

# Law and the Administration of Justice in Basque: A translator's view of general principles and evolution to date

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## **Introduction**

We embarked on preparing this article in earnest two years ago with two aspects to be dealt with. Firstly, we wanted to establish a proper framework for work in the scientific disciplines and to carry out an overall survey of the general principles and features of these sciences. Secondly, we wished to recount the problems that we usually encounter in our everyday legal translation work and to explain what kind of solutions we might find to these problems.

As the reader may realize, apart from the problems that the translation itself might pose, topics dealing with terminology are what mostly crop up since it is our opinion that the greatest hurdle is the lack of a complete and precise bank of legal terminology. Although we shall not go into the cause and effect of that gap, we wish to make a historical contribution towards increasing the current scant use of Basque in the courts.

Perhaps the section that an experienced translator might deem the most interesting

is the last one since in it there are quite practical aspects such as the purpose of the translation, the need for co-operation, and language resources used in the construction of a legal language.

The data that we have provided in the article has changed somewhat in the last two years: towards the end of this paper, we state how few people use Basque in the courts but we are now in the position to revise that statement a bit. With the data from the last few years, it can be clearly seen that the number of cases presented in Basque before the courts has seen a dramatic increase. Indeed, aside from interpreting sessions which have also seen a considerable increase, we can safely say that written legal work (aspects, proceedings, lawsuits, denunciations, edicts, sentences, agreements, etc. have gone up three-fold. In 1990, there were 75 cases in Basque. There were just 69 in 1991, and 197 in 1992. Last year, the Basque caseload shot up to 257. Let us hope that this trend will go from strength to strength.

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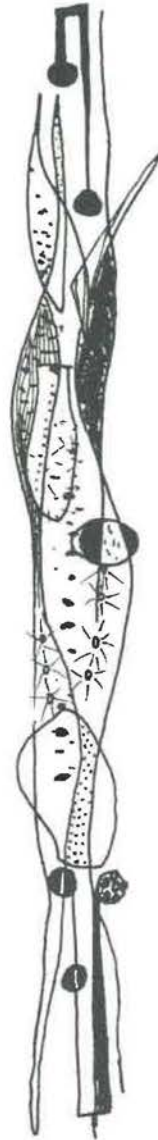
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## Setting the scope for translation

### 1. Translation science and linguistics

To begin with, we are of the opinion that it is essential to establish the parameters of what constitutes our work — translation and law — and thus it is our wish to let the reader know about the criteria that guide our everyday work. This chapter will deal with translation.

The translator should know about the mechanisms of the character and function of languages; and if he or she is to learn about language structure, he or she will need the support of a helpful science which offers suitable resources. All in all, when translating into a language, the goal involves scientific method. Thanks to the progress that Linguistics has made since the beginning of the century, we are now able to talk about a science of translation. In the opinion of linguists, as well as of those who study translation theory, this theory needs to be based on linguistics. Indeed, Vázquez Ayora<sup>1</sup>, a disciple of Taber and Nadar, believes that translation is a branch of applied linguistics and, insofar as it is a discipline, it has its own principles, methods, and applicable criteria. Indeed, applied linguistics takes in every sphere of language science and some allied disciplines: psycholinguistics, sociolinguistics, ethnoinguistics, language teaching, translation theory, etc.<sup>2</sup>



1. Vazquez Ayora, Gerardo (1977). *Introducción a la traductología*, Washington D.C.: Georgetown University, School of Language and Linguistics, p.1.
2. Ebnetter, T. (1982). *Lingüística aplicada*, Madrid: Gredos, p. 9.

Nevertheless, many discussions have arisen over the scientific and non-scientific nature of translation, not only about wholly linguistic factors in the translation process but many extralinguistic ones as well. For this reason, i.e., because the scope of translation science is a cross-section of some areas of knowledge (philology, lexicology, psycholinguistics, contrastive linguistics, stylistics, literary research, and semiotics, to mention a few), not a single one of these disciplines has been deemed to be a wholly independent area of research. Furthermore, it is a well-known fact that those who have been concerned with explaining the human communication system known as language, such as Ferdinand de Saussure, Sapir, or Bloomfield, left the problem of translation aside: translators engaged in translating the few theoretical and practical references that they had were worked out by other translators (we can recall Cicero, Horace, St. Jerome, Paul Valéry, and Ortega y Gasset).

If we had to mention an author who was to change this situation, it would have to be A.V. Fedorov who published two books on the principles of translation theory in 1958. Fedorov, based his work on a thoroughly scientific method, took the translation process as his object of study and came out in favour of a kind of translation science. Fedorov is right on target when he says that translation is, first and foremost, a linguistic operation with linguistic objects, i.e. with

texts and linguistic resources made up of words which are used according to linguistic rules. This is why he believes that translation theory should be studied along with other linguistic disciplines. Likewise, Vinay and Dalbernet<sup>3</sup> are also in favour of placing translation in the linguistics camp insofar as the discipline is exact, since it has particular techniques and problems which need to be studied in the light of methods used in modern linguistics. Georges Mounin<sup>4</sup> also clearly states that theoretical problems of translation are those pertaining to the science of semiotics.

Nevertheless, however logical the belief that a knowledge of linguistic procedures in the translation process might be, translation has been taken to be a kind of art (and so think many translators today) which is resistant to scientific analysis. Edmond Cary<sup>5</sup> remarked that the linguistic side is nothing but a complement of translation and that the most fundamental feature of the translation process is its context of a relationship between two different cultures, i.e. two different modes of thought. Thus, translation is not a mere linguistic operation as extralinguistic elements also have to be taken into account.

Nowadays, the principles of translation are constantly being constructed and we have no doubt whatsoever that different currents of language — structuralism, stylistics, generative grammar, and semiotics, among oth-

3. Vinay, P. and Darbelnet, J., *Stylistique Comparée du français et de l'anglais*, Paris: Didier, p. 21.

4. Mounin, G. (1971). *Los problemas teóricos de la traducción*, Madrid: Gredos.

5. Cary, E. *La traduction dans le monde moderne*, Genève: Georg y Cie, p. 10.



ers — all have a role and something to say to us in order to get to know the most elemental properties that languages have. This is because we will translate in an accurate and suitable manner only by being experts in the operations taking place in the translation process. As Vázquez-Ayora said<sup>6</sup>, today it is not reasonable for the translator to continue groping in the dark, enthralled by literal translations, which essentially go back to medieval methods.

## 2. Characteristics of technical translations

Translation theory is obviously concerned with translation *per se*, and as there are various kinds of translation, i.e. as the object of all translations differs, there is more than one translation theory. Overall, two different kinds have usually been put forward and accepted: the technical-scientific theory on the one hand, and the literary theory on the other. Legal translation, which has law as its objective, embraces the field of technical translation both because of its linguistic features and because of the specifics of the topics being dealt with. Indeed, as far as our work is concerned, it should be said that our task is directed towards legal institutions, namely towards the written work issued by courts and individuals as well as by other administrative entities.

Indeed, as we are dealing with the field of translation, we need to be familiar with the inherent features of the language since they have to be taken into account when translation is undertaken. Below are features of technical translations:

1. *Universality.* Technical language and special scientific language tend to develop along international lines. That is to say, if the object is to find what is general in scope, the goal is to get as close to universal terms as possible. That is why all technical languages are becoming more and more alike and, as a result, it is easier to translate from one technical language to another. For the sake of comparison, let us take a mathematical proposition: three and three equals six. Indeed, this proposition transcends different linguistic structures but maintains an absolute equivalence in whatever language.

