How are metaphors rendered in legal translation? A corpus-based study of the European Court of Human Rights judgments

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ABSTRACT

Rendition of metaphors from source to target linguaculture has been labelled as one of the most challenging translation tasks. As a pervasive feature of legal language which reflects and shapes the perception of law, metaphors have attracted the attention of numerous legal scholars. Surprisingly, however, the studies of metaphors in legal translation are still scarce. The present paper aims to contribute to this understudied area by attempting to shed light on how metaphors are rendered in translations of the ECtHR judgments and the underlying reasons for the choice of the translation strategy. To this end, I have scrutinised a corpus of 60 judgments in English and their translations into Montenegrin contained in the HUDOC repository. The results suggest that most of the metaphors used in the ECtHR judgments are lexicalised, dead metaphors and rendered via image transfer with a meagre omission rate suggesting that they are a prominent feature of both the source and target text and that there is a shared cognitive ground between the concerned LSPs. Monocultural metaphors trigger a varied translation behaviour as more strategies are employed. Transculturality seems to be one of the key influencing factors for the choice of a strategy. Finally, illustrative examples of the renditions of metaphors used for law, court, court procedure, rights, discrimination, truth and injustice are discussed.

KEYWORDS

Metaphors, legal translation, corpus-based translation studies, European Court of Human Rights, judgments.

1. Introduction

Metaphors are a prominent and pervasive feature both of everyday and specialised language. Having important stylistic and referential implications, their use is far from purely ornamental, and, as such, it has been labelled as "the most important particular problem in translation" (Newmark 1988: 104). Even though metaphors have attracted the attention of numerous translation scholars predominantly in the field of literary translation, they are still understudied in legal translation. As of January 2021, in the Translation Studies Bibliography (Gambier and Doorslaer 2019), there were 514 articles published from 1976 to 2021 that focused on legal translation and only two contained the word "metaphor" as a keyword and none with the word in the title. The Bibliography of Interpreting and Translation (BITRA) contained five publications with titles mentioning metaphors in the legal context and nine with the same reference in the subject section.

Legal Translation Studies (LTS) have come a long way from being regarded "merely as one of the many subject areas of special-purpose translation […] often snubbed for its alleged inferiority" (Šarčević 1997: 1) to gradually

gaining recognition as an interdiscipline in its own right "committed to contributing to a better understanding of all aspects converging in this complex and multifaceted phenomenon, including its processes, products and agents" (Biel *et al.* 2019: 1). Hence, LTS scholars have dealt with various aspects of legal translation such as the linguistic patterns of translated legal texts, translator's competences and training, translation assessment, overcoming the lack of lexical equivalence and conceptualisation of the meaning of words in supranational legal orders, sociopolitical aspect of legal translation, use of corpora and interdisciplinary methods in LTS research, among others (Šarčević 1997, Alcaraz and Hughes 2002, Leung 2004, Stern 2004, Cao 2007, Chan 2007, Biel 2010, Engberg 2016, Phelan 2017, Pontrandolfo 2019). The scarcity of studies of metaphors across the legal genres might come as a surprise, especially since in legal scholarship, there is a "growing field of research on the interpretation of legal metaphors" (Larsson 2017), and legal scholars point out that

> [f]igurative language is essential in legal discourse […] The use of metaphors reveals how lawyers perceive different situations and contexts. Thus, they shape the legal discourses and, in some cases, determine which arguments are valid in legal reasoning when legal issues are resolved (Ebbesson 2008: 260).

Another reason for the importance of awareness and critical analysis of figurative language in legal discourse used both in the source and target text is that "metaphors can also blind us and lead us astray" (Ebbesson 2008: 260).

The present study aims at contributing to filling the above-mentioned gap by shedding light on the translation of metaphors in the European Court of Human Rights (ECtHR) judgments and answering the following questions:

1. How are the metaphors found in the ECtHR judgments rendered in the target language? What do the employed strategies suggest about the identified metaphors as potential translation crisis points?

2. What could be some underlying reasons for the employed translation strategies?

3. What type of metaphors are most typically found in ECtHR judgments and to what degree does the level of transculturality influence the translator's decision?

This paper seeks to answer these questions by conducting a corpus-based study of the ECtHR judgments in English and their renditions into Montenegrin. I hypothesise that most transcultural metaphors will be rendered with image transfer due to the cognitive equivalence as they share the same cognitive domain and will not present a significant translation problem in this genre. Before presenting the study's results, a brief

overview of the treatment of metaphors in legal discourse will be given in section 2, followed by the studies on translation of metaphors in Translation Studies in section 3. Then, the study design and the results with analysis and discussion will be given in sections 4 and 5, wrapped up by conclusions in section 6.

2. Metaphors in legal language

Quite a number of works, written chiefly by legal scholars, have dealt with the use of metaphors in legal language (Schane 2006, Smith 2007, Johnson 2007, Berger 2007, Winter 2007, Ebbesson 2008, Larsson 2017, Slosser 2019, Wojtczak and Witczak-Plisiecka 2019). A number of these studies rely on the work by Lakoff and Johnson (2003) and move from the purely linguistic manifestations to a cognitive level of conceptualisations that metaphors signal. However, at this point, it should be noted that any attempt to give a comprehensive overview of studies of metaphors in a single section is due to fail because of the complexities involved. Thus, in the remainder of this section, the discussion will focus on some of the key issues at stake and studies of metaphors in the legal context.

