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Contrastive study and translation of a legal sentence
from English into Spanish. Oscar Pistorius' case.

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ABSTRACT

The purpose of this research is to translate into Spanish an extract of Oscar Pistorius' legal sentence, and to provide an accurate analysis of the lexical and grammatical characteristics found in the same. By using specialized dictionaries, parallel texts, as well as glossaries the problems found during the process of translation will be studied. Besides, solutions adopted to these problems will be provided. The research shows that thanks to the use of translation techniques such as transpositions, the translator is able to provide a target text that sounds natural and balanced in the target language. This research focuses only on a concrete extract of a legal sentence. It would be interesting for further studies to continue analyzing if these features and problems appear in other legal sentences.

Key words: Legal translation, legal sentence, criminal law, law language, translation problems.

ABSTRACT

El principal objetivo de este estudio es la realización de una traducción de un extracto de la sentencia legal de Oscar Pistorius. A su vez, se realizará un análisis de las características léxicas y gramaticales encontradas en dicha sentencia. Los problemas que se han encontrado a lo largo del proceso de traducción serán analizados, así como las soluciones adoptadas.

Este estudio demuestra que el traductor es capaz de crear una traducción natural y equilibrada gracias al uso de distintas técnicas de traducción como son las transposiciones.

Es importante tener en cuenta que este estudio se centra únicamente en el extracto seleccionado de la sentencia judicial. Por ello, sería interesante realizar nuevos para seguir investigando si estas características y problemas se repiten en otras sentencias jurídicas.

Palabras clave: Traducción jurídica, sentencia judicial, derecho, derecho penal, lenguaje jurídico, problemas traductológicos-

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1. INTRODUCTION

The research consists of the translation and analysis of an extract of a legal sentence. In concrete, Oscar Pistorius' legal sentence. Legal sentences are specialized texts that belong to the field of legal translation.

We decided to translate a legal sentence because it belongs to a field of knowledge in which further studies are needed. Many researchers have focused their attention on the study of specific genres such as contracts or wills, as these are the most demanded documents. Nevertheless, we considered interesting to analyze the features and problems that can be found during the translation of a legal sentence. Oscar Pistorius is a well-known paralympic athlete. He was accused of murdering her girlfriend in Saint Valentin's day. We decided to translate and analyze an extract of his legal sentence as it is a good example to achieve the aims of the research.

We have three main aims. The first one is to select and translate an extract of Oscar Pistorius' legal sentence. Its translation from English into Spanish consist of 943 words. Besides, we compiled a list of terms that appeared in the source text. To ensure that our translation was right, we asked an expert to check specific terminological problems we encountered in order to continue with our second aim. This second aim consists of the explanation of the lexical and syntactical characteristics found in the source text. Finally, the last aim deals with the problems encountered in the process of translating, and the solutions adopted for the same.

According to the methodology followed, the first thing done was to acquire a deeper knowledge in the field of legal translation. Authors such as Alcaraz (2002), Tiersma (2000) or Hughes (2002) were essential for the investigation process. They helped us not only to understand better the lexical and syntactic characteristics of our source text, but also to analyze the problems it conveys. The next step was to select an extract of Oscar Pistorius' legal sentence in order to use it with two main aims. Firstly, to study its lexical and syntactic characteristics; and secondly, as a text to translate and to analyze.

Before starting to translate it, it was necessary to understand the source text in order to provide a translation as natural and clear as possible. For this stage of the study, we created a list with the complex terms encountered in the process of translating. Three main sources

were used to find the Spanish equivalents of the terms that appear in the glossary. The use of monolingual and bilingual dictionaries such as *Diccionario de términos jurídicos. A dictionary of Legal Terms (2012)*, or *Diccionario Espasa jurídico (2001)*, both in English and in Spanish, as well as the use of parallel texts selected from journals such as *El Mundo* and the database *CENDOJ*. And last but not least, the help of an expert in the field.

This research is structured into four main sections which are: the theoretical background, the materials used, the translation of the source text and the analysis and translation problems. First, the theoretical background consists of the explanation of lexical characteristics and syntactical features. Then, in the materials section, we describe the main features of the source text taking into account its genre, communicative function, and the discourse community. Together with this, a translation of the source text made by myself follows. In the analysis and problems section, we analyze the problems found during the translation process, as well as the solutions adopted. Finally, the appendix includes the glossary made during the translation.

2. THEORETICAL BACKGROUND

2.1 Legal language

In 1726, Jonathan Swift (1826: 139) defined the language of law as “A peculiar cant and jargon of their own that no other natural mortal can understand.” The most important tool for lawyers are words as they need them to advise clients, to argue at the court or jury or to question witnesses. (Tiersma, 2000: 1). Thus, lawyers do not only use legal language orally; but they also use it in contracts, legal sentences, deeds or wills. Tiersma (2000: 2), as Swift, defines the legal language as a complex “and virtually incomprehensible to those most affected by it.” This differs from what we understand by general language, the language we use in our daily life.

2.2 Lexical characteristics of legal language

According to Alcaraz, Campos and Miguelez (2002), legal language has many noticeable characteristics at the lexico-terminological level. Along this section, we describe and explain only the ones that we have found in the source text. Furthermore, each of these features are explained with examples selected from the source text.

2.2.1 Terms derived from French and Latin words due to Normand and Roman Invasions.

According to the Collins dictionary a latinism is “a word, idiom, or phrase borrowed from Latin.” Due to the Roman Invasion, Latin contributed to the development of European languages. With their conquest, Latin became the “language of government and administration, legislation and the judiciary, trade and army operations” (Ristikivi, 2005: 199).

However, the most powerful factor for the influence of Latin in legal language was the creation of the Corpus Iuris Civilis (Ristikivi, 2005: 200). Apart from this, it is necessary to take into consideration that many important jurisprudence and political works were written in this language.

On the other hand, with the Norman invasion in 1066, French became one of the three official languages in England together with Old English and Latin. In the courts, French was the language used to communicate orally, and Latin was the language used in written records (Williman, 2007). Normans not only influenced the English language with their language, but also with their legal system. It is in this moment when the Common Law appeared.

According to Williman (2007), Spanish colonization, together with Napoleon’s conquest of Quebec and Louisiana, supposed a clearly decisive boost to the influence of Latin and French law systems and lexicon in America. Blackstone, thanks to his book *Commentaries of the laws of England* (1763), was one of the most important figures to influence the Americans with their law tradition (Williman, 2007). During the revolutionary period, Americans decided to imbue themselves with English law books as this one.

Due to these facts, many terms of legal language have French and Latin origins. Nevertheless, it may be interesting to focus on how English received words from these two languages.

There are “three levels of reception of foreign words into a language: borrowing, adoption and derivation” (Williman, 2007). Even though there are three levels, we are going to focus on the last one as in the source text there are no words that follow the processes of adoption, neither borrowing. In the following table, we present the terms of the source text that follow this process, as well as their origins and definitions.

TERM	ORIGIN	DEFINITION	SOURCE
<i>Court</i>	First from the Latin <i>cohort</i> which developed into the French word <i>cour</i> to the present <i>court</i> .	It makes reference to the place where juridical businesses take places.	(American association journal, 1939: 1026)
<i>Defendant</i>	From the Latin <i>defendens</i> . It developed into the French word <i>defendant</i> to the present <i>defendant</i> .	It makes reference to the person or company sued in a court.	(Dictionary.com, 2016)
<i>Deterrence</i>	From Latin <i>deterreere</i> to the present <i>deterrence</i> .	It makes reference to the that ensures a fair punishment to the criminal defendant.	(Etymonline, 2016)
<i>Imprisonment</i>	From Latin <i>prehensio</i> to the French word <i>imprison</i> to the present <i>imprisonment</i> .	To be in prison.	(Etymonline, 2016)
<i>Crime</i>	From Latin <i>crimen</i> to the French word <i>crimne</i> to nowadays <i>crime</i> .	It is the violation of law.	(Hill, 2016, p. 107)
<i>Homicide</i>	From Latin <i>homo</i> + <i>cidium</i> .	It means <i>man</i> + <i>the act of killing</i> .	(Etymonline, 2016)
<i>Accused</i>	From Latin <i>ad causa</i> .	It is the person accused for a crime.	(Etymonline, 2016 Hill, 2016: 7)
<i>Sentence</i>	From Latin <i>sentencia</i> .	It is the punishment	(Etymonline, 2016)

		applied to the person accused for a crime.	
<i>Judge</i>	From French <i>juger</i> to nowadays <i>judge</i> .	To create an opinion about something.	(Etymonline, 2016)
<i>Procedure</i>	From the Latin <i>procedere</i> to the French <i>procédure</i> to nowadays <i>procedure</i> .	“The proceedings in a given cause.”	(American bar association journal, 1939: 1023)

Table 1: Word of Latin Origin. Source: Compiled by the author.

Many of these terms are common words easy to understand such as *judge*. However, there are other terms such as *deterrence* or *defendant*, which are more complex as they acquire a new meaning within legal language. In the following section, we differentiate between technical, sub-technical and general language terms.

2.2.2 Terminology in legal language

Legal vocabulary has something in common with the general language, the differentiation between symbolic vocabulary and functional vocabulary (Alcaraz et al., 2002: 93).

On the one hand, the functional language is the language used to establish relationships between words and linguistic units (Ariel, 2002: 94). For instance, fixed legal expressions such as:

- (1) *mine and mine alone* [¹ 12]
- (2) *In the matter between*. [6]

On the other hand, Alcaraz, Campos and Miguélez (2002: 94 - 95) classify the symbolic language into “technical terms, subtechnical terms and general language terms.”

- *Technical terms*: These are words with just one meaning that belong to a specialized subject field. In order to be able to understand them, and to use them,

¹ In order to make easier the reading of the TFG, following each example we have included between square brackets a reference to the ST/TT table.

it is necessary to know their meaning. They are better known as *terms of art*. For instance:

(3) *High court* [1]

(4) *Negligence* [42]

(5) *Case Number* [1]

- Sub-technical terms: These are words from general language that have a specific meaning in a specialized field. In contrast with the previous one, these words are polysemic. For instance:

(6) *Act* [10]: Defined by Web-Merriam Dictionary as:

- something that is done.
 - a law made by a group of legislators.
 - one of the main divisions of a play or opera.
- Words from general language: These are sub-technical words as they still retain their general meaning. Some examples found in the source text are:

(7) *Paragraph* [23]

(8) *Date* [1]

(9) *Society* [13]

2.2.3 Use of abbreviations

In legal language, the use of abbreviations is common (Bhatia, 2010: 274). According to Merriam-Webster dictionary an abbreviation is “a shortened form of a word or name that is used in place of the full word or name”. Within this, it is necessary to differentiate between acronyms, which are abbreviated words that are spelt as words themselves, and initials, which are abbreviations that cannot be pronounced as words themselves. These are some examples with their respective meanings found in the legal sentence:

(10) *In S v RO and Another 2000 (2) SACR 248 (SCA), Heher JA* [16]

- v = versus
- 2000 (2) SACR 248 = year and volume number of South African Criminal Reports
- (SCA) = Supreme Court of Appeal

– JA = Judge of Appeal

(11) *S v Martín* 1996 (2) SACR 378 (W) at 380 A-B [25]

– (w) = Watermeyer’s Reports of the Supreme Court, Cape of Good Hope
(S Afr) 1857// Witwatersrand Local Division Reports (S Afr) 1910-1946

(12) *S v Vries* 1996 (2) SACR 638 (Nm) at 643 F-G: [28]

– (Nm) = High Court of Namibia

(13) *See S v Mhlongo* 1994 (1) SACR 584 (A) at 588J-589B [40]

– SACR: South African Criminal Law Reports

(14) *See S v V* 1972 (3) SA 611 (A) at 614: [40]

– SA: South African Law Reports

2.3 Syntactical characteristics of Legal language

Legal syntax may be both simple and complex depending on the canal. On the one hand, simple syntax is used in the narrative discourse of legal sentences called “facts as found” (Alcaraz et al., 2002: 95). This type of writings tries to be as objective as possible using understandable grammatical structures. On the other hand, the complex one is found in contracts, trusts, wills and other legal documents. We are going to focus on the first one as the source text is a legal sentence.

2.3.1 The use of non-finite clauses

The use of non-finite clauses is a common syntactic characteristic of legal writings (Tiersma, 2000: 65). Thanks to the inflectional form of non-finite verbs, we can distinguish them from finite ones. (Huddleston & Pullum, 2002: 1173). We can find two different types of non-finite clauses in the source text. In the following table, we present on the one hand the infinitival sentences, and on the other hand the gerund-participial sentences found in the source text.

INFINITIVAL	GERUND-PARTICIPAL
(15) <i>To arrive</i> at different conclusions [19]	(21) <i>Sentencing</i> is about achieving the right balance (...) [17]

(16) It now remains for me <i>to sentence</i> him [11]	(22) <i>Finding</i> an appropriate sentence is a challenge (...) [20]
(17) <i>To reach</i> an appropriate sentence (...) [13]	(23) <i>Sentencing</i> is not a perfect exercise [20]
(18) <i>To consider</i> the nature and the seriousness [13]	(24) (...) <i>sentencing</i> in South Africa [22]
(19) <i>To take</i> into consideration the main purposes (...) [14]	(25) <i>Sentencing</i> , at the best of times, is an imprecise and imperfect procedure [27]
(20) Appropriateness tends <i>to be</i> subjective according to the views of the sentencing officer [24]	(26) <i>Having regard</i> to the circumstances [37]

Table 2: Non-Finite clauses of the ST. Source: Compiled by the author.

2.3.2 The placement of dependent clauses

As Tiersma states (2000: 66), dependent clauses are usually placed “next to the words they modify or between the auxiliary and noun verb.” This type of clauses decreases ambiguity, nevertheless, they reduce comprehension. In the ST we have found the following examples:

- (27) “Sentencing, *at the best of times*, is an imprecise (...) [27]
- (28) To give him an opportunity, *where possible*, the possibility to become a useful member of society. [32]
- (29) I am mindful, *however*, of the fact that true mercy has (...) [40]

Apart from this type of clause, in the source text we have also found embedded clauses. In the following section we will study the complexity of sentences in this field.

2.3.3 Complex sentences

There are two different reasons why lawyers use lengthy and complex sentences. The first one is due to legitimate reasons, and the second one because of “the desire to place all information on a particular topic into one self-contained unit” (Tiersma, 2000: 56). Lawyers

use this feature as a way to avoid ambiguity in their writings. Due to the use of these long sentences, the information that the lawyer wants to express is clear enough to avoid different meanings of a concrete message (Tiersma, 2000: 57). These sentences are distinguished not only by the use of embedded clauses, but also by the use of conjoined ones. We have elaborated a table with some complex sentences selected from the source text, in order to explain them.

SENTENCE	EXPLANATION
<p>(30) “In the light of <i>the fact that the presiding officer is endowed with a wide discretion in the imposition of the sentence</i>, appropriateness tends to be subjective according to the views of the sentencing officer.” [24]</p>	<p>In this complex sentence, we find two juxtaposed clauses. One conjoined clause by the relative determinant <i>that</i> and a second simple clause.</p> <p>In the first clause, the use of <i>that</i> clarifies who is the person that the lawyer is making reference to. In this case, the presiding officer.</p>
<p>(31) “<i>Finding an appropriate sentence</i> is a challenge faced by criminal courts daily <i>as sentencing is not a perfect exercise</i>.” [20]</p>	<p>Here, the conjunction <i>as</i> helps the reader to understand the reason why it is a challenge to find an appropriate sentence. But at the same time, due to the use of a non-finite gerundival clause, the comprehension of this may be reduced.</p>
<p>(32) The former might cause the public <i>to lose confidence in the justice system and people might be tempted to take the law into their own hands</i>. [31]</p>	<p>As we can see, there are two infinitive embedded clauses and one conjunction. The conjunction <i>and</i> adds new information, and the use of embedded clauses obscure the meaning.</p>

Table 3: Complex sentences in the ST. Source: Compiled by the author.

2.3.4 Wordiness and redundancy

Lawyers usually use long sentences as well as the repetition of different terms as a way to avoid ambiguities and to be as precise as possible. The way they achieve this, is by the use of prepositional and adverbial expressions, the use of binomial expressions, and the use of redundancy. (Tiersma, 2000: 59-61).

a) Prepositional and adverbial expressions

“The law is a profession of words.” (Mellinkoff, 2004: 7). Verbosity and wordiness are very frequent both in legal speech, and in written discourse as lawyers tend to be as explicit and clear as possible. It is characterized by the use of prepositional and adverbial sentences or expressions, instead of the use of simple prepositions or adverbs respectively (Tiersma, 2000: 59). We have elaborated a table in which we provide the complex structures found in the ST, and the possible simple structures that could substituted each of them. Besides, we have classified the type of sentence we are studying.

COMPLEX TERMINOLOGY	SIMPLE TERMINOLOGY	TYPE OF SENTENCE.
(33) <i>At the outset</i> it needs to be emphasized (...) [12]	<i>Initially</i> it needs to be emphasized (...)	Prepositional clause to adverb
(34)The accused has been found guilty of the personal circumstances of the accused <i>as well as</i> the interest of society [13]	The accused has been found guilty of, the personal circumstances of the accused <i>and</i> the interest of society	Adverbial expression to simple adverb
(35) <i>All these</i> must be accorded due weight in any sentence. [15]	<i>All</i> must be accorded due weight in any sentence.	Adverbial expression to simple adverb.
(36) “ <i>In the light of the fact that</i> the presiding officer is	“ <i>As</i> the presiding officer is endowed (...)	Prepositional sentence (idiom) to a simple adverb

endowed (...) [24]		
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Table 4: Prepositional and Adverbial Expressions. Source: Compiled by the author.

b) Binomial Expressions

According to Tiersma (2000), Binomial expressions are characteristic of wordiness language in legal writings. A binomial expression is “a technical linguistic term of two parallel words joined by a conjunction like *any and all*.” (Tiersma, 2000: 61). As mentioned in the previous section (*vid supra 2.2.1*), there was a moment in history when Latin, French and English coexisted. How could law members determine which terms were more precise in a multilingual lexicon, where most of the terms were synonyms or near-synonyms? This is a question Crystal (2005: 74) made and answered in his book: “The solution in many cases, was: don’t choose; use both.” Therefore, as Crystal said, lawyers in the fifteen century started to join terms belonging to different languages and with similar meanings. According to Cristal (2005), they did this as a way to be as precise as possible. In the source text we have found only two example.

(37) “Sentencing, at the best of times, is an *imprecise and imperfect* procedure (...)”
[27]

(38) “The following is what I consider to be a sentence that is *fair and just* (...)” [43]

According to Merriam Webster dictionary, *imprecise* is and adjective firstly used in 1805. It comes from the word *precise*, a Middle English word which came from Middle French *precis*, and this from Latin *praecius*. The suffix *im-* has its origin in the suffix *in-* which suffered an assimilation into *im*. This word was also spelt as the Old English word *unprecise* in 1756. On the other hand, the term *imperfect*, according to Merriam Webster dictionary, is a word firstly used in the 14th century. It is an alteration of Middle English *imparfit* which derives from Latin *imperfectus*. These words could be considered as nearly synonyms conjoined by the conjunction *and*. For this reason, they were considered binomial expressions.

In the second example the same happens. *Fair* is a term that has its origin in the Old English word *fæger*, while *just* has a French (*juste*) and a Latin (*justus*) origin. (Merriam Webster Dictionary). Both have similar meanings and are conjoined by the conjunction *and*.

c) Redundancy

Redundancy is the last characteristic mentioned by Tiersma (2000) according to wordiness and redundancy. It is defined by the Encyclopedia Britannica as “the repetition of elements within a message that prevents the failure of communication of information”. Therefore, apart from couplets, the repetition of grammatical constructions may add some redundancy to the text as a way to clarify the message. In this case, the author would be the judge in the following statement selected from the ST:

(39) “*I have considered (...)[33] I have also taken into account (...)[35] I have taken the particular circumstances (...) into account.[36]*”

In this example, the judge clears up that she is the only one who takes into consideration all the elements before given a sentence. She achieves this by using the pronoun *I* instead of using other connectors such *as well as*. Besides, expressions like (40) *mine and mine alone* [12], which are very frequent in legal sentences, highlight verbosity and redundancy.

In the following section, study the use of the pronoun *I* in legal sentences which could be observed along the source text as it is a characteristic proper of legal sentences (Freeman & Smith, 2013: 542)

2.3.5 Impersonal vs Personal Constructions

As Tiersma explains in detail in his book *Legal Language* (2000), the use of personal or impersonal constructions depends on who is the juridical entity writing or using the language. On the one hand, the use of impersonal constructions is more frequent in documents such as wills or contracts. On the other hand, judges use the first person more frequently in documents such as legal sentences. Sometimes, judges prefer to use personal constructions as a way to ensure that the meaning of the message is not ambiguous.

The use of the first person pronoun stresses that it is “just” the opinion of the deciding judge and not a commonly agreed decision upon legal statement” (Freeman & Smith, 2003: 545). This can be clearly seen in one of the utterances found in the source text:

(40) *The decision in sentence is mine and mine alone.* [12]

In this example, the judge is already informing the reader that the following is a decision of her own and no one else. At the same time, the use of the first person singular adds authority to the voice of the judge. In other words, the *I* expresses the judge's "inclinations, hesitations and other personal attitudes" (Freeman & Smith, 2003: 551).

Along the source text, we have found the following examples:

- (41) *I* now deal with the evidence in mitigation and aggravation (...) [29]
- (42) *I* have considered all the evidences placed before me (...) [33]
- (43) *I* have weighted all the relevant factors (...) [34]
- (44) *I* am of the view that (...) [37]
- (45) The following is what *I* consider to be a sentence that is fair and just (...) [43]

Hitherto, we have mentioned some of the elements that make legal language less ambiguous and clearer. For instance, the use of conjunctions in complex sentences, redundancy, and the use of the first personal pronoun. However, there is another syntactic feature that needs to be analyzed, this is the use of modal verbs.

2.3.6 Modal verbs, the use of shall

The main aim of modal verbs in legal writings is to make the message clearer (Tiersma, 2000: 207). Along the ST there are many modal verbs such as *must, may, need not, should or shall*. In legal writings, the modal *shall* is used to express obligation. According to Tiersma (2000: 106), "shall indicates that the verb and phrase that follow are part of what is being enacted, promised, and so forth." In other words, shall may be used to say that something is bound by law.

There is just one structure in the translation that uses the modal *shall*, and it is used to express legal obligation:

- (46) The sentence in count one and the sentence in count 3 *shall* run concurrently.
[47]

Besides all these characteristics that provide the text with some accuracy and light, there is one syntactic element that clouds the understanding of the text. These are the so-called passives and nominalizations.

2.3.7 Passives and Nominalizations

As Tiersma explains in detail in his book *Legal language* (2000), passives may have two different functions in legal writing. The first one is to obscure the message. This happens when the passive is not in the main clause, but in the subordinate clause as in the example:

- (47) *SS Terreblanche Guide to Sentencing in South Africa (...) states that an appropriate sentence as determined by a trial judge (...) [22]*

On the other hand, judges or lawyers may use passives as a way to be more precise, highlighting who is the author of the action (Tiersma, 2000: 76). For example:

- (48) *Finding and appropriate sentence is a challenge faced by criminal courts. [20]*

In this example, it is clear that the judge is highlighting who is the responsible to achieve an appropriate sentence, in this case the criminal courts. Besides, it adds objectivity and authority to judge's decisions; or as Tiersma said "to give them the greatest possible rhetorical force" (Tiersma, 2000: 76).

Nominalizations, as well as passives, are quite frequent in legal writings. They are "abstract nouns derived from verbs, usually by adding suffixes like -ing, -ion, -ure" (Tiersma, 2000: 78). Apart from these, other suffixes were found in the ST such as -al or -ment. Here are some examples:

- (49) *Contravention*: To contravene (v) -tion [45]
(50) *Sentencing*: To sentence (v) -ing [17]
(51) *Trial*: To try (v) -al [22]
(52) *Punishment*: To punish (v) -ment [32]

To end up with these syntactic characteristics, we are going to analyze one last feature. This is the use of negation particles or negative words in legal texts.

2.3.8 Negation

Negation is another characteristic that is present along the ST. There are three ways in which negation appears in the ST. The first one is with particles that express negation such as *not*:

- (53) *The accused is not found guilty or need not be the only (...). [46]*

The second is by adding a suffix with a negative connotation, for instance:

(54) *Unscientific* [19]

(55) *Imprecise* [27]

(56) *Imperfect* [27]

And the third is by the use of negative expressions such as:

(57) *Neither be too light, nor too severe.* [30]

(58) *Non-custodial sentence.* [37]

Besides, it is frequent the use of multiple negations in this kind of writings, an example found in the ST would be:

(59) *On the other hand, a long sentence would also not be appropriate either as it would lack the element of mercy.* [38]

According to Tiersma “Judges also tend to favor injunctions that are negative in form rather than positive” (Tiersma, 2000: 66). There is one sentence in the ST that shows this characteristic:

(60) *A sentence cannot be said to be appropriate without the feelings of mercy.*
[39]

Up to here, we have provided a theoretical background of the lexical and syntactical characteristics found in the ST. In the next section, we present the translated text, as well as an explanation of the main problems and solutions adopted during the process of translation.

3. MATERIALS. THE SOURCE TEXT

3.1 Presentation of the text

The source text is an extract selected from Oscar Pistorius’ legal sentence. Its translation consists of 943 words from English into Spanish.

According to Swales,

“A genre comprises a class of communicative events, the members of which share some set of communicative purposes. These purposes are recognized by the expert members of the parent discourse community and thereby constitute the rationale for the genre. This rationale shapes the schematic structure of the discourse and influences and constrains choice of content and style” (Swales, 1990: 58)

The discourse community of the ST is law experts, and it is classified into the genre of criminal law, more specifically in the subgenre of legal sentences. Even though we have just translated an extract of Oscar Pistorious' legal sentence, we would like to analyze the whole structure of the text. The first part introduces main information about place, case number, date and the accused and judge who take part in the legal sentence. The second part consists of the counts for which the accused was found guilty. The third one deals with the mitigation of sentence and the aggravating circumstances. Then, the personal circumstances of the accused, the seriousness of the offences and the interests of society follow. And finally, the conclusion of the legal sentence appears.

According to the content, we can say that the ST is written in a nonobjective tone as it is a personal decision taken by the judge. However, we must remark that the judge uses an objective tone in the presentation of the facts. Besides, we could make a classification of the text according to its communicative and linguistic function (Méndez, Cendón, 2016). On the one hand, the ST has an expressive function as "it is used to express the sender's/ author's attitude or feelings towards the objects and phenomena dealt within the text." (Méndez, Cendón, 2016). In order to be more precise, the ST linguistic function is instructive as the source text's focus "is on the formation or planning of future behavior." (Méndez, Cendón, 2016). Furthermore, we can classify the ST according to Göpferich (1995) and Pearson's (1998) classifications. (Méndez, Cendón, 2016). On the one hand, Göpferich (1995) classifies texts into primary and secondary texts. Our source text would be a primary juridical-normative text. And on the other hand, according to Pearson (1998), texts can be classified depending on the level of expertise of the reader and writer. In this case, the source text is addressed to an expert to expert communication. These kinds of texts are characterized by their complex terminology and grammatical structures, the avoidance of legal term definitions, as well as by the non-explanation of abbreviations (Méndez, Cendón, 2016).

4. TRANSLATION OF THE SOURCE TEXT FROM ENGLISH INTO SPANISH

The first thing done was to read the source text in order to understand it, and to classify its general function. Then, we performed a close reading where any potential difficulty was identified to analyze and document how to translate specific difficulties. Regarding terminology problems, specialized dictionaries, terminological databases and

glossaries were used. For example: *Diccionario Espasa Jurídico* (2001), *The Longman dictionary of law* (2007), *Cardiff Index to Legal Abbreviations* (2016). Moreover, experts were consulted when specific terminology problems appeared.

	ST	TT
1	<p>IN THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA.</p> <p>CASE NO: CC113/2013 DATE: 2014-10-21</p>	<p>EN EL TRIBUNAL SUPERIOR DE SUDÁFRICA, GAUTENG, PRETORIA.</p> <p>RESOLUCIÓN: CC113/2013 FECHA: 21-10-2014</p>
2	DELETE WHICHEVER IS NOT APPLICABLE	TÁCHESE LO QUE NO PROCEDA
3	<p>(1) REPORTABLE: YES/NO</p> <p>(2) OF INTEREST TO OTHER JUDGES: YES/NO</p> <p>(3) REVISED</p>	<p>(1): INFORME SÍ/NO</p> <p>(2) DE INTERÉS PARA OTROS JUECES: SÍ/NO</p> <p>(3) REVISADO</p>
4	DATE	FECHA
5	SIGNATURE	FIRMA
6	In the matter between STATE and OSCAR LEONARD CARL PISTORIUS.	En relación con el caso entre el ESTADO y OSCAR LEONARD CARL PISTORIUS.
7	Accused	Acusado
8	Sentence	Sentencia

9	MASIPA J: The accused in this matter has been found guilty of the following counts:	Juez MASIPA: En este caso, al acusado es culpable de los siguientes delitos:
10	<ol style="list-style-type: none"> 1. One count of culpable homicide. 2. One count of contravention of section 120 (3)(b) of the Firearms Control Act 60 of 2000. 	<ol style="list-style-type: none"> 1. Delito de homicidio. 2. Delito por contravención del artículo 120 (3)(apartado b) de la Ley 60 de Control de Armas de Fuego del año 2000.
11	It now remains for me to sentence him.	Ahora solo queda dictar sentencia.
12	At the outset it needs to be emphasized that although I am sitting with two assessors in this matter, the decision on sentence is mine and mine alone.	Para comenzar, es necesario enfatizar que a pesar de actuar de forma colegiada en este caso, la decisión de la sentencia es mía y solo mía.
13	To reach an appropriate sentence, this court is duty-bound to consider the nature and the seriousness of the offences that the accused has been found guilty of, the personal circumstances of the accused as well as the interests of society.	Para dictar una sentencia apropiada, este tribunal se ve obligado a tener en cuenta el carácter y la gravedad de los hechos por los que se ha declarado culpable al acusado, sus circunstancias personales, así como los intereses de la sociedad.
14	I am also duty-bound to take into consideration the main purposes of punishment; namely retribution, deterrence, prevention and rehabilitation.	También estoy obligada a tener en cuenta los objetivos principales de la condena: la retribución, disuasión, prevención y la rehabilitación.
15	All these must be accorded due weight in any sentence.	A estos se les debe conceder el debido peso en cualquier sentencia.

16	In <i>S v RO and Another</i> 2000 (2) SACR 248 (SCA), Heher JA said the following at paragraph 30:	En <i>S contra RO y Otros</i> 2000 (2) SACR 248 (SCA), la juez Heher afirmó lo siguiente en el párrafo 30:
17	“Sentencing is about achieving the right balance or in more high-flown terms, proportionality.”	“Dictar sentencia es conseguir el equilibrio adecuado, o en términos más formales, el principio de proporcionalidad.”
18	The elements at play are the crime, the offender, the interests of society with different nuance, prevention, retribution, reformation and deterrence.	Los elementos que intervienen son el delito, el agresor, los intereses de la sociedad matizados, la prevención, retribución, la reforma y disuasión.
19	Invariably these are overlaps that render the process unscientific, even a proper exercise of the judicial function allows reasonable people to arrive at different conclusions.	Con frecuencia estos son coincidencias que hacen que el proceso de sentencia no sea exacto. Incluso un ejercicio acertado de la función judicial permite que distintas personas razonables lleguen a conclusiones diferentes.
20	Finding an appropriate sentence is a challenge faced by criminal courts daily as sentencing is not a perfect exercise.	Dictar una sentencia apropiada es un reto que afrontan a diario los Tribunales de lo Penal ya que este es un ejercicio imperfecto.
21	What complicates this even more is that there may be more than one appropriate sentence in a particular case.	Lo que complica incluso más este ejercicio, es la posibilidad de dictar más de una sentencia adecuada en un determinado juicio.
22	SS Terreblanche <i>Guide to Sentencing in South Africa</i> , second edition, states that an appropriate sentence as	La segunda edición del Manual de SS Terreblanche <i>Guide to Sentencing in South Africa</i> , establece que la sentencia

	determined by a trial judge need not be the only appropriate sentence.	que dicta un tribunal no es necesariamente la única.
23	On page 146, paragraph 3.1, line 5, the learned author states the following:	En la página 146, párrafo 3.1, línea 5, el autor establece lo siguiente:
24	“In the light of the fact that the presiding officer is endowed with a wide discretion in the imposition of the sentence, appropriateness tends to be subjective according to the views of the sentencing officer”	“A luz del hecho de que al oficial del juzgado se le otorga gran discreción al imponer la sentencia, lo que es apropiado tiende a ser subjetivo de acuerdo a la opinión del juez.”
25	In footnote 110 the author cites <i>S v Martin</i> 1996 (2) SACR 378 (W) at 380 A-B in this regard.	En la nota a pie de página 110 el autor cita a <i>S contra Martin</i> 1996 (2) SACR 378 (W) en 380 A-B en referencia a este tema.
26	Also cited in the footnote is <i>Smith v Queen</i> 1987 (34) CCC (3d) 97 at 109.	También cita en la nota a pie de página a <i>Smith contra Queen</i> 1987 (34) CCC (3d) 97 en la 109.
27	“Sentencing, at the best of times, is an imprecise and imperfect procedure and there will always be a substantial range of appropriate sentences.”	“Dictar sentencia, en la mejor de las ocasiones, es un proceso impreciso e imperfecto y siempre habrá una serie considerable de sentencias apropiadas.”
28	This was cited in <i>S v Vries</i> 1996 (2) SACR 638 (Nm) at 643 F-G.	Esto se cita en <i>S contra Vries</i> 1996 (2) SACR 638 (Nm) en 643 F-G.
29	I now deal with the evidence in mitigation and aggravation.	Ahora, procedo a analizar las pruebas de mitigación y agravación.
30	For a very good reason an appropriate sentence should neither be too light, nor too severe.	Por una buena razón, una sentencia justa no debería ser ni muy suave, ni muy dura.

31	The former may cause the public to lose confidence in the justice system and people might be tempted to take the law into their own hands.	Lo primero podría provocar que la sociedad perdiese la confianza en el sistema judicial, y esto podría incitarla a tomarse la justicia por su mano.
32	On the other hand, the latter may break the accused and the result may be just the opposite of what the punishment set out to do, which ultimately is to rehabilitate the accused and to give him an opportunity, where possible, to become a useful member of society once more.	Por otro lado, lo segundo podría dañar al acusado y el resultado podría ser opuesto a lo que se pretende conseguir con la pena, que a la larga es rehabilitar al acusado y darle la oportunidad, si es posible, de llegar a ser un miembro útil para la sociedad una vez más.
33	I have considered all the evidence placed before me and all the submissions and argument by counsel.	He tenido en cuenta todas las pruebas presentadas ante mi, así como cada exposición de las posiciones y argumentos de hecho presentados por los abogados.
34	I have weighted all the relevant factors, the purposes of punishment and all forms of punishment, including restorative justice principles.	He sopesado todas las circunstancias relevantes, tanto la finalidad como todos los tipos de condena posibles, incluyendo los valores de la justicia restaurativa.
35	I have also taken into account the seriousness of the offence which led to the death of the deceased, the personal circumstances of the accused and the interests of society.	A su vez, he valorado la gravedad de los hechos que implican la muerte de la fallecida, las circunstancias personales del acusado y los intereses de la sociedad.
36	I have taken the particular circumstances of the accused at the time of the offence into account.	Así como las circunstancias particulares del acusado en el momento de los hechos.

37	Having regard to the circumstances in matter, I am of the view that a non-custodial sentence would send a wrong message to the community.	Tras considerar las circunstancias del caso, opino que una pena restrictiva de la libertad podría enviar un mensaje equivocado a la sociedad.
38	On the other hand, a long sentence would also not be appropriate either as it would lack the element of mercy.	Por otra parte, una pena de larga duración tampoco podría ser apropiada ya que carecería del principio de perdón.
39	A sentence cannot be said to be appropriate without the feelings of mercy for the accused and hope for his reformation.	Una sentencia no se puede considerar adecuada sin expresar clemencia por el acusado y confiar en su rehabilitación.
40	(See S v Mhlongo 1994 (1) SACR 584 (A) at 588J- 589 B) I am mindful, however, of the fact that true mercy has nothing to do with weakness or maudling sympathy for the criminal, but is an element of justice. (See S v V 1972 (3) SA 611 (A) at 614)	(Véase S contra Mhlongo 1994 (1) SACR 584 (A) at 588J- 589 B). Sin embargo, soy consciente del hecho de que la clemencia real no tiene nada que ver con la debilidad o con la simpatía por el acusado, sino que es un elemento de la justicia. (Véase S contra V 1972 (3) SA 611 (A) at 614)
41	In respect of the conviction in count 3, I have taken into account that no one was hurt, though the offence is a serious one, especially in the setting of a restaurant.	Respecto a la condena del tercer delito, he tenido en cuenta que nadie resultó herido a pesar de ser un delito grave, especialmente siendo el escenario un restaurante.
42	I do not believe that the degree of negligence in respect of this count, that is count 3, justifies a sentence of direct imprisonment.	No considero que el grado de negligencia con respecto a esta pena, es decir, la condena tercera, justifique una pena de aprisionamiento directo.

43	The following is what I consider to be a sentence that is fair and just, both to society and to the accused:	Lo siguiente es lo que considero una sentencia equitativa y justa tanto para la sociedad como para el acusado:
44	1. Count 1 -Culpable homicide: The sentence imposed is a maximum imprisonment of five years imposed in terms of section 276 (1) (i) of the Criminal Procedure Act, number 51 of 1977.	PRIMERO - Culpable de homicidio: La sentencia impuesta es un máximo de cinco años de prisión de acuerdo con la sección 276 (1) (i) de la Ley de Enjuiciamiento Criminal número 51 de 1977.
45	2. On Count 3 -The contravention of section 120 (3) (b) of the Firearms Control Act, number 60 of 2000:	SEGUNDO - Incumplimiento de la sección 120 (3) (b) de la Ley de Control de Armas, número 60 de 2000:
46	The sentence imposed is 3 years' imprisonment, wholly suspended for 5 years on condition that within the period of suspension the accused is not found guilty of a crime where there is negligence involving the use of a firearm.	La pena impuesta es de 3 años de encarcelamiento la cual prescribirá a los cinco años si en este periodo de tiempo el acusado no es declarado culpable de un delito por negligencia por uso de armas de fuego.
47	3. The sentence in count 1 and the sentence in count 3 shall run concurrently.	TERCERO Tanto la sentencia del primer delito como la del tercero, deben llevarse a cabo simultáneamente.

Table 5: ST translation into the TL (Spanish) Source: Compiled by the author.

5. ANALYSIS AND TRANSLATION PROBLEMS

During the process of translation, the translator has to face different semantic and syntactic barriers. In the following sections we analyze the problems found during the translation of the ST, as well as the solutions adopted.

5.1 Terminological problems and solutions

5.1.1 Multiple word technical expressions

Along the source text, we observe different multi-word technical terms. One of the difficulties encountered, when we translated the source text, was to find the equivalents to these types of terms. For instance, we had to decide whether to translate in a literal way or not. In the first draft of our translation, we made some mistakes according to this point. Nevertheless, we solved them using the specialized glossaries and dictionaries listed above. In the following table we present multi-word technical terms with the first translations and their corrections after consulting an expert.

MULTI-WORD TECHNICAL TERM	FIRST WRONG TRANSLATION	SECOND TRANSLATION CORRECTED
(61) <i>Sitting with two assessors</i> [12]	Sentada con dos asesores	Actuar de forma colegiada
(62) <i>In the matter between</i> [6]	De acuerdo al asunto	En relación con un caso
(63) <i>Finding an appropriate sentence</i> [20]	Llegar a una sentencia	Dictar sentencia
(64) <i>Purposes of punishment</i> [34]	Posibilidades de castigo	Finalidad de la condena

Table 6: Multiword technical terms translation. Source: Compiled by the author.

5.1.2 Semi-technical vocabulary

Semi-technical terms are those terms with different meanings which are used not only in everyday life, but also in the field of law (*vid supra* 2.2.3). Due to this, the translator has to understand the source text in order to choose the right meaning and translation into the target language. As Hughes and Alcaraz stated, the translator has to take into consideration the context in which the word appears (Hughes and Alcaraz, 2002: 155). By doing this,

translators will be able to acquire the precision they are looking for. In the source text, there are some semi-technical terms of this nature. For instance, the term *case* has different meanings in a legal context. Cuzon's Longman Dictionary of Law (2007, 80) defines it as "a legal action or trial", and as the "argument put forward in legal proceedings." In the source text, the term appears in the following context:

(65) What complicates this even more is that there may be more than one appropriate sentence in a particular *case*. [21]

The different translations for the term "case" are: *caso*; *pleito*; *acción*; *defensa*; *juicio* and *causa* (Bodoutchain-Sáiz, 2000: 223). At the beginning, we had some doubts about if we should translate it as *caso* or as *juicio*, because these were the terms we considered more appropriate for the translation. At the end, due to the context in which the term was used, we decided to translate it as *juicio*.

Another example would be the term *act*. If we look up this term in any of the specialized dictionaries, we will find many definitions for it. Therefore, we decided to study the context in which it appeared in order to choose the right option. The context was:

(66) "Firearms Control Act 60 of 2000." [45]

Here the term *act* is functioning as a noun. The semi-specialized term *act* has different meanings therefore, the translator should pay special attention to the context. According to Cambridge Dictionary (2016), *act* as a noun in the general language means "something that you do." Nevertheless, if we look for the technical definition, the one provided by the same dictionary is: "a law or formal decision made by a parliament or other group of people who make the laws for their country". This second definition is going to be the one used in the translation. Therefore, the term *act* is not going to be translated as *actuación*, but as *ley*.

The last instance we would like to provide is the term *count*. This term meant for us some difficulties. On the one hand, in the first draft of the translation, we translated it as *cargo*. However, after looking for different parallel texts using CENDOJ database, we realized that the most precise equivalent into Spanish would be the term *delitos*.

To conclude, it is necessary to emphasize the importance of the use of specialized dictionaries and parallel texts. Their importance reside in the fact that words change their

general meanings when they are used as technical words of a specialized subject field. This is what we are going to demonstrate along the following section.

5.1.3 Everyday vocabulary

These types of terms are quite frequent in criminal English (Alcaraz and Hughes, 2002: 161). Even though they may sound familiar to us, sometimes it is difficult to translate them due to the context. The main solution to this problem was the use of different parallel texts in order to see how these terms are used in the target language (*vid infra* 7.2.1).

In the following table, we provide a list of 5 terms selected from the ST. Each of them is used in the general language, but they acquire a new meaning as sub-terms within legal language.

TERM	ST	PARALLEL TEXT	TT
<i>Delete</i>	(67) Delete whichever is not applicable [2]	[(*) táchese lo que no proceda]	Táchese lo que no proceda.
<i>Found</i>	(68) The accused in this matter has been found guilty of the following counts:	le sirvió de base para declarar culpables a los acusados	Al acusado en este caso se le declara culpable de los siguientes delitos:
<i>Severe</i>	(69) An appropriate sentence should neither be too light, nor too severe [30]	Sentencia clara y dura	Por una buena razón, la sentencia apropiada no debería ser ni muy suave, ni muy dura

<i>Light</i>	(70) An appropriate sentence should neither be too light, nor too severe [30]	Cuando un preso moría en la cárcel sus parientes continuaban el proceso para obtener una condena suave o una absolució n que les permitiera recuperar los bienes confiscados	Por una buena razón, la sentencia apropiada no debería ser ni muy suave, ni muy dura
<i>Public</i>	(71) The former might cause the public to lose confidence [31]	a la confianza que la sociedad tiene depositada en el valor de los documentos	Lo primero podría provocar que la sociedad perdiese la confianza en el sistema judicial

Table 7: Everyday vocabulary translation. Source: Compiled by the author.

As we can observe in these examples, words used in daily life namely *delete* (borrar), *find* (encontrar), *severe* (severo), *light* (luz, suave) or *public* (público) have different meanings in the legal context.

5.1.4 Collocations

Collocations are “particular lexical combinations found with some regularity in lexical texts” (Alcaraz and Hughes, 2002: 167). Lexical collocations may be useful or a barrier for translators. Translators have to pay attention to the context in which a term appears. One of the instances found in the text is the word *sentence*. The tool TermoStat Web was used in order to have a clearer view of the different lexical combinations in which this term could appear:

– Sentence

Grammatical Category	ST	TT
As a verb	(72) <i>It now remains for me to sentence him</i> [11] (73) <i>Sentencing is about...</i> [17] (74) <i>Guide to sentencing</i> [22]	Sólo queda dictar sentencia Dictar sentencia es... Manual para dictar sentencia ²
As a noun	(75) <i>The decision on sentence</i> [12] (76) <i>To reach an appropriate sentence</i> [13] (77) <i>Due weight in any sentence</i> [15]	La decisión de la sentencia Para dictar una sentencia apropiada ³ El debido peso en cualquier sentencia
As an adjective	(78) <i>Sentencing officer</i> [24]	Secretario del Tribunal

Table 8: Collocations of the word sentence. Source: Compiled by the author.

False friends are one of the main sources of translator’s pitfalls. False friends are also known as false cognates. Hayward and Moulin (1984) state the following definition according to Saussure terminology:

“In the learner’s mother tongue a particular significant is associated with a particular signifie. Once the significant appears, even in a foreign language context, the above mentioned association is so strong that the user automatically thinks of his mother-tongue signifié (in its totality)” (Hayward and Moulin, 1984: 190).

² In the translation this structure would not be translated as there is not a translation of the title in our language. Nevertheless, we wanted to show its possible translation according to the collocation.

³ In this collocation, there could be another possible translation which would be: “Para alcanzar una sentencia adecuada”. However, we decided that a transposition would fit better in the target language.

How can the translator avoid making this mistake defined by Hayward and Moulin? During the process of translation, we realized that the best solution for this was the use of specialized written dictionaries and glossaries in the field. In the following table, we provide a list of eleven false friends found in the source text with their equivalents into Spanish.

TERM	TRANSLATION	SOURCE
(79) <i>Act</i> [10]	Not <i>acto</i> , but <i>ley</i>	Bodoutchian-Sáiz: 2000, 192
(80) <i>Offence</i> [35]	Not <i>ofensa</i> , but <i>delito</i>	Tellez: 2010, 128
(81) <i>Balance</i> [17]	Not <i>balanza</i> , but <i>equilibrio</i>	Clarie, Airlie: 2004, 24
(82) <i>Crime</i> [18]	Not <i>crimen</i> , but <i>delito</i>	Tellez: 2010, 52
(83) <i>Case</i> [21]	Not <i>caso</i> , but <i>juicio</i>	Bodoutchian-Sáiz: 2000, 223
(84) <i>Evidence</i> [29]	Not <i>evidencia</i> , but <i>prueba</i>	Bodoutchian-Sáiz: 2000, 254
(85) <i>Law</i> [31]	Not <i>derecho</i> , but <i>ley</i>	Mayorga: 2006, 120
(86) <i>Sentence</i> [37]	Not <i>frase</i> , but <i>sentencia</i> or <i>pena</i>	Mayorga: 2006, 176
(87) <i>Court</i> [1]	Not <i>corte</i> , but <i>tribunal</i>	Mayorga: 2006, 58
(88) <i>Punishment</i> [14]	Not <i>castigo</i> , but <i>pena</i>	Tellez: 2010, 148
(89) <i>Seriousness</i> [35]	Not <i>seriedad</i> , but <i>gravedad</i>	Mayorga: 2006, 15

Table 8: False friends. Source: Compiled by the author.

Even though there are terms that cannot be considered false friends, their equivalents into Spanish are usually different from the one the reader expects. Some examples are *reformation* (rehabilitación), *balance* (equilibrio), *public* (sociedad) or *severe* (duro). To avoid this mistake, the translator has to take into consideration the context in which the term is placed.

5.1.5 Lexical repetition

Lexical repetition may be a problem for translators as sometimes it is difficult to decide whether to use the same equivalent of a term or a synonym. The use of synonyms could imply the loss of meaning or precision in some contexts. In the source text, the word *appropriate* is repeated ten times. Therefore, in order to make the language sound as natural as possible, we used some synonyms such as *adecuada*, *apropiada*, and *justa*.

It has to be noted that English has a grammatical structure in which the subject cannot disappear, but Spanish grammatical structures allow its omission. One of the main translator's aims is to keep the harmony of the text. For this reason, we have tried to maintain the Spanish grammatical style in order to make the target text sound as natural as possible. For instance:

(90) *It now remains for me to sentence him* [11]

Our translation was “Ahora solo queda dictar sentencia”. Here we decided not to specify the subjects involved in the action as we thought it was more adequate to the level of formalism of the text.

(91) *Although I am sitting with two assessors in this matter, the decision on sentence is mine and mine alone* [12]

In this example the same happens: “A pesar de actuar de forma colegiada, la decisión de la sentencia es mía y solo mía”. We decided to omit the first person singular pronoun in the target language as it would make the text to sound unnatural.

(92) *Finding an appropriate sentence is a challenge faced by criminal courts daily as sentencing is not a perfect exercise:* [20]

In this example, as a way to avoid a cacophony, we considered that it was necessary to substitute the second *sentencing* for a determinant: “Dictar una sentencia apropiada es un reto que afrontan a diario los Tribunales de lo Penal ya que este es un ejercicio imperfecto”

(93) *What complicates this even more is that there may be more than one appropriate sentence in a particular case.* [21]

In this last example, we made a transposition from the passive voice to the active. Besides, we realized that the best thing to do was to omit the translation of the term *appropriate* as its meaning was compensated by the translation of the term *only*. Therefore, the translation would be “*La sentencia que dicta un tribunal no es necesariamente la única*”.

Connectors are another element used in the translation process to avoid the repetition of structures. During the process of translation, we realized that its use is useful in order to introduce them in order to create a better translation. In Spanish, the use of connectors makes the language sound balanced and natural. Here is an example:

ST	TT
(94) <i>I have considered (...) [33] I have weighted (...) [34] I have also (...) I have taken [35]</i>	He tenido en cuenta (...). He sopesado (...) A su vez, he valorado (...) Así como (...)

Table 9: Use of connectors. Source: Compiled by the author.

5.1.6 Abbreviations

In a previous section (vid supra 2.2.3), we analyzed the use of abbreviations in the ST. Nevertheless, we did not focus on the problems the translator could encounter during the process of translation. When we translated the source text, we realized that the translation of abbreviations was a difficult task to do as many of them did not have an equivalent into the target language. Due to this problem, we became aware of the important role documentation plays in order to achieve the perfect translation. For instance, we realized that the numbers that appeared between brackets along the source text were articles of a law. We decided to translate them in order for the reader to understand their meaning. Therefore, the sentence (95) *one count of contravention of section 120 (3)(b) [10]* was translated as *delito por contravención del artículo 120 (3) (apartado b)*. On the other hand, terminological glossaries of legal abbreviations such as The Cardiff Index to Legal Abbreviations (2011) helped to understand the meaning of the abbreviations found in the ST.

5.2 Grammatical problems. The use of transpositions as a solution

According to Hughes and Alcaraz, lexical decisions about how to translate a term will depend, in a way, on syntax. Thus, the translator has to find a natural equivalence into the target language without losing meaning (2002: 178). Sometimes the problem may be that the translator needs to change the grammatical category of the source text. This problem may be solved by the use of transpositions.

5.2.1 Transpositions

“By transposition is meant the substitution of one grammatical category for another, on the basis that both may be fairly said to process the same semantic weight or equivalent semantic density” (Alcaraz and Hughes: 2002, 181). The following examples are six transpositions processes followed along the translation:

TRANSPOSITION	SL	TL
Adjective to noun	(96) <i>Criminal courts.</i> [20]	Tribunales de lo Penal
Verb to adjective	(97) <i>It needs to be.</i> [12]	Es necesario
Noun to verb	(98) <i>Without the feelings of mercy for the accused and hope for his reformation.</i> [39]	Sin expresar perdón al acusado y confiar en su rehabilitación
Adverb to preposition	(99) <i>Invariably.</i> [19] (100) <i>Concurrently.</i> [47]	Con frecuencia. Al mismo tiempo.
Indefinite to definite article	(101) <i>To give him an opportunity.</i> [32]	Darle la oportunidad.

Passive to active voice	(102) <i>The accused has been found guilty.</i> [13]	Se ha declarado culpable al acusado.
	(103) <i>All these must be accorded due weigh in any sentence.</i> [15]	Se les debe conceder la debida importancia en cualquier sentencia.
	(104) <i>A sentence cannot be said to be appropriate.</i> [39]	Una sentencia no se puede considerar adecuada.

Table 10: Transpositions Source: Compiled by the author.

5.2.2 The complex noun phrase

Alcaraz and Huges state that “the long noun phrase that is a feature of English and other Germanic languages presents some problems to the translator of technical text in particular” (Alcaraz and Hughes, 2002: 186). These long noun phrases make the translator doubt about the order of the pre-modifiers and post-modifiers of the complex noun phrases in the target language. The solution provided by Alcaraz and Hughes is to adapt them by terms of transposition (2002: 186), and to adapt them according to the syntactic order of the target language. Therefore, we solve this problem by adapting them to the syntactical order of the Spanish language using different transpositions. These are examples selected from the ST.

(105) *Useful member of society*: Un miembro útil para la sociedad [32]

(106) *Restorative justice principle*: los valores de la justicia restaurativa [34]

(107) *One count of contravention of section*: Delito por contravención de la sección [10]

(108) *High-flown terms*: términos más elaborados [17]

6 CONCLUSION

At the beginning of the study we had three main aims: (1) to translate the source text from English into Spanish and to elaborate a list with the terms of the source text, (2) to describe the lexical and syntactical characteristics encountered in the source text, and (3) to explain and solve the problems found during the process of translating. At this point of the study, we have translated a legal sentence despite of the difficulties it entails. Furthermore, we have created a bilingual list of terms that appear in the source text. At the same time, we have also compiled the parallel texts used in order to find the equivalents for these terms. We have understood how important it is to avoid ambiguities in the target text, and to keep the whole meaning of the ST, as well as, to provide a target text that sounds as natural and harmonic as possible. Secondly, we have analyzed a total of four lexical characteristics and 9 syntactical features found in the ST. Together with this, we have provided tables and examples in order to clarify each of the characteristics. And last, but not least, we have been able to explain and solve the problems found during the process of translation. According to this study, results show that the syntactical aspects are the most meaningful ones such as the use of non-finite clauses, complex sentences, personal constructions and the use of the passive. According to terminology, some problems were found as the use of tecnicisms, the lexical repetitions or the different lexical combinations of words. These problems were solved by the use of dictionaries, terminological databases and the help of experts. Grammatical problems were also encountered, the research shows that one of the main solutions to solve these problems is the use of transpositions. This solution made our text sound natural and balanced and allowed to keep the whole meaning of the ST. It is important to bear in mind that this research only focuses on an extract of a legal sentence. For further studies, it would be interesting to continue analyzing if these features and problems appear in other legal sentences.

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7.2.1 Parallel texts

1.

Roj: SAP B 3767/2016 - ECLI:ES:APB:2016:3767
Id Cendoj: 08019370062016100330
Órgano: Audiencia Provincial
Sede: Barcelona
Sección: 6
Nº de Recurso: 103/2011
Nº de Resolución:
Procedimiento: PENAL - PROCEDIMIENTO ABREVIADO/SUMARIO
Ponente: JOSE ANTONIO RODRIGUEZ SAEZ
Tipo de Resolución: Sentencia

CENDOJ: Buscador del sistema de jurisprudencia.
<http://www.poderjudicial.es/search/doAction?action=contentpdf&database=AN&reference=7713997&links=agravacion&optimize=20160620&publicinterface=true>. Web. (date of access: 07/03/2016)

2.



*Descuento I.R.P.F. s/nómina 53,98

*Otros descuentos(anticipos, consignaciones indemnización)

0,00 LIQUIDO A PERCIBIR 6.938,04

El importe líquido a percibir se abona mediante transferencia bancaria en la cuenta del trabajador señalándose que este documento es carta de pago de tal cantidad.

Habiendo percibido la totalidad de los emolumentos devengados hasta la fecha, presto mi conformidad a la liquidación efectuada, estando conforme con la misma y sin que tenga reclamación alguna que hacer, y dando por finalizadas mis relaciones laborales con la empresa a partir de esta fecha.

El trabajador declara que ha sido informado al derecho que le asiste a que esté presente en la firma del presente documento un Representante Legal de los Trabajadores. En caso de existir Representante Legal de los Trabajadores, y de acuerdo con esta previsión legal el firmante requiere SI / NO la presencia del mismo (táchese lo que no proceda).

CENDOJ: *Buscador del sistema de jurisprudencia.*

<http://www.poderjudicial.es/search/doAction?action=contentpdf&database=AN&reference=6544416&links=%22tachese%20lo%20que%20no%20proceda%22&optimize=20121122&publicinterface=true>

Web. (date of access: 07/03/2016)

3.

daños y perjuicios no fue objeto de debate ni de pronunciamiento alguno ni por el juez de instancia ni por el juez de apelación.

A tales efectos debemos recordar que es doctrina reiterada de esta Sala que la cuantía exigida para acceder al recurso de casación queda circunscrita a la cuantía de la materia debatida en la alzada, esto es, a la apelación, con exclusión de aquella que, por una u otra razón, hubiese devenido pacífica o no hubiera sido objeto de debate (SSTS de 27-2-95 , 8-4-95 , 25-2-00 y 8-2- 2012 , y autos 16-1-96 , 21-10-97 , y 10-10-2006 , entre otros muchos).

CENDOJ: *Buscador del sistema de jurisprudencia.*

<http://www.poderjudicial.es/search/doAction?action=contentpdf&database=TS&reference=7712956&links=%22ni%20por%20el%20juez%20de%20instancia%22&optimize=20160617&publicinterface=true>. Web. (date of access: 07/03/2016)

4.

Estimar el recurso de revisión formulado por la representación procesal de Creno Impex, S.A.S. y Creno España, S.L. contra el decreto de fecha 9 de marzo de 2016, que se modifica en el sentido de fijar los honorarios del letrado D. Luis Angel en la cantidad de 51.278 euros, más el IVA correspondiente, sin expresa imposición de costas y con devolución a la parte recurrente del depósito efectuado para recurrir.

Contra la presente resolución no cabe recurso alguno.

Así lo acuerdan, mandan y firman los Excmos. Sres. Magistrados indicados al margen.

CENDOJ: *Buscador del sistema de jurisprudencia.*

<http://www.poderjudicial.es/search/doAction?action=contentpdf&database=TS&reference=7712956&links=%22as%20lo%20acuerdan%20mandan%20y%20firman%22&optimize=20160617&publicinterface=true>. Web. (date of access: 07/03/2016)

5.

La policía interroga al cardenal francés Barbarin por su presunta relación con un caso de pedofilia

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6.

ANTECEDENTES DE HECHO

PRIMERO.-En el día de hoy ha tenido lugar la celebración de la vista del presente juicio oral.

SEGUNDO.-El Ministerio Fiscal modificó sus conclusiones, solicitando la condena del **acusado** como autor de un delito del art. 352 en relación con el art. 358 del Código Penal de incendio por imprudencia grave a la pena de CUATRO MESES DE PRISIÓN E INHABILITACIÓN ESPECIAL PARA EL EJERCICIO DEL DERECHO DE SUFRAGIO PASIVO DURANTE LA CONDENA Y CUATRO MESES DE MULTA CON CUOTA DIARIA DE SEIS EUROS, con la responsabilidad personal subsidiaria de un día de privación de libertad por cada dos cuotas impagadas Y QUE INDEMNICE, CON LA RESPONSABILIDAD CIVIL DIRECTA DE MAPFRE EMPRESAS, SL, A LA GENERALITAT VALENCIANA en 5.261,42 euros, intereses y se condena a las costas procesales incluidas una tercera parte de la acusación popular y tanto el Letrado de la defensa, como el **acusado** mostraron su conformidad con la calificación y pena solicitada por el Ministerio Fiscal en sus conclusiones definitivas, precediéndose a dictar Sentencia in voce en los términos interesados por el Ministerio Público, declarándose la misma firme en el propio acto de la vista.

CENDOJ: *Buscador del sistema de jurisprudencia.*

<http://www.poderjudicial.es/search/doAction?action=contentpdf&databasematch=AN&reference=7715942&links=%22la%20condena%20del%20acusado%20como%22&optimize=20160621&publicinterface=true>. Web. (date of access: 07/03/2016)

7.

Roj: SJP 37/2016 - ECLI:ES:JP:2016:37
Id Cendoj: 46190510172016100002
Órgano: Juzgado de lo Penal
Sede: Paterna
Sección: 17
Nº de Recurso: 396/2013
Nº de Resolución: 449/2016
Procedimiento: PENAL - PROCEDIMIENTO ABREVIADO/SUMARIO
Ponente: MARIA ISABEL IZQUIERDO JIMENEZ
Tipo de Resolución: Sentencia

CENDOJ: Buscador del sistema de jurisprudencia.
<http://www.poderjudicial.es/search/doAction?action=contentpdf&database=TS&reference=7715214&links=%22tribunal%20de%20lo%20penal%22&optimize=20160621&publicinterface=true>. Web. (date of access: 07/03/2016)

8.

En el momento de la resolución de junio de 2016, se dictó la siguiente sentencia:

Vistos por mí, D/D^a. MARÍA ISABEL IZQUIERDO JIMÉNEZ, Magistrado-Juez de este Juzgado, los autos seguidos bajo el número de juicio Oral N° 000396/2013, procedente del Procedimiento Abreviado - 000004/2010 del JUZGADO DE PRIMERA INSTANCIA E INSTRUCCIÓN NUMERO 5 DE LLIRIA, seguidas por delito de Incendios, por imprudencia grave del ar. 352 en relación con el art. 358 CP, contra MAPFRE EMPRESAS SA., Carlos Jesús, Violeta, AYUNTAMIENTO DE NAQUERA, Alfredo y PIROTECNIA CABALLER S.A. representado/s por el/la Procurador/a NAVARRO TOMAS, JUAN FRANCISCO, Leon, María Cristina, Leon Leon y Salvador, y defendido/s por el/la Letrado/a FURNES VIVAS, CARLOS Sergio

CENDOJ: Buscador del sistema de jurisprudencia.
<http://www.poderjudicial.es/search/doAction?action=contentpdf&database=AN&reference=7715942&links=%22por%20delito%20de%20incendios%22&optimize=20160621&publicinterface=true>. Web. (date of access: 07/03/2016)

9.

Del conjunto de esos indicios resulta excluida la hipótesis del suicidio y demuestra la autoría del recurrente en la producción de la muerte de su mujer. No hay hipótesis de realización del suicidio que pueda explicar conjuntamente todos los hechos mencionados que, sin embargo, encuentran fácil encaje en un **homicidio** alevoso (asesinato).

CENDOJ: Buscador del sistema de jurisprudencia.

<http://www.poderjudicial.es/search/doAction?action=contentpdf&databasematch=TS&reference=7712979&links=%22homicidio%20alevoso%22&optimize=20160617&publicinterface=true>. Web. (date of access: 07/03/2016)

10.

Tampoco aparece **contravención alguna**, como se encarga de clarificar el T.S.J., entre el entendimiento y aplicación del art. 121 C.P. y el Convenio del Consejo de Europa sobre prevención y lucha frente a la violencia contra la mujer y la violencia doméstica, hecho en Estambul el 11 de mayo de 2011 (ratificado por España el 18 de marzo de 2014). Y ello es así, porque el "desideratum" de la ley se manifiesta en el art. 30.2º, en que el término empleado, referido a la obligación establecida es " **deberá** ": "El Estado deberá conceder una indemnización a quienes hayan sufrido **graves daños**", si no estuvieren cubiertos dichos daños por otras vías.

CENDOJ: Buscador del sistema de jurisprudencia.

<http://www.poderjudicial.es/search/doAction?action=contentpdf&databasematch=TS&reference=7712979&links=%22tampoco%20aparece%20contravencion%20alguna%22&optimize=20160617&publicinterface=true>. Web. (date of access: 07/03/2016)

11.

Tampoco aparece **contravención alguna**, como se encarga de clarificar el T.S.J., entre el entendimiento y aplicación del art. 121 C.P. y el Convenio del Consejo de Europa sobre prevención y lucha frente a la violencia contra la mujer y la violencia doméstica, hecho en Estambul el 11 de mayo de 2011 (ratificado por España el 18 de marzo de 2014). Y ello es así, porque el "desideratum" de la ley se manifiesta en el art. 30.2º, en que el término empleado, referido a la obligación establecida es " **deberá** ": "El Estado deberá conceder una indemnización a quienes hayan sufrido **graves daños**", si no estuvieren cubiertos dichos daños por otras vías.

CENDOJ: Buscador del sistema de jurisprudencia.

<http://www.poderjudicial.es/search/doAction?action=contentpdf&databasematch=TS&reference=7712979&links=%22tampoco%20aparece%20contravencion%20alguna%22&optimize=20160617&publicinterface=true>

[ence=7712956&links=%22as%C3%AD%20lo%20acuerdan%C2%02mandan%20y%20firman%22&optimize=20160617&publicinterface=true](http://www.poderjudicial.es/search/doAction?action=contentpdf&database=TS&reference=7712956&links=%22as%C3%AD%20lo%20acuerdan%C2%02mandan%20y%20firman%22&optimize=20160617&publicinterface=true)

Web. (date of access: 07/03/2016)

12.

El artículo 2 del citado Convenio Colectivo establecía que tendría una vigencia de tres años y entrada en vigor el día 1 de enero de 2013 hasta el 31 de diciembre de 2015, prorrogable por la tática de año en año, de no existir denuncia por cualquiera de las dos partes con dos meses de antelación a su caducidad, proponiendo la revisión o rescisión. Tras la finalización de la vigencia del convenio se mantendrán durante 2 años como máximo las condiciones hasta que se concluye la negociación del nuevo.

CENDOJ: Buscador del sistema de jurisprudencia.

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[ence=7712956&links=%22as%C3%AD%20lo%20acuerdan%C2%02mandan%20y%20firman%22&optimize=20160617&publicinterface=true](http://www.poderjudicial.es/search/doAction?action=contentpdf&database=TS&reference=7712956&links=%22as%C3%AD%20lo%20acuerdan%C2%02mandan%20y%20firman%22&optimize=20160617&publicinterface=true).

Web. (date of access: 07/03/2016)

13.

VIGÉSIMOSEGUNDO.- En un informe elaborado por la empresa TRW se concluye, teniendo en cuenta todos los despidos realizados por la empresa en los 3 años anteriores al 19 de enero de 2016 (inicio del periodo de consultas) y en año posterior, que como en dicho periodo salieron 61 trabajadores de 50 o más años de un total de 114, el número de extinciones que desencadenaría la aportación al Tesoro Público prevista en la D.A.16ª de la Ley 27/2011 sería 115 despidos, derivados del despido colectivo actual (ninguno de trabajadores de 50 o más años), y que un número superior a 115 despido (afectando ninguno de ellos a empleados de 50 o más años) no desencadenaría la aportación económica al Tesoro.

CENDOJ: Buscador del sistema de jurisprudencia.

[http://www.poderjudicial.es/search/doAction?action=contentpdf&database=AN&refe](http://www.poderjudicial.es/search/doAction?action=contentpdf&database=AN&reference=7713323&links=%22de%20la%20ley%2027%2F2011%22&optimize=20160617&publicinterface=true)

[rence=7713323&links=%22de%20la%20ley%2027%2F2011%22&optimize=20160617&p](http://www.poderjudicial.es/search/doAction?action=contentpdf&database=AN&reference=7713323&links=%22de%20la%20ley%2027%2F2011%22&optimize=20160617&publicinterface=true)

[ublicinterface=true](http://www.poderjudicial.es/search/doAction?action=contentpdf&database=AN&reference=7713323&links=%22de%20la%20ley%2027%2F2011%22&optimize=20160617&publicinterface=true). Web. (date of access: 07/03/2016)

14.

QUINTO: Que en la tramitación de estos autos se han observado las prescripciones legales de procedimiento, excepto el plazo para dictar sentencia, debido a la complejidad del asunto.

CENDOJ: Buscador del sistema de jurisprudencia.

[http://www.poderjudicial.es/search/doAction?action=contentpdf&database=AN&refe](http://www.poderjudicial.es/search/doAction?action=contentpdf&database=AN&reference=7713323&links=%22para%20dictar%20sentencia%22&optimize=20160617&publicinterface=true)

[rence=7713323&links=%22para%20dictar%20sentencia%22&optimize=20160617&public](http://www.poderjudicial.es/search/doAction?action=contentpdf&database=AN&reference=7713323&links=%22para%20dictar%20sentencia%22&optimize=20160617&publicinterface=true)

[interface=true](http://www.poderjudicial.es/search/doAction?action=contentpdf&database=AN&reference=7713323&links=%22para%20dictar%20sentencia%22&optimize=20160617&publicinterface=true) Web. (date of access: 07/03/2016)

15.

SEGUNDO. Recibido el expediente administrativo, se puso de manifiesto en Secretaría a la parte recurrente para que formulara su demanda, lo que así hizo en el plazo legal, alegando los hechos y fundamentos de derecho que tuvo por conveniente, suplicando a la Sala que se dictase sentencia estimatoria del mismo, declarando contraria a derecho la actuación la Conselleria d'Educació, Cultura i Esport, de D^a Tatiana y del CONSELL, por **actuar de forma colegiada** al denegar la documentación nº 7149, (RE 46666) y nº 7148 (RE 46664, cuya petición obra en el expediente administrativo, al vulnerar los derechos fundamentales consagrados en el art. 23 de la CE, con todas las consecuencias jurídicas que ello implica, ordenando la reposición en el derecho vulnerado mediante orden expresa al Consell y en especial a la citada Conselleria de

CENDOJ: Buscador del sistema de jurisprudencia.
<http://www.poderjudicial.es/search/doAction?action=contentpdf&database=AN&reference=7139509&links=%22por%20actuar%20de%20forma%20colegiada%22&optimize=20140805&publicinterface=true> Web. (date of access: 07/03/2016)

16.

G) A los anteriores, ha de añadirse, desde una perspectiva estrictamente procesal, la obligación que compete al recurrente de citar expresamente el documento de manera clara, cita que si bien debe efectuarse en el escrito de anuncio del motivo - art. 855 L.E.Cr. - esta Sala ha flexibilizado el formalismo permitiendo que tal designación se efectúe en el escrito de formalización del recurso (STS 3-4-02) pero en todo caso, y como ya recuerda, entre otras la STS 332/04 de 11 de marzo, es obligación del recurrente además de individualizar el documento acreditativo del error, precisar los concretos extremos del mismo que demuestren claramente la equivocación en la que se dice incurrió el Tribunal (STS 465/2004 de 6 de abril y 1345/2005 de 14 de octubre).

CENDOJ: Buscador del sistema de jurisprudencia.
<http://www.poderjudicial.es/search/doAction?action=contentpdf&database=TS&reference=7712979&links=%22se%20dice%20incurrio%20el%20Tribunal%22&optimize=20160617&publicinterface=true> Web. (date of access: 07/03/2016)

17.

Vistos por mí, D/Dª. MARÍA ISABEL IZQUIERDO JIMÉNEZ, Magistrado-Juez de este Juzgado, los autos seguidos bajo el número de juicio Oral N° 000396/2013, procedente del Procedimiento Abreviado - 000004/2010 del JUZGADO DE PRIMERA INSTANCIA E INSTRUCCIÓN NUMERO 5 DE LLIRIA, seguidas por delito de Incendios, por imprudencia grave del ar. 352 en relación con el art. 358 CP , contra MAPFRE EMPRESAS SA., Carlos Jesús , Violeta , AYUNTAMIENTO DE NAQUERA, Alfredo y PIROTECNIA CABALLER S.A. representado/s por el/la Procurador/a NAVARRO TOMAS, JUAN FRANCISCO, Leon , María Cristina , Leon Leon y Salvador , y defendido/s por el/la Letrado/a FORNES VIVAS, CARLOS Sergio , Inmaculada , Sergio , Sergio y Amadeo , en los que ha intervenido el Ministerio fiscal, representado por D.

CENDOJ: Buscador del sistema de jurisprudencia.
<http://www.poderjudicial.es/search/doAction?action=contentpdf&database=AN&reference=7715942&links=%22por%20delito%20de%20incendios%22&optimize=20160621&publicinterface=true>. Web. (date of access: 07/03/2016)

18.

PRIMERO.- Seguido por la Audiencia Provincial de Madrid, Sección 27ª, el procedimiento del Tribunal del Jurado, dimanante de la causa instruida por el Juzgado de Instrucción nº 2 de Aranjuez bajo el nº 1 de 2013 de Ley de Jurado, se dictó sentencia con fecha 30 de junio de 2015 que contiene los siguientes Hechos Probados: De conformidad con el Veredicto emitido por los miembros del Jurado, cabe declarar probados los siguientes hechos: **1. El acusado Romualdo , de nacionalidad española, con D.N.I. nº NUM000 , nacido el**

CENDOJ: Buscador del sistema de jurisprudencia.
<http://www.poderjudicial.es/search/doAction?action=contentpdf&database=AN&reference=7715942&links=%22por%20delito%20de%20incendios%22&optimize=20160621&publicinterface=true>. Web. (date of access: 07/03/2016)

19.

SEGUNDO.- El Ministerio Fiscal modificó sus conclusiones, solicitando la condena del acusado como autor de un delito del art. 352 en relación con el art. 358 del Código Penal de incendio por imprudencia grave a la pena de CUATRO MESES DE PRISIÓN E INHABILITACIÓN ESPECIAL PARA EL EJERCICIO DEL DERECHO DE SUFRAGIO PASIVO DURANTE LA CONDENA Y CUATRO MESES DE MULTA CON CUOTA DIARIA DE SEIS EUROS, con la responsabilidad personal subsidiaria de un día de privación de libertad por cada dos cuotas impagadas Y QUE INDEMNICE, CON LA RESPONSABILIDAD CIVIL DIRECTA

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<http://www.poderjudicial.es/search/doAction?action=contentpdf&database=AN&reference=7715942&links=%22%20condena%20del%20acusado%22&optimize=20160621&publicinterface=true>. Web. (date of access: 07/03/2016)

20.

La reinserción social es una de esas finalidades, a la que, según mandato constitucional (art. 25.2 CE), deben estar orientadas penas y medidas privativas de libertad, pero no es el único cometido con que las penas operan en aras a satisfacer el fin de protección de bienes jurídicos, ni debe ser esa, como hemos venido reiterando, la interpretación que haya de hacerse del precepto constitucional (SSTC 167/2003, de 29 de septiembre, FJ 6 y 299/2005, de 21 de noviembre, FJ 2). Debe resaltarse, en este sentido, que «el mandato presente en el enunciado inicial de este art. 25.2 tiene como destinatarios primeros al legislador penitenciario y a la administración por él creada, según se desprende de una interpretación lógica y sistemática de la regla» (STC 19/1988, de 16 de febrero, FJ 9), Cabe afirmar así, que la finalidad de reinserción social se proyecta esencialmente sobre la fase de ejecución, en la que se materializa la afeción al derecho a la libertad (art. 17.1 CE) de quien resulta penalmente sancionado, pero ha de armonizarse con otros fines legítimos de la pena que adquieren mayor protagonismo en otros momentos de intervención del *ius puniendi*. En particular, la finalidad de prevención general, tanto en su vertiente de disuasión de potenciales delinquentes mediante la amenaza de pena, como de reafirmación de la confianza de los ciudadanos en el respeto de las normas penales, constituye igualmente un mecanismo irrenunciable para el cometido de protección de bienes jurídicos.

Boe. Gobierno de España. https://www.boe.es/diario_boe/txt.php?id=BOE-A-2012-12958. Web. (date of access: 07/03/2016)

21.

La reinserción social es una de esas finalidades, a la que, según mandato constitucional (art. 25.2 CE), deben estar orientadas las penas y medidas privativas de libertad, pero no es el único cometido con que las penas operan en aras a satisfacer el fin de protección de bienes jurídicos, ni debe ser esa, como hemos venido reiterando, la interpretación que haya de hacerse del precepto constitucional (SSTC 167/2003, de 29 de septiembre, FJ 6 y 299/2005, de 21 de noviembre, FJ 2). Debe resaltarse, en este sentido, que «el mandato presente en el enunciado inicial de este art. 25.2 tiene como destinatarios primeros al legislador penitenciario y a la administración por él creada, según se desprende de una interpretación lógica y sistemática de la regla» (STC 19/1988, de 16 de febrero, FJ 9), Cabe afirmar así, que la finalidad de reinserción social se proyecta esencialmente sobre la fase de ejecución, en la que se materializa la afeción al derecho a la libertad (art. 17.1 CE) de quien resulta penalmente sancionado, pero ha de armonizarse con otros fines legítimos de la pena, que adquieren mayor protagonismo en otros momentos de intervención del *ius puniendi*. En particular, la finalidad de prevención general, tanto en su vertiente de disuasión de potenciales delinquentes mediante la amenaza de pena, como de reafirmación de la confianza de los ciudadanos en el respeto de las normas penales, constituye igualmente un mecanismo irrenunciable para el cometido de protección de bienes jurídicos.

Boe. Gobierno de España. https://www.boe.es/diario_boe/txt.php?id=BOE-A-2012-12958. Web. (date of access: 07/03/2016)

22.

Tras practicarse una ecografía, la intervención se realizó el mismo día, ignorándose quiénes actuaron en quirófano como Médico ginecólogo y como anestésista - aunque consta en la Hoja de Anestesia el nombre de la acusada Petra Cristina con una firma que no es suya. El acusado Lazaro Saturnino firmó el documento impreso denominado "Dictamen Médico-Psiquiátrico", acompañado de un informe (que afirma que la paciente sufre un trastorno límite de la personalidad), y se incorporó a la Historia Clínica. La paciente firmó el "test de Goldberg" que aparece en la historia clínica pero no lo cumplimentó.

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<http://www.poderjudicial.es/search/doAction?action=contentpdf&database=AN&reference=7715942&links=%22%20condena%20del%20acusado%22&optimize=20160621&publicinterface=true>

[rence=7713997&links=%22%20que%20afirma%20que%22&optimize=20160620&publicinterface=true](http://www.poderjudicial.es/search/doAction?action=contentpdf&database=TS&reference=7713997&links=%22%20que%20afirma%20que%22&optimize=20160620&publicinterface=true) Web. (date of access: 07/03/2016)

23.

por la vía de la intracción de ley".

Ello establecido, en el presente caso, como se aludió, por demás el Tribunal, para determinar la pena a imponer, explícita haber tenido en cuenta datos concurrentes en los hechos con relevancia valorativa del mayor o menor grado de reprochabilidad que merece la conducta enjuiciada, cual sean: a) lugar en que se desarrolló la acción delictiva; b) condición de Jefe de Destacamento que ostentaba el acusado; c) notable diferencia de graduación militar existente entre **agresor** y víctima; d) gravedad de la conducta; e) trascendencia de los hechos; f) grave afectación de la disciplina y del servicio; g) perjuicio económico que derivó para la Hacienda Militar; h) conocimiento previo que el acusado tenía de los efectos que le podía producir el consumo de alcohol.

CENDOJ: Buscador del sistema de jurisprudencia.

<http://www.poderjudicial.es/search/doAction?action=contentpdf&database=TS&reference=7714316&links=%22%20entre%20agresor%20y%20victima%22&optimize=20160620&publicinterface=true> Web. (date of access: 07/03/2016)

24.

El auto 338/83 del Tribunal Constitucional, reitera la misma doctrina, al señalar que "no equivale (el derecho a la presunción de inocencia) a que en cualquier caso y situación el Tribunal Constitucional, y lo mismo puede decirse del Tribunal Supremo, cuando se analiza en vía casacional la vulneración de dicho principio constitucional, pueda valorar pruebas efectivamente practicadas, primando unas o menospreciando otras, hasta concluir un pronunciamiento concordante o dispar del aceptado por el Tribunal de lo Penal, ya que ello es atribución privativa de éste por mandato ex art. 741 LECrim, y esta vía constitucional -o casacional- ha de mantenerse distante de una nueva instancia o revisión de lo tratado y resuelto por la jurisdicción ordinaria.

CENDOJ: Buscador del sistema de jurisprudencia.

<http://www.poderjudicial.es/search/doAction?action=contentpdf&database=AN&reference=7690758&links=%22%20tribunal%20de%20los%20penal%22&optimize=20160603&publicinterface=true> Web. (date of access: 07/03/2016)

25.

B) No procede la aplicación pretendida por algunas acusaciones de la circunstancia agravante de actuar mediante precio, recompensa o promesa. La remuneración económica que obtenían los acusados en las clínicas TCB y Ginemedex no respondía única y exclusivamente a la realización de una actividad delictiva y una parte importante de dicha remuneración era del todo legítima, con independencia de la valoración moral que puedan merecer algunas de las cantidades monetarias que las mujeres embarazadas satisfacían por los servicios que recibían. No concurre, pues, un plus de desvalor en la acción que justifique la **agravación** de la pena.

CENDOJ: Buscador del sistema de jurisprudencia.
<http://www.poderjudicial.es/search/doAction?action=contentpdf&databasematch=AN&reference=7713997&links=%22%20la%20agravacion%20de%20la%20pena%22&optimize=20160620&publicinterface=true> Web. (date of access: 07/03/2016)

26.

≡ EL PAÍS 

EDITORIALES TRIBUNAS COLUMNAS VIÑETAS VÍDEOS CÓMO COLABORAR CARTAS AL DIRECTOR NUESTRAS FIRMAS QUI

EDITORIAL ›

Sentencia clara y dura

El Constitucional desautoriza el desacato del Parlament sin humillarle

“ Sentencia clara y dura.” *El País*.
http://elpais.com/elpais/2015/12/02/opinion/1449081989_928043.html 03 Dec.2015. Web.
(date of access: 07/03/2016)

27.

Tribunal Constitucional ha declarado que las costas no constituyen una sanción al que pierde, sino una contraprestación por los gastos ocasionados, para que el que obtuvo una victoria fundada no vea mermados sus intereses, La SAP Madrid, sección 10ª, 14-12-2011, señala, como el STC 1-12-88, y 147/89. En concreto, la Sentencia del Tribunal Constitucional de 1 de julio de 1.991 declara que: "que tal imposición constituye "un efecto derivado del ejercicio temerario o de mala fe de las acciones judiciales o de la desestimación total de éstas, según sea el régimen legal que rija el proceso o recurso, cuya justificación o razonabilidad se encuentra (...) según hemos dicho en el ATC171/1986, en prevenir los resultados distorsionadores del entero sistema judicial que se derivaría de una excesiva litigiosidad y en restituir a la parte contraria los gastos que, en menoscabo de la satisfacción de sus pretensiones, le ocasione la defensa de sus derechos e intereses legítimos frente a quienes les promuevan acciones o recursos legalmente merecedores de la imposición de costas". Posibilidad de imposición de costas que constituye un riesgo común "que todo potencial litigante debe valorar y asumir antes de instar la actividad procesal de los Jueces y

5

CENDOJ: Buscador del sistema de jurisprudencia.
<http://www.poderjudicial.es/search/doAction?action=contentpdf&databasematch=AN&reference=7713997&links=%22%20la%20agravacion%20de%20la%20pena%22&optimize=20160620&publicinterface=true>

[rence=7708824&links=%22%20sistema%20judicial%22&optimize=20160614&publicinter
face=true](http://www.boe.es/diario_boe/txt.php?id=BOE-A-2012-12958). Web. (date of access: 07/03/2016)

28.

4. Llegados a este punto, procede poner de manifiesto que el cometido esencial del sistema penal –que engloba también la legislación penal de menores– radica en la protección de los bienes jurídicos más importantes del ciudadano y la sociedad, para lo cual el legislador se ve obligado a establecer un complejo entramado de sanciones y medidas privativas de derechos que operan en diferentes estratos temporales –desde la conminación abstracta hasta el momento de ejecución efectiva de la sanción impuesta– y con distintas finalidades. Así, hemos afirmado que el legislador penal, para fijar la relación de proporción que deba guardar un comportamiento penalmente típico con la sanción que se le asigna, «ha de atender no sólo al fin esencial y directo de protección al que responde la norma, sino también a otros fines legítimos que puede perseguir con la pena y a las diversas formas en que la misma opera y que podrían catalogarse como sus

http://www.boe.es/diario_boe/txt.php?id=BOE-A-2012-12958

29.

La valoración del suelo se aborda en la sentencia recurrida en los fundamentos de derecho tercero y cuarto, de la siguiente forma:

<<TERCERO. Valoración del suelo. Exposición de las posiciones de las partes.

CENDOJ: Buscador del sistema de jurisprudencia.

<http://www.poderjudicial.es/search/doAction?action=contentpdf&databasematch=TS&reference=7684587&links=%22%20exposici%C3%B3n%20de%20las%20posiciones%22&optimize=20160527&publicinterface=true>. Web. (date of access: 07/03/2016)

30.

4) Que el dato contradictorio así acreditado documentalmente sea importante en cuanto tenga virtualidad para modificar alguno de los pronunciamientos del fallo, pues si afecta a elementos fácticos carentes de tal virtualidad el motivo no puede prosperar ya que, como reiteradamente tiene dicho esta Sala, el recurso se da contra el fallo y no contra los argumentos de hecho o de derecho que no tienen aptitud para modificarlo.

CENDOJ: Buscador del sistema de jurisprudencia.

<http://www.poderjudicial.es/search/doAction?action=contentpdf&databasematch=TS&reference=7684587&links=%22%20exposici%C3%B3n%20de%20las%20posiciones%22&optimize=20160527&publicinterface=true>

[ence=7712974&links=%22%20argumentos%20de%20hecho%22&optimize=20160617&publicinterface=true](http://www.poderjudicial.es/search/doAction?action=contentpdf&database=AN&reference=7712974&links=%22%20argumentos%20de%20hecho%22&optimize=20160617&publicinterface=true). Web. (date of access: 07/03/2016)

31.

Ese perímetro fáctico fue expuesto, de forma clara y diáfana, a los imputados en el transcurso de sus declaraciones ante la Juez de Instrucción, y fue conocido directamente por sus **Abogados** a partir del 7 de marzo de 2008, cuando fue levantado el secreto y tuvieron acceso a resoluciones como las que autorizan la

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<http://www.poderjudicial.es/search/doAction?action=contentpdf&database=AN&reference=7713997&links=%22abogados%22&optimize=20160620&publicinterface=true>.

Web. (date of access: 07/03/2016)

32.

podría estar ocurriendo con los principios y valores de la justicia restaurativa y la puesta en práctica de los mismos en la justicia penal en general y en la justicia de menores. *De la Junta del Departamento Especial de la Secretaría*

Bernúz, Beneitez M^a José. “La posibilidad de la justicia restaurativa en la justicia de menores (española). *Revista electrónica de ciencia penal y criminología*. 2014. <http://criminet.ugr.es/recpc/16/recpc16-14.pdf>. Web. (date of access: 07/03/2016)

33.

5. El Fiscal General del Estado presentó su escrito de alegaciones con fecha 24 de octubre de 2002, interesando la inadmisión de la cuestión de inconstitucionalidad por resultar notoriamente infundada. En relación con la alegada contradicción del precepto cuestionado con el art. 14 CE, considera el Fiscal General del Estado que la aplicación de la doctrina constitucional sobre el derecho a la igualdad (citando las SSTC 181/2000 y 190/2001) evidencia la falta de fundamento de la cuestión en este punto, pues las diferencias presentes en el precepto no se basan en categorías de personas, sino en virtud de un elemento objetivo y rigurosamente neutro, como es la gravedad del ilícito, que se aplica por igual a todas las personas que lo cometan. Y en lo tocante a la vulneración del art. 25.2 CE, su vigencia no es contraria a la necesidad de que deba transcurrir un mínimo de tiempo de cumplimiento de la medida impuesta para que pueda suspenderse la ejecución.

Boe. Gobierno de España. https://www.boe.es/diario_boe/txt.php?id=BOE-A-2012-12958 Web. (date of access: 07/03/2016)

34.

El motivo, al igual que se ha dicho en los precedentes citados, no puede acogerse.

La sentencia impugnada funda su razón de decidir en la inexistencia de Plan de Ordenación de Recursos Humanos en el Servicio de Salud donde prestaba sus servicios el médico hoy **fallecido** recurrente en instancia y por ello considera que la motivación ofrecida por la resolución impugnada para denegar la prolongación de la permanencia en el servicio activo solicitada por aquél es insuficiente.

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<http://www.poderjudicial.es/search/doAction?action=contentpdf&database=AN&reference=7713997&links=%22fallecido%22&optimize=20160620&publicinterface=true>.

Web. (date of access: 07/03/2016)

35.

a quien incumbe la carga de la prueba u onus probandi, de acreditar y demostrar que el aborto haya evitado un grave peligro para la vida o la salud física o psíquica de la gestante, pues sólo en tal supuesto aparecería justificada su conducta". La STS 1639/2000 se refiere a los "presupuestos que excluyen la punibilidad del aborto, a modo de justificación específica", para después afirmar que la "posición mayoritaria de la Doctrina atribuye a las indicaciones recogidas en el art. 417 bis la naturaleza de causas de justificación" (en esta sentencia se confirma la condena al médico ginecólogo que practicó el aborto, con aplicación de la exención

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<http://www.poderjudicial.es/search/doAction?action=contentpdf&database=AN&reference=7713997&links=%22fallecido%22&optimize=20160620&publicinterface=true>.

Web. (date of access: 07/03/2016)

36.

SEGUNDO.- En efecto, los hechos objeto de acusación han sido calificados por el Ministerio Fiscal como delito que no excede del marco punitivo establecido en el artículo 787.1 de la **Ley de Enjuiciamiento Criminal**. En ese marco punitivo, prestada por el acusado conformidad con el escrito de acusación, se ha de

CENDOJ: Buscador del sistema de jurisprudencia.

<http://www.poderjudicial.es/search/doAction?action=contentpdf&database=AN&reference=7715942&links=%22ley%20de%20enjuiciamiento%20criminal%22&optimize=20160621&publicinterface=true>.

Web. (date of access: 07/03/2016)

Secretario del Juzgado de Primera Instrucción n.º 3 de Eivissa, antiguo Instancia e Instrucción n.º 6, de fecha 3 de diciembre de 2014, donde se dice expresamente: "que en ese Juzgado se siguió juicio de cognición n.º 173/1996 y consultada la base de datos y libros del registro no consta iniciado ningún procedimiento de ejecución ni pieza alguna de liquidación de daños y perjuicios, por tanto no consta que los favorecidos por la sentencia hayan solicitado contra el Sr. Hipolito ni contra la Sra. Fidela cantidad alguna en concepto de perjuicios"; iii) Igualmente dado traslado de la solicitud de devolución a los demandados, nada han opuesto.

CENDOJ: Buscador del sistema de jurisprudencia.

<http://www.poderjudicial.es/search/doAction?action=contentpdf&databasematch=TS&reference=7712876&links=%22secretario%20del%20juzgado&optimize=20160617&publicinterface=true>. Web. (date of access: 07/03/2016)

8 APPENDIX

8.1 Glossary

ST	TT
Accused	Acusado
Act	Ley
Aggravation	Agravación
Arguments	Argumentos de hecho
Case no	Resolución
Community	Sociedad
Contravention	Contravención
Conviction	Condena
Counsel	Abogados
Count	Delito
Court	Tribunal
Criminal Courts	Tribunales de lo penal
Criminal Procedure Act	Ley de Enjuiciamiento Criminal
Deceased	Fallecido

Delete	Tachésé
Element of mercy	Principio de perdón
Homicide	Homicidio
In the matter between	En relación con un caso
Judge	Juez
Justice System	Sistema judicial
Light	Suave
Negligence	Negligencia
Non-custodial sentence	Pena restrictiva de la libertad
Offence	Delito, hechos
Offender	Agresor
People	Sociedad
Prevention	Prevención
Proceeding Officer	Secretario del Juzgado
Punishment	Condena
Restorative Justice Principles	Valores de la Justicia Restaurativa
Revised	Revisado
Said	Afirmar
Section	Artículo
Sentence	Sentencia
Sentence	Dictar sentencia
Seriousness	Gravedad
Severe	Duro
Signature	Firma
Submissions	Exposición de las posiciones
To be sit with two assessors	Actuar de forma colegiada