It should be pointed out that technical translation tallies with the concept of universal terms and not with particular concepts of a culture. It should not be forgotten that the breakthroughs that technology and science bring are not the property of a single language community, but of any community that can take advantage of such breakthroughs. Moreover, we should be aware that the importance of technical words lies in the following: they explain the evolution and theoretical development achieved with a certain discipline. Basque is mostly — if not always — the borrower rather than the one that coins the word in the field of science (insofar as we do not coin any new terms, we have to look at what others have done).

2. *Invariance.* The goal of technological and scientific translation is recreating a conceptually functional structure in which

6. Vázquez-Ayora, Gerardo. *Introducción a la traductología*, *Ibid.*, pp. 1-3.

the translation is achieved through a structure of the same value regarding its content<sup>7</sup>. This is why the elementary concept of theory regarding scientific translation is invariance. According to this concept, during the translation process there are several changes fail to be picked up, something that stays unchanged. That which cannot be recreated by means of every single detail must endure in the system as a whole, by making use of universal logic functions. Two absolutely equivalent texts in two different languages present the possibility of achieving a perfect translation.

3. *Lack of ambiguity.* The language of science calls for precision and accuracy and thus, to that end, ambiguity must be avoided. It is solely aimed at comprehension and its tool is the concept itself. Thus, it is necessary that each word has a single meaning and each idea has a single word that will represent it. This principle is called the "principle of univocalness", and as Charles Bally said<sup>8</sup>, scientific language aims to adhere to the principles of univocalness and because of univocalness itself, it distances itself from everyday language. This, on the contrary, does not happen with everyday language where each word may have one or more meanings and are quite often mixed up (the word "hand", for instance, has many meanings according to context: "work in hand", "he's an old hand", "let's give our

speaker a big hand"...). Natural science, for example, has names for every animal in the world (crocodile only means one thing). A mathematical demonstration is entirely logical and is not open to interpretation (here we are referring to linguistic signs). For the rest, terms generated by science are incomprehensible to common people (terms such as "lipoma", "amicus curiae", "boson" are only understood by experts in the field). Charles Bally talks about this in the following quote<sup>9</sup>:

"Giving exact, unmistakable names to objects is inherent to science, to technology, not to everyday speech (...) Science aspires to name precise things in an exact manner without mixing subjective judgement or sentiment. Everyday speech inverts the terms. What it aims at is having words that stand for simple ideas that are easy to handle but associating them in a non-stop way with delicate subjective and affective values".

## Legal Language

### 1. Definition and Characteristics

Before tackling the idiosyncrasies of legal language, an overall definition of language should be borne in mind with the special use of language involving legal jargon. First of all, a language is the most widespread means to communicate that people have. That is, undoubtedly, the main aspect of language. Secondly, it is also a fundamental factor in making humans what they are, according to

7. García Yebra, Valentín. *En torno a la traducción*, Madrid: Editorial Gredos, p. 47.

8. Bally, Charles (1977). *El lenguaje y la vida*, Buenos Aires: Editorial Losada, p. 56.

9. *Ibid.* p. 59.



Wilhelm von Humboldt's definition that "man is man on account of language". Furthermore, language establishes and organizes thought, indeed thought shapes reality through language. Language is also a memory prop. Finally, a human gains his or her freedom in society thanks to language.

Naturally, there are numerous differences between each language. The following are differences that speech brings out within the same code

1.- Idiolect. An individual and personal rendition of a certain code. In this way, a speaker could say "I take the greatest possible exception to their dubious behaviour" while another speaker could say "I don't think I like the nasty way those blokes act at all". Thus, an idiolect is the particular style of a speaker.

2.- Collective varieties. These correspond to a group of speakers. There are two aspects: social and geographic. a) Social aspect. An educational system pushes for a certain linguistic model which is normally based on a written tradition and to the detriment of another model, in other words, one register of language is imposed on another. That model is erudite or learned and the media and learned people use it. This language standard is called the Standard Language, i.e. the unified model. Within this social aspect, functional registers are also usually found since they are tied to a certain use of language. These functional registers have been termed "technolects". b) Geographical aspect. Linguistic varieties of a community that is

located in a certain territory are called "geographical variants" or "dialects" and which are characterized by the use of different linguistic levels (especially phonetic, lexical, phonological, and morphological ones) within the same code.

A technolect is the specialized language of technical and scientific disciplines which define the specifics of their subject matter. According to this differentiation, legalese is the technolect corresponding to the conceptual field of law and as there is but one kind of technolect, it has the following characteristics<sup>10</sup>:

1. It uses specific linguistic resources such as terminology borrowed from Latin (magistrate, jurisprudence) or the use of the third person singular in reference to a judicial body ("says", "requests", etc.).
2. It semantically defines, distinguishes, and organizes them so as to make way for a whole and coherent conceptual organization. It brings on board conceptual organization and brings precision to the naming process pertaining to all realities since it avoids synonyms.
3. It uses a formal and impersonal tone without taking on a familiarity that would be unbecoming in certain situations.
4. It is functional in character: a legal text need not have any aesthetic goals. The goal of any legal text is communication in such a way that it must use language that is clear, explicit, and, as far as it is possible, plain.

10. Duarte, Carles and De Broto i Ribas, Pilar (1986). *Introducció al llenguatge jurídic*, Barcelona: Generalitat de Catalunya.

## 2. Legal terminology

As is well-known, the most noteworthy characteristics of technolects or techno-scientific languages are two-fold: on the one hand, they show a complex terminological structure such as being composed of numerous conceptual subcategorizations (law: labour law, civil law, penal code, provincial law, etc.). On the other hand, it is often difficult to place a boundary between similar technolects (law – administration – politics).

Apart from this and within the so-called terminological structure, each conceptual field is organized hierarchically by starting from notions of certain expressed terms (e.g. kinds of decisions: sentence, verdict, etc.).

### *Methodology*

A terminological corpus of a language must be progressively established and it will gradually take shape along with the evolution taking place in the discipline, in the case of Basque, we are faced with structuring the field of legal terminology from top to bottom.

Overall, when we have a notion for which there is not fixed term, we must follow a procedure based on terminological principles through which information will be gathered prior to a decision. The information that has to be gathered is:

- 1.- The grammatical and lexical category of the term to be named: noun, adjective or verb.
- 2.- Area of usage: defining the area where the term will be used.
- 3.- Definition: the definition of a term must be clear, exact, and accurate; moreover, it must also have a descriptive character and a single reference. The definition will come from documentation.
- 4.- Contexts: Different contexts that show usage of the term have to be collected which will express the veritable meaning of the term.
- 5.- Sources: Documentation used by us.

On the other hand, it might be the case that the language to express the notion that we need to have has more than one term. In order to select the most properly constructed term, the following criteria will be used:

- The term selected by us will have a monosemic character.
- Ease with which to derive other terms.
- Ability to integrate the selected designations in an easy and wide-ranging manner.

Nevertheless, it may also be the case that there might be a certain language that has no term to designate a new concept (for instance, how could we render into Basque the Spanish word "caución" or "jurisprudencia" without changing the meaning except by using a neologism? In this, we could resort to neologisms but when using these, we should be sure that the new term we will be adopting will result in greater clarity and precision. In such cases, using loan words is indispensable as a purist tendency goes against the epistemology. Maria Moliner <sup>11</sup>,

11. Moliner, María. *Diccionario de uso del español*, Madrid: Editorial Gredos.



in reference to Spanish, strongly criticizes this purist tendency:

«The untenable position of the purists becomes clearer when, as happens in most cases, the vetoed words or expressions come from a common Latin (or Greek) root. This crude refusal to employ sources offered by this heritage, crying out to be used, just because some other linguistic reference has popped up, is puerility or scrupulousness taken to the point of foppish snootiness»

In speaking about what is right, the gravity and the influence that Latin and Roman Law have on European culture comes to mind.

Indeed, purists seem to forget about what linguistics showed us long ago, i.e. language purism is hardly concerned with the language, its richness, and its ability to communicate. On the other hand, everyday speech is, whether it be Basque or any other language, not entirely up to the task of tackling these precocious efforts unless we know how to render appropriate and fashion terms and syntax.

Nevertheless, for an adoption of a neologism to be acceptable, these conditions have to be fulfilled:

1. The ability to integrate it within the system of the language and being in accordance with the language system.
2. The ability to have semantic detail derive other terms.
3. The ability to be accepted by users and to be diffused by entities and users alike.

### 3. Language, style, and law <sup>12</sup>

The moment that we start studying the relationship between law and language, we become aware that law exists thanks to language. In other words, the law takes on its legal meaning through language and only thanks to language. Nevertheless, a law of physics exists though unexpressed in linguistic terms (the law of gravity has always been around although it was not formulated until the 17<sup>th</sup> century). Rules of custom and use, even if unwritten, must also be made known and understood. The strength of law and its essential nature become subject to the rule. In the last analysis, legal norms exist as a result of linguistic formulations. In saying “formulation”, we mean creating and applying the norms and, without a doubt, generalizing written law further enhances the faithfulness between law and language (let us not forget that a justice was around before a single law was). When the Spanish constitution says that citizens are equal before the law, the language is not only telling us something, it is also laying down something which has been expressed as a rule that establishes mutual interaction. Through a standardizing enunciation, the creative function that a language fulfils constitutes a close link between the two in which law is the language. To be more precise, law exists because of language.

Lawmakers as well as lawyers or jurists lend great importance to language in their activities. We are in need of distinguishing between the language of rules on the one hand and the language of the lawyer on the

12. This chapter is based on Antonio Hernández Gil's «El lenguaje, el estilo y la técnica legislativa en la Constitución» (*Obras Completas*, VII Espasa-Calpe, Madrid 1988).



other. Rules are made and enunciated through language. This is why rules exist and are made known by expressing them through language. When making rules, it is legal tradition, the nature of things, the will of society, the knowledge of lawyers, comparative law, and of course, ideologies that come together. The language of lawyers, on the other hand, is a metalanguage which has influence in the language that is the object of the rules being formulated.

How are we to understand style when talking about legal language? What place does style have in legal language? First of all, in talking about style, we cannot compare literary style with legal style because the end goal of the language and the topics it covers have a direct bearing on the use of the language. As Antonio Hernández Gil says, one must not look at the author behind the law, even if there actually is one. Apart from the overall goals of the language, which is communication, it also fulfils other certain functions: the formulation of enunciations that establish organization and social behaviour. The worlds of legal language and legal discourse are closely intertwined. Laws form and shape the most important uses that can be given to words within society. Although art and beauty do not constitute values of law, law should not shun them either. "The law of legal beauty" is defined by Jehring<sup>13</sup> as "plainness, clarity, transparency, and naturalness" and these four characteristics boil down to one thing: clarity.

In the development of the state in the 18<sup>th</sup> century, several elements have gradually dis-

appeared from the semantic field of law. Thus, the lawmaker set aside the former, persuasive style as he understood that he did not have to persuade or remind anyone but order them instead (that is why, for instance, lawmakers do not use the conjunction "because"). Despite the disappearance of several elements, some other factors have been added to modern legal speak: precision (whether achieved or not), the trend towards technical jargon (since modern society has been totally technified), especially technical jargon arising from legal research; the use of internationally standardized expressions, concern for dividing up topics in an orderly and systematic fashion, etc. In comparing laws from another age with modern laws, even if they are or seem enshrined, we could use the adjectives "complex" and "confused" to describe modern law. Not because it wants either to persuade or instruct but because it embraces as many areas as it can<sup>14</sup>.

The conclusion reached on the reflection of legal style can be summed up in one word: clarity. Clarity is not an added factor, an afterthought. It is, instead, a constitutive element of the saying itself. The clarity of a law is a rule of language style and reasoning. It is, furthermore, an ethical rule. A law need not persuade but it should lend itself to a clear interpretation.

The principle of publicizing rules which the Constitution lays down is not effective if the linguistic formulation is rendered rather confused or incomprehensible by the rule. Thus, to conclude, language must be used

13. Jehring. *El espíritu del derecho romano*, III, Madrid: Bailly-Baillière, p. 79.

14. However, there has been criticism of the Spanish legal language: there is overuse of latinisms, terms that are hardly indispensable are maintained, and use is made of erudite quotations, etc.

on the side of clarity, without resorting to oversimplification since clarity and a learned style do not rule each other out.

## Basque legal language

### 1. Historical approach

Before embarking on a historical approach, we should first make some preliminary observations. First of all, we must concede that Basque has not traditionally been used in legal matters. Indeed, it has been on the margin of the legal framework and activities in both the Northern Basque Country (a.k.a. the French Basque Country) and the southern Basque Country given that, in written form, it has not been used in the various organs of justice. As for oral use — in trials, statements, or affidavits — it is fair to think that the plaintiff and witnesses used the only language that they knew, i.e. Basque, although we know very little about how it was used and what rights they had. Although a slight divergence from our paper, below are S. Mugika's words as a reflection on the lack of written usage<sup>15</sup>.

«When I began to sift through the municipal archives of Gipuzkoa province, as requested by the Provincial Government, there was a general belief amongst those involved in our country's history that I would find many documents in the Basque language. This, however, has not proved to be the case. Some, very few, have been written in Latin but, all the rest, with rare exception, is in Spanish. I have no doubt whatsoever

that the usual tongue in Council Sessions was always Basque, as it is most places and, nevertheless, the clerks never wrote up the minutes in Basque, according to what I have seen so far in the archives. The same can be said of the Minute Books or Registers of the *Juntas* (Provincial Government) all of which are in Castilian »

Secondly, there are no elementary fundamentals of law in written Basque since Basque Statutory Law has been compiled and elaborated wholly in Spanish with only a few words trickling down to us: «alkar-poderoso», «abeurrea», «bidezor», «hilburuko». In Navarrese General Statutory Law, some Basque words appear scattered here and there, for instance, some royal taxes known in Spanish as “pecha”: are known in Basque as «azageriko», «baturratu», «eskurain» and «ozterate», among others. Apart from these terms, there are two kinds of degrees of homicide “gaiztez berme” (akin to pre-meditated) and “onez berme” (without malice aforethought)<sup>16</sup>. On the other hand, no work in law has been thought through in Basque nor have any laws or other such legal texts been translated, at least until recent times.

In this field of knowledge, totally dominated by Spanish in the Southern Basque Country, we would like to present two pieces of evidence dating from the 13<sup>th</sup> and 16<sup>th</sup> centuries. The former dates back to 1235 and to a territory where Basque was beginning to disappear six or seven centuries ago: to the Ojacastró Valley in Rioja where the inhabitants were authorized to answer legal lawsuits in Basque<sup>17</sup>. The latter case is from

15. Múgica, Serapio (1908). El vascuence en los archivos municipales de Guipúzcoa, *RIEV II*, pp. 725-733.

16. Caro Baroja, Julio (1969). Observaciones sobre el vascuence y el Fuero general de Navarra, *Fontes Linguae Vasconum I*, pp. 88, 89, 90 and 93.

17. Lapesa, Rafael, *Historia de la lengua española*, Madrid: Gredos.



the town of Burgi located at the southern end of the Roncal Valley and dates to three centuries later. In 1596, on account of a witchcraft case, we are in possession of written verification because statements by witnesses were made in Basque. For that to have been done, use must have been made of Basque interpreters since the inhabitants from there only knew the local language. During the turbulent times of the Inquisition, the priests in Isaba and Adoain and the commissioner of Aginaga took part by translating the declarations of women alleged to be witches in that valley of Navarre. As Florencio Idoate stated<sup>18</sup>, renunciations made in Basque were an interesting novelty to the witchcraft ritual: no similar formulas have been found either among the authors or among the cases in the General Archives of Navarre except for the odd sentence or a single word. The Basque curses or renunciations appeared as insertions in Spanish texts corresponding to four cases mentioned by the author. To see what kind of curses they were, below is the text of a renunciation uttered by a woman named Ana Portaz:

«Arnega eçaçuey Jangoycoaz eta andre dona Mariaz, eta aren semeaz, eta sancta Ana, eta aytazeta ezcazi guçuez». Which means: «Renounce God and St. Mary and Her son and St. Anne and your parents and relatives».

Towards the end of the 18<sup>th</sup> century, we have come into the possession of the odd document dating from the period of the French Revolution written by an anonymous translator from Lapurdi (Labourd). They actually have little to do directly with legal activities since he is dealing with instructions, regulations, ordinances, proclamations and commandments. Nevertheless, references closely linked to what we are studying can be found in the terms used by the translator in question: *akusatu, apela, hauzi kriminel, deklaratu, diruzko hauzi, dretxo komuneko printzipio, erreparazione zibil, exekutatzte, faltadun, gozamen, laudamen, lege egin, manuzko gutun, prebenda, punitu eta kriminel-xumeko egiteko*, to mention a few. We have chosen the following paragraph out of the rather long parallel French and Basque texts.

«Ez othe liteke hauzi kriminelekoen jujatzeko ordenetarik apartatzea, arrazoin naturalaren kontra dohan peremptoriak deitzen diren, erran nahi da, batere dudarik gabekoak, eta bertze justifikazioneko artikuluen artean aurkhitzen den distinzionea? Ez othe liteke posible ordenatzea bi froga suerte horiek izan ditezkela galdetuak eta eginak akusatuen aldetik, hauzia persegitzen den zein nahi denboretan? Ez othe liteke posible oraino akusatuei errextea bere inozentziaren frogatzeko presentatu behar tuzten lekhukoan adiarazteko tuzten trabak?»<sup>19</sup>.

18. Idoate, Florencio (1978). *La brujería en Navarra y sus documentos*. Pamplona: Diputación Foral de Navarra, Institución Príncipe de Viana.

19. Rica Esnaola, Margarita (1977). Traduction en basque de termes politiques sous la révolution. Donostia: *Anuario de Filología Vasca Julio de Urquijo*, p. 105.

"Is it not right to stray from the directive to judge criminals, in contravention of peremptory evidence of natural reason, that is, those that are beyond doubt and a distinction found in articles of other justifications? Is it not possible to order those two sorts of evidence that might be inquired of and made by the accused, whenever the case might be pursued? Is it not possible to facilitate the obstacles that the accused face to bring witnesses to prove their innocence?"

During the XX century and in conjunction with the first-ever co-official status of Basque, presence of the language grew. Among the new publications in Basque which deserve special mention was “Euzkadiko Agintaritzaren Egunerokoa”, published from October 1936 to June 1937. In addition to decrees, orders, and circulars put out by the Basque Government, circulars of the Biscay Provincial Government, municipal orders and announcements, certificates, edicts, and sentences were also translated into Basque. In order to find out just what kind of legal translations were carried out during that period, below is a notification issued by a court of instruction<sup>20</sup> which contrasts — indeed is of a totally different order — with the example shown above:

«Durango'ko Epailletza Argibidelaria: Durango eta bere erbarrutiko Epaitegi Argibidelariko Epaille naizen Medina Garijo-tar Isaka Josebak. Auxe jakin erazten det: berebil-ezbeharr dala-ta, Altanira Kortaxarena'tar Silber'i'ren eriotza eta beste zenbaiten zauriei buruz. 1937'garreneko 9'gn. zenbakiaz argibidea egiten ari da Epaitegi au. (...) Ildakoaren aita dan Altamira'tar Silber'i'ri, Gaizkile Auzipe Legearen 109'gn. atalak damaizkion eskubideak eskeintzen zaizkio, aitaturako argibidean gaurko egunetz erabaki dana beteaz».

As a result of the long silence imposed by the post-war dictatorship, the process that had begun ever so humbly during the Spanish Civil War came to an abrupt halt and

had to wait for the new Spanish Constitution to be proclaimed. Indeed, it was that fundamental body of law that lent the language of the autonomous communities official status. As soon as the government, provincial government and municipalities were set up, work on translation laws, decrees, orders, decisions, and various kinds of regulations issued by those institutions was begun. In any case, the first working attempt directly related to law was very late in coming, in 1987 to be exact, when the terminological think tank, UZEI published two volumes.

Apparently, it was the first real attempt in Basque, carried out with terminological and scientific rigor. As UZEI has done in many other areas of knowledge, besides listing terms in three languages, it also has many definitions of those terms, defined according to different branches of law.

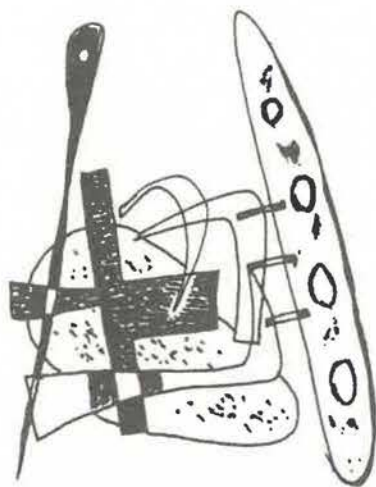
Over the past few years, several classes have been taught in Basque at the Donostia and Bilbao Law Faculties and, however humble the beginnings, this should be considered as an important step as it is clearly the university itself, more than anywhere else, where teaching and expounding upon law subjects can be furthered.

We should not conclude this historical survey without a mention of the desktop work of lawyers and other professionals trying at least to a certain extent, to work

20. (1937) *Euzkadi'ko Agintaritzaren Egunerokoa*, 176, p. 1,417.

“The Court of the First Instance of Durango. I, Isaka Joseba Medina Garijo, Magistrate of the Court of the First Instance, hereby notify the following: Concerning the automobile accident in which Silverio Altanira Kortaxarena died and in which others were injured, this court is gathering information in case number nine of 1937. (...) and offers the father of the deceased Silverio Altamira, rights afforded under article 109 of the Criminal Code in compliance of what has presently been decided in the aforesaid informative report.”





through Basque, since it is they, at the behest of several citizens, who are promoting the use of Basque in the courts for the first time. This is quite an encouraging development if we bear in mind that Basque has never been used in the past history of the Basque Country in court cases.

## 2. Establishing Legal Language in Basque

### 2.1 Premises to take into account and the task of translation

In recognition of the multi-faceted character of this question, before we go ahead, we would like to make these two premises clear:

1. Basque has no established legal tradition as we stated in the historical survey section <sup>21</sup>.
2. The legal order in the Basque Country has been, and is, Spanish or French with the exception of some vestiges in law dealing with cases between private parties.

While the first premise is subject to debate, the second one deserves a deeper analysis since, to a great extent, activity in this sector will guide and condition translation work for a long time to come. As for the translator's task, it is clear that responsibility for coming up with a corpus of Basque legal language should not be thrust upon their shoulders. Indeed, generally speaking, the function of a specialized translator has usually been to put across conceptual and formal content between two or more highly structured languages, not to invent a specialized jargon or terminology. We do not believe there is any country where translators have been used to establish a register for any branch of knowledge.

Whatever the obstacle, the activity of translation need not unfairly get in the way of establishing a legal language. On the contrary, it is necessary as an aid in drawing up original work and, at present, it serves as a pioneer model. There is no denying that languages enrich each other through translation and that they gain a higher stature in every field of knowledge. Thus, when gratuitous statements about the validity and legitimacy

21. In Catalonia, on the other hand, documentation of Catalan legal jargon goes way back and is extensive, especially in the Middle Ages: *Usatges de Barcelona*, *Costums de Tortosa*, *Furs de Valencia*, etc. As a result, this treasure trove of Catalan tradition has provided the modern language with many forms, such as lexical elements, terms, and formulae.

of a translation are made, they fail to admit the real truth of the matter.

This is not to say that achieving an independent Basque legal register outside of translation is not feasible, at least in theory<sup>22</sup>. In passing, may we say that law-making entities in the Basque Country, the most notable of which would be the Basque Parliament, always look to Spanish since autonomy law-making procedures are established in Spanish and are but adjuncts to the Spanish legal corpus. Thus, it is hard to see what role Basque could play within this framework.

## 2.2. Obstacles and the need for co-operation

The problem, unfortunately, does not end with the premises mentioned above since the weakness of the current situation also stems from other factors. In a study of the direction that Basque has been taking in legal administration, Andres Urruti offers this diagnosis<sup>23</sup>:

a) Basque has no legal administrative tradition. b) The lack of a fixed Basque standard is readily apparent. c) The serious sociolinguistic problem that Basque labours under. d) The fact that legal content published in Basque legal documents comes from translation. e) The legal framework is not the most suitable. f) The problem of Basque

dialects. g) The lack of language registers in Basque.

For our part, we would add another point to the list: co-operation, since it is indispensable if the goals we want to achieve are actually attained and not remain a mere dream. Co-operation is essential between, on the one hand, Basque professionals working in the legal profession — lawyers, notaries, university professors — and, on the other terminologists, linguists, and translators. Unless that is achieved, there is a risk that endlessly prolonging the mess we are suffering today, together with a lack of serious and enduring work (apart from UZEI), the insane scattering of efforts by translators going it alone will be extremely harmful<sup>24</sup>.

As in the case of what was done with unified Basque, the language in this field also needs to be standardized, especially for two reasons: firstly, to achieve communication; secondly, in order to facilitate and encourage original work as well as translation. It is clear that a network should be set up so that the work we are doing can be made known to others and vice versa (this is precisely one of Euskalterm's goals). However, in addition to that, in order to guarantee the quality of the work, there is a pressing need to establish a language commission. These services should be promoted by the Government Administration itself, just as they have been

22. Without venturing too far, although a small nation like Scotland does not enjoy effective political power, it does have its own legal system which is different from English and Welsh law in many aspects since it is more profoundly influenced by Roman and Continental law (even if the body of law is in English).

23. Urrutia, Andres (1989). *Administrazioko euskararen hizkera-mailak eta terminologi arazoak. Administrazioko hizkeru eta terminologiaz jardunaldiak*. Oñati: HAEE/IVAP, pp. 19-21.

24. Unifying the income tax forms for four different provincial governments has to be taken as a successful exercise in co-operation.



done in Catalonia<sup>25</sup>. As far as we know, more than one proposal has been made to the Basque Government (the latest one in a conference held by the Biscay Bar Association) but there has apparently been no response. The seminars held until now have been few and far between and no lasting benefit has emerged from them given that everybody, once the seminar is over, goes back to what they were doing before. Furthermore, it is our opinion that seminars are complementary, not a guiding force. Thus, if anything of quality is to be done, it can only be achieved through co-operation, as experience has clearly shown us that the individual volunteer effort is not enough.

### 2.3 Things that urgently need to be translated into Basque

As for the steps that need to be taken in the immediate future, we shall state our opinion, even though we are not lawyers ourselves and thus it may seem to be rather bold on our part. After three years of hard experience, we are convinced that, when undertaking translation, it should be tackled with the greatest of ease and without stress and we should always bear in mind that keeping up with as much legal documentation as Spanish and French can churn out is not something that can be done in a short period of time and just *ad hoc*, as what happened in the Basque version of the Spanish constitution shows. Indeed, the abolition provision («disposapen derogatzailea») says that «Likewise, all of the provisions applicable in this Constitution are

hereby abolished» («Era berean derogaturik geratzen dira Konstituzio hontan ezartzen diren disposapen guztiak»)! Thus, by adhering to the Basque text, the Spanish Constitution would be regarded as outside the Law since the provisions are abolished. Such gaffes (mistakes by both translator and printer) happen all too often, unfortunately, but no one seems to denounce them. What is worse, nothing is done to rectify the mistakes.

In our opinion, the Basque legal code is being translated superficially and too quickly (perhaps aware that few will actually bother to read it), without any theoretical criteria and is not based on any reliable work of terminology and thus much of the work could end up being a waste of time. Consequently, where theoretical bases are well founded and based on a work of terminology, we should take on the following tasks:

1. Those which can be reached without too much effort:
  - Establishment of Basque designations for all courts and tribunals in the Spanish legal system. It is distressing to see how there can be three or more names for the same body. For example, to express the notion of "Supreme Court", we have found these designations "Goreneko Epaimahaia", "Auzitegi Gorena", "Erresumako Epaitegia", etc.
  - Translation of the most important and used laws into Basque. In appeals the placing of Spanish laws in quotation marks or adding the adverbial "de-

25. To find out more about planning, read what Andoni Sagarna and Arazeli Diaz de Lezana report in the book entitled *Administrazioko hizkerari eta terminologiari jardunaldiak* (1989). Oñati: HAEE/IVAP, pp. 81-88 and pp. 153-164 respectively.

lakoa" (so-called) should be considered unacceptable.

- According to the standardization challenge, making a list of all the norms and resources and their equivalents in Basque. Furthermore, defining the inner workings of both laws and codes (book, title, chapter, etc.)
- Approval of a unified dictionary of the most basic terms since the UZEI one is not enough. Not only should definitions of the terms be present in this dictionary, but their contexts as well.

2. Mid-term and long-term goals could be as follows:

- To gradually build up various kinds of legal material: forms and printed matter (arraignment notices, trial notices, affidavits, court documents, etc.).
- Translation of the most important codes and laws such as the Civil Code, Penal Code, etc.
- Promotion of a Basque language doctrine would be beyond the scope of translation efforts.

2.4. Linguistic resources in the construction of a legal language.

However superficial it might be, we will be using language resources that are most fundamental for lexical heritage, phraseology,

and legal syntax by laying special stress on specific words which have been misconceived or misused for many reasons.

If we are to flesh out a Basque legal language in the short or long term, the importance and inevitability of loan words are starkly clear to us<sup>26</sup>. Indeed, the loftier we want a legal language, the greater the need for loan words, as is outlined towards the end of 2.2. However special and peculiar Basque might seem to neighbouring languages, it cannot be denied that Basque has been the recipient of foreign elements down the centuries, especially in lexical matters. We only need to take a brief look at the following words which are basic to our field of research to prove that: *abokatu* ("lawyer" > Lat. *advocatum*), *babestu* ("to protect" > *babes* < *it. pavese*) *froga* ("proof" > Lat. *probare*), *foru* ("charter law" > Lat. *forum*), *haizu* ("licit" > Lat. *ausus*), *judizio* (lat. *judicem*), *lege* ("law" > Lat. *legem*), *manatu* ("to command") lat. *mandare*), *zilegi* ("permissible" > Lat. *sigillum*). The language took in these words long ago and so they are now Basque words.

On the other hand, in spite of the best efforts of several people, words such as *akusatatu*, *deklaratu*, *kondenatu*, *magistratu*, *sententzia* have enjoyed a long and extensive tradition in many works of Basque literature. The equivalents meant to substitute these words are not only unsuitable, they also lead to confusion. Although "sentencia" and "fallo" (ruling) are altogether differentiated in

26. Mitxelena, Koldo, *Euskal Idazlan Guztiak VII*. Hizkuntzalaritzaz II, no. 27, p. 187. Euskal Editoreen Elkarte.

« It is clear to us where the need for loan words comes from. Basque, besides being a "tiny" language, has never been used in very many fields down through the centuries. Thus, if we wish to work on those fields in Basque, and it seems that we all do, we find ourselves needing to increase our lexical treasure unduly, whether it be by using coined words or by adopting "foreign" words».



Spanish, some do use "epai" for both in Basque. The word "zuzentza" has been concocted to mark off a difference with the word "justizia" which can be read here, there, and everywhere in the writings of Basque authors from every age. The same goes for "fiskal", for which the totally unacceptable equivalent "herri-salatari" (public denouncer) was proposed. Indeed, the word "salatari" in the Basque that we all use and know takes on a clearly disdainful and condemnatory meaning to it, i.e. someone who sticks his nose in other people's business and then tells everyone about it (known in Biscayan Basque as *nun-ze-barri*). It is clear that the duties of the district attorney have little to do with what is implied by "salatari".

Cases of excessive semantic extension have, in our opinion, been able to take place because no use of indispensable loan words was made, for instance, the words "*zigorbidetzko*" (lit. of penal way) or "*zigorlegezko*" (lit. of penal law) which have been used to express the adjective "penal": "*zigorlegezko arau-bilduma*" (lit. "collection of rules on penal law") instead of "kode penala"). Although the word "*atal*" has been used in place of "*artikulu*"<sup>27</sup>, the latter is considered better on account of both literary tradition and its univocal nature (the former has seven different meanings). More examples could be given where the efforts of language purist can be seen. Such a trend, in most cases, can be more harmful to a language than helpful.

Some might get the idea that, by using loan words (we should not forget, by the way, that they are a kind of neologism), a class of

neologism is being denied the right to enter the lexicon. Needless to say, that is not the case. A neologism that does not come from borrowing is a productive resource for lexical creation, whether it be from derivation or from joining words together. It is acceptable whenever it maintains the univocal nature of the meaning of the foreign term to be rendered into the language (see p. 162 for the conditions that a neologism must fulfil to be accepted as such). It goes without saying that is even more acceptable when expressing home-grown terms, e.g. "*hilburuko*" (will or testament). All in all, great care must be taken in using those language resources if we are not to concoct a kind of indigestible lexical soup resulting from an unsuitable piling up of suffixes as in the cases of -lari and -tza: "*zergarlaritza baimena*" (lit. "taxable activity permission") instead of "*lizentzia fiskala*" or "*baimen fiskala*" to say "fiscal/commercial enterprise licence", -bide + -tza: "*zehaztapidetza*" (lit. "detailed formulation") instead of "espediente" to say "proceeding", and there are even more convoluted cases that could be mentioned. Even in compound words, we have come across forms that have never been documented in which the verb "etsi" is unreasonably used as a second element: *aintzatetsi*, *ordetsi*, *largetsi*, etc.

It is absolutely unacceptable — and thus should be strongly criticized as many times as necessary — that we should turn our backs on these terms that are common to Spanish and many other neighbouring languages by ineptly concocting terms willy-nilly in order to banish anything smacking of something

27. K. Mitzelena, *Orotariko Euskal Hiztegia*.

foreign (but always subservient to its essence). The penchant for coming up with a term that is as distant from foreign languages as possible is non-scientific, or “epistemophobic” if you prefer, which makes us think that they are more motivated by extralinguistic reasons and, indeed, that *Weltanschauung* has been, and still is, firmly rooted in certain sectors of society since Larramendi’s time (i.e. 1750), especially in Biscay and Gipuzkoa. Such an attitude is in keeping with the idea that God, with Tubal at his side, is said to have given the Basques special gifts and an alleged purity to the Basque race, and thus to the language. This is more in keeping with an alleged purity than with the reality of the language. A look at the recently published “European Treaty Dictionary” shows to what lengths this non-scientific approach can go. We have chosen the following term that is closer to our field of research:

- “439 EU *gizakiak eta erakundeak*  
 (lit. human beings and entities)  
 ES *las personas físicas y jurídicas*  
 FR *les personnes physiques et morales*  
 DE *natürliche und juristische Personen*  
 EN *natural and legal persons*  
 IT *le persone fisiche e giuridiche*  
 NL *natuurlijke personen en rechtspersonen*  
 DA *fysiske og juridiske personer*<sup>28</sup>”.

In languages other than Basque, while a need to differentiate between these two kinds of persons from a strictly legal point of view, such a differentiation does not seem to be needed in Basque. Thus, those who translated this term have buried the entire legal doctrine on the premises «*totum pro parte*» and «*pars pro toto*»<sup>29</sup>.

Apart from borrowings, there are few neologisms in Basque and it can hardly be otherwise if we look at what has been published in Basque up to now (articles in the first volume of UZEI’s law dictionary entitled «*Euskara legebidean*», «*Zuzenbide Zibileko Hastapenak*» written by Andres Urrutia and separate sporadic articles published). If we compare it to linguistics, this has a very peculiar and rather extensive terminology. The source of the terminological development is to be found in original work and numerous articles written in this area<sup>30</sup>.

Another interesting aspect is that of archaic expressions. Several Spanish words have become obsolete and crusty such as “*providencia*”, “*exhorto*”, “*infraescrito*”... even though they have a precise sense. “*Providencia*” is not a mere decision but a concrete kind of decision: an unreasoned verdict that a judge or tribunal gives on lawsuit matters and secondary petitions. Experts have the last word on the acceptability or adequacy of such

28. (1991). *Europako Ituneeen Hiztegia*. Bilbo: HAEE/IVAP, p. 115.

29. If we base ourselves on the Basque translation of this term, the problems and headaches arising from this equivalent are no small matter. Indeed, how would we render into Basque section 1 of article 35 of the Civil Code: «*son personas jurídicas las corporaciones, asociaciones y fundaciones de interés público reconocidas por la ley*»?

30. «Save for the odd exception, we have not, for instance, worked very much in fields of knowledge, be it in Basque or Spanish. We have learnt something in the best of cases and the little that we have learnt, we have learnt and are learning it in another person’s language given that we have most often learnt it from others. If we wish to elude this dependency, even in language matters, it is essential for us not only to come up with words but also with different entities». MITXELENA, K. cf. p.188.

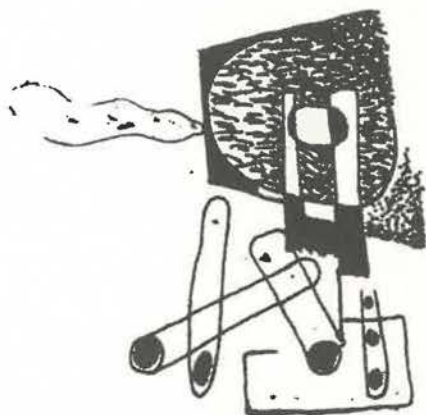


terms because they and nobody but they use the terms<sup>31</sup>. Likewise, it would be suitable to resurrect words that are no longer used in Basque by re-establishing them in the Basque lexicon, e.g.: "jarauntsi", "baratari", "ordeinu"...

To conclude this section, we believe that even if the results are hardly surprising, the terms that show some kind of legal connection and that can be found in the General Basque Dictionary should be sorted through, bearing in mind that this work includes the greatest body of Basque-language works and writers ever compiled: "ahaidekeria" (incest) – UZEI has "intzestu" –, "gezurrezko lekukotasuna" (false testimony), "ahapaldi gaixtoa" (slander), etc.

## 2.5. Phraseology and legal syntax

It is a well-known fact that legal jargon uses forms of fixed expressions or periphrases: on the one hand, in legislation, in the regulations governing legislative power and administrative documents; on the other, in those that are more inherent to the everyday practise of judicial organs. Resources of this kind should also be created in our language, insofar as they are fundamental ingredients of both real and written law. Nevertheless, we cannot oversimplify things by just taking in wholesale expressions from Latin and neighbouring languages if we do not first sit down and think what, how, and how many we are to take.



It is true that Spanish and French have gone through a process of withering that comes from days of yore, the echo of which is with us today. A great many example of this can be given: «en virtud del proveído dictado en el día de la fecha; llevar a puro y debido efecto; según su leal saber y entender, devolver por el mismo conducto de su recibo; mejor proveer...» Moreover, a whole paragraph is more often than it should be jammed full of overblown forms of expression: «He acordado dirigir el presente a V.S., por el cual en nombre de S.M. el Rey (q-D-g.), le exhorto y en el mío propio ruego y encargo se sirva aceptarlo y acusar recibo y acordar su cumplimiento y devolución, quedando obligado a lo propio en casos

31. The EL PAIS style book says this about the word «Auto»: «(...) Si en algún caso se pretende evitar la confusión del auto con el automóvil o coche y eliminar prolijas explicaciones entre paréntesis, puede utilizarse el término «resolución»; se entiende mejor, aunque, según los juristas, sea demasiado genérico.» EL PAIS, *Libro de estilo*, Madrid 1990, Ediciones El País, SA, p. 158.

análogos.» In such cases, it is readily apparent that translating every single element is not only unfair, it does not lead us anywhere except towards linguistic servitude. So long as what is to be translated is poorly expressed or full of mere linguistic padding, it will have to be studied and decoded on a case-by-case basis depending on what will be rendered and what will be omitted in translation. In connection with that, it should be borne in mind that with Spanish itself, several attempts are underway, namely by the Royal Spanish Academy, to set up a special commission in order to simplify legal language.

In this context, it is illustrative to see how other languages handle the problem. There are those among us who hold up English as a model having an easy-to-understand style which is a sign that they are not as familiar as they ought to be with English in this field. Indeed, in the introduction, after discussing the process of fossilization of Spanish and French, the following statement reads:

«In the same vein, it is quite clear that in the following sentence collections, English has such a naturalness to name things directly and suitably without resorting to pedantic expression. I despair at the great many problems arising from the attempt to render into Basque the modern world. Many — but not all — problems would be solved if we were to look directly at the English model»<sup>32</sup>.

Although there is no denying that he might have his reasons for thinking so, we do not believe that he is on the right track.

Indeed, the alleged naturalness or absence of pedantry in English is not evident in the books and writings that we have at our disposal. We could give a great many other examples taken from law books and everyday judicial proceedings. Take, for example, this arrest warrant (the underlining is ours)<sup>33</sup>.

*Warrant of Arrest*

*In the County of Somerset, Petty Sessional Division of Oxbridge.*

*To each and all of the constables in the Borough of Oxbridge.*

*INFORMATION on oath has this day been laid before me. the undersigned Justice of the Peace, by Watson Holmes, Chief Inspector of Police, that William Sykes (hereinafter called the defendant) on the 5th day of July, 1980, at Blacktown in the County aforesaid did steal one gold watch, one silver chain (...) the property of John Jones, (...) contrary to section 1 (1) of the Theft Act, 1968.*

*YOU ARE HEREBY COMMANDED to bring the defendant before the Magistrates' Court sitting at Oxbridge, forthwith to answer to the said information.*

*DATED the 12th day of August, 1980.*

The underlined sentences show us that a) English is equally content to use fossilized expressions that are no longer used in modern everyday speech; b) in some cases, there are formulaic parallelisms on par with those in Spanish; c) the style is not very far off from the formal style of Spanish.

To tell the truth, very few legal expressions in Basque have been coined and those

32. SARASOLA, Ibon, in the preface of *Europako Ituneeen hiztegia*, HAAE/IVAR, p. XXV

33. PADFIELD, C.F., LLB, DPA of Gray's Inn, Barrister, Law, Made Simple Books, Heinemann Professional Publishing Ltd, Oxford, 1990, p. 395.



that have been coined are scattered. Among those that have achieved some kind of acceptance, there are those that are morphologically ill-formed such as “-(r)en kaltetan gabe” (without detriment to) when “kalterik gabe” (without detriment) would be better. On the other hand, there are a very few expressions with a Basque structure to them that are unfamiliar and hidden away in dictionaries: *ez da lege* (it is unlawful), *bidez eta legez* (rightfully and lawfully). There are several proverbs as well. This one of Oihenart's is a case in point: *Auzilaria, sarista ezak ontsa barataria, ezpere eure zuzena ez dakidik balia*. (plaintiff, pay your barrister well, otherwise you will receive no justice).

As for syntax, the importance that this part of grammar has in legal practice approaches something akin to empirical science. Arguments put forward in legal reasoning related to all kinds of appeals and sentences in trials, jurisprudence, rules and regulations are better contemplated in a logical, discursive style. Thus, the jurist makes use of rhetoric to defend or to accuse (what Aristotle calls “*genus iudicale*”) This kind of discourse meld a great many dependent clauses and conjunctions together into sentences in order to achieve a coherent text replete with nuances. Nevertheless, many judges as well as lawyers use clumsy syntax: endless paragraphs from top to bottom, incorrect use of gerunds, a lack of conjunctions between sentences, etc. Needless to say, when rendering such text into Basque, this huge fault has to be corrected, not only those faults

committed because of a writer's intrinsic style, but also those arising from not knowing how to write very well.

In any case, we cannot fall into the trap of calling for false easiness as an excuse for true easiness: for instance, using co-ordinated sentences without any nuance or detail instead of working on subordinate clauses into any text of this field (in this sense, shying away from non-defining relative clauses made up by “*zein*” and “*non*” which are so necessary in this style). Once again, it should be pointed out that classical writers, and not so classical ones, did not, and do not, have any qualms in making use of those kinds of syntax. In this sentence we completely agree with Xabier García Arguello who wrote in the newspaper *El Mundo*:

«Without further ado whatsoever, let us regard the simple and simplistic syntax that has been promoted in our country. Basque has always been totally flexible and adaptable to the influence of neighbouring languages until purist tastes turned that special virtue of the language into a prohibition and a sin»<sup>34</sup>.

## ***Experience in the field of law to date***

### **1. Some results of the work that has been done to date**

This September, it will be three years since the Translation Service of the Supreme Court of Justice of the Basque Country was launched. With a good three years of hard experience behind us, we believe that now it

34. G<sup>a</sup> Arguello, Xabier, Basakeria estandarra, in the newspaper *El Mundo*, March 20, 1992.

is a great opportunity to discuss the consequences.

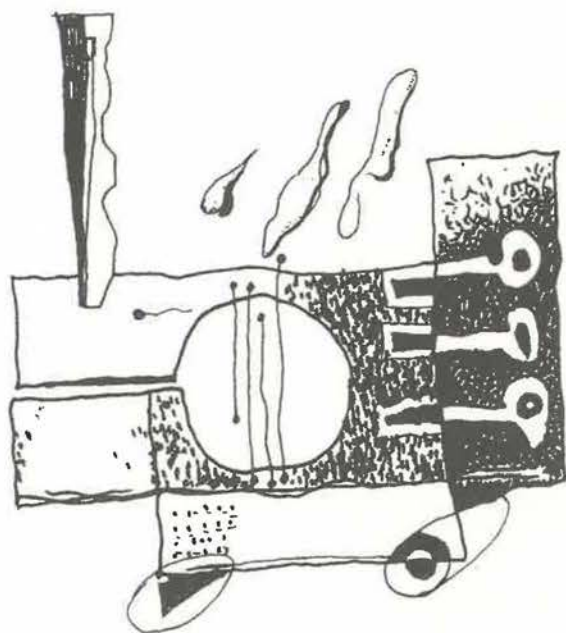
Since our work started, one thing that we harbour within our souls is the loneliness of what we are doing. Indeed, the only one who knows about the work we are doing is usually the happy recipient of our services — as indeed it should be — and as it does not reach the rest of the professionals labouring in this field, we are devoid of their criticism and evaluations. On the other hand, every time we need to come up with a new term (something that happens more often than we would like), we ourselves have to come up with the term, fulfilling a task that is usually carried out by a team consisting of an expert, a translator, and a terminologist. The problems and quandrums are obviously no small matter in any sense of the word. Even in other situations, that is, both in certain places and organizations (e.g. at the university and UZEI) we do not hear anything at all about what is being done in the field of law. A clear example of this lack of coordination can be seen in the signs in the courthouses. Nowadays, the signs appearing in the courthouses are said to be under the central control of the Basque Government (we say “said to be” because we do not rightly know for sure) which has made no contact with those working here whatsoever. Thus, after spending a lot of resources on the sign hanging on the wall, no professional in this field who is working in Basque uses the terminology appearing on the said signs (the terms we use in our translations are not the same). What is more, the media also uses different terms when mentioning the courts in their reports (we have, for now, put aside the acceptability of terms such as «zibil arloa», «pertsonal

batzordea» according to the language’s rules of acceptability). Here, then, is an example of the ephemeral nature of the situation that we labour under.

The scant use of Basque in courts, on the other hand, worries and concerns us even more. Overall, it is a well-known fact that Basques have, since time immemorial, (read the 17th century Basque writer, Axular, for instance) always used little Basque in judicial procedures and indeed, sociologists have mentioned this dearth of Basque in other fields as well. It is not our job to put forward reasons why but data that we have in our possession tells us that Basques make very little use of Basque in their dealings with the Justice Administration, especially orally. These two statistics are telling: in 1990, there were only 10 cases of interpreting sessions taking place in Biscay. In 1991, on the other hand, there were only twelve. Taking into account the number of Basque-speakers in Biscay, these are consequently worrying statistics.

Furthermore, we must bear in mind that the Justice Administration is totally Spanish-speaking and that those working with it address them only in Spanish, save for the odd request by someone to use Basque, and in such cases, use of an interpreter-translator is always compulsory. Thus, it could be argued that the Basque is a second-class citizen since his or her treatment is not on par with the treatment that a Spanish-speaker receives. The official status of Basque is at its lowest point with judicial authorities since the main language, if not the only language, is Spanish. Apart from some token cases, if the Central Spanish and Basque Governments have the responsibility to turn this situation





around, they will have to offer suitable resources so that laws which grant Basque official status are honestly and totally complied with. Changes that such a situation calls for cannot be brought about overnight. It will be a while before Basque will truly make its appearance in Basque courts.

#### **4.2 Tasks ahead**

Taking into account all of what has been said above, we will now put forward what, in our opinion, are the steps that must be taken in order to find a way out of this unenviable situation.

a) First of all, co-operation of everyone working in justice or areas connected with

justice is essential if we are to act together or if we are to see the fruits of our labours. The best possible way to bring all of us together should be studied. One of these ways could be the EUSKALTERM terminology bank.

b) The UZEI law dictionary must be renewed, both regarding the number of terms (for instance many terms that are used in trial proceedings are not included) and the degree of acceptability of some terms (i.e. it is surprising to see how a term with a long tradition, "aitasuna" (paternity) has been overlooked in favour of the undocumented concoction "aitatza". In our opinion, the General Basque

Dictionary should be thoroughly looked through because there are more terms that could prove useful to our field than one might think.

- c) Stylistic principles of Basque legal language must be defined, to wit:
- Which person to use. When should the author of a text use first and third person? How is one to deal with the end user of the text: the second person singular or the second person plural?
  - Courtesy titles: should Basque make use of hierarchically arranged titles in the same manner as Spanish?
  - Suitable translation of certain expressions and legal phraseology.
  - Spelling: Precise rules must be spelt out in order to come up with a solution to the present mess (which is a direct consequence of the mess in Spanish).
- d) Preparation of the documents that are used the most and drawn up in the same way as in Catalonia, such as: «Sil.labus

processal civil i formularis» or «Cinquanta documents juridics en català». Legal professionals here too, in conjunction with experts, should decide which kind of document ought to be translated (or adapted), a task that would facilitate work for us all.

There you have it, patient reader, a list of the main tasks to be carried out, although this list could be made a lot longer.

In conclusion, we would like to close with Koldo Mitxelena's words which all of us should bear in mind before tackling the work ahead of us<sup>35</sup>.

«Perhaps we need to denounce the danger of the volunteer spirit which is so rooted among us, as if the mere wish to reach goals were enough. I will not deny the amazing utopian results as some are self-evident. I would prefer, on the other hand, just to be on the safe side, if anything is to be done, that the dreams and avid enthusiasm, so very necessary in this enterprise, should be accompanied by a calculating spirit that would guide our efforts in what we are after, by what steps we will achieve it, and what kind of resources we have at our disposal now and in the future».

35. MITXELENA, Koldo (1978). Euskararen bide luze bezain malkarrak, *Euskararen liburu zuria*. Bilbo: Euskaltzaindia, p. 25.



## SYNTHÈSE

### Le droit en basque : principes généraux et trajectoire du point de vue du traducteur

Cet article propose une réflexion théorique et pratique sur l'emploi de l'euskara (langue basque) dans les Tribunaux, réflexion faite du point de vue de la traduction. Les auteurs commencent par situer leur travail de traducteurs juridiques dans le contexte des deux disciplines auxquelles ce travail est rattaché, à savoir, la traduction et le droit, la première relevant directement de la linguistique. Le rapport entre ces deux domaines est très étroit car, contrairement à d'autres disciplines le droit n'existe que par la langue.

Dans une première partie, ils établissent les principes et les caractéristiques de la traduction technique en général et de la traduction juridique en particulier. La langue juridique, disent-ils, est le technolecte, ou langage spécialisé, ayant trait au droit et ils en donnent les caractéristiques. Tout au long de notre histoire, l'espagnol et le français ont été nos seules langues juridiques, aussi, tout est à faire pour que l'euskara, devenue langue officielle dans une partie du territoire et manquant de tradition dans ce domaine, devienne un outil efficace et fonctionnel.

La seconde partie traite de questions pratiques en relation avec les difficultés posées par la traduction de textes juridiques en une langue cible démunie. La traduction contribue à l'élaboration et à la normalisation de la langue juridique mais ce travail doit être fait de façon systématique. L'accent est mis d'une part, sur l'importance d'élaborer une terminologie juridique en euskara, sans craindre de recourir aux emprunts, afin de contribuer à l'homogénéisation des termes et d'éviter la multiplicité des dénominations pour un même concept, et d'autre part, sur la nécessité de trouver un modèle de phraséologie et de structure syntaxique propre au langage juridique en basque.

Finalement, se fondant sur l'expérience des trois années d'existence du Service de Traduction de la Cour de Justice du Pays Basque, les auteurs se plaignent de l'isolement dans lequel ils doivent travailler et ils appellent à la collaboration de toutes les personnes travaillant en euskara dans le domaine juridique, ainsi que des institutions concernées. Ils soulignent la nécessité de coordonner les efforts dans ce sens, le seul volontarisme n'étant pas suffisant pour relever un tel défi.