Impaginazione
Verena Papagno

EUT Edizioni Università di Trieste, 2019

ISBN 978-88-5511-088-4 (print)
ISBN 978-88-5511-089-1 (online)

EUT Edizioni Università di Trieste
Via E. Weiss, 21 – 34128 Trieste
eut@units.it
http://eut.units.it
https://www.facebook.com/EUTEdizioniUniversitaTrieste

National law in supranational case-law: A linguistic analysis of European Court of Human Rights judgments in English

Katia Peruzzo

EUT EDIZIONI UNIVERSITÀ DI TRIESTE

Contents

Acknowledgements

This book would have never seen the light of day without the input, support and encouragement of the people who have influenced, directly or indirectly, my writing. The list of colleagues and friends that I owe much to is long, and I apologise if I have forgotten to mention anyone here, misused any of the brilliant ideas they shared with me or failed to take their advice.

First of all, I would like to acknowledge the colleagues and friends from the Section of Studies in Modern Languages for Interpreting and Translation of the Department of Legal, Language, Interpreting and Translation Studies of the University of Trieste. My most profound gratitude goes to Professor Federica Scarpa, without whom I would have never undertaken academic research or started working on this project; Professor Marella Magris, with whom I share the sorrows of working in the field of legal terminology; Professor Giuseppe Palumbo, who gave me valuable input and who would always put me back on track when I was about to give up; Doctor Gianluca Pontrandolfo, who endured my endless doubting, huffing and puffing during the writing of this book; and Floriana Sciumbata, for her precious input on the use of TalTac^2.

A great thanks is owed to the colleagues and friends from the Section of Legal Studies of the same Department: Professor Mitja Gialuz, who has always believed in me accomplishing this turbulent journey through the intricacies of supranational case-law more than I have; Doctor Jacopo Della Torre, with whom I share

not only my legal doubts, but also a high degree of meticulousness (or shall we call it pedantry?); Doctor Andrea Cabiale (now University of Torino and University of Piemonte Orientale), whose observations never fail to remind me how much linguistic analysis is still to be done in the legal domain; and Doctor Pietro Faraguna, the Jiminy Cricket I encountered while heading towards the Land of Toys.

I feel deeply indebted to James Brannan, whose questions, observations, and answers deepened my interest in the European Court of Human Rights in general and in its language regime in particular. Since our first meeting in Geneva in 2015, we have been engaged in fascinating face-to-face and virtual discussions, the results of which are contained in this book.

I am also grateful to Professor Rita Temmerman and Doctor Koen Kerremans from Vrije Universiteit Brussels, for the precious advice they gave me during the planning stage of the study presented in this book. In this respect, I also need to acknowledge the European Society for the Study of English, which granted me an ESSE Bursary to support my stay abroad.

I cannot forbear to mention here the students that I had the privilege to teach at the Department of Legal, Language, Interpreting and Translation Studies of the University of Trieste. Working with them on legal translation and legal English gave me the opportunity not only to delve further into the topics in which I have been doing research for several years, but also to get out of my comfort zone and learn more about branches of law and legal systems that I would probably have neglected otherwise.

Finally, I would like to thank my life companion Marco, for his constant reassurance, and my daughter Iris, for her patience when I am working from home. A big thank you also goes to my family, my sister, and my in-laws: were it not for their willingness to babysit, this book would not have existed.

Introduction

This book is the culmination of almost three years spent exploring the relationship between national and supranational law in the rich body of case-law produced by the European Court of Human Rights (ECtHR). The project started as a research grant awarded to the author in 2017 by the University of Trieste under the title "Linguistic creativity in international case-law: an empirical study of the English version of ECtHR judgments dealing with Italian cases". Yet, the subject matter of the project revealed itself to be a largely unexplored field calling for deeper and more comprehensive analysis. The one-year period originally planned for the research turned out to be insufficient and further investigation of the topic was required.

The book is the product of the author's research interest in legal language and, in particular, in English used in communicative situations where it serves as the language of supranational law. It is the natural outcome of the author's previous research and teaching experiences. These include several years of research on the English and Italian legal languages as employed in the European Union and their relationship with the respective national varieties, participation in a major legal translation project carried out in a multidisciplinary team (Gialuz et al. 2014; 2017), and the teaching of Legal English modules within the Law degree programme of the Department of Legal, Language, Interpreting and Translation Studies of the University of Trieste. Her research on the language used in the

European supranational sphere on the one hand and the constant collaboration with legal scholars and law students on the other allowed the author to acknowledge a lamentable scarcity of linguistic analyses on texts produced by European international bodies other than the European Union. For these reasons, this book is the first of its kind in being devoted to a systematic study of ECtHR case-law from a linguistic perspective.

The book is divided into two parts, the first dedicated to the ECtHR in general and the second to an empirical study carried out on a corpus of judgments delivered by one of the possible judicial formations of the ECtHR, namely the Grand Chamber. The primary intended reader of this book is a researcher or a graduate student in legal linguistics or legal translation with a strong interest in the linguistic features of texts produced by international organisations and institutions where translation is involved. However, some chapters could equally well be read by linguistically minded legal scholars and law students whose wish is to go beyond the essentially legal aspects and look into some linguistic aspects of ECtHR case-law. In point of fact, law can be seen as a communicative activity occurring at a certain point in time within a specific community and is therefore a social phenomenon. This means that law exists only through its interplay with the language in which it is expressed and the society to which it applies. Law and language are therefore intertwined to such an extent that it would be almost impossible to study legal language without having sufficient legal knowledge or to address legal issues without a satisfactory understanding of legal language. Based on these assumptions, the ECtHR and its case-law are illustrated here through the lens of a linguist and translator, trying to highlight the facets that are linguistically more relevant, but at the same time making sure the illustration is accurate from a legal point of view.

This book pursues several aims. Given the intended readership, most of whom are assumed not to have an in-depth knowledge of the ECtHR, the first goal is to help the reader obtain a better comprehension of the functioning of this Court. Therefore, Chapter 1 provides an overview of the historical background of the ECtHR, explains its internal structure, and illustrates how a case can be brought before it. The acquisition of this information is seen as a prerequisite for understanding both the content of ECtHR case-law and its language, which is the subject-matter of this book. Since the empirical study presented in the second part of the book involves a corpus of judgments passed by the Grand Chamber, special attention is devoted to the procedure before this judicial formation.

The second aim of the book is to provide an insight into the language regime at the ECtHR, which is explored in Chapter 2. This regime is radically different from the extensively studied language system adopted by the European Union (EU). Whereas the latter has opted for complete multilingualism, which has been attracting considerable research attention in both law and translation studies (Derlén 2009; 2015; 2019; Pozzo 2012; McAuliffe 2013a; 2013b; Athanassious 2006; van Els 2005; Mori 2018; Biel 2007), the ECtHR has endorsed a system

based on two official languages only, i.e. English and French. While this solution may seem simpler and is certainly more cost-effective compared to the language regime at the EU, it is shown that translation plays a major role not only in the drafting process of the ECtHR case-law, but also in its dissemination.

In Chapter 3, a further step is made towards the analysis of the language of ECtHR case-law. First, a review of classifications of "legal language" developed in legal linguistics and in translation studies is provided as this is seen functional to framing ECtHR case-law as a legal genre with its own peculiarities. Given the constraints imposed on the corpus used for the empirical study, the chapter then provides a detailed portrait of the communicative situation and the macro-structure of ECtHR Grand Chamber judgments. The aim of this chapter is thus twofold. First, it is meant to provide a backbone for possible future studies in the field by analysing the macro-structure, which reveals a high degree of standardisation and formulaicity; second, it is intended to identify the variety of direct and indirect receivers by scrutinising the participants in the communicative situation.

Chapter 4 serves as a link between the first part of the book and the empirical study. Although the main focus of the study is not on translation practices at the ECtHR, the chapter opens with a brief overview of "culture-bound elements" (CBEs) as approached in translation studies. The reason underlying this choice is that the aim of the empirical study is to unveil – from a linguistic standpoint – the "interaction" between national law and supranational law in ECtHR Grand Chamber judgments. National law is one of the manifold expressions of a national culture and, therefore, system-bound elements (SBEs) are here considered as a type of culture-bound elements.

The empirical study of SBEs in ECtHR case-law is presented in two chapters. The study is meant as a first attempt to isolate linguistic expressions referring to elements embedded in a national legal and judicial system in a corpus made of judgments produced by a European supranational court. In particular, the study investigates the presence of Italian SBEs in a corpus of Grand Chamber judgments issued against Italy and published in English between the years 2000 and 2018. In order to extract these SBEs from the corpus, an innovative methodology (illustrated in Chapter 5) has been developed which combines the event templates used in frame-based terminology with keywords. This methodology allowed for the identification of 401 expressions pointing at different types of Italian SBEs, which have been grouped into four categories. In Chapter 6, the extracted expressions are analysed from two different angles in order to evaluate their frequency and distribution in the corpus and to take a closer look at their linguistic forms.

The analysis has confirmed that the judgments of the European Court of Human Rights are worth being investigated from a linguistic perspective. The first reason is that the study has revealed a feature that, to the author's knowledge, has been left largely unexplored in legal linguistics, namely the abundance of quoted passages from multiple national, international and other sources. The co-existence

of such a variety of sources in the body of these judgments is necessary and crucial for the ECtHR to review the cases and provide the argumentation of its decisions. The need to recall national legislation and case-law and the presence of SBEs in ECtHR judgments also pinpoint the fundamental role played by translation in the process of drafting supranational case-law. Indeed, the shift from the national to the supranational level combines a recontextualization through translation with the adoption of linguistic strategies that make national legal and judicial contents understandable to a readership that has no direct access to the original sources in the national language. This, in turn, contributes to the dissemination of both supranational legal principles and national legal and judicial knowledge at least within the boundaries of the Council of Europe, with its forty-seven member States representing a population of approximately 800 million people.

1 The European Court of Human Rights

The European Court of Human Rights (ECtHR) is an international court, or rather a "supranational judicial body", established by the European Convention for the Protection of Human Rights and Fundamental Freedoms or, simply, the European Convention on Human Rights (ECHR), which "vested it with the power to adjudicate complaints (applications) lodged by individual persons" (Garlicki 2009: 390). Although the aim of this chapter is neither to concentrate on the content and development of the Convention nor to delve into the subtleties of the functioning of the Court, a brief overview of the development and the functioning of both the Convention and the Court is considered a useful introduction to the main topic of this volume, i.e. judgments delivered by the ECtHR.

1.1 The European Convention on Human Rights and the European Court of Human Rights

The last decade of the 20th century and the first decade of the 21st century have witnessed a "burgeoning of international courts and tribunals" (Higgins 2007). However, the history of the European Court of Human Rights is much longer. Indeed, the European Convention on Human Rights was opened for signature in Rome in 1950 and came into force in 1953. Since then, it has been amended sev-

eral times and supplemented with additional rights compared to those set forth in the original text. The Convention was "drafted within the Council of Europe, an international organization that was formed after the Second World War in the course of the first post-war attempt to unify Europe" (Harris et al. 2014: 3). The reasons for adopting the Convention are to be found in the political situation in Western Europe at that time: Western European countries wished to "provide a bulwark against communism, which had spread from the Soviet Union into European states behind the Iron Curtain after the Second World War" (Harris et al. 2014: 3). However, the Convention was also "a reaction to the serious human rights violations that Europe had witnessed during the Second World War" (Harris et al. 2014: 3). In other words, the aim of the Council of Europe was "to defend democracy, the rule of law, and human rights in Europe" (Letsas 2007: 1). The Convention has been ratified by all forty-seven member States of the Council of Europe, thus applying to approximately 800 million people. Given the heterogeneity of the Contracting Parties in terms of historical and legal background, "neither the Convention nor the Court have one single identity – they rather represent a merger of different traditions arising from different legal systems" (Garlicki 2009: 391). In this sense, the Convention is said to have evolved "in the direction of being a European bill of rights, with the European Court of Human Rights having a role with some similarities to that of a constitutional court in a national legal system" (Harris et al. 2014: 4).