As is the case with language in general, metaphors are omnipresent, unavoidable and frequently found in legal language. According to Smith (2007), there are four types of metaphors in persuasive legal language corresponding to four different types of arguments: a) doctrinal metaphors — aspects of doctrinal law expressed through metaphors (e.g., the "wall of separation" principle in connection with the law on the separation of church and state under the First Amendment in U.S. legislation); b) legal methods metaphors — concepts of legal methods and legal analysis which are expressed in metaphoric terms (e.g. "balancing" or "weighing" tests to say that a legal issue was resolved); c) stylistic metaphors – different metaphors an advocate might use as a feature of his or her writing style; d) inherent metaphors – many words or expressions used in legal discourse which go unnoticed as metaphors (e.g. "high court" where HIGH means POWER and AUTHORITY).

As indicated, in some cases, metaphors may be used quite intentionally in legal settings for rhetorical purposes and may have a significant impact. Wojtczak and Witczak-Plisiecka (2019) show how the common feature of metaphors to simultaneously emphasise certain aspects of target concepts and hide others has been exploited in Polish legislation, sometimes projecting a favourable image of certain legal concepts and other times changing conceptualisations. Berger (2007) focused on metaphor use in the U.S. Supreme Court decisions on campaign finance regulation and judicial decision-making in custody disputes concluding that lawmakers cannot avoid being influenced by metaphors, myths and symbols in their decision-making. She analysed the cases that involved determining which parent was best suited to be given custody over children when there was

often no rational basis for why one parent should have been given an advantage over the other. The "embedded knowledge structures," she argues, influence judicial decision-making negatively and unconsciously, sometimes to the disadvantage of some families that do not conform to a traditional picture of what a family *should* look like (Berger 2009: 206).

Lewison (2015) gives an example from contract law in which a metaphor was used to avoid decision-making. In *Woodar v. Wimpey* case, the criterion for determining whether a party was entitled to terminate a contract on account of the breach by the other party was whether the breach had gone to the root of the contract. Thus, it was claimed that "[t]o be repudiatory, the breach, or threatened breach, must go to the root of the contract," a controversial statement based on a botanical metaphor possibly suggesting that a plant cannot survive if the root is damaged (which is quite untrue of course having in mind numerous cases in which plants survived with severely damaged roots or even no roots at all) that caused a lot of discussions and debates and the need for further clarifications (Lewison 2015: 7).

Ebbesson (2008: 260), hence, rightly notes that

> [g]etting a metaphor accepted may change the outcome of a negotiation, a court procedure or an academic legal debate. New persuasive metaphors may thus give new meaning to an issue, and give a new understanding of our experience. Metaphors also add to the justification and legitimation of court decisions as well as legal structures and the legal system at large – and this makes them all the more important.

Furthermore, Ebbesson (2008: 262) mentions several ways in which metaphors influence law. The influence can be seen in the selective inclusion or exclusion of different categories of subjects through anthropomorphism and personification. For instance, a corporation can be "negligent", "made accountable", "be guilty", to name a few examples, which signals that CORPORATION IS A PERSON and, as such, a duty- and rights-holder. This suggests that corporations can even invoke the European Convention on Human Rights and Fundamental Freedoms (Emberland 2016, Kaufmann *et al.* 2017). Metaphors can also affect the perception of law and legal methods. For instance, if a court "finds" in "the sources of law", typically case-law, how a provision should be interpreted and applied, it becomes immune to criticism for the decision made in a particular case. However, this metaphor creates an inaccurate picture of what judges do because they become lawmakers in a number of cases. Metaphors also help legitimise the work of courts through "weighting of interests and concerns", creating an image of a court that can objectively and precisely balance one interest against another (as if put on Iustitia's scales), suggesting that the judge cannot be influenced by his or her values or political elements, a picture to which courts, alas, not always do justice.

Another typically employed metaphor is that of a law seen as a system suggesting that norms and provisions are codependent.

It should be mentioned that there were some calls by the representatives of an objectivist approach to law to abandon the nomenclature of metaphors to increase clarity and reduce the possibility of misinterpretation, believing that metaphors were the antithesis to legal reasoning (Johnson 2007). One of the well-documented cases in point is the example of an early American legal realist, Justice Cardozo, who claimed that "metaphors in law are to be narrowly watched, for though starting as devices to liberate thought, they end often by enslaving it" (Berger 2004), a statement in which, as it is often pointed out, he paradoxically used at least two metaphors. However, most scholars agree that being such a pervasive phenomenon, the use of metaphors is unavoidable, and they are here to stay in legal language as "the law is an abstract social phenomenon [and] the need for metaphors is great" (Larsson 2017: 34). The growing body of literature dealing with the interpretation and the impact of metaphoric language testifies to that.

3. Translation of metaphors

A systematic approach to the study of metaphors in Translation Studies was initiated in the 1960s and later on intensified significantly with the research carried out by Kleopfer (1967), Dagut (1976), Newmark (1980), Toury (1995), Dickins (2005), Schäffner and Shuttleworth (2013), Pedersen (2015) and others. In most cases, it has been studied in literary translation, and most of the studies were process or product-oriented, with only a handful of user-oriented studies. Some of the recent LTS studies on metaphor include a study of conceptual metaphor translation in the legal discourse of EU White Papers which suggests that if metaphorical expressions share the same cognitive domain both in the source and target language, metaphoricity is fully preserved in translation (Gražytė and Maskaliūnienė 2009). Furthermore, Vegara Fabregat conducted a study of metaphors in the United States Supreme Court opinions and their translations into Spanish suggesting that the most commonly used strategy for the rendition of metaphors is "using a formally different metaphor in the TT, either maintaining the underlying cognitive image or domain, or changing it", followed by a paraphrase as the second most employed strategy and formally literal translation as the third (Vegara Fabregat 2015: 344). Other scholars have dealt with the challenges and (im)possibilities of translating some of the key legal conceptual metaphors showing that sometimes the translation process changes both the conceptualisations and the way they are understood by TT readers. They suggest that the equivalence should not be sought at the word or conceptual metaphor level but at text level and that the concepts of source or target linguaculture are "simplifications that may readily fit in the translation market, but poorly

reflect the complexity and the hybridity of every languaculture" (Mannoni 2021a: 1396, see also Mannoni 2021b, Bromwich and Manzella 2018).

At this point, it is important to mention the notions suggested by Goatly (1997), which are also crucial for the translation of metaphors. According to this, the three essential components of a metaphor are: topic (the referent or the subject of a metaphor), vehicle (the image that carries the weight of comparison) and grounds (the similarity or the link between the items of comparison). A well-known example used by Goatly to illustrate these components is "the past is a foreign country" where the topic is "the past", the vehicle is "a foreign country" and the grounds the fact that both in foreign countries and the past things are done differently, which can be seen from the context of the given example (Goatly 1997: 8). However, it should be noted that a vehicle does not necessarily have to be a noun or a noun phrase. It can be any part of speech or expression that is the metaphorical image carrier. Hence, in the expression "to break the law", the underlying conceptual metaphor is LAW IS AN OBJECT. In this case, the topic is "law", the vehicle "to break", the grounds "law can be broken just as an object".

As for the translation strategies for rendering metaphors, numerous taxonomies have been suggested. Keeping it simple, we will mention the taxonomy suggested by Lindqvist (2005: 121), which is primarily based on Toury's (1995: 82) work. This is the taxonomy of translation strategies that will be used in the present study. From the perspective of the source text, these strategies include:

1. Image transfer: this includes the translation of the source text metaphor with the same metaphor in the target text by using the same vehicle.

2. Image substitution: this includes the translation of the source text metaphor with a different target language metaphor by using a different vehicle that shares the same or similar underlying conceptual domain.

3. Reduction to sense: this includes a translation of the source text metaphor with a non-metaphor, typically via a paraphrase.

4. Omission: this includes the replacement of the source text metaphor by nothing.

From the perspective of the target text, the strategy includes:

1. Compensation: this includes the addition of the metaphor in the target text when there is none in the source text. This will not be the focus of the present study.

Another relevant concept for the translation of metaphors that is used in the present study is the notion of transculturality. It has been articulated by Pedersen in his study on the rendition of extralinguistic elements of culture in subtitling (2011). It refers to the degree to which metaphors are shared between the source and target linguaculture. With this in mind, transcultural metaphors are the ones that are conceptualised and used in the same way both in the source and target linguaculture and, thus, share the same conceptual domain. On the other hand, the monocultural ones are not shared between two linguacultures and are closely linked to the language and jurisprudence of one country and cause a varied translation behaviour (Pedersen 2011: 106). Such is the example of the right to act or talk in the court, which in American law and the language is conceptualised through the metaphor of "standing", but this is not the case with various other languages.

As for the typology of metaphors, a taxonomy that the present study will rely on is the one suggested by Dickins (2005). He divided the metaphors into lexicalised (the metaphors that have a translation equivalent) and non-lexicalised (those that do not have a translation equivalent) (Dickins 2005: 231). Going further, as indicated in some of the examples given in the previous section, the lexicalised metaphors can be dead (if a vehicle is not perceived, and in most cases, the speakers do not perceive it as a metaphor), stock (if a vehicle is fairly prominently perceived) and recent (similar to the stock metaphor but still not found in a dictionary). The non-lexicalised metaphors can be adapted (based on lexicalised metaphors) and original metaphors (for a deeper discussion, the reader is referred to Dickins 2005: 231-243 and Newmark 1988: 106-113, as more profound elaboration would go beyond the scope of the present paper).

4. Study design

4.1. Material

The material used for this study consists of a corpus of 60 judgments in English and their translations into Montenegrin (overall 120 judgments) delivered by the European Court of Human Rights (ECtHR) found in the HUDOC database. HUDOC is an online repository used by the ECtHR which provides access to the case-law of the Court (Grand Chamber, Chamber and Committee judgments and decisions, communicated cases, advisory opinions and legal summaries from the Case-Law Information Note), the European Commission of Human Rights (decisions and reports) and the Committee of Ministers (resolutions). At the time of this study, these were all the translations into Montenegrin with the English versions as a source text that were available in the HUDOC database. For the sake of potential replication and further research, it might be useful to draw attention to the fact that at the time of this study, if searched using the language filter

option, HUDOC result list displays 76 judgments labelled as being translated into Montenegrin. However, 16 do not have a source text in English and one Macedonian version is mistakenly labelled as Montenegrin. Hence, these 16 judgments were discarded from the analysis.

The English part of the corpus consists of 1,127,473 words while the Montenegrin part consists of 245,851 words. The difference in the word number in the Montenegrin part results from the fact that some of the judgments are given as legal summaries with only the most relevant paragraphs for the concerned case taken from the original judgments and translated into Montenegrin. Out of 60 judgments, 13 were delivered by the Grand Chamber (a panel of seventeen judges ruling on the admissibility and/or merits) and 47 by the Chamber (a panel of seven judges ruling on the admissibility and/or merits). According to the level of importance, 58 judgments are classified as "Key cases" (judgments delivered since the inception of the new Court in 1998 and published or selected for the publication in the Courts Official Reports of Judgments and Decisions), one as "Level 1" which is the category of high importance and one as "Level 2" which is the category of medium importance. The time frame of the concerned judgments is 2014 to 2019.

4.2. Method

The method used to extract metaphors from the corpus was the same applied in Lindqvist's (2005) and later in Pedersen's study (2017). Namely, two key criteria that guided the process of the identification of metaphors were: a) the lie criterion, which means that the figurative rather than literal meaning of a figure of speech is true, and b) the divergence criterion, which implies that the semantics of the concerned figure of speech diverges from typical language use. In Hallidayan terms, the latter criterion refers to the process of substitution of one grammatical class congruently used for constructing a meaning (e.g., verbs for processes or nouns for entities) by an incongruent grammatical class (e.g., nouns for processes as in nominalisations) resulting in "a semantic hybrid" (Halliday 2010: 22). In this way, 63 metaphor types were manually identified in the ST and, after that, their counterparts in the TT. Due to the above-mentioned discrepancy in the word count of the available sub-corpora documents, I did not use an automatic alignment tool as the process of alignment of such documents would have been extremely time-consuming. Rather, I used AntConc (version 3.5.9.) to scrutinise the TT and locate the equivalents and possible variations in translation behaviour for the previously manually identified ST metaphors. Finally, I identified the translation strategy and classified it according to Lindqvist's (2005) taxonomy.

5. Results

This section will give an overview of the key findings, starting from the main results. After that, we will have a closer look and analyse some specific cases with illustrative examples.

5.1. Main results

As shown in Figure 1, out of 65 metaphor types that were sampled from the corpus, 42 (62.4%) were rendered using image transfer, 19 (29.2%) were rendered using image substitution, 3 (4.6%) were rendered using reduction to sense and only 1 (1.5%) by using omission. The omission rate is rather low, suggesting that metaphors are a prominent feature of legal discourse both in the target and source language. The translation strategies employed in rendering metaphors suggest that translators are aware of the degree of transculturality of metaphors. Most of the sampled metaphors are transcultural, lexicalised, dead and hence, probably not surprisingly, rendered with image transfer. The monocultural metaphors are rendered in varied ways, typically by using a different image and vehicle. In the following section, I will zoom into the different metaphors and analyse the renditions with a brief discussion. I will focus on the most typical metaphors which were identified related to law, court, court procedure, rights, discrimination, truth and injustice.
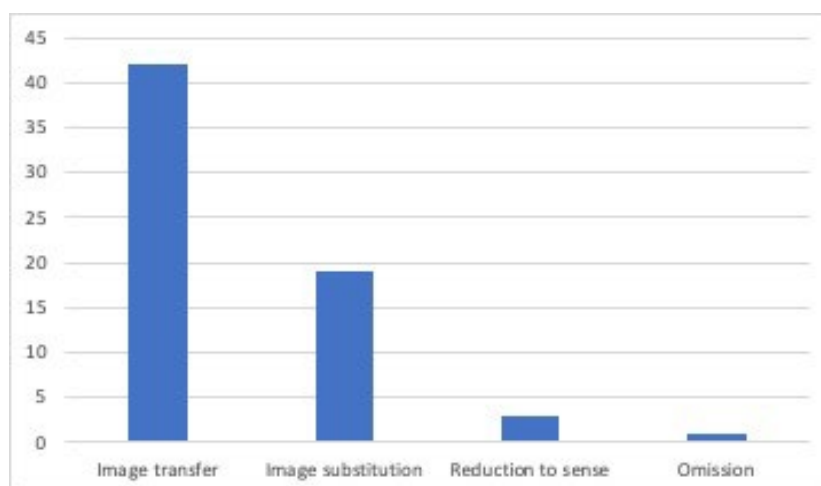

Figure 1. ST metaphors and transfer strategies

5.2. LAW metaphors

As shown in Figure 2, most of the LAW metaphors (66%) were rendered with image transfer, while 22% were rendered with image substitution and only 11% via reduction to sense. There were no cases of omission for rendering LAW metaphors.
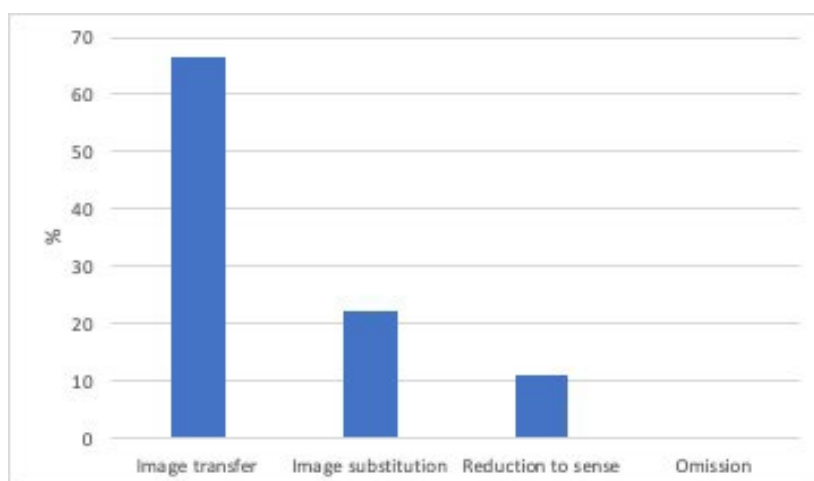
Figure 2. Transfer strategies for LAW metaphors

The most typical cognitive domains for the metaphors related to the law that were identified in the corpus are the following: LAW IS A PERSON (it "defines", "alludes", "requires", "keeps pace"), LAW IS A STRUCTURE (it has the "basis", "grounds"), LAW IS A SOURCE OF LIGHT (it gives "light" for the interpretation and understanding), LAW IS A SANCTUARY (freedom is "enshrined" in it), LAW IS A TERRITORY/ DEFINED PLACE (facts of the case "fall within the ambit" of the law), LAW IS A TREE (provisions "stem from international law"), LAW IS AN INSTRUMENT (it is "a binding international instrument could ensure the necessary efficiency"), LAW IS A SYSTEM (the Convention is "first and foremost a system"), LAW IS A REMEDY, LAW IS A BODY (it has "limbs").

We will analyse some illustrative examples for each rendition of the mentioned metaphors. In each case, first, we will give the source text, then the translation into Montenegrin, followed by a back translation (literal, word for word following the source syntax) and a brief discussion.

(1) LAW IS A PERSON

Again, whilst certainty is highly desirable, it may bring in its train excessive rigidity and the law must be able to keep pace with changing circumstances.

Translation into Montenegrin:
Isto tako, iako je sigurnost izuzetno poželjna, ona može za posljedicu imati pretjeranu rigidnost, a zakon mora da bude u stanju da ide u korak sa okolnostima koje se mijenjaju.

Back translation:
[Likewise, whilst certainty is highly desirable, it may as a consequence have excessive rigidity and the law must be able to keep pace with circumstances which are changing.]

(*Del Rio Prada v. Spain*, 21 October 2013, §92)

(2) LAW IS A SANCTUARY

The Republic of Turkey was a secular State in which freedom of religion was specifically enshrined in the Constitution.

Translation into Montenegrin:
Republika Turska je sekularna država u kojoj je sloboda vjeroispovjesti pohranjena konkretno u ustavu.

Back translation:
[The Republic of Turkey is a secular State in which freedom of religion is stored specifically in the Constitution.]

(*Sinan Isik v. Turkey*, 2 February 2010, §34)

(3) LAW IS A SOURCE OF LIGHT

It is the Court's task in the present case to establish what the "penalty" imposed on the applicant entailed under the domestic law, based in particular on the wording of the law, read in the light of the accompanying interpretative case-law.

Translation into Montenegrin:
Zadatak suda u ovom predmetu jeste da utvrdi što sa sobom nosi "kazna" izrečena Podnositeljki predstavke po domaćem pravu, naročito na osnovu formulacije u zakonu, sagledane u kontekstu sudske prakse kojom se ta formulacija tumači.

Back translation:
[The task of the Court in the present case is to establish what with itself carries "penalty" imposed on the applicant under the domestic law, in particular, based on the wording in the law, seen in the context of case-law by which that wording is being interpreted.]

(*Del Rio Prada v. Spain*, 21 October 2013, §96)

In Example (1), English uses one of the LAW metaphors found in the corpus most frequently, LAW IS A PERSON, suggesting that law should be flexible in order to keep pace with the changing circumstances in society. This transcultural lexicalised metaphor is rendered into Montenegrin literally via image transfer as the same metaphor is used in the target language. In Example (2), English uses a metaphor that conceptualises law as a sanctuary in which sacred objects are to be found, in this particular case, the freedom of religion, which is itself indeed another metaphor. Perhaps surprisingly, the same conceptualization is not found in the Montenegrin part of the corpus, which could be related to historical reasons and development of the legal discourse making this a monocultural metaphor. Instead, it is rendered via image substitution by employing a more general and frequently found metaphor LAW IS A DEFINED (CLOSED) SPACE, though not necessarily a sacred one. Perhaps closely connected to the previous conceptualisation is the one given in Example (3), where the law is conceptualised as the source of light, and, thus, enlightenment, a concept commonly found concerning revelations of religious truths and guides to

the paths of righteousness, but not exclusively limited to these of course. The metaphor in the given example is rendered via reduction to sense ("sagledane u kontekstu"). It should be noted, though, that the conceptualisation of the law as a source of light can be found in the Montenegrin legal discourse (e.g., "u svjetlu principa iz datog člana"), which suggests that a given metaphor cannot be qualified as a monocultural but transcultural one possibly introduced at some point as a calque, which suggests that the rendering found in the corpus might be related to a particular choice of the translator.

5.3. COURT and COURT PROCEDURE metaphors

It comes as no surprise that the Court is conceptualised as a person in the present corpus. It acts as a judge, researcher, doctor, master, and other. As shown in Figure 3 two strategies were employed for rendering this metaphor: image transfer (53% of cases) and image substitution (47% of cases).
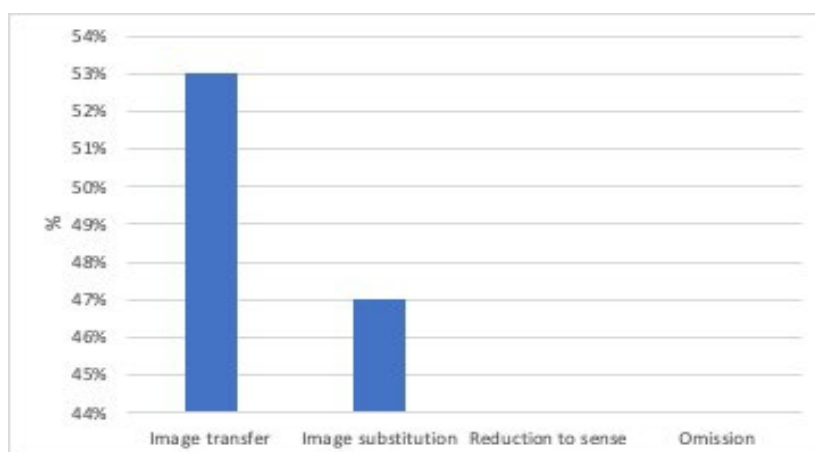

Figure 3. Transfer strategies for COURT metaphors

(4) A COURT IS A PERSON

In the present case, the Court has no doubt that the applicant was convicted by a competent court in accordance with a procedure prescribed by law, within the meaning of Article 5 § 1 (a) of the Convention.

Translation into Montenegrin:
U ovom konkretnom predmetu Sud ne sumnja da je Podnositeljka predstavke osuđena od strane nadležnog suda u skladu sa postupkom koji je propisan zakonom, u smislu člana 5 stav 1 (a) Konvencije.

Back translation:
[In this present case the Court has no doubt that the applicant was convicted by a competent court in accordance with a procedure prescribed by law, within the sense of Article 5 paragraph 1 (a) of the Convention.]

(*Del Rio Prada v. Spain*, 21 October 2013, §128)

(5) A COURT IS A PERSON

However, since the Court is master of the characterisation to be given in law to the facts of the case […], it considers it more appropriate, in the light of all the circumstances of the case, to examine the present case under Article 8.

Translation into Montenegrin:
Međutim, pošto Sud ima zadnju riječ kada je u pitanju karakterizacija koju treba dati u pravu činjenicama predmeta […], Sud smatra prikladnijim, u svjetlu svih okolnosti predmeta, da ovaj predmet ispita po članu 8.

Back translation:
[However, since the Court has the last word when it comes to the characterisation which should be given in the law to the facts of the case […], the Court considers appropriate, in the light of all the circumstances of the case, to examine this case under Article 8.]

(*Schwizgebel v. Switzerland*, 10 June 2010, §69)

Both Examples (4) and (5) illustrate the use of the transcultural lexicalised metaphor A COURT IS A PERSON. In the first case, the source vehicle is preserved and the metaphor is rendered literally via image transfer. In the second case, although the same conceptual metaphor is preserved, the headword "master" is omitted, but the wording "ima zadnju riječ" ("has the last word") suggests the same underlying concept. By all means, this could be considered a reduction to sense. However, since by definition that strategy implies the rendition of a metaphor into a non-metaphor, and in the given example the wording preserves the original concept that A COURT IS A PERSON, the strategy that the translator used can be categorised as image substitution as the ST vehicle is substituted with a different vehicle which shares similar grounds. The explicit *master* image seems not to be used in Montenegrin legal discourse, although it might be implied through different images and wording.

As for the court procedure, Figure 4 shows that the metaphors in the given corpus were rendered by using two different strategies: image transfer (66.66%) and omission (33.33%).
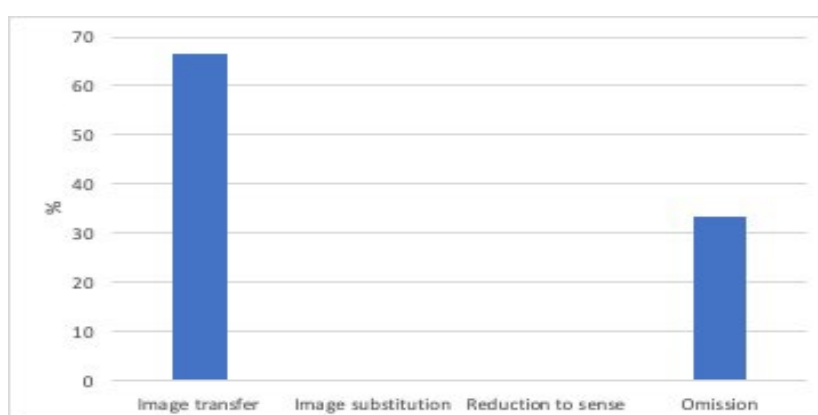

Figure 4. Transfer strategies for COURT PROCEDURE metaphors

The most typical cognitive domains for these metaphors are COURT PROCEDURE IS A WAR (in it, the object of a provision can be "defeated"), COURT PROCEDURE IS A CONTAINER (it can be "reopened"), COURT PROCEDURE IS A PLAY (in it, different values can be "brought into play"). The following examples illustrate some of the most typical strategies used for rendering these metaphors.

(6) COURT PROCEDURE IS A WAR

Were that not the case, the object and the purpose of this provision – namely that no one should be subjected to arbitrary prosecution, conviction or punishment – would be defeated.

Translation into Montenegrin:
Da to nije tako, cilj i svrha ove odredbe - naime da niko ne treba da bude podvrgnut proizvoljnom krivičnom gonjenju, osuđivanju ili kažnjavanju - bili bi pobijeni.

Back translation:
[That it is not the case, the object and the purpose of this provision – namely that no one should not be subjected to arbitrary prosecution, conviction or punishment – would be defeated.]

(*Del Rio Prada v. Spain*, 21 October 2013, §93)

(7) COURT PROCEDURE IS A PLAY

The question of transforming the institution of marriage into a gender-neutral one brought significant ethical and religious values into play.

Translation into Montenegrin:
Pitanje transformisanja institucije braka u rodno-neutralnu instituciju nosilo je sa sobom značajne etičke i vjerske vrijednosti.

Back translation:
[The question of transforming the institution of marriage into gender-neutral institutions brought with itself significant ethical and religious values.]

(*Hämäläinen v. Finland*, 16 July 2014, §18)

In Example (4), English uses the metaphor COURT PROCEDURE IS A WAR which is rendered into Montenegrin via a literal image transfer as this is a transcultural lexicalised metaphor. The expressions such as "defendant", "defence", "win", which are frequently used in such contexts, confirm that. This metaphor is similar to a well-documented metaphor ARGUMENT IS WAR (Lakoff and Johnson 2003). As noted by Ebbesson (2008: 261), by seeing court procedures as acts of war, only certain aspects of the procedure are highlighted (that one party will win and the other party will lose), while other aspects (say the outcome which could, in some cases, be beneficial for both parties) are hidden. Furthermore, he claims "our understanding of the court procedure would be quite different if procedures and actors in the procedures were referred to in reconciliatory terms"

(Ebbesson 2008: 261). The metaphor in Example (5) refers to a court procedure involving the definition of the institution of marriage in a case involving transsexual and heterosexual marriage partners. The COURT PROCEDURE IS A PLAY metaphor is omitted in the target text, and it is not found in the Montenegrin part of the corpus of judgments. More evidence is needed to determine if this, otherwise transcultural metaphor, is not used in the Montenegrin legal genre of judgments.

5.4. RIGHTS and DISCRIMINATION metaphors

Both the RIGHTS and DISCRIMINATION metaphors are transcultural and are conceptualised identically in the source and target texts and, thus, rendered literally via image transfer. The identified cognitive domains for these metaphors include RIGHTS ARE PERSONS, RIGHTS ARE COMPETITORS (a sub-category of the previous metaphor; they can "compete"), DISCRIMINATION IS AN ENEMY, DISCRIMINATION IS A TREE (it has its "roots" into different stereotypes from which it grows). As previously mentioned, since these are all examples of literal renderings, no back translation will be provided in the examples to follow.

(8) RIGHTS ARE COMPETITORS

The Chamber considered that there were two competing rights which needed to be balanced against each other, namely, the applicant's right to respect for her private life by obtaining a new female identity number and the State's interest in maintaining the traditional institution of marriage intact.

Translation into Montenegrin:
Vijeće je smatralo da je tu riječ o dva konkurentna prava koja je trebalo staviti u ravnotežu, i to: pravo podnositeljke predstavke na poštovanje privatnog života tako što će joj se dati novi ženski lični broj i interesa države da održi nepromijenjenom tradicionalnu instituciju braka.

Back translation:
[The Chamber considered that there were two competing rights which needed to be put into balance, and namely: the right of the applicant to respect of the private life by giving her a new female identity number and the interest of the State to maintain intact the traditional institution of marriage.]

(*Hämäläinen v. Finland*, 16 July 2014, §38)

(9)   DISCRIMINATION IS A TREE

Many differences in treatment based on sexual orientation had their roots in stereotypes about gender roles.

Translation into Montenegrin:
Mnoge razlike u tretmanu koje se baziraju na seksualnoj orijentacili imaju svoje korjene u stereotipovima rodnih uloga.

Back translation:
[Many differences in treatment which are based on sexual orientation have their roots in stereotypes about gender roles.]

　　　　　　　　　　　　　　　　　　(*Hämäläinen v. Finland*, 16 July 2014, §54)

5.5. TRUTH and INJUSTICE metaphors

The TRUTH and INJUSTICE metaphors are conceptualised in the same way in the source and target texts and are thus rendered literally via image transfer. The identified metaphors include TRUTH IS AN INSTITUTION (it is "established"), INJUSTICE IS A BURDEN, and their rendition is illustrated in the examples to follow.

(10) TRUTH IS AN INSTITUTION

It is sufficient that the court, in the proper exercise of its discretion, deems the examination of the witness not to be necessary for establishing the truth.

Translation into Montenegrin:
Dovoljno je da sud, u propisnom ostvarivanju svoje slobode u odlučivanju, smatra da ispitivanje svjedoka nije neophodno da bi se ustanovila istina.

Back translation:
[It is sufficient that the court, in the prescribed exercise of its freedom in deciding, deems that the examination of the witness is not necessary to establish the truth.]

　　　　　　　　　　　　　　　　　　(*Jorgic v. Germany*, 12 July 2007, §39)

(11) INJUSTICE IS A BURDEN

I refuse to continue to bear the weight of this injustice and this contradiction stemming from the desire to offset a fear, which is wholly unfounded and deeply offensive.

Translation into Montenegrin:
Odbijam da nastavim da nosim teret nepravde i ove kontradikcije koja potiče od želje da se pobijedi strah, koji je u potpunosti neosnovan i duboko uvredljiv.

Back translation:
[I refuse to continue to bear the weight of injustice and this contradiction which stems from the desire to conquer the fear, which is wholly unfounded and deeply offensive.]

　　　　　　　　　　　　　　　　　　(*Sinan Isik v. Turkey*, 2 February 2010, §7)

6. Conclusions

The present study has shown that metaphors are a prominent feature of the legal discourse with a low omission rate in the rendition from the ST to the TT in the translations of the ECtHR's judgments. Most of the metaphors in the genre that was the object of this investigation tend to be

transcultural, lexicalised, dead metaphors and translation behaviour tends to be uniformed as they tend to be preserved and rendered via image transfer which confirms the hypothesis set at the beginning of the paper. The high rate of preservation of metaphors in translations of the concerned legal genre is in line with the findings of a study on metaphor translation in the genre of EU white papers (Gražytė and Maskaliūnienė 2009). Furthermore, from a cognitive perspective, the results suggest a shared cognitive ground between English and Montenegrin for the concerned LSP genre and provides product-based evidence that the identified metaphors do not seem to pose a translation problem (cf. Pedersen 2017: 19). Granted, this evidence should be triangulated with process-oriented methods to reach any solid conclusions in this regard. As for the most frequently employed strategies, the results differ from Vegara Fabregat's (2015) study in which she reports image substitution as the most frequently used strategy. This can partly be explained with her focus on a specific type of metaphor and possibly different legal genres and language pair.

In the cases of monocultural metaphors, translation behaviour varies, and unlike the transcultural ones, they call for the activation of specific translation strategies. This shows that translators are aware of the transculturality in legal translation, and it seems to be one of the key influencing factors for the choice of translation strategy. This is in line with the findings of studies carried out outside the field of legal translation as well (Schmidt 2014, Pedersen 2017). However, unlike some other forms of translations (such as the audiovisual translation), metaphors do not seem to lose their force when rendered from ST to TT in legal translation (Dagut 1976, Dickins *et al*. 2002, Pedersen 2017). One exception to that which was evidenced against this trend involves monocultural metaphors, which in some cases seem to be toned down by the reduction to sense and neutralisation of metaphoric images.

To my knowledge, this is the first study tackling the raised issues in relation to Montenegrin, an understudied language in the field of Translation Studies and a low-resource language in terms of the available electronic resources (Božović 2020, Božović *et al.* 2018). It should be pointed out, though, that the present study was limited to the legal genre of judgments, and specifically the judgments delivered by the European Court of Human Rights and one language pair. As a way forward, it would be interesting to replicate the study and see whether the same results would be obtained from corpora pertaining to different legal genres or different courts for that matter, be it international or domestic, and indeed different language pairs to see if we can talk about universal features for rendering figurative language in legal translation.

Data availability statement

Link: https://github.com/PetarBozovic1/ECtHR-judgments-EN-CNR.git

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