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CASE COMMUNICATION AT THE EUROPEAN COURT OF HUMAN RIGHTS
Genre-based and translation perspectives

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Abstract – This study contributes to research on the discursive practices at the European Court of Human Rights (ECtHR), as descriptions of ECtHR language and translation policies are scant. The study combines genre-based and translation perspectives to outline the system of procedural genres, with a specific focus on a hitherto unresearched and semi-"occluded" (Swales 1996) genre of *case communication*. This genre takes on an important role in the procedural flow of documents as it marks the case acceptance by the Court, orients the following written procedure and represents the first instance of institutional legal translation in cases when the initial application is lodged in a language other than English or French, the ECtHR official languages. The findings identify two alternative generic templates and hypothesize that the template choice could derive from a potential reliance on the so-called situated cognition and could correlate with a different set of translational competences required, when transposing knowledge from the initial applications. The study supplements previous research on institutional legal translation at the ECtHR, casting light on its "hidden" dimension, as well as uncovering its imaginative and creative side through an overview of case communications dealing with Article 10 provisions – freedom of expression – that exact the highest level of translational expertise on the lawyers dealing with these texts as they frequently feature creative, profane and even taboo language.

Keywords: case communication; genre-based; legal translation; European Court of Human Rights; freedom of expression.

1. Introduction

To talk of legal language in international courts is to talk of "usefully distinguishable" legal genres (Bhatia 1983, p. 227) embedded in a strictly defined "social-institutional context, including the lawyers and judges who work there and are actively involved in judicial decision-making, and the linguistic realisation of such legal processes" (Nikitina 2018a, p. 110). Legal genres at the European Court of Human Rights ("ECtHR" or "the Court") are situated in the context of forty-six Council of Europe Member States with their assorted legal systems and languages. The Court is called upon to interpret the provisions of the European Convention on Human Rights

("ECHR" or "the Convention") in a multitude of subject matters, ranging from the right to life to the right to a fair trial, from prohibition of torture to freedom of expression, and others. This paper focuses on the topic of freedom of expression in a peculiar procedural genre within the ECtHR system: case communication to the respondent government, illustrated here by the Russian government[1]. ECtHR discourse has been the object of a limited number of linguistic studies (Nikitina 2018a, 2018b; Brannan 2009, 2013, 2018; Peruzzo 2019a, 2019b), covering aspects of legal translation (Brannan 2009, 2013), the genres of judgment (Weston 2005; White 2009; Nikitina 2018c; Peruzzo 2017, 2019a, 2019b) and written pleadings (Nikitina 2018a, 2018b), and the general setting of institutional communication (Brannan 2018; Nikitina 2019). Still, to the best of my knowledge, the genre of *case communication*[2] has never been the object of a linguistic inquiry.

This study intends to fill the existing gap. It sets the scene by describing the context and the language policy of the Court, illustrating the communicative situation in which the procedure is embedded and analyzing it as a system of genres. Naturally, as any international court, the ECtHR, too, relies on institutional legal translation. This theoretical framework is introduced in Section 3, first in general and then specifically for the ECtHR system. Next, the specific materials of the study are put under the spotlight in Section 4, explaining Article 10 provisions – Freedom of expression – in genre-based and translation perspectives. The aim of this study is twofold: to describe the semi-occluded genre of *case communication* and to cast light on the dark side of the institutional legal translation at the ECtHR carried out at the case communication stage.

2. Procedural genres at the ECtHR

2.1. Context

The ECtHR is a regional supranational court, meaning that while transcending national borders, this adjudicative body operates in a

[1] The materials of this study precede March 15, 2022, when Russia withdrew from the Council of Europe.

[2] The term used in the Court's official database HUDOC is "communicated case" or *affaire comuniquée* in French, where the "communication" element is rendered through a premodifying participle. Such a denomination keeps the focus on the head noun, i.e. the *case*, which – understandably – is at the centre of the attention in legal terms. In the present study, however, it is the act of *communication* that is the object of analysis, and not the *case* as such. To better reflect this focus, the label "case communication" was created inverting the premodifier and the head noun. This label was chosen also on account of the phrasing in Rule 37.1 (Rules of Court), dealing with "communications or notifications". Its adequacy was verified through informal inquiry with the Registry lawyers.

geographically limited area of the extended Europe. The official languages of the ECtHR are English and French. Despite a declared bilingualism, the ECtHR is not always required to rule in both its official languages (Nikitina 2018b, p. 15; see also Weston 2005, p. 449). The Court underwent a reform in 1998 which recognized *inter alia* the right of individual petition (Art. 34, ECHR) for *all* member states, allowing applications from any person, NGO or group of persons. This revolutionary tool led to a significant increase in the workload, making universal bilingualism next to impossible as well as financially unviable. So the 1998 Rules of Court restricted bilingualism, making it an exception rather than a rule (Brannan 2018, p. 171). Today it is adopted for the Grand Chamber judgments and documents destined for law reports, whereas most of the procedural documents are drafted or translated in one of its working languages, depending on the language profile of the parties involved.

2.2. Procedure before the ECtHR

The documentary flow in the ECtHR procedure is graphically represented in Figure 1. The life of cases at the ECtHR starts with an *application*. As Brannan (2018, p. 170) aptly comments, "The right of petition, as it is known, would be meaningless if the applicant were unable to use his or her own language". Initial applications may be lodged in any national language of the states who have ratified the Convention, and sometimes even in non-official or minority languages, provided that the Registry staff understands these languages (Brannan 2018, p.171; Nikitina 2018b, p. 33; Peruzzo 2019a, p. 35).

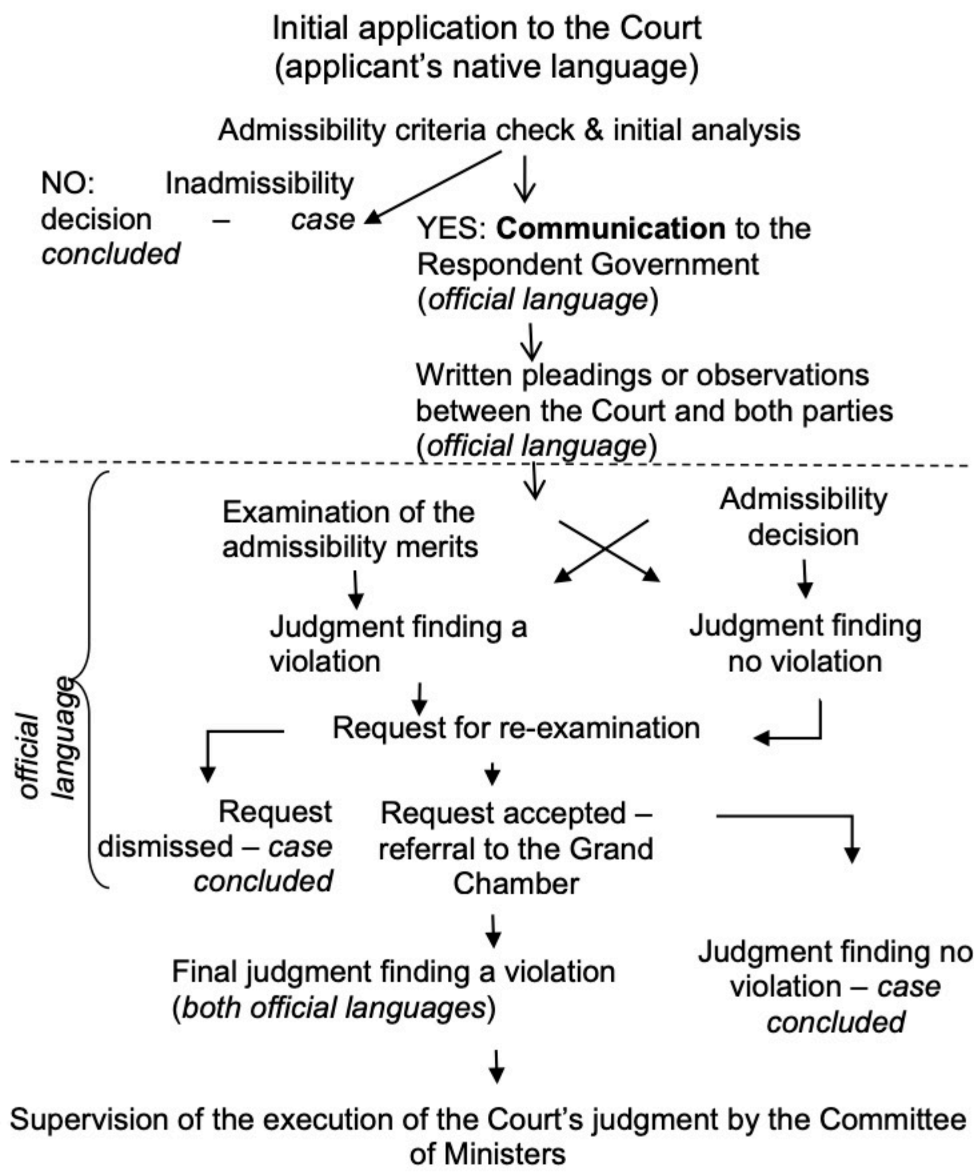

Figure 1
Procedure before the ECtHR (Adapted from Legal Protection of Human Rights 2012 cited in Nikitina 2018b, p. 32).

Once the application has been declared admissible, based on a number of strictly defined admissibility criteria[3], the case is *communicated* to the respondent State (see Figure 1), and starting from this moment all interaction between the Court and the Parties has to be carried out in one of its official languages. If the case is referred to the Grand Chamber, which is the highest judicial formation of the Court, its final judgment is available in both official languages. Typically, Grand Chamber judgments are not co-drafted but translated before delivery by in-house translators. In other limited cases,

[3] See Peruzzo (2019a, pp. 22-23) for details on the admissibility criteria.

translation into the other official language can be carried out "after delivery for the purposes of publication (sometimes in the form of extracts) on the website (HUDOC database) and occasionally also in the printed reports" (Brannan 2018, p. 171). The life of judgments after they leave the Court is very country-specific, but this aspect deserves to be addressed in a separate study.

2.3. Genres

In a discursive perspective, the procedural flow of documents represents a *system of genres*, i.e. "the interrelated genres that interact with each other in specific settings" (Bazerman 1994, p. 97). Linguistic studies on the case-law of the ECtHR are limited, and those with a genre element tend to cluster around the most recognizable genre at the peak of this system, the judgment (e.g. Peruzzo 2017, 2019a, 2019b). An exception would be several studies by Nikitina (2018a, 2018b) that aim at highlighting the existence of other, "occluded" (Swales 1996) procedural genres, such as written pleadings, i.e. the exchange of written observations between the Court, the Applicant and the Respondent Government. To the best of my knowledge, no linguistic study so far has taken into consideration the genre of *case communication*. While being publicly accessible through the HUDOC database, it remains "out of sight" of general public and is written for "specific individual or small-group audiences" (Swales 1996, p. 46), which makes it reasonable to conceptualize it as a partially "occluded genre".

Pivotal studies grounded in genre theory (Swales 1990; Bhatia 1993, 2014 [2004]) highlight a number of convergent elements necessary to pinpoint reproduceable textual prototypes. In particular, Bhatia (2014, p. 27), building on previous research, defines *genre* based on the conventionalized setting, communicative purposes and stable structural forms, which form a matrix for genre description in this paper. The Registry lawyers drafting notices to the respondent government rely on their *genre knowledge*, i.e.

> the awareness of the characteristics and properties of each single text genre [that] is a form of *situated cognition* (Berkenkotter, Huckin, 1995, pp. 7-13), being strictly related to the discursive practices of the members of a disciplinary culture and the context where such practices are set (Garzone 2020, p. 131).

In practical terms, genre knowledge allows the drafters to navigate successfully discursive practices of the ECtHR, including by filling a preset structural form with system-specific text patterning, or the so-called "move" structure (Garzone 2020, pp. 133-134), and lexicogrammar (Bhatia 1993, p. 24-29).

Yet, nothing is truly fixed, and text genres evolve and adapt to the needs of their users (Garzone 2020, p. 131). A certain degree of interference between situated cognition and traditional habitus of national systems may be expected in the supranational context of the ECtHR, as its lawyers carry the knowledge "luggage" of their own legal system and the system of the state involved (Nikitina 2018b, p. 30).

Some interference may transpire also through translation-related elements. The case communication stage is the first stage when elements of an application drafted and submitted in a non-official language are rendered in one of the official languages. This operation is carried out internally by lawyers of the Registry who have processed the initial application[4], and involves mechanisms of institutional legal translation addressed in the following section.

3. Legal translation

3.1. Background of Legal Translation Studies

Despite the obvious importance of legal translation, only recently was it recognized as an independent field of Translation Studies (Garzone 1999, p. 391). One of the most famous definitions of legal translation describes it as "an act of communication in the mechanism of the law" (Šarčević 1997, p. 55). Today legal translation is recognized both by comparative lawyers and translation scholars (Šarčević 2018, p. 9), with the latter positing that it is one of "the most prominent disciplines of translation studies" (Prieto Ramos 2014a, p. 261), which capitalizes on the developments in such neighbouring disciplines as comparative law, linguistics, terminology and general translation studies (Biel 2018, p. 25), as well as methodological innovation brought by corpus linguistics.

The mainstream orientation at the outset of Legal Translation Studies dealt with terminological equivalence and untranslatability of system-bound elements both in the national (Chromà 2008) and international context (Fletcher 1999; Weston 2005; Brannan 2013; Peruzzo 2019b). Later on, an additional focus on the communicative function of translation was introduced, heralding the functional approach to cater for inevitable imbalance (e.g. Šarčević 1997; Garzone 2000; Engberg 2013), and covering also aspects of quality of translation (Scarpa 2008; Prieto Ramos 2014b). A

[4] Typically, applications against a particular state are assigned to the Registry lawyers who speak the same national language. Besides this national language, all Registry lawyers are fluent in at least one of the Court's official languages. However, their primary mansions are legal and not linguistic, so they cannot be equaled to the role of a lawyer-linguist present in the EU system (see, e.g. Gallo 2006, p. 182).

relatively recent turn included the study of phraseology in legal translation (Kjær 2007; Biel 2014; Goźdź-Roszkowski and Pontrandolfo 2018; Nikitina 2018a), recognizing the challenges legal translators face when dealing with the translation of phraseological units (Garzone 2007, pp. 218-219; Prieto Ramos 2014b, p. 16).

This study relies on the wealth of research dealing with legal translation transferring national legal knowledge into a supranational system (e.g. Peruzzo 2019a) and vice versa (Biel 2014), including aspects of legal terminology (Peruzzo 2019a) and phraseology (Goźdź-Roszkowski and Pontrandolfo 2018; Nikitina 2018a).

3.2. Institutional legal translation at the ECtHR

The operation of multilingual international organizations is characterized by complex processes of hierarchical institutional translation, or rather "the legal dimension of institutional translation" (Prieto-Ramos 2020, p. 456), with varying degrees of mutual conditioning between the legal and the institutional elements and shifting translation priorities depending on a specific genre and/or purpose of a text to be translated (Schäffner *et al.* 2014). By virtue of its setting, legal translation at the ECtHR is also an instance of institutional translation. Despite the self-evident importance of translation for a supranational body such as the ECtHR, it has been largely neglected both in the literature and in the Rules of Court (Peruzzo 2019a, p. 38).

The highest priority is assigned to the translation of judgments and decisions (see 2.2), which is carried out by in-house Council of Europe translators[5], whose mother tongue is either English or French. If we go back to Figure 1, it is possible to draw an imaginary line separating the graph into two halves. The bottom part, starting with the decision/judgment stage, is typically the object of in-house institutional legal translation. As a resident translator, Brannan (2018, p. 174-175) provides a detailed overview of the organization of translation activity at the ECtHR, referring predominantly to the procedural documents created after the decision stage, including also law reports, legal summaries, factsheets and press releases, which are all part of a larger system of genres (Nikitina 2019, p. 59) not discussed here on account of space restrictions. Here procedural genres are represented by the documents resulting from legal proceedings, and thus exclude the convention, press releases, factsheets, etc. The upper part of Figure 1, however, is rarely the object of institutional translation. Most frequently translation at this level is either carried out by the parties, the applicants (or rather their counsel) and

[5] As Weston (2010, p. 77) describes, this professional figure is relatively new as there were no in-house translators for the Court before 1987.

the government agent's office, as is the case with written pleadings (Nikitina 2018a, p. 167, 2018b, p. 54), or by the Registry lawyers as is the case with notices to the government.

As a result, the upper part of Figure 1 corresponds to a "hidden" layer of institutional translation. As concerns the case communication stage, the Registry lawyers process the initial application in a national language, and then summarize (if applicable) and extract relevant fragments from the application, effectively "entextualizing" (Garzone 2020, pp. 171-172) information. This information is transposed or translated into one of the official languages of the Court, creating thus a document called here "case communication" which is then sent to the respondent government. Similarly to the ECtHR judges, for whom knowledge of languages is considered to be "one of the most important non-binding substantive criteria" (Kosař 2015, p. 133; also quoted in Brannan 2018, p. 175), language skills rank high in the selection of Registry lawyers[6], yet, obviously, no formal translation/linguistic training is required.

Not much is known about the translation procedures at this stage. Besides a marginal recognition in Brannan (2018, p. 190) that such "hidden" translation indeed exists (see also Peruzzo 2019a, p. 36), no other linguistic scrutiny has dealt with this topic. Informal interviews with the Registry lawyers indicate that the choice of a specific *modus operandi* frequently falls on the lawyer involved. The selection of the official language to use is also made implicitly, based on the active working languages of the legal professionals involved (both the Registry lawyers and the Government's agents). For instance, Russian-speaking lawyers and the Russian Government's agents appear to prefer to communicate in English, whereas Italian-speaking lawyers and Government agents most frequently seem to rely on French. So, whenever the respondent is not an English- or French-speaking state, in addition to the fact that procedural document drafters are non-native speakers of English or French (Weston 2005, p. 457), all decisions and judgments "incorporate a substantial amount of 'covert' translation from a third language" (Weston 2005, p. 449).

While the upstream part of Figure 1 (application – case communication – written observations) does not rank high in terms of translation priorities, any errors or imprecisions may leak later into a judgment along with the "covert" or "hidden" translation mechanisms described above. The judgment

[6] A typical vacancy at B1-B3/ A1-A3 level requires the candidates to know at least one of the CoE languages, i.e. English or French, and knowledge of the other language is desirable. No minimum CEFR level is indicated; however, given the fierce competitiveness of the selection procedure, only proficient candidates are likely to be pre-selected. Knowledge of one's mother tongue and the national judicial system is a tacit requirement, because candidates in respect of a given country need to hold a university degree issued in that country, assuming their fluency in that national language.

wording may include quotes from preceding procedural documents, referring both to national legislation (Brannan 2018, p. 178) and to the so-called national "traces" or "system-bound elements", i.e. recontextualized elements that originated from a national legal system (Peruzzo 2019a, 2019b). As revisers and translators of judgments work typically in a French-English linguistic combination, it is unlikely that they could intervene substantially on such elements. The difficulty is further increased if the case concerns language-sensible statements, as it frequently occurs with allegation of violations of Article 10 ECHR – freedom of expression – addressed in Section 4.

4. Communication of cases alleging Art. 10 ECHR violation

Article 10 ECHR enshrines the right to freedom of expression, including "freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers". In the majority of cases, applications alleging violations of Article 10 are associated with image or reputational risks as well as defamation proceedings following a publication in conventional or new media outlets, or interference of authorities that censure or limit some outlets; however other forms of expression, e.g. a drawing modifying the President's face, posters and videos are also object of applications.

This study overviews an ad hoc corpus of case communications collected using the HUDOC database (Language: English; article: 10; respondent state: Russia; a 5-year timeframe: November 2016 – November 2021). The general search yielded 195 results, totaling 221,909 words (see Table 1). This larger dataset was used for genre description purposes aiming to uncover generic aspects of this hitherto unresearched genre. Although this is not a corpus linguistics study, WordSmith Tools 6.0 (Scott 2015) was used for word count and lexical search.

Corpus	Number of texts	Number of words
General corpus	195	221,909
Sample	18	31,201

Table 1
Study materials.

Almost all texts featured quotations of a varying length, ranging from single words to paragraphs. Based on the reconstruction of the procedural flow (see 2.2 and Figure 1), these quotes would amount later to instances of "hidden"

(Brannan 2018, p. 190) or "covert" translation (Weston 2005, p. 449) in judgments and decisions. The texts involve a significant amount of recontextualization from the initial applications lodged in the Russian language, as information is summarized and adapted to a new target audience (Peruzzo 2019a, p. 71).

I have extracted a smaller sample of eighteen texts and 31,201 words with graphically visible longer quotations. Two of the downsampled texts communicated more than one application, so the total number of cases concerned is higher (37) than the number of texts (18). A smaller corpus size was necessary to evaluate the translational side of case communications qualitatively on the basis of the descriptive Translation Studies paradigm, in order to explore the hidden layer of institutional legal translation at the ECtHR.

4.1. Case communication: genre-based perspective

Figure 2 below outlines the genre structure of the case communications analysed (the general dataset). The moves in italics are optional; A/B are alternatives; the moves in bold are core. As the main communicative purpose of the genre is to notify the respondent government about a case, all case communications briefly described it in move 4, where a minor variation appeared. 62% of texts introduced the case as "Subject matter of the case" (4A) and 36% of texts used the label "Statement of facts" (4B) (see Table 2). While it may seem just a different label, subtle presentation differences appeared. 4A texts were typically introduced by the formula "The application concerns…" followed by a synthetic description of the case. If the formula was not used, 4A move started with a description of an event or an action, foregrounding the actions that lay in the basis of the case. 4B, on the contrary, started with a different formula centred around the applicant(s) (see Figure 2), thus highlighting the person(s) who lodged the application. Another peculiarity concerns the length of case communications. As Table 2 reports, while texts using the 4B template were fewer, they were also significantly longer and more detailed. As all known variables were the same (subject-matter, timeframe, court section, respondent State, languages involved), the presence of two templates eludes a clear analytical explanation and invites further research with structured interviews. Peculiarly, all but one text in the smaller dataset are of a 4B type. As the additional criterion for the selection of texts in the smaller corpus was the presence of longer quotes translated from Russian increasing thus the level of difficulty in knowledge recontextualization, a question emerges: is there a correlation between the choice of the template (4A or 4B) and translation-related competence of the lawyers involved?

1. The Court logo and name

2. Date (“Communicated on…”, sometimes adding “published on…”)

3. Case details
- Court section number
- Application number
- Case name
- Date when the application was lodged

peripheral

4A. Subject matter of the case (“This application concerns…”)

- *Subsections dealing with specific applications if more than one is communicated in the same document*

4B. Statement of facts (“The applicant, [Ms/Mr Name Patronymic Surname], is a Russian national, who was born in [year] and lives in [place]. He/she is represented before the Court by [Ms/Mr Initial Surname, a lawyer practising in

- **The circumstances of the case** (“The facts of the case, as submitted by the applicant, may be summarised as follows.”)
- **Relevant domestic law**

- **Complaints**

5. Questions to the parties (numbered if more than one)
- *Common questions to the parties*
- *Additional case specific questions*

6. Appendix

Core

Figure 2
Generic structure in case communications.

Template	No. of texts	Percentage	Tokens
4A	121	62%	67,960
4B	71	36%	152,647
4C-5	3	2%	1,302
Total	195	100%	221,909

Table 2
Number of different of case communication templates.

There are three (2%) different texts, codified as 4C-5 in Table 2. These texts replace Move 4 by the intertextual formula in (1) and feature the only core move, “Questions to the parties” (Move 5 in Figure 2), focusing thus on the second communicative goal of case communications: to trigger the development of written procedure.

> (1) The facts and complaints in these applications have been summarised in the Court’s Statement of facts and Questions to the parties, which is available in HUDOC.

The “Questions to the parties” core move, common to 4A, 4B and 4C-5, solicits the parties to provide written observations (or pleadings, see Nikitina 2018a, 2018b) and thus shift to the next procedural level (see Figure 1). This move lays the ground for future development of the written procedure, and the questions are formulated relying heavily on referential prepositions and short quotations from domestic law (e.g. “Did the national authorities provide any reasoning as regards the statutory requirement of ‘exceptional circumstances’?”). The texts are also highly heteroglossic (Bakhtin 1981), but this aspect cannot be addressed here for space limitations (see Nikitina, forthcoming).

4.2. Case communication: translation perspective

As discussed in 3.2, the presence of translational traces in the ECtHR case-law is a well established fact in the literature. Analysis of the smaller corpus shed light on the nature of these traces that appear to be both of a system-bound type and of a linguacultural nature.

System-bound elements referring to the national legal system were among the most prominent translational traces even outside of direct quotations. They covered a variety of conceptual fields, such as national court types (“City Court”, “District Court”, “Regional Court”, etc., preceded by a toponym), administrative bodies (“Duma”), judicial procedure and legal sources (“Code of Administrative Offences”, “impediment to the exercise of official duties by a public official”, “administrative escorting and arrest”, etc.). This goes in line with Peruzzo’s (2017, 2019a, 2019b) findings on the presence of system-bound elements in the ECtHR judgments with reference to the Italian system. The overall choice for such legal realia was to translate them literally (e.g. first-instance court) rather than to replace them with a functional equivalent[7] (e.g. trial court). Other types of Russian realia (geographical and social, such as currency and patronymics) also contributed to undeniably marking the texts as recontextualized and (partially) translated,

[7] Translation-related terms are taken from Šarčević 1997, pp. 250-260.

but not legally transplanted (Fletcher 1999, p. 62), as the source legal system and culture were always easily identifiable.

Careful avoidance of legal transplantation is also represented by discourse transfer, i.e. "the tendency to insert typical language patterning of the source text into the translation" (Nikitina 2018a, p. 128). For instance, "repeated commission", "assist in the commission of crimes" or "guilt in the commission of an administrative offence" (2), calques the Russian multiword term *совершение преступления* (lit. "commission of a crime"), where the first element is typically omitted in English or rendered with a verb ("to commit").

> (2) It follows that [the applicant's] guilt in the commission of an administrative offence under Article 13.15(9) of the Code of Administrative Offence has been established. [Avagyan v. Russia 2020]

Analysis of the data suggests that most instances of discourse transfer were caused by the considerations of precision that shifted the translational balance towards a more literally oriented end of the continuum, resulting in stylistically deviant nominalizations. This goes in line with other studies on the ECtHR English signalling a certain amount of hybridization (Nikitina 2018a, 2018b; Peruzzo 2019a, 2019b) and studies on the EU legal English, or Euro-legalese (Koskinen 2008; see also Biel 2014), as in these varieties English functions as a European lingua franca (Scarpa *et al*. 2014, p. 54).

Whenever the system-bound terms were consolidated (e.g. court types), they were translated with literal equivalents, showing a different approach to the translation of system-bound terms to Peruzzo's (2019a, 2019b) findings on borrowings in judgments against Italy, where such authorities as *Questura* or *Consiglio di Stato* were left in Italian (Peruzzo 2019b, p. 22). However, when the concept was new, such as the novel definition of "fake news" (3), or potentially misleading, such as the name of a regional assembly (4), the Russian original was kept in brackets as a borrowing. It would be interesting to trace whether this choice is used consistently in other procedural documents, e.g. decisions or judgments (currently unavailable for the cases at hand), where it may occur more than once.

> (3) Paragraph 9 of Article 13.15 of the Code of Administrative Offences was added to read as follows:
> "Dissemination through the media and ICT networks, of <u>socially important information known to be untrue</u> [*заведомо недостоверная общественно значимая информация*] under the guise of reliable reports […] ... shall be

punishable by an administrative fine of between 30,000 and 100,000 Russian roubles ...” [Avagyan v. Russia 2020][8]

(4) On 31 May 2012 in a speech delivered during a parliamentary session, the applicant – who was then a parliamentarian in the Pskov Regional Parliamentary Assembly (*Псковское областное Собрание депутатов*) − addressed another parliamentarian (Mr S.) with the following phrase: “But you’ve been G.’s stooge, always − the whole region knows that!” (“*А вот то, что Вы были “шестеркой” Г., всегда, - это тоже знает вся область!*”) [Savitskiy vs. Russia 2017]

Cases dealing with creative language, including profanity and colourful offensive lexis, such as insults reproducing jail jargon as in (4), deserve special attention. Legal translation is traditionally portrayed as a highly technical and specialized operation. Although some degree of creativity is allowed even in legal translation, it cannot be paralleled to the creativity in literary translation (Šarčević 1997, p. 116). The cases at hand demonstrate that institutional legal translation dealing with freedom of expression is, to use Garzone’s term (2015), *a fuzzy set*. Here legal and terminological precision constraining translation choices coexist with liberal creativity necessary for the translation of colourful and obscene lexis acting as culturemes (Nord 1997, p. 37), i.e. “a cultural phenomenon that is present in culture X but not present (in the same way) in culture Y”. Determining obscenity and profanity, also in relation to defamation cases, has been the task of forensic linguistics (Butters 2011). The need to transfer faithfully and effectively offensive expressions from one language into another is a well-known challenge for legal interpreters (see Hale et al. 2020 for an overview), as it requires top-tier pragmatic competence. Yet, to the best of my knowledge this issue has never been addressed from the point of view of institutional legal translation, let alone the one carried out by non-linguists.

Similarly to legal interpreting (Hale et al. 2020, p. 373), the main strategy to render vulgar or offensive expressions was to introduce a functional equivalent. But in contrast to legal interpreting – for obvious reasons of a different delivery mode and different expectations of target-orientedness – functional equivalents were followed by a borrowing, i.e. an untranslated Russian term, in parenthesis (Šarčević 1997, p. 256) as a kind of a translation couplet, see (5), also because it has been observed that lawyers favour the use of borrowings (Šarčević 1997, p. 257).

[8] Original italics in every example. Underlining was added to highlight the object of analysis.

> (5) The applicant was found liable in civil defamation proceedings after he had exposed the fake news disseminated during his election campaign and described the person who had been at their origin as a "con man" (*аферист*). [Navalny v. Russia 2018]

Linguistic creativity ranged from colourful epithets to straightforward taboo lexis. At times, the case communications involved even translation of poetry (6), which is an undoubtedly complex semiotic product (Garzone 2015, pp. 135-136), further complicated by the need to keep the same level of derogatory connotations and lexical expressivity, as the one established by Russian-language experts in domestic proceedings.

> (6) The verse read:
> "You have not had a win in sixteen years, // Like <u>jackals</u>, you walked past the cups, // You salivated with jealousy // Wherever CSKA claimed victory.
> Your time had come, you won the Premier League, // You <u>wetted your pants</u> with joy, // It's funny to look at you, you are all like <u>imbeciles</u>, // Tell me what is the reason for all that joy?
> Have you ever won in Europe? // Have you ever brought glory to your country? // Spartak is <u>shit</u>, as are its fans, // I will <u>wipe my ass</u> with your crest!". [Ogurtsov v. Russia 2021]

> (7) His comment on the second video read: "Russia gifted $30 million to Kyrgyzstan. Putin is a fairy-tale dumbwit." The expression "fairy-tale dumbwit" (*сказочный долбоёб*) was first used to describe the hapless Prince Myshkin in the 2001 Russian comedy film *Down House*, a spoof of Dostoyevsky's novel *The Idiot*. Since then it has become a popular way of describing people who are so stupid that they could not possibly exist in the real world. [Kartyzhev v. Russia 2020]

Many profane expressions were rendered using a functional equivalent coupled with a zero-translation, an explanation or a gloss (7), going beyond the mere operation of translation and providing cultural background for the sake of the extended participation framework (cf. Goffman 1981), i.e. judges and lawyers coming from different contexts. The intensity of the expression in (7) was, however, toned down in translation, even though a number of closer taboo equivalents for *долбоёб* are available in English. The hesitation with straightforward taboo equivalents is comparable to many cases in legal interpreting, where obscenities are toned down (Felberg and Šarić 2017) as interpreters feel responsible for saying them. It is understandable that putting such equivalents in writing in a supranational context would require even a greater effort. Rendition of profanity in a different language requires the highest level of pragmatic competence (Hale et al. 2020, p. 388) and translation experience (Hale et al. 2020, p. 387), going well beyond a comparative law perspective, typically required of lawyers.

5. Concluding remarks

This study fills in the gap in the description of discursive and translational practices at the ECtHR, casting light on a previously neglected genre of case communication. Case communications represent a crucial junction in the procedural system of the ECtHR as they trigger the development of the written procedure and mark the linguistic turn from non-official into official language(s), paving the way for future references to national systems in judgments of this supranational court.

Drafting a case communication is a complex legal and linguistic operation, involving summarization and material entextualization from a longer application along with linguistic transposition from a non-official language of the ECtHR. The texts followed a variable template, the issue which eluded a clear analytical explanation. Is it just a manifestation of situated cognition of different lawyers? Is there a correlation between the choice of a template and the amount of (creative) translation involved? A future study with structured interviews would assist in uncovering the underlying mechanism.

The linguistic transposition amounts to a "hidden" layer of institutional legal translation at the ECtHR from a third language, which has not been extensively addressed so far in the literature. The study thus raises awareness on the origins of "covert" or "hidden" institutional legal translation in the ECtHR case-law, foregrounding the importance to assess its discursive practices holistically as a system of genres. The space limitations did not allow me to pursue this line of enquiry in detail, leaving exploration into the "life" of system-bound elements and their "migration" into other procedural documents for a different study (Nikitina, forthcoming).

Finally, against the widespread perception that institutional legal translation lacks creativity, the research uncovers its creative side. When dealing with Article 10 violations, lawyers had to deal with allegedly defamatory, colourful, offensive and taboo expressions in settings where at least the latter were unexpected. Profanity in the legal context has been extensively addressed in forensic linguistics and legal interpreting studies, yet it has not yet been covered in studies on institutional legal translation, identifying an exciting niche for further research.

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