The close relationship between the Convention and the Court has been stressed by the ECtHR itself in *Tyrer v. United Kingdom*[1], in which it is stated that "[t]he Court must also recall that the Convention is a living instrument which […] must be interpreted in the light of present-day conditions". The same is emphasised by Garlicki (2009: 390), who affirms that "…the Convention would not be able to survive, had it not been regarded as a 'living instrument' and had it not been constantly developed in the case law of the Court". By considering the Convention as a "living instrument", the Court can keep up with the times, interpret, and apply the Convention in the light of the current situation. However, although there seems to be general consensus on this point, the same cannot be said about the constitutional nature of the Court vested with interpreting this "living instrument". In fact, "the ways and methods of the ECtHR's interpretation, as adopted in its case law, may not be very different from the ways and methods adopted by the national courts that deal with constitutional questions" (Garlicki 2009: 391). Nonetheless, "the ECtHR cannot be treated just like one of the constitutional courts", since it "still conserves its nature as a supranational body, created and operating within the realm of international law" (Garlicki 2009: 391). Similar doubts are raised by Letsas (2007: 38), who rejects the idea that the role of international human rights bodies may approximate that of constitutional courts, but recognises that the ECtHR represents an exception. Ryssdall (1996: 22), in turn, defines the

1 *Tyrer v. United Kingdom* (Application no. 5856/72), 25 April 1978, Series A No. 26, § 31.

ECtHR as "a quasi-constitutional court for the whole of Europe". Harris et al. (2014: 39) do not share this view. They affirm that both states parties and NGOs "see the Convention as providing a remedy for all individual complaints", but do not refer to the ECtHR as a constitutional court (Harris et al. 2014: 39, footnote 299).

Letsas is not the only scholar to recognise the exceptionality of the European Court of Human Rights. Such exceptionality should not be attributed to the Court's constitutional-like role. In fact, the ECtHR represents "a very strong enforcement mechanism" (Harris et al. 2014: 6) of the Convention, which allows any person, non-governmental organisation or group of individuals to apply to the ECtHR in case of an alleged violation of the Convention by one of the parties to the Convention (see Article 34 of the Convention). According to Letsas (2007: 1), "[i]n international human rights law, the European system is considered to be a model of effectiveness", and this is especially due to the fact that the judgments passed by the Court are binding in international law and the parties are required to enforce them. As Garlicki (2009: 391) puts it, "[w]hile, in the legal perspective, the Convention (as well as the judgments of the ECtHR) is binding on all member States, the compliance with those judgments must be assured on the domestic level". However, although the Contracting States have recognised the ECtHR's power to deliver binding judgments, "each judgment is only legally binding for the State Party that is a party to the case" (Gerards 2009: 408). Moreover, "the Court determines only whether the ECHR has been violated, it is not competent to annul national government acts (orders, legislation, etc.) that have caused this violation or to declare them non-binding" (Barkhuysen and van Emmerik 2009: 439). Therefore, States are free to decide how to execute the Court's judgments (except for the payment of just satisfaction, where awarded, and for pilot judgments, where the Court sets out in detail how they should be complied with) and also whether national legislation should be amended to avoid future violations.

Although the effect of the ECtHR's case-law is "formally limited to the concrete circumstances of one single case" (Gerards 2009: 408), the principles it promotes should be considered as fundamental rights to be safeguarded in all the Contracting States. Both the need for judgments to be executed by domestic justice systems and the desire to disseminate the principles beyond the national boundaries of the State involved in the specific case have a significant impact also on the linguistic choices of the ECtHR's linguists. In this regard, Brannan (2018: 180), who concentrates on the specificities of translation at the ECtHR, maintains that:

> The Court's linguists must never forget that their translations will be read and interpreted by domestic courts and lawyers across Europe and may in turn be translated into other languages. Ultimately, the relevant Convention standards will have to be 'translated' into reality in the legal order of each country; the clarity, accuracy and terminological consistency of the official-language case-law are therefore all the more important.

The exceptional nature of the ECtHR thus comes to the fore also with regard to the linguistic aspects of the judgments delivered by the Court. The "linguistic

make-up" of ECtHR's case-law is indeed the leading thread of this volume. However, before moving on to the linguistic aspects, a brief review of the development of human rights in Europe and of the ECtHR is considered beneficial for a better understanding of the linguistic regime adopted by the Court.

1.2 The protection of human rights: Historical background

The European Court of Human Rights is a supranational court based in Strasbourg, France, which was established on a permanent basis to ensure observance of the engagements undertaken by the forty-seven Contracting Parties to the European Convention on Human Rights. The establishment of the Court is set forth in Article 19 of the European Convention on Human Rights: Section II of the Convention, which comprises Articles 19-51, is entirely devoted to the ECtHR. Although the Convention entered into force in 1953, it was not until 1959 that the Court was set up or, more precisely, that the first members of the Court were elected by the Consultative Assembly of the Council of Europe, now known as Parliamentary Assembly, and that the Court's first session was held. In the same year, the Rules of Court, i.e. the rules regulating the functions and internal organisation of the Court and its Registry, were also adopted, while in 1960 the Court delivered its first judgment in the case of *Lawless v. Ireland*[2]. Since then, the Court has passed more than 10,000 judgments regarding the alleged violation of the European Convention on Human Rights by the Contracting Parties.

Although the ECtHR has operated uninterruptedly since its establishment, both its original composition and its structure have not remained unchanged. To ensure the protection of the fundamental rights set forth by the Convention, a two-tier system was originally introduced which involved two organs: the European Commission of Human Rights and the European Court of Human Rights[3].

The European Commission of Human Rights, whose members worked for it part-time, was responsible for receiving, examining and deciding on the admissibility of applications, trying to secure a friendly settlement between the parties and referring certain cases to the European Court of Human Rights. The main role of the Commission was to serve as a sort of "barrier" (Maringele 2014: 40) or to perform a "filtering function" (European Court of Human Rights 2017b: 10) to discard inadmissible applications. Indeed, the Commission's first tasks were to consider whether the application met the admissibility requirements and to make a decision[4] on this question (Rainey et al. 2017: 8). When an application

2 *Lawless v. Ireland* (Application no. 332/57), 1 July 1961.

3 For an overview of the functions of the two bodies, election procedures of their members, qualifications required for membership, and procedure adopted within the two bodies, see van Dijk and van Hoof (1998).

4 From a terminological perspective, it is interesting to note that the decisions made by the former European Commission of Human Rights and the European Court of Human Rights on

was declared admissible, but a friendly settlement was impossible to reach, the Commission investigated the merits of the case. It then drew up a report where it established the facts and expressed an opinion on the complaint, which was not legally binding. The report was then forwarded to the Committee of Ministers, i.e. the political organ of the Council of Europe comprising one representative from each Contracting Party to the European Convention on Human Rights, usually the Foreign Secretary of each government. The final decision on an admissible case was then made by either the Committee of Ministers, which originally also had judicial powers, or the European Court of Human Rights. The latter option was only available if the Contracting State had recognised the Court's jurisdiction, which was not compulsory. For a case to be decided upon by the Court, the application had to be referred – within three months of the transmission of the report to the Committee of Ministers – to the Court by the Commission, the respondent State or the Contracting Party whose national was the alleged victim.

Individual applicants were not allowed to refer a case to the Court unless the respondent State had ratified Protocol no. 9. If this was the case, the application first had to be examined by a panel of three judges who had a further filtering function: they "could decide unanimously that the application should not be considered by the Court because it did not raise a serious question affecting the interpretation or application of the Convention" (Rainey et al. 2017: 9).

Like the European Commission of Human Rights, the European Court of Human Rights was a part-time organ. It was originally conceived as a judicial body whose task was to decide on the cases received by the Commission. Judges received no regular salary but rather a daily allowance paid by the Council of Europe.

When a case was not referred to the Court within three months of its transmission by the European Commission to the Committee of Ministers, under former Article 32 of the Convention, the Committee "had the power to decide, by a two-thirds majority, whether there had been a violation of the Convention" (Foster 2011: 46). However, "the practice of the Committee of Ministers was to endorse the Commission report without any further investigation of the merits of the case" (Rainey et al. 2017: 9).

The original system for protecting human rights illustrated so far had multiple disadvantages, which were well summarised by Rowe and Schlette (1998: 5):

> The most obvious weakness of the old system was its extraordinary complexity: three organs worked together in a protracted, multi-phase procedure. There was considerable overlap between the competencies of the various organs, which meant that work was often duplicated. Nor was the interplay of the Commission, Court and Committee the only difficult matter: the structure of the review system and the mixed judicial and political character of the decision-making organs made the internal decision-making process a complicated affair. In sum, the review system was ponderous, expensive and difficult for the complainant to understand. There was a considerable risk that the

admissibility are called "decisions", while the decisions on the merits of the case are referred to as "judgments".

various organs would reach different decisions in substantially similar cases – as happened on several occasions in decisions of the Commission and Court.

In other words, the first drawback was that a fundamental role in the decision-making process was played by an organ that was not judicial, i.e. the Committee of Ministers. Secondly, the jurisdiction of the Court was not obligatory, but subject to specific declaration by the Contracting Parties (Mikaelsen 1980: 16). Thirdly, individuals were entitled to bring an action against a State under Article 25 of the Convention, which represented a great innovation under international law. However, for an individual complaint to be admissible, a declaration by the Contracting Party involved to accept the competence of the Commission of Human Rights over individual cases was required.

The procedures to apply to the ECtHR have certainly not remained unchanged. For instance, the right of individual petition has undergone a complete transformation by being "no longer dependent on the optional recognition by the State" (Lemmens 2018: 33) and thus becoming an obligatory right entitling individuals to bring a case before the Court rather than the Commission[5]. In what follows, an overview of the main changes that have led to the current way of functioning of the ECtHR is provided, with a focus on those aspects that have a major impact on the linguistic dimension of the Court's activity.

1.3 The 'old' and the 'new' Court: Protocol No. 11

Since its adoption, the European Convention on Human Rights has undergone several major amendments through the so-called "protocols". The most significant changes to the ECHR relating to the judicial bodies that enable the enforcement of the principles set forth in the Convention and to their functioning were introduced by Protocol No. 11[6]. The need for a fundamental reform in the structure and the functioning of the ECtHR lay primarily in the increasing number of applications. From 1955 to 1998, 45,000 applications were allocated to a judicial formation and 837 judgments were issued (Dothan 2011: 128, footnote 28). In 1997 only, "the Commission received 14,166 applications, 703 of which were declared admissible, and the Court handed down 106 judgments" (Tomuschat 2009: 11). After the fall of the Berlin Wall, the European Convention of Human Rights experienced a wide enlargement towards the East, with Eastern countries – such as Russia, Serbia, Azerbaijan and Armenia – becoming Contracting Parties. At that time, enlargement was seen as a possible cause of an exponential

5 For a detailed account of the various steps of this metamorphosis, see Kjeldgaard-Pedersen (2010).

6 The full title of the Protocol is *Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby*, Strasbourg, 11.V.1994, European Treaty Series No. 155, http://www.echr.coe.int/Documents/Library__Collection__P11__ETS155E__ENG.pdf (accessed 26/02/2018).

increase in the number of applications submitted to the Commission and the introduction of a new control mechanism to cope with the growing caseload was thus considered necessary.

The year in which Protocol No. 11 entered into force, namely 1998, set a milestone in the history of the European Court of Human Rights, because it succeeded in streamlining the Court's workflow. Through the Protocol, the European Commission of Human Rights was abolished, the Committee of Ministers was deprived of its judicial role and the European Court of Human Rights was turned into a single, permanent, and full-time judicial body. However, the purpose of Protocol No. 11 was not limited to converting a part-time court into a full-time one: its aims were to simplify the system – and thus to reduce the length of proceedings – and to recognise the right of individual petition. The simplification of the procedure through the creation of a "new Court" contributed to both improving the accessibility and the visibility of the Court and enhancing the effectiveness of the system. The need to streamline the procedure stemmed from a "massive influx of applications" (see, for instance, European Court of Human Rights 2014b: 10), which was due to the enlargement towards the East but also to the increasing number of applications brought against States that were Contracting Parties before the enlargement (Steering Committee for Human Rights 2009: 692). This was true because "[t]he 1980s witnessed an explosion of activity under the Convention", with all 22 ratifying states having accepted the right of individual petition and consented to the jurisdiction of the Court by the end of the decade (Janis et al. 2008: 22).

However, the introduction of this new system, combined with other solutions adopted to cope with an excessive caseload, such as the adoption of pilot judgments[7], neither reduced nor limited the number of applications, which continued to grow until 2013 (European Court of Human Rights 2017b: 5). Therefore, other measures were necessary to stem the Court's burgeoning caseload[8], among which Protocol No. 14[9] is worth mentioning, given that its aim is to guarantee the long-term efficiency of the ECtHR.

1.4 The structure of the new European Court of Human Rights: Protocol No. 14

As seen above, Protocol No. 11 has played a fundamental role in creating the so-called "new European Court of Human Rights" and granting individuals the right

7 See, for instance, European Court of Human Rights (2009); Haider (2013); Zwaak et al. (2018: 212–219).

8 For a detailed account, see Steering Committee for Human Rights (2009: 692–695).

9 The full title of the Protocol is *Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention*, Strasbourg, 13.V.2004, Council of Europe Treaty Series No. 194, https://www.echr.coe.int/Documents/Library__Collection__P14__ETS194E__ENG.pdf (accessed 31/05/2018).

to apply directly to it. While Protocol No. 11 dramatically changed the structure of the supervisory mechanisms of the Convention, "Protocol No. 14 made no radical changes to the control system" (Lemmens 2018: 34). The changes introduced by Protocol No. 14 "related more to the functioning of the system rather than to its structure" (Lemmens 2018: 34). Indeed, save for a couple of exceptional recent years in which the number of correctly completed applications received by the ECtHR was lower than previous years, e.g. 2014 and 2015 (European Court of Human Rights 2017b: 5), the number of applications to be dealt with by the ECtHR has always been on the increase. Since the ECtHR was called upon to solve many cases simultaneously, the system had to be improved by giving the Court the procedural means and flexibility it needed to process all applications in a timely fashion, while allowing it to concentrate on the most important cases that require in-depth examination" (Lemmens 2018: 34). Therefore, Protocol No. 14 established rules that allow to quickly filter or process applications of limited interest, introduced a new admissibility criterion to reduce the number of cases to be dealt with, and adopted new measures for dealing with repetitive cases (Caflisch 2006: 408; Lemmens 2018: 34; Lemmens and Vandenhole 2005).

1.5 The European Court of Human Rights: Judicial formations

How does the European Court of Human Rights deal with such a heavy caseload? After the entry into force of Protocol No. 14 in 2010, from an administrative point of view the ECtHR is organised into five Sections. The ECtHR counts a total of 47 judges, one from each Contracting State, who are selected by the Parliamentary Assembly of the Council of Europe from a list of three candidates proposed by each Contracting State. Every judge is assigned to one of the Sections by the Plenary Court on the basis of the geographical origin, the gender of the judge, and the legal system of the Contracting State. Each Section is presided over by a President (assisted by a Vice-President), has a varying number of judges and is assisted by a Section Registrar and a Deputy Section Registrar. Every three years the composition of the Sections changes.

The division into Sections has a mere administrative function: for an application to be dealt with, it must be referred to the most appropriate judicial formation among the available ones. The Court may sit in four distinct judicial formations, as provided for in Article 26 of the Convention: single judges, Committees, Chambers or the Grand Chamber (Schabas 2015: 689–695; Rainey et al. 2017: 18–20).

Single judges were introduced by Protocol No. 14 to streamline the procedure before the ECtHR. In fact, the Protocol abolished the Commission and referred its filtering function to the Court. The single judges' role is thus to deal with individual applications that are clearly inadmissible because they do not meet all the admissibility criteria. Single judges are assisted by non-judicial rapporteurs with knowledge of the language and the legal system of the respondent State. Single

judges can either declare an application inadmissible or strike it out, but if they do not do so, they forward it to a Committee or to a Chamber for further examination. The decisions taken by single judges are final and cannot be challenged. To avoid any bias, single judges are not allowed to examine any application against the Contracting Party in respect of which they have been elected.

Committees of three judges are responsible for declaring applications inadmissible or striking them out when no further examination is needed. However, they also play an important role in relation to so-called "repetitive cases", i.e. admissible and well-founded cases raised by individuals, usually deriving from systemic or structural problems within a national legal order. Before the adoption of Protocol No. 14, these cases significantly contributed to the inflation of the Court's caseload and undermined the effectiveness of the ECtHR. Since in repetitive cases the case-law of the Court was already well-established, Protocol No. 14 provided for Committees of three judges to rule both on the admissibility and the merits of these cases. Again, the decisions taken by Committees, which must be unanimous, are final.

When an application is not clearly inadmissible or the case at issue is not the subject of well-established case-law of the Court, then the case is to be allocated to a *Chamber*, which is composed of seven judges under Rule 26 of the ECtHR's Rules of Court. Chambers also deal with all inter-State applications. Each Chamber includes the President of the Section to which the case was assigned, the so-called "national judge", i.e. the judge with the nationality of the Contracting State against which the application was lodged, and five other judges designated by the President of the Section. The Chamber may declare the case either inadmissible or admissible: in the latter case, the Chamber examines it and decides on its merits. Before delivering its decision, the Chamber informs the Contracting State concerned of the existence of the application and allows them time to submit their observations. The decisions taken by the Chambers, either unanimously or by a majority, are final.

The highest judicial formation available at the ECtHR is the *Grand Chamber*, which is composed of seventeen judges, including the President of the Court, the Vice-Presidents, the Presidents of the five Sections, the national judge and other judges chosen in accordance with the rules of the Court. The number of cases heard by the Grand Chamber is limited if compared to the number of cases dealt with by the other ECtHR formations. Unlike what happens with other judicial formations, cases are never allocated directly to the Grand Chamber. In fact, to reach the Grand Chamber, a case must be either relinquished to it by a Chamber (Article 30 of the Convention) or referred to it by any party to the case (Article 43 of the Convention). If one of the parties requests that the case be referred to the Grand Chamber, then a panel of five judges of the Grand Chamber will accept the request if the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance: only then will the Grand Chamber decide the case. Both relinquishment of jurisdiction and referral to the Grand Chamber are possible when the case at issue raises a serious question affecting the interpretation or application of the

Convention or its Protocols. Relinquishment is also possible where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court.

1.6 The European Court of Human Rights: Jurisdiction

Article 32 of the European Convention on Human Rights addresses the issue of the Court's jurisdiction[10]. However, as is well explained by Schabas (2015: 715ff.), this Article is the result of the historical development of the Court. In its current version, it provides that the Court's jurisdiction "shall extend to all matters concerning the interpretation and application of the Convention and the Protocols thereto which are referred to it as provided in Articles 33, 34, 46 and 47", which deal with inter-State cases, individual applications, the binding force and execution of judgments and advisory opinions respectively.

The only possible way to bring a case before the European Court of Human Rights is by submitting an application. In other words, the ECtHR cannot start cases of its own motion, but has jurisdiction to hear cases concerning alleged violations of the European Convention on Human Rights upon receiving individual or inter-State applications. As has been said earlier, the European Convention on Human Rights has undergone several modifications. One such modification concerns the right of individuals to bring an action against one of the Contracting Parties. Until the entry into force of Protocol No. 11, Article 25 of the Convention gave individuals the possibility to lodge a complaint with the former European Commission of Human Rights rather than with the ECtHR, provided that the Contracting Party expressly granted such a right to individuals by making a declaration under the same Article. Therefore, States "had the option to allow or disallow individual application by their citizens" (Miller 1998: 12). The new Article 34 introduced by Protocol No. 11 involved radical changes in the right to individual petition, which is "a key feature of the European system, a victory slowly won, and one that is unique in the world" (Costa 2009: 14). Article 34 removed the States' discretion in granting the right of petition to individuals and, since the Commission ceased to exist, it allowed individuals to bring cases directly before the Court, without going through a filtering institution.

The right of individual petition could have contributed to a further increase in the number of applications submitted. For this reason, Article 35 of the Convention sets forth admissibility criteria, which can be summarised as follows: all available domestic remedies must have been exhausted and the application must be submitted within six months of the final decision in domestic courts. When an individual application is submitted, it shall not be anonymous and

10 For an exhaustive discussion of the jurisdiction of both the European Convention on Human Rights and the European Court of Human Rights, see Janis et al. (2008: 47–49) and Schabas (2015: 715–722).

shall not be substantially similar to a matter that has already been examined by the Court or by another international investigative body. Individual applications shall not be incompatible with the provisions of the Convention or its Protocols nor manifestly ill-founded and shall not constitute an abuse of the right of individual application. Furthermore, individual applications are inadmissible when "the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal" (Article 35(3)(b), introduced by Protocol No. 14). Therefore, since Protocol No. 11, direct referral to the Court can be pursued by two types of applicants, i.e. Contracting States and individuals, an umbrella term including "any person, non-governmental organisation or group of individuals" (Article 34).

On the contrary, the respondent can only be one or more Contracting States. An interesting fact to note in this regard is that when the application is submitted by an individual claiming to be the victim of a violation of the rights set forth in the Convention or one of its Protocols by one of the Contracting Parties, the applicant does not have to be a citizen of a Contracting Party. On the other hand, all the applications submitted to the Court must concern alleged violations committed by a Contracting Party to the Convention.

1.7 The procedure before the European Court of Human Rights

The procedure before the European Court of Human Rights consists in a series of steps to be performed by the applicant, the respondent State and the Court itself. Given their importance for understanding the structure of the judgments delivered by the Grand Chamber, which are the subject of this volume, these steps are briefly outlined below[11].

1.7.1 Submission and handling of applications

After the entry into force of Protocol No. 11, both inter-State and individual applications alleging a breach of one of the Convention rights by a Contracting Party may be lodged directly with the ECtHR. However, once the ECtHR receives an application, before dealing with the merits of the case it first needs to establish whether the application is admissible. To do so, applications are allocated to different judicial formations.

Individual applicants who wish to apply must send their application by post to the ECtHR's Registry. The Registry, as it is nowadays conceived and structured,

11 For a thorough account of the steps of the procedure before the ECtHR, see Leach (2011) and Rainey et al. (2017: 17–56).

is the result of the merger of the Secretariat of the Commission and the Registry of the "old" Court under Protocol No. 11 (Berger 2006: 12). Once the application is received by the ECtHR, it is "examined by a Registry lawyer who makes the first assessment as to its importance and admissibility" (Garlicki 2009: 393) and assigns it to a Section. Given that applicants can apply in either English, French or one of the 38 official languages of the Contracting Parties of the Council of Europe, "the Registry has several units corresponding either to single countries or to groups of similar countries" (Garlicki 2009: 393). There are currently 33 legal divisions within the Registry. Once an application is assigned to a Section, it is then allocated either to a single judge, a Committee or a Chamber depending on the type of applicant and the fulfilment of the admissibility criteria.

As seen above, individual applications that are clearly inadmissible are referred to single judges. The decisions taken by single judges, which are final, are actually prepared either by or under the responsibility of a non-judicial rapporteur (European Court of Human Rights 2010: 70). Individual applications where well-established case-law can be applied are referred to a Committee, which either delivers a unanimous judgment on the merits of the case or refers the case to a Chamber. The judgments delivered by a Committee are final and cannot be appealed to either a Chamber or the Grand Chamber. The processing of cases initiated by means of an individual application is schematically summarised in Figure 1 below.

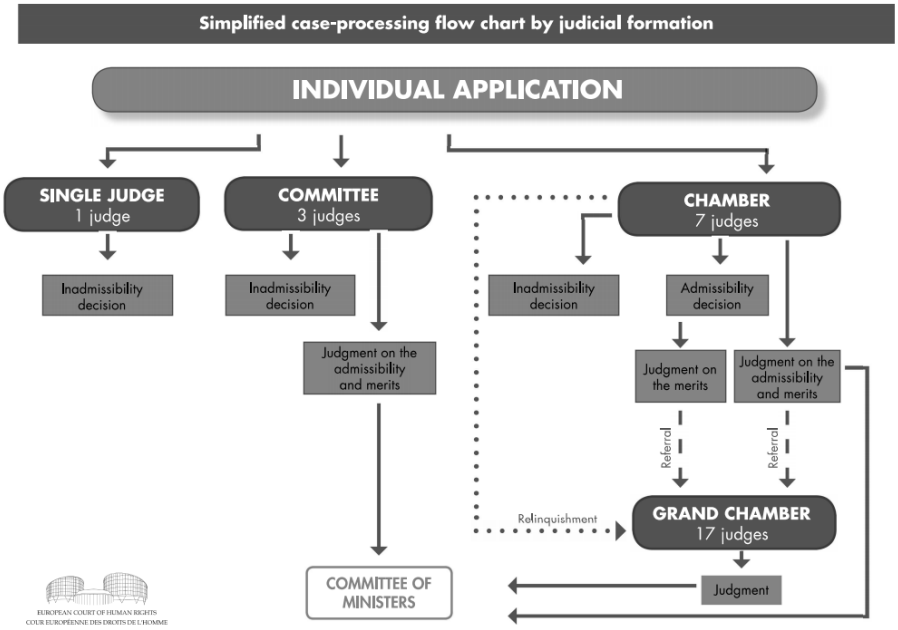

Figure 1. Simplified case-processing flow chart by judicial formation for individual applications[12].

12 Flow chart retrieved from https://www.echr.coe.int/Documents/Case__processing__Court__ENG.pdf (accessed 07/05/2018). Permission to reproduce the figure granted by the ECtHR.

Both individual applications that are neither clearly inadmissible nor repetitive and inter-State applications are allocated to a Chamber, which decides by a majority. In this case, "[e]ach application is assigned to the case-lawyer (who must have a command of both the language of the application and the legal system of the State in question)" (Garlicki 2009: 393) and "the Section President (acting together with the Section Registrar) appoints the Judge Rapporteur" (Garlicki 2009: 393).

The judge rapporteur is responsible for submitting a report on admissibility when the written observations of the Contracting Parties concerned have been received as well as drafts and other documents that may assist the Chamber and its President in carrying out their functions. The judge rapporteur is thus "celui qui normalement connaît le mieux l'affaire" (Costa 2017: 153) and his or her name "n'est *pas connu* à l'extérieur … pour raisons de sécurité" (Costa 2017: 152, footnote 2, emphasis in the original). When a case is considered by a Chamber, the judge rapporteur generally corresponds to "the national judge since he/she has the highest expertise in the national law and in the national context" (Garlicki 2009: 393). Yet, while the national judge "*doit* siéger, comme member de droit, lorsque cet État est partie au litige" (Costa 2017: 156, emphasis in the original) when the case is discussed by a Chamber, he or she cannot be the judge rapporteur in cases heard by the Grand Chamber: "[a]u sein de la Grande Chambre, un usage veut que le « juge national » ne soit jamais le rapporteur de l'affaire" (Costa 2017: 161, footnote 9). The importance of being familiar with the national legal system of the State involved in the case at issue is highlighted by former President Jean-Paul Costa (2017: 154), who states that when the task of judge rapporteur is performed by the national judge, then his or her role is simpler, because "il connaît bien les traditions et le système de son pays, souvent même mieux que le juriste chargé de l'assister, même si celui-si ou celle-ci a la même nationalité, car souvent le juriste, s'il fait carrière à la Cour, peut avoir quitté son pays depuis longtemps". Costa (2017: 157) also stresses the fundamental role played by the national judge in preserving the image and credibility of the Court: "il peut et doit expliquer, lors du délibéré, les particularités et les raisons historiques de telle ou telle règle ou institution de son pays, évitant ainsi, parfois difficilemant, les contre-sens et les malentendus. Un arrêt contenant des erreurs sur le droit national est peu credible et nuit à l'image de la jurisdiction".

1.7.2 Third-party intervention

Article 36 of the Convention provides for three types of intervention in proceedings before a Chamber or the Grand Chamber by third parties. The first type, i.e. "intervention as of right" (Schabas 2015: 791), is provided for in paragraph 1, which establishes that a Contracting State one of whose nationals is an applicant has the right to submit written comments and to take part in hearings. The second type, i.e. "intervention with leave" (Schabas 2015: 792–94), is set forth in paragraph 2 of the same Article and entitles the President of the Court to invite, in the interest of

the proper administration of justice, any Contracting Party which is not a party to the proceedings or any person concerned who is not the applicant to submit written comments or take part in hearings. Finally, the third type is enshrined in paragraph 3, which establishes that the Council of Europe Commissioner for Human Rights may submit written comments and take part in hearings.

The detailed account of the procedure to be followed for a third party to be able to intervene in the proceedings before a Chamber or the Grand Chamber is considered unnecessary for the purposes of this volume. The reader is thus referred to Rainey et al. (2017: 26), Schabas (2015: 788–795), and Zwaak et al. (2018: 176–179). However, it must be borne in mind that the intervention of a third party may leave its traces in the text of the judgment delivered by the Court, as is discussed in Section 3.4.

1.7.3 Decision on the merits

If an application is declared admissible, the relevant decision is communicated by the Registrar to the applicant, the Contracting Party (or Parties) and any third party involved. The next step requires the examination of the merits of the case. However, it should be pointed out here that the ECtHR encourages, at any stage of the proceedings, a confidential "friendly settlement of the matter on the basis of respect for human rights as defied in the Convention and the Protocols thereto" (Article 39(1) of the Convention) to be conducted through the Registrar (Keller et al. 2010). In this respect, the ECtHR reports that, between 1999 and 2009, 3,381 applications were struck out of its list of cases following either a friendly settlement or a unilateral declaration by the respondent State, while in the same period approximately 344,000 applications were allocated to a judicial formation (European Court of Human Rights 2010: 70).

If no friendly settlement can be reached, then the merits of the case must be examined by a Chamber or, in case of referral or relinquishment, by the Grand Chamber. The procedure before the ECtHR is largely a written procedure, and oral hearings are held in a small minority of cases. To examine the merits, the Court first needs to establish the facts, but since in most cases this has already been done by domestic courts, the ECtHR's task is "limited to examining these facts to assess compliance with the Convention" (Rainey et al. 2017: 27). If needed, the Chamber may obtain evidence to clarify the facts, carry out further investigations, and hear witnesses and experts.

Once a decision on the merits has been reached, the Chamber delivers a judgment, which becomes final: "(1) when the parties declare that they will not request that the case be referred to the Grand Chamber; or (2) three months after the date of judgment, if reference of the case to the Grand Chamber has not been requested; or (3) when the panel of the Grand Chamber rejects the request to refer the case to the Grand Chamber" (van Dijk et al. 2006: 208).

What has been illustrated so far refers to Chamber proceedings, i.e. to cases heard by a judicial formation composed of seven judges within one of the ECtHR's five Sections. The procedure followed in Grand Chamber proceedings, in which the most difficult and complicated cases are generally heard, is usually more complex as compared to Chamber proceedings. The composition of the Grand Chamber also reflects the severity and relevance of the cases discussed: indeed, it is made up of seventeen judges and at least three substitute judges (Rule 24, Rules of Court), including the Court's President and Vice-Presidents, the Section Presidents, and the national judge.

As mentioned above, the Grand Chamber cannot be seized directly, but has competence with regard to both inter-State and individual applications in cases of referral and relinquishment of jurisdiction (Articles 30 and 43 of the Convention). Furthermore, the Grand Chamber has also competence to decide in two other circumstances: first, when issues regarding Contracting Parties that refuse to abide by the Court's final judgments are referred to it by the Committee of Ministers in accordance with Article 46(4) (Article 31(b) of the Convention), and second, when requests for advisory opinions on legal questions concerning the interpretation of the Convention and its Protocols must be considered (Article 47 of the Convention, see also Schabas 2015: 874–883).

Relinquishment of jurisdiction is regulated by Rule 72 of the Rules of Court and occurs in two cases (Article 30 of the Convention), namely either when a case pending before a Chamber raises a serious question affecting the interpretation of the European Convention on Human Rights or its Protocols or when the resolution of a question before a Chamber may lead to a result that is inconsistent with a judgment previously delivered by the Court (Zwaak et al. 2018: 204). In both circumstances, one of the parties to the case must not have objected in accordance with paragraph 4 of the same Rule 72.

On the contrary, referral to the Grand Chamber (Article 43 of the Convention and Rule 73 of the Rules of Court) is possible within a period of three months from the date of the judgment of the Chamber, i.e. before the judgment becomes final. In this period, any party to the case may request that the case be referred to the Grand Chamber, but only in exceptional cases, i.e. when the case raises a serious question affecting the interpretation or application of the European Convention on Human Rights or its Protocols or a serious issue of general importance. The party's request is subject to examination by a panel of five judges of the Grand Chamber solely on the basis of the existing case file. If the case is referred to the Grand Chamber, then the panel of judges does not include any of the judges who decided on the case in the Chamber which first examined the case.

When a case reaches the Grand Chamber, its President designates the judge rapporteur(s) (one for individual applications and more than one for inter-State applications). As seen above, the judge rapporteur of the Grand Chamber never

corresponds to the national judge elected in respect of the respondent State. As in Chamber proceedings, Grand Chamber proceedings are mainly in writing, but oral proceedings may also be held. Although a case reaches the Grand Chamber after having been examined by a Chamber, the Grand Chamber must assess the facts from scratch and deal with the case afresh. The Grand Chamber may also re-examine objections to the admissibility of an application. Therefore, judgments delivered by the Grand Chamber sometimes address the admissibility of the application before proceeding to the merits of the case.

1.7.5 Binding force and execution of judgments

Final judgments delivered by a Chamber or the Grand Chamber are binding on the respondent State(s) concerned, but are not "directly enforceable in a manner similar to that of judgments of domestic courts" (Schabas 2015: 861). Contracting States have discretion to decide how to abide by the Court's judgments, but this is generally done by either legislative or administrative amendments to national legislation.

The responsibility for supervising the execution of the Court's judgments lies with the Committee of Ministers of the Council of Europe. To fulfil this obligation and supervise the terms of friendly settlements, the Committee of Ministers adopted a set of Rules (see Committee of Ministers of the Council of Europe 2006/2017). In fact, the Committee of Ministers performs various tasks: (i) it invites the Contracting Parties found in violation of the ECHR to inform it of the measures which they have taken or intend to take in consequence of the judgment; (ii) it examines whether any just satisfaction awarded by the Court has been paid, including default interest; (iii) it verifies whether individual measures have been taken to ensure that the violation has ceased and that the injured party is put, as far as possible, in the same situation as that party enjoyed prior to the violation of the Convention; and (iv), it verifies whether general measures have been adopted, preventing new violations similar to that or those found or putting an end to continuing violation (Committee of Ministers of the Council of Europe 2006/2017: Rule 6).

Now that the historical background and the functioning of the European Court of Human Rights and of its Grand Chamber in particular have been illustrated, the time has come to delve into the specificities of the ECtHR's linguistic regime, which are explored in Chapter 2.

2 The European Court of Human Rights and its language regime

The European political, economic and legal scenario is characterised by the presence of various supranational and international organisations. To guarantee a proper functioning, these organisations have always faced and tried to solve challenging linguistic problems in different ways. The purpose of this chapter is to shed light on the solution adopted by the European Court of Human Rights to overcome the challenges posed by the variety of official languages of the member States of the Council of Europe.

2.1 ECtHR's official languages

The language regime of the European Court of Human Rights can be said to have failed to attract much academic interest, as is well summarised in Weston's observation (2010: 77) that "[m]any people in Europe know about the European Court of Human Rights, but probably few of them have given any thought to the fact that an international court has to deal with the practical problems of language(s) across frontiers – translation – as well as law". When comparing the European Union and the Council of Europe, the organisation from which the ECtHR has derived its language regime, it is impossible not to agree with Weston (1988: 679) that "[u]nlike a number of other international organisations, the Council of Europe has the considerable economic advantage of having only two official lan-

guages – English and French". With its forty-seven member States, the Council of Europe is "the widest organization bringing together all European democracies" (Turner 2013: 37), but it has only two official languages, as established in Article 12 of its Statute[1], which also provides that "[t]he rules of procedure of the Committee of Ministers and of the Consultative Assembly shall determine in what circumstances and under what conditions other languages may be used".

Founded under the auspices of the Council of Europe, the ECtHR, based in Strasbourg, adopted a language regime identical to the one in force at the Council. According to Weston (2005: 448), such a language regime does not make the ECtHR "in any official sense a multilingual institution", though it certainly is a multinational institution. Despite the fact that the language regime of the Council of Europe – and thus of the ECtHR – has remained unchanged over time, the way in which the two official languages are used by the ECtHR has been modified since the establishment of the Court in 1959. The gradual gathering of momentum by the Convention system has led to a "Court which has greatly advanced human rights in Europe and elsewhere", but is also "inundated by the inflow of applications", which makes it "a victim of its success" (Directorate General of Human Rights and Rule of Law – Council of Europe 2014: 77). Indeed, all judgments and decisions were originally translated from English into French and vice versa, since "[a]t the Strasbourg Court […], judgments may be drafted in either English or French" (Weston 2005: 449). However, the increasing number of applications and thus of decisions taken by the ECtHR has brought about an increasing need for translation. Considering that "in the old Court all judgments were delivered in both English and French and the relevant drafts were translated at all stages" (Weston 2010: 77) and that the translation work of the ECtHR used to be "split between the Council of Europe's central translation service (which handled the non-confidential material only) and the two native English-speaking and two French-speaking lawyers in the Court's Registry" (Weston 2005: 448, footnote 6), the translation workload became almost unsustainable. Therefore, "in 1986 a request by the Registry for the creation of two posts of senior translator (one into English and one into French) was granted, and since 1987 further posts have been created to cope with the ever-growing workload" (Weston 2010: 77). At the time of writing, the Language Department, which is coordinated by the head of the Language Department, consists of two divisions, i.e. the French Language Division, with five translators, one reviser and four language checkers, and the English Language Division, with four translators, two revisers and nine language checkers. However, not all translation work is done in-house: documents that are not confidential, such as the referral request and the (third) parties' observations, are usually outsourced (regardless of the source language), while confidential documents are translated internally (Brannan 2018: 176– 177).

1 Statute of the Council of Europe, London, 5th May 1949, available at https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680306052 (accessed 10/11/2017).

Although the ECtHR has always had only two official languages, in the context of the 1998 reform a proposal was made for the inclusion of a third official language, i.e. Russian. This change in the language regime of the Court would have facilitated communication and the dissemination of ECtHR case-law in post-Soviet countries. However, this proposal did not get far, especially for fear that other States might make similar requests (Brannan 2009: 27; Cohen 2016: 506; Malinverni 2000: 543). Therefore, no other official language has been added to English and French, despite the ECtHR's interest in disseminating its case-law in other languages, which is confirmed by the major investments in translation in non-official languages (see Section 2.6). Before discussing the role of translation in non-official languages, however, a description of how the Court has regulated the use of English and French – as well as other languages, when need be – is provided below. In this regard, it is interesting to notice that while much has already been written on both the European Convention on Human Rights and the procedure to be followed to bring a case to the ECtHR[2], the same abundance of literature cannot be found concerning the internal working practice of the ECtHR[3], especially as regards the use of languages for the drafting of ECtHR judgments and decisions. The same can also be said of the use of languages by judges in the decision-making process. The literature available on the subject is relatively scarce and produced mainly by (former) ECtHR's personnel, from judges to registrars and employees of the language divisions[4].

2.2 ECtHR's official languages and translation in the Rules of Court

The use of languages at the ECtHR is provided for in Rule 34 of the Rules of Court, which are the rules adopted by the ECtHR itself to regulate all the practical aspects related to the Court's procedure. These aspects range from the internal organisation of the Court (e.g. judges, Registry, composition of Sections and Chambers) to the actual procedure before the Court (e.g. lodging of applications, admissibility, hearings).

Rule 34 sets forth that "[t]he official languages of the Court shall be English and French". However, Rule 34 also provides for cases in which other languages may be used. In particular, this Rule specifies the circumstances under which applicants and Contracting Parties are allowed to use their own language. While the general

2 See, for instance, Arold (2007: 41–65), Council of Europe (2014), Tochilovsky (2008), Marguénaud (2012), and Berger et al. (1999).

3 In this regard, see, for instance, Costa (2017).

4 The main authors who have published on the working method at the ECtHR are Vincent Berger, former Jurisconsult of and former Section Registrar at the ECtHR, James Brannan, Senior Translator at the ECtHR, Lech Garlicki and Giorgio Malinverni, former Judges of the Court, and Martin Weston, former Head of the English Language Division in the Registry of the Court. (See references below.)

rule requires the use of the Court's official languages, applicants may communicate with the Court and submit their application and oral or written submissions in the official language of a Contracting Party and the President of the Chamber may grant leave for the continued use of this language (Rule 34, § 3(a)). In this case, translation is mentioned for the first time in the Rules of Court. In particular, the Rule specifies that "the Registrar shall make the necessary arrangements for the interpretation and translation into English or French of the applicant's oral and written submissions respectively, in full or in part, where the President of the Chamber considers it to be in the interests of the proper conduct of the proceedings" (Rule 34, § 3(b)). However, the applicant may be exceptionally required to "bear all or part of the costs of making such arrangements" (Rule 34, § 3(c)). The possibility to lodge an application in a language other than English or French affirms a fundamental democratic principle, since it grants applicants equal access to the ECtHR, regardless of their mother tongues (see also Brannan 2018: 170–171).

On the other hand, Contracting Parties which are parties to the case are not considered as vulnerable to discrimination as individual applicants due to a lack of knowledge of either English or French. Therefore, they are subject to more restrictive rules. They are expected to use one of the Court's official languages both to communicate with the Court and to send oral and written submissions, while they may be granted leave to use one of the Contracting Party's official languages for oral and written submissions by the President of the Chamber (Rule 34, § 4(a)). In such a case, it is the responsibility of the requesting Party "(i) to file a translation of its written submissions into one of the official languages of the Court within a time-limit to be fixed by the President of the Chamber. Should that Party not file the translation within that time-limit, the Registrar may make the necessary arrangements for such translation, the expenses to be charged to the requesting Party; (ii) to bear the expenses of interpreting its oral submissions into English or French. The Registrar shall be responsible for making the necessary arrangements for such interpretation" (Rule 34, § 4(b)).

Translation is also an integral part of Rule 34, § 4(c), under which "[t]he President of the Chamber may direct that a Contracting Party which is a party to the case shall, within a specified time, provide a translation into, or a summary in, English or French of all or certain annexes to its written submissions or of any other relevant document, or of extracts therefrom". Under Rule 34, § 4(d), the same shall apply to third party intervention regulated by Rule 44 and to the use of a non-official language by a third party. Furthermore, "[t]he President of the Chamber may invite the respondent Contracting Party to provide a translation of its written submissions in the or an official language of that Party in order to facilitate the applicant's understanding of those submissions" (Rule 34, § 5).

As regards witnesses, experts or other persons appearing before the ECtHR, they may use their own language if they do not have sufficient knowledge of either English or French, and the Registrar shall make the necessary arrangements for interpreting or translation (Rule 34, § 6).

The ECtHR's language policy reflects what is well summarised by Brannan (2009: 27):

> La langue ne doit pas constituer un obstacle à l'accès effectif à la justice. Il serait parfois trop onéreux pour un requérant de faire traduire ses observations à ses propres frais ou de payer un interprète lors d'une audience. Par contre, les gouvernements peuvent plus facilement se faire assister par des juristes maîtrisant l'anglais ou le français.

Malinverni (2000: 545–546), in turn, expresses himself in the same sense:

> Cette solution […] paraît raisonnable. En effet, même si plusieurs Etats d'Europe centrale et orientale se trouvent dans une situation financière difficile, l'ont voit mal que le Conseil de l'Europe doive, pour cette seule raison, prendre à sa charge les frais de l'ensemble des Etats, y compris de ceux qui sont parfaitement en mesure de les assumer eux-mêmes.

Translation is also explicitly mentioned in Rule 70, which provides for the making of the verbatim record of a hearing by the Registrar under the President of the Chamber's direction. This record must include the composition of the Chamber, a list of those appearing before it, the text of the submissions made, questions asked, and replies given, and the text of any ruling delivered during the hearing. Given that all or part of the verbatim record may be made in a non-official language, the Registrar shall arrange for its translation into one of the official languages (Rule 70, § 2). A similar provision also applies to Rule A8 in the Annex to the Rules concerning investigations, which provides that "[a] verbatim record shall be prepared by the Registrar of any proceedings concerning an investigative measure by a delegation" (§ 1), and that if such verbatim record is entirely or partially "in a non-official language, the Registrar shall arrange for its translation into one of the official languages" (§ 2).

However, linguistic issues which require translation also emerge elsewhere in the Rules of Court. Rule 9A provides for the Court's Bureau, whose task is "to assist the President in carrying out the functions of the office with respect to the Court's work and administration" (Schabas 2015: 683) and which is composed of the President of the Court, the Vice-Presidents of the Court and the Section Presidents. § 7 of the same Rule sets forth that "[a] record shall be kept of the Bureau's meetings and distributed to the Judges in both the Court's official languages", which means that the record needs to be translated from French into English or vice versa.

Rules 57 and 76, on the other hand, regulate the language of ECtHR's decisions and judgments respectively. They provide that all decisions and judgments delivered by a Chamber must be given in either English or French, unless the Court decides that a decision or a judgment is given in both official languages, thus suggesting the possible presence of translation. Further confirmation is provided by §§ 2 of the same Rules, which lay down that the publication of such decisions and judgments in the official reports of the Court, i.e. the official col-

lection of the ECtHR's leading judgments, decisions and advisory opinions, shall be done in both official languages of the Court, therefore requiring translation.

2.3 Languages and translation at the ECtHR

Although the use of languages and translation are covered in a relatively limited number of Rules of Court, they play a fundamental role in the daily practice of the ECtHR. Such a role is aptly acknowledged by Popović, a judge of the Court in the period 2005-2015. He derives the ECtHR's vital need for translation from the comparative method adopted by the Court to unravel the intricacies of the Contracting States' legal systems and to apply the law established by the Convention. What Jean-Paul Costa (2017: 157), President of the ECtHR from 2007 to 2011, encapsulates in a single statement, i.e. "[l]a Cour se nourrit de droit comparé", is linked to the unavoidable need for translation in the following passage by Popović (2007: 373):

> La pluralité des ordres juridiques des États membres exige inévitablement l'appel au droit compare et à l'application de la méthode comparative.
> En remplissant sa tâche et au cours de ses travaux quotidiens, la Cour doit faire face à la nécessité de comprendre une certaine règle ou institution d'un ordre juridique donné, et ensuite de l'interpréter, afin de pouvoir mettre en œuvre une règle de la Convention. Cela se fait en traduisant un texte vers l'une des deux langues officielles de la Cour. C'est bien la raison pour laquelle la traduction juridique représente un travail de première importance parmi les activités quotidiennes de la Cour, sur laquelle s'érige l'édifice de la protection des droits de l'homme.

The same idea is stressed repeteadly by Popović, for example in this other assertion: "[l]a traduction fait partie de ce qu'on peut appeler la technique journalière de la Cour" (Popović 2007: 373–374). Although the comparative method in ECtHR's everyday practice has received criticism, since it has been considered "dangerous in that it may lead the Court to draw inspiration from legislation and practices which could worsen and not improve the protection of individuals" (Ost 1992: 308), it has also been recognised that "[t]he Court cannot adopt an entirely autonomous interpretation for fear of detaching itself from legal reality nor can it simply adopt an international consensus view which is difficult to discover and which may be below the standard required for the protection of individual rights" (Ost 1992: 308). The comparative method is closely related to the methods adopted by the Court for the interpretation of the European Convention and goes beyond the scope of this volume, but it is interesting to notice how an interpretative method adopted by the Court and discussed by both former judges of the Court and legal scholars brings to the fore practical aspects that concern the use of one or more languages and the need for translation.

As mentioned in relation to the submission and handling of applications, individual applicants must send their application to the ECtHR's Registry. The Registry is "the body of staff that provides the Court with legal and administrative support in its judicial work" and "is made up of lawyers, administrative and technical staff and translators" (European Court of Human Rights 2014b: 4). It currently counts about 640 staff members (European Court of Human Rights: n.a.), who are "highly qualified lawyers, linguists, administrative and technical staff from the various Contracting States, acting independently in the service of the judges, few of whom could fail to appreciate the invaluable assistance they receive" (Dollé and Ovey 2012: 544, footnote 2).

Applicants can apply to the ECtHR in one of the two official languages of the Council of Europe, i.e. French and English. However, they can also apply in an official language of any Member State of the Council of Europe, which is what happens in most cases. As seen above, individual applications and inter-State applications that meet the admissibility criteria and that are allocated to a Chamber are assigned to a case lawyer, who must have a command of the language of the application and the legal system of the State involved. For every case, one or more judge rapporteurs are then designated (Rules 48 and 49 of the Rules of Court) who examine the application and have slightly different functions depending on the application being an inter-State or an individual application. However, in both cases the judge rapporteurs submit reports on admissibility, drafts and other documents and may assist the Chamber (or the Committee) and its President in carrying out their functions. Under Rule 50, also in Grand Chamber proceedings one or more judge rapporteurs are designated by the President of the Grand Chamber. Judge rapporteurs must have a thorough knowledge of the legal system(s) of the State(s) involved in the case. However, their linguistic skills are equally relevant: "[l]es connaissances linguistiques devront également être l'un des critères du choix du juge rapporteur. Celui-ci devra d'abord avoir une maîtrise suffisante de la langue de l'Etat défendeur" (Malinverni 2000: 546, but see also Cohen 2016: 504–506 for a discussion of the knowledge of English and French by ECtHR lawyers).

Linguistic skills are fundamental also in the choice of the Registry lawyer. The judge rapporteur and the Registry lawyer work closely together and their relationship must be based on mutual trust: "la confiance, au sein de ce tandem que constituent à Strasbourg le juge rapporteur et le juriste qui travaille avec lui sur une affaire, est indispensable" (Costa 2017: 155). Any case dossier is first assigned to a Registry lawyer "en fonction de sa familiarité avec la matière et de ses connaissances linguistiques et juridiques" (Costa 2017: 153), because in most cases neither the applicant nor the respondent State are English- or French-speaking.

As Weston (2005: 449) pointed out, "all decisions[5] in cases in which the respondent member State is not an English- or French-speaking one […] are drafted in a language which is not that of the national legal system and thus incorporate a substantial amount of 'covert' translation from a third language". Brannan (2018: 178) refers to this language as a "'hidden' third (non-official) language". Furthermore, in most cases the drafters are not English- or French-native speakers (Weston 2005: 457), which implies that draft judgments usually undergo a linguistic check during the drafting process.

As concerns the role of the Registry, Berger (2006: 16) highlights "la richesse et la variété des missions confiées au greffe de la Cour" and stresses that "[l]e greffe fournit un soutien logistique, intellectuel et rédactionnel à la Cour et à ses membres". Here the relevance in the drafting process emerges clearly. Berger identifies three main tasks in which the drafting comes to the fore: the preparation of the case, the writing of draft decisions and judgments, and the drafting of the final decisions and judgments. During the preparation of the case, the Registry lawyer writes a report, under the supervision of the judge rapporteur, on the procedure and the facts, but also on the relevant law (Berger 2006: 13–14). Even though the actual drafting of either a decision or a judgment comes at a later stage, it is important to remember that the language of the relevant national law may very likely not be English or French. This may prove particularly burdensome when it comes to translating the provisions of national law – be they constitutional, legislative or jurisprudential – into the official languages of the ECtHR, especially because they will later appear in the decisions or judgments of the Court (Berger 2006: 13; Brannan 2018: 178). The draft of the decision or judgment on both admissibility and the merits is prepared by case lawyers, who always act "with the clearance of the head of the unit and of the Section Registrar/Deputy Registrar" (Garlicki 2009: 393), or, rather, by the Registry lawyer. Indeed, as Berger (2006: 14) exquisitely puts it, "[l]a plupart du temps, le jurist ou référendaire chargé du dossier est la « plume » du juge rapporteur". In Dollé and Ovey's words (2012: 544, footnote 2), "[i]t is a little acknowledged fact that it is actually the members of the Court's Registry who draft most of the Court's texts". The draft is then submitted to the judge rapporteur for acceptance. If the judge rapporteur is ready to sign the draft, it is submitted to the deliberation of the Section (or Grand Chamber).

Given that all judgments are adopted by a formal vote and that unanimity is not a *sine qua non* for a verdict to be reached, under Rule 74, § 2, of the Rules of Court "[a]ny judge who has taken part in the consideration of the case by a Chamber or by the Grand Chamber shall be entitled to annex to the judgment either a separate opinion, concurring with or dissenting from that judgment, or a bare statement of dissent". In this case, the text of the separate opinion is written by the dissenting or concurring judges themselves.

5 Note that Weston uses "decisions" as a superordinate of admissibility decisions and judgments.

2.4.1 Specific features of Grand Chamber judgments

In Grand Chamber proceedings, "[t]he case is, at first, prepared by the Judge Rapporteur (who is always a different person from the national judge), assisted by an experienced Registry lawyer" (Garlicki 2009: 394). While oral hearings are rare at the Section level (Garlicki 2009: 394), they are a rule in Grand Chamber proceedings. Oral hearings are "followed by the first deliberation, during which the JR [Judge Rapporteur] presents his/her oral report and initial proposal as to the judgment" (Garlicki 2009: 394). After the national judge has taken the floor, the discussion is opened and led by the President, who appoints a drafting committee after the vote has been held. This committee always includes both the judge rapporteur and the national judge and is responsible for adopting and submitting the full draft of the judgment. However, the text is usually drafted by the Registry lawyer and discussed with the judge rapporteur and the Registrar assigned to the case. In a similar way as in Chamber cases, after the judge rapporteur accepts the text, the drafting committee discusses it, accepts it and submits it to the second deliberation. During the second deliberation, the judgment is read out and accepted or amended by the Grand Chamber. In rare cases, the draft may be returned to the drafting committee for more significant or "invasive" amendments and then submitted for a third deliberation (Garlicki 2009: 394).

2.5 The role of translation in drafting ECtHR case-law

As seen so far, the drafting of decisions and judgments can be considered a collegial activity in which certain professional profiles, especially Registry lawyers and judge rapporteurs, have a more prominent role than others. Although the drafting itself seems more of a customary practice than an activity regulated by the Rules of Court (indeed, no specific Rule provides for these practicalities), some information on it can be found in the literature. Translation, on the other hand, plays a rather marginal role in the Rules and seems to have been almost completely neglected in the literature.

Translation from English into French and vice versa is provided for by the Rules of Court as regards the lodging of the application and of oral and written submissions. However, the Rules of Court do not mention the details of the translation process or those of the drafting process. There is, for instance, no mention of the translator as a professional profile involved in the production of judgments and decisions. From a historical perspective, two facts are worth recalling in this regard. The first is that the ECtHR had no internal translators until 1987 (see Section 2.1). The second is that judgments and decisions were drafted in both English and French until 1998. Since then, under Rule 76 of the Rules of Court, all judgments are given either in one or the other language, unless the Court decides otherwise. In these cases, which represent a minority, translation is needed

and, when judgments are translated, "usually because of their significance for case-law, the translation will be produced before delivery when both language texts are to be authoritative (as is the case for Grand Chamber judgments), or otherwise after delivery purely for publication on the on-line HUDOC database and more rarely in printed reports" (Brannan 2013: 910). However, it should not be forgotten, especially for the purposes of a linguistic analysis of case-law such as that presented in this book, that as regards judgments, "il convient de distinguer la langue dans laquelle ils sont rendus et celle dans laquelle ils sont publiés" (Malinverni 2000: 547).

2.6 The role of translation in disseminating ECtHR case-law

While the role of translation in the drafting of ECtHR judgments and decisions and its most practical aspects seem to have gone unnoticed both in the ECtHR's Rules of Court and in academic literature, the same cannot be said about the role of translation in the dissemination of the Court's most relevant cases. An important translation project and a number of publications that accompanied it confirm the great importance attributed by the ECtHR to the translation of key judicial texts into non-official languages.

In the years 2010, 2011 and 2012, three high-level conferences on the future of the European Court of Human Rights were held in Interlaken, İzmir, and Brighton. In line with the resulting declarations, one of the Court's core objectives was the improvement of both the accessibility and the understanding of leading Convention principles and standards, which would facilitate the implementation of these principles and standards at national level. This could be achieved through clear and consistent case-law. To be more accessible and more easily understandable, ECtHR case-law needed to be translated also into non-official languages. The European Court of Human Rights (2014a: 3) itself acknowledged that:

> Ensuring that the Court's leading cases are made available in all official languages of the member States would enable judges, prosecutors, legal practitioners, public officials and civil society to better understand the leading Convention principles, thereby reinforcing the principle of subsidiarity. In addition, such translations would be of assistance when considering the conclusions to be drawn from a judgment finding a violation of the Convention by one State, where the same problem of principle exists in other member States as well.

For this reason, in April 2012 the Registry's Case-Law Information and Publications Division launched an ambitious four-year project entitled "Bringing Convention standards closer to home: Translation and dissemination of key ECHR case-law in target languages", which was supported by the Human Rights Trust Fund (HRTF) and ended in March 2016. The aims of the project were to commission the translation of key ECtHR case-law and ensure its dissemination to le-

gal professionals and civil society in "those member States where neither of the Court's official languages is sufficiently understood" (European Court of Human Rights 2015: 4), i.e. Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Republic of Moldova, Montenegro, Serbia, The former Yugoslav Republic of Macedonia, Turkey, and Ukraine.

With a total funding of 1.6 million euros, the HRTF allowed the Court's Registry to outsource, on a framework-contracting basis, the translation of ECtHR case-law into twelve target languages to 70 freelance translators who had passed the required test. This translation project produced 3,500 translations of case-law of Europe-wide significance, which mainly included the cases selected by the Court's Bureau for publication in the official series *Reports of Judgments and Decisions* (about 30 cases per year). Apart from these translations, the translation project also served as "a catalyst for an ongoing inventory and sharing of case-law translations produced in member States" (European Court of Human Rights 2016: 7). Indeed, in addition to the translations commissioned by the HRTF, the Court's Registry invited Governments, judicial training centres, associations of legal professionals, NGOs, publishers, and other partners to provide it with any case-law translations to which they had the rights. In this way, the Registry collected about 17,000 translations in around 30 languages other than English and French, which were then made available through the HUDOC portal. The considerable number of non-official translations provided by Governments and other partners gives further confirmation to the strong interest in the principles and standards established in the Convention and in ECtHR case-law and in the need for their dissemination in languages other than English and French. Furthermore, the results of stakeholder surveys carried out in 2013 and 2016 are encouraging, since they both showed that 90% of the respondents were satisfied with the quality of the translations and that 80% and well over 90% of respondents respectively had already had the opportunity to use the translations in legal practice, education and training (European Court of Human Rights 2014a: 2, 2017a: 2).

However, it is also worth noting that the bodies interested in the translations of ECtHR case-law also have an interest in other types of textual material related to the Court for their own needs, such as case-law guides, factsheets, legal summaries, or the Rules of Court. For this reason, they have commissioned the non-official translations of this material or produced them themselves and then made them available on the Court's website[6]. Furthermore, languages also play a relevant role in improving the user-friendliness of the HUDOC interface, which is now available not only in the two official languages, but also in Turkish, Russian, and Spanish. In order to facilitate communication and knowledge dissemination through social media, in 2015 the Court's Registry launched a new

6 See, for instance, the Rules of Court available in Italian, Russian, and Turkish at https://www.echr.coe.int/Pages/home.aspx?p=basictexts/rules&c=#n1347875693676_pointer, and the practice directions available in 30 languages at https://www.echr.coe.int/Pages/home.aspx?p=basictexts/rules/practicedirections (both accessed 05/06/2018).

multilingual Twitter account[7] in addition to the existing account administered by the Press Unit[8]. The latter account is used to publish tweets containing direct links to the Court's press releases available on the HUDOC portal, while the new account is used to publish updates on the latest publications in different languages, translations added to the HUDOC database, and other information about ECtHR case-law.

Despite the substantial investment in translation into non-official languages made in the past and the fundamental role of translation in the dissemination of ECtHR case-law, the Court itself stressed, on occasion of its very first conference on its own future held in Interlaken in 2010, that "it is first and foremost the responsibility of the States Parties to guarantee the application and implementation of the Convention" (Directorate General of Human Rights and Rule of Law – Council of Europe 2014: 35). While translation is essential for fulfilling this task, the costs of translating the Court's case-law in non-official languages have never been intended to be covered on a permanent basis by the Court's ordinary budget. Under the Brussels Declaration[9], after the Court's judgments States Parties are called upon to

> promote accessibility to the Court's judgments, action plans and reports as well as to the Committee of Ministers' decisions and resolutions, by:
> – developing their publication and dissemination to the stakeholders concerned (in particular, the executive, parliaments and courts, and also, where appropriate, National Human Rights Institutions and representatives of civil society), so as to involve them further in the judgment execution process;
> – *translating or summarising relevant documents, including significant judgments of the Court, as required*; […] (Directorate General of Human Rights and Rule of Law of the Council of Europe 2015: 142, emphasis added).

What clearly emerges from this Declaration is that the future of non-official translations at the ECtHR depends on the national authorities and also on partner institutions designated in each member State to organise and carry out this activity rather than on the Court's direct investment in this field.

Chapter 2 has explored how the two official languages of the ECtHR, i.e. English and French, are used in the drafting process of the Court's case-law and the role of translation in both its drafting and dissemination. The next chapter is devoted to framing ECtHR judgments as a legal genre and illustrates the macrostructure of Grand Chamber judgments.

---

7 Available at https://twitter.com/echrpublication (accessed 04/06/2018).

8 Available at https://twitter.com/ECHR__Press (accessed 04/06/2018).

9 High-level Conference on the "Implementation of the European Convention on Human Rights, our shared responsibility", Brussels Declaration, 27 March 2015, available at https://www.echr.coe.int/Documents/Brussels__Declaration__ENG.pdf (accessed 29/06/2018).

3 Legal language and ECtHR judgments

The language used in ECtHR judgments would, without any doubt and probably without even the need to delve into the analysis of its features, be simply described as legal language. This is so for the simple fact of it being used in judgments by an international court. However, this intuitive guess is not enough when a more thorough linguistic understanding of ECtHR judgments is pursued. Indeed, to understand the role played by the ECtHR judgments in the vast landscape of legal language and its peculiarities, legal language must first be characterised through the lens of those who have already described it. For this reason, an overview of the main classifications proposed by scholars in different academic disciplines is provided here.

The range of available classifications is wide because of the multiple perspectives that can be adopted when observing the interaction between language and law. For instance, some scholars concentrate on legal language, others on legal genres, while others still on legal texts. The terminological uncertainty is well accounted for in Kurzon (1997: 123), who acknowledges that a "sea of terms" has been used to classify the language that is connected to the law, such as "sublanguage", "variety", "register", "genre", and "discourse", and that even these terms may be assigned different meanings by different scholars. It will suffice to recall the following passage by Cao (2007: 9), where "variety" is used to explain what "register" is in relation to "legal language":

> Legal language is a type of register, that is, a variety of language appropriate to different occasions and situations of use, and in this case, a variety of language appropriate to the legal situations of use. Legal texts refer to the texts produced or used for legal purposes in legal settings.

By looking at how the different terms have been used, Kurzon's final conclusion is that, among all the terms available, "legal discourse" should be the preferred superordinate term.

Another problematic aspect is that legal language and legal texts are intrinsically linked to the legal system they are used in, or at least to the legal family they belong to. Therefore, a distinction should be made between general classifications and system- or family-bound classifications. Furthermore, as any other form of communication, legal discourse is a multidimensional phenomenon in which several factors are at play. Thus, multiple classification criteria exist and the choice of one or more of them leads to different results. A survey of the various classifications developed within the field of translation studies is provided, for instance, by Valderrey Reñones (2004, cited in Gutiérrez Arcones 2015: 148), who identifies six criteria: branch of law, discursive categories, communicative situation, type of legal language, function, and genre. In what follows, a review of existing classifications in two fields, i.e. legal linguistics and translation studies, is presented. This is then followed by a description of ECtHR judgments in the light of the GENTT genre characterization template, with a particular attention to the communicative situation and the macro-structure.

3.1 Classifications of legal language in legal linguistics

Classifications of legal language have been provided by several scholars and according to diverse sets of criteria. One of the most frequently quoted classifications dates from 1965 and is found in Kalinowski (1965, cited in Tiscornia 2007: 191), who adopts one main criterion which is text-external, i.e. it does not depend on linguistic features, and corresponds to the text producer. According to Kalinowski's classification, a distinction is to be made between the "language of Law", i.e. the language used by the legislator to express a legal rule, and the "language of Jurists", i.e. the language used in legal literature and legal science. As regards the latter category, Kalinowski stresses the fact that the term "Jurists" is used to encompass whoever speaks about the law. This category also includes experts other than legal scholars (e.g. historians, sociologists, psychologists) as well as legal practitioners, such as legal counsels, judges, prosecutors, businesspeople, etc. In Kalinowski's classification, "legal language" can thus be seen as a superordinate term that includes both the language of the law and the language of jurists.

However, other criteria can be used when tracing the boundaries of legal language. In his seminal work entitled *The Language of the Law*, Mellinkoff (1963: 3)

offers an "expanded definition of the language of the law". What is of particular interest here is that, despite the seemingly all-embracing title of this work, the "language of the law" (or "law language", the second term being used as a short form by the scholar himself) is defined as "the customary language used by lawyers in those common law jurisdictions where English is the official language" (Mellinkoff 1963: 3). This means that the extension of this definition is restricted through three criteria, namely the natural language the language of the law belongs to (English), the jurisdictions where this language is used (common law jurisdictions), and the users of this language (lawyers). This definition thus implies that the language of the law comprises both the language of statute law and the language of case-law. Later in the same chapter on the characteristics of the language of the law (Mellinkoff 1963: 11–23), it emerges that the main focus is on written language, while the spoken language plays a marginal role in his volume and is restricted to the description of the historical development of legal English.

From Mellinkoff's classification it can be inferred that a single classification criterion is insufficient to provide a thorough description of legal language and that the criteria selected produce different classifications. Another classification of legal language based on multiple criteria is the one proposed by the sociologist Brenda Danet. Her starting point is the recognition that legal language, which is used in different situations by different users, can perform different functions. Danet's aim is to study the relationship between language and the functions of law in society. In her work, a definition of "legal language", which corresponds to legal English, is not provided, but two basic functions of law are acknowledged, i.e., "the ordering of human relations and the restoration of social order when it breaks down" (Danet 1980: 449), and related to legal language. By doing so, Danet is not only able to distinguish between the language used for the ordering of social relations (1980: 463ff.) and the language used in the dispute process (1980: 490), but she is also able to describe the features of language used for these two purposes in different settings. Despite recognising these two basic functions of legal language, in her visual representation of legal English, Danet (1980: 471, based on Joos 1967; see Figure 2) prefers using "situations" to "functions" and adds further classification criteria, i.e. the mode, which can be either written, spoken-composed, or spoken-spontaneous, and the style, which ranges from frozen through formal and consultative to casual.

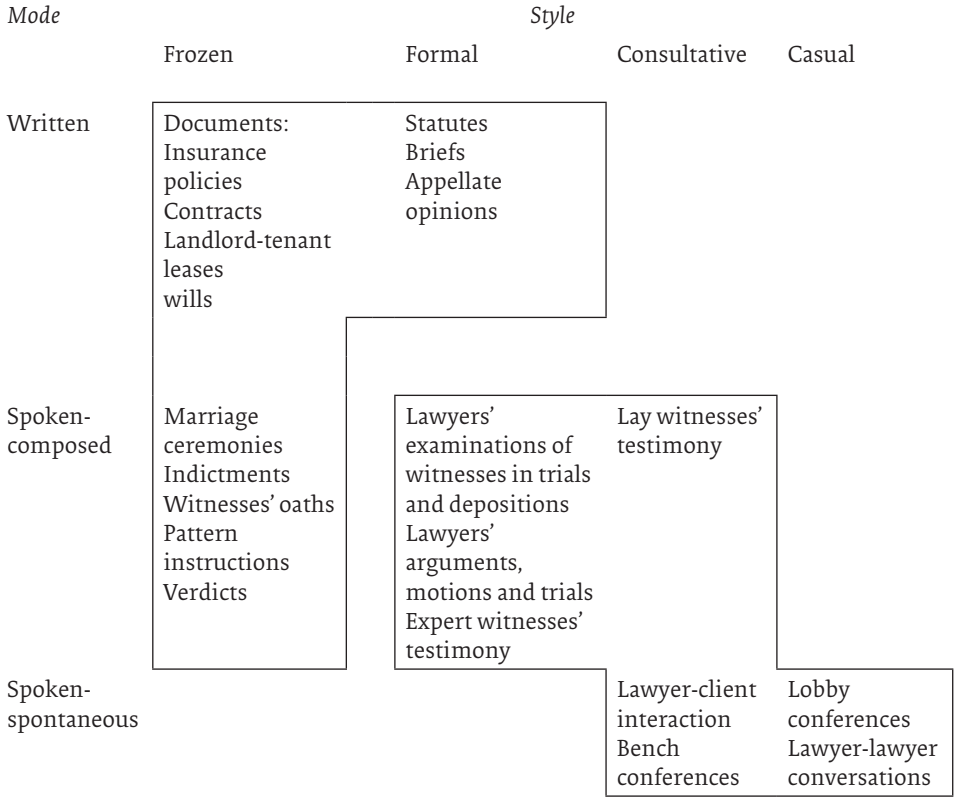

Figure 2. Danet's typology (1980: 471) of situations in which legal English is used, based on "style" and "mode".

Another attempt to classify "the language of the law" is the one made by Bhatia, whose work relies on the notion of legal genres, which can be identified by adopting multiple criteria. In Bhatia's words (1987: 227), the language of the law

> encompasses several usefully distinguishable genres depending upon the communicative purposes they tend to fulfil, the settings or contexts in which they are used, the communicative events or activities they are associated with, the social or professional relationship between the participants taking part in such activities or events, the background knowledge that such participants bring to the situation in which that particular event is embedded and a number of other factors.

By taking a closer look at this definition, it can be said that Bhatia spells out the factors allowing to distinguish one legal genre from another, while the same factors may be considered implicit in other classifications. For instance, Danet and Bhatia put the function and the purpose of legal language – which can be seen as largely overlapping notions – first, and most of the factors explicitly mentioned by Bhatia can be subsumed under "function" (e.g. the communicative setting de-

pends on the function, the relationship between the participants depends on the setting and the function, etc.).

Bhatia's classification is the most fine-grained among those presented so far. The first aspect to be emphasized is that Bhatia uses the term "language of the law" as a hypernym. This contrasts with the terminology proposed by Mellinkoff (1963), whose "language of the law" can be said to correspond to Bhatia's juridical and legislative language and to exclude other forms of legal language. Furthermore, Bhatia proposes a multi-level classification, in which the first criterion to classify legal genres is the medium and the second is the setting in which legal communication occurs. The first distinction is thus made between spoken and written language of the law. Within these two broad categories, pedagogical, academic, and professional settings are envisaged for the spoken medium, while academic, juridical, and legislative settings require the written medium. In Bhatia's classification, some of the major distinctions within the language of the law are also represented graphically (see Figure 3).

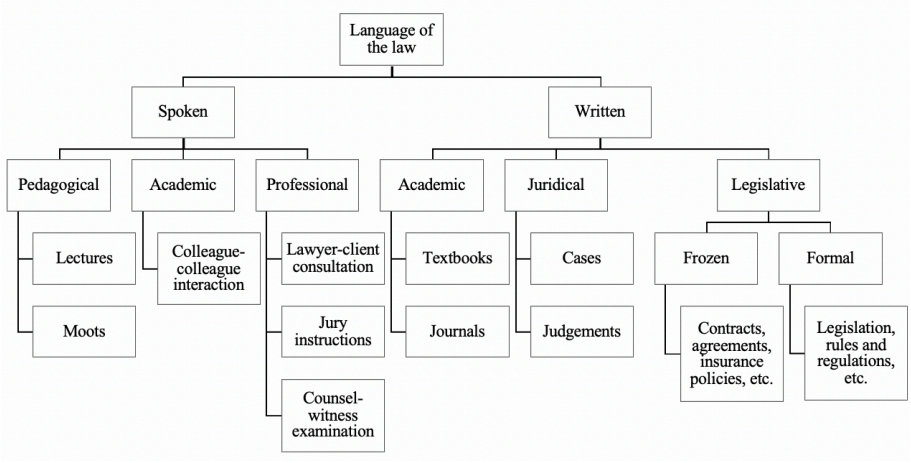

Figure 3. Bhatia's classification (1987: 227) of the language of the law.

Another essentially bipartite classification scheme is adopted by Kurzon (1989: 283), who first comments on the relationship between the "language of the law" and "legal language". (Once again, he mainly focusses on legal English.) He points out that lawyers and linguists have erroneously used the terms as synonyms. He rejects this view and offers two alternative views: according to the first one, the language of the law is included in, and is thus a sublanguage of, legal language, while according to the second view, which is the one he supports, the language of the law and legal language are to be considered separately on the basis of various pragmatic criteria. From this second perspective, the language of the law is "the language or the style used (or the sublanguage used) in documents that lay down the law, in a very broad sense" (Kurzon 1989: 283–284). The definition is thus

general enough to include both legislation and private law documents such as contracts, wills, and deeds. Legal language, on the other hand, is defined as "the language used when people talk about the law" (Kurzon 1989: 284), and is thus meant to comprise the language used in legal textbooks, lawyers' speech and correspondence, and by judges when giving their decisions. At this point, Kurzon acknowledges that it may be controversial to include judges' decisions in legal language as he defines it, since such decisions also lay down the law, especially in the common law systems where the doctrine of *stare decisis* applies. Although Kurzon admits that the judge's actions are open to multiple interpretations, he considers that the judge's main function is to declare the law rather than to create it. Consequently, for him judicial decisions are instances of legal language rather than of the language of the law.

Kurzon also recognises that criteria other than pragmatic ones may be applied to distinguish the language of the law from legal language. He therefore mentions formal, syntactic criteria that allow him to discriminate between frozen documents (e.g. contracts, wills, and deeds) and formal documents (e.g. statutes) within the language of the law. Kurzon's definition of legal language also allows him to include in this category what he calls "law talk", i.e. the "spoken language in the context of law" (Kurzon 1989: 287). Law talk is to be considered as a separate subcategory because of the specific classificatory criteria needed to analyse spoken language, and it is to be divided into spoken formal and spoken informal language. Kurzon also mentions rhetorical techniques as viable criteria to distinguish the two sublanguages, stating that "[d]ocuments in language of the law primarily do three things: command, permit and prohibit", while "[t]exts in legal language [...] have a wide variety of rhetorical techniques, as with all academic texts, especially techniques connected with argumentation" (Kurzon 1989: 288). He then argues that, by taking a broader viewpoint, the language of the law can be seen as a primary language, legal language being the metalanguage used to discuss it.

In a later work recognising, and trying to overcome, a "substantial amount of terminological uncertainty" as regards the term "legal language" (Kurzon 1997: 119), Kurzon presents his classification through a diagram, which is reproduced in Figure 4.

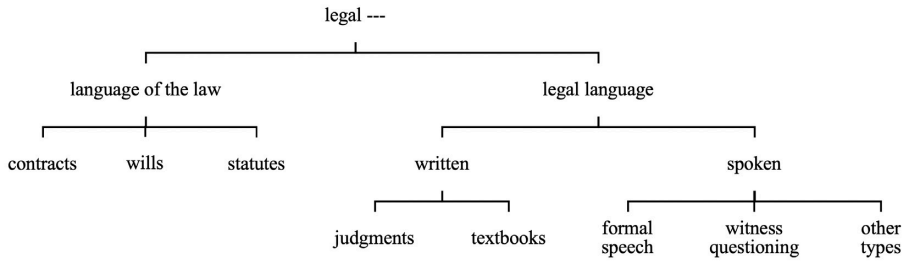

Figure 4. Kurzon's classification (1997: 120, adapted) of "legal ---".

As Kurzon himself admits, "legal language" and the "language of the law" have no defined superordinate, and the hypernym therefore corresponds to the incomplete label "legal ---". Regardless of the most appropriate term to refer to the primary node in this classification, of particular relevance for the purposes of this volume is that Kurzon is one of the first scholars to acknowledge that the features of judicial decisions make them difficult to classify. As already mentioned, given the function they perform, judicial decisions fall within legal language rather than the language of the law, but it is hard to consider them as metalanguage in the same way as textbooks, so much so that Kurzon (1989: 288) admits that "[t]here is no doubt that legal language is a metalanguage (apart from the various pragmatic considerations [...] in relation to the judge's decision)".

Another interesting classification is the one proposed by Maley (1994), who speaks about "legal discourses" rather than legal language. In her view, four legal discourses can be identified, namely judicial discourse, which includes the language of both spoken and written judicial decisions; courtroom discourse, which is "interactive language, peppered with ritual courtesies and modes of address" (Maley 1994: 13); the language of legal documents or legislative discourse, which partly corresponds to Kurzon's language of the law; and the discourse of legal consultation, which takes place between lawyer and lawyer or between lawyer and client.

A different point of view is expressed by Trosborg (1997), who mainly concentrates on written legal language, and on written legal English in particular. From her standpoint, studying the lexical and syntactic features of legal language is not enough to understand its distinctive characteristics, thus other dimensions of linguistic analysis should be taken into account. She admits that studies of pragmatic aspects and communicative functions of legal language in relation to specific domains and subdomains were gaining momentum in the late 1980s and that legal language is "a specific field of Language for Specific Purposes (LSP)" (Trosborg 1997: 15), a notion that is nowadays hardly denied. However, in contrast with Kurzon, Trosborg sees "legal language" as the superordinate category including all the sublanguages within the legal domain and the "language of the law" as one of these sublanguages. In order to distinguish one sublanguage from another within the same domain, Trosborg draws on the concept of "context of situation" and explains it in terms of field, tenor and mode in the wake of Halliday and Hasan (1989) and Hatim and Mason (1990). However, Trosborg develops a model with four dimensions: field, which corresponds to the domain/subdomain; interactional tenor, which concerns the relationship between the sender and the receiver; functional tenor, which relates to the communicative functions realized through speech acts; and mode, which corresponds to the medium used to communicate (Trosborg 1997: 18). When discussing the field of legal discourse, Trosborg (1997: 20) highlights that "[t]he language of the law is distinguished from other domains of legal language, as, for example, the language used in the courtroom, the language of legal textbooks, the language used to communicate about the law ('law language') in a formal, as well as an informal setting". She rep-

resents her classification of legal language "according to external factors pertaining to the situation of use" in the diagram here reproduced in Figure 5.

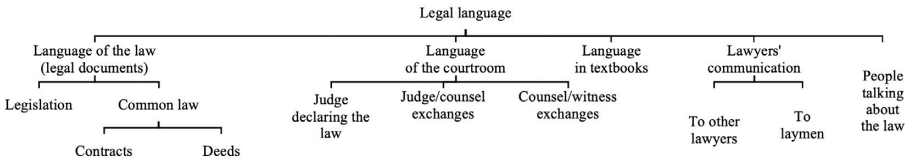

Figure 5. Trosborg's classification (1997: 20, adapted) of legal language.

However, Trosborg (1997: 24) admits that "[c]lassifying texts according to criteria such as field of discourse amounts to little more than a statement of subject matter", a classification criterion used for example by Cavagnoli (2008; see below). Furthermore, Trosborg affirms that field, tenor, and mode describe the speech situation, but in order to understand a text within a register, three functions of a text must be taken into account, namely the ideational, the interpersonal, and the textual function. Following Halliday and Hasan (1976), the ideational function relates to the "expression of content", the interpersonal function concerns "the speaker's motive in saying something [...] and the way this is realized in the particular role relationship between sender and receiver", and the textual function "pertains to the structure, cohesion, mode and medium of the text" (Trosborg 1997: 25).

Despite the fact that his seminal work is entitled *Legal language*, Peter Tiersma's (1999) book again focuses on legal English. The different types of legal language are discussed in the chapter entitled "Variation". Tiersma (1999: 133) acknowledges that legal English is not "a unitary system", or, as he puts it, that legal English is "far from uniform". Although not directly relevant to the main topic of this volume, it is worth noticing that Tiersma first takes into consideration diatopic variation by dealing with the historical development of legal English into distinct legal dialects or varieties.[1] What emerges is a major interest in the differences between national varieties of legal language used in the various English-speaking countries, such as in the UK, the USA, New Zealand, Australia, and other former British colonies. The focus is thus on the legal English used in national legal systems, while the supranational and international settings in which English native and non-native speakers communicate in English are completely neglected in his original discussion[2]. The second type of variation con-

1 Controversial as it may nowadays seem, Tiersma uses "dialect" and "variety" interchangeably.

2 In *Recent developments and additions to* Legal Language, Tiersma states that "[a]n important variety or dialect of legal English that has been developing in the past years is sometimes called International English. The English language is increasingly being used for drafting international agreements, even when neither of the parties are native English speakers or in English-language jurisdictions". http://www.languageandlaw.org/LEGALLANG/CORRECT.HTM (last updated 21/09/2011, accessed 14/08/2018).

sidered by Tiersma relates to the mode. Like other scholars before him, Tiersma distinguishes between spoken and written legal language. Despite mentioning the existence of different degrees of formality, syntactical complexity, and lexical density of the two modes, Tiersma does not indulge in a more detailed classification of legal language, save for two informal "varieties" of legal English, i.e. "telegraphic speech" and "legal slang" (Tiersma 1999: 136–139). The former "occasionally occurs in written language", such as in the form of the order following the opinion of a court or in lawyer-judge communication in courts, while the latter refers "mainly to individual lexical items or phrases". The third type of variation covered in Tiersma's analysis, which is also more central to the present research, relates to genre.

The definitions of "genre" are almost as numerous as the individual scholars who work or have worked in the field, all of whom approach the topic from a different angle. According to Tiersma (1999: 139), "genre refers to a category of composition; the members of a category usually share a particular structure as well as level of formality". By taking this definition as a starting point, Tiersma identifies three classes of documents based on their function, i.e. "operative legal documents", "expository documents", and "persuasive documents". Operative documents, such as pleadings, petitions, orders, statutes, contracts, and wills, are those that "create or modify legal relations" and do so through "legal performatives" (Tiersma 1999: 139). In terms of Danet's view, Tiersma's operative documents perform both primary functions of the law. Explanatory documents, on the other hand, "typically delve into one or more points of law with a relatively objective tone" (Tiersma 1999: 139). These can be likened to Kurzon's metalanguage. Finally, Tiersma briefly mentions persuasive documents, which include "briefs that are submitted to courts and memoranda of points and authorities" (Tiersma 1999: 141).

Of particular note is Tiersma's characterisation of judicial opinions, which represents a step forward from the difficulties of classification acknowledged by Kurzon with respect to this particular type of document. Tiersma recognises judicial opinions as instances of expository documents "to the extent that the judge expresses what the law is", but acknowledges that "opinions typically also contain a judgment or order at the end that constitutes the actual disposition of the case" and that "such an order is operative" (Tiersma 1999:139). Furthermore, Tiersma points out that judicial opinions, despite their supposed objectivity, also have a persuasive function, since "a judge actually aims to persuade the reader that her decision was correct, but the objective tone suggests that the outcome is the only rational conclusion in light of the law and the facts" (Tiersma 1999: 139).

Another scholar drawing on the concept of genre is Gotti. Despite not proposing a classification of legal language or legal genres of his own, Gotti's contribution is relevant in so far as he affirms that, just like in other specialised domains, in the legal domain there are multiple factors that determine the differences between one genre and another, such as "the communicative purposes they [genres] aim to fulfil, the settings or contexts in which they are employed,

the communicative events or activities they are associated with, the professional relationships existing between the people taking part in such activities or events, and the background knowledge of each participant", as well as "the matter they cover" (Gotti 2012: 61–63).

A yet different perspective is adopted by Gémar (2002: 167) who, rather than trying to define legal language and classifying it, starts by asking himself "Qu'est-ce qu'un « texte juridique » ?". He limits the extension of "texte" to written texts and observes that the first problem lies in the polysemy of the adjective "juridique". To solve this problem, he draws on Cornu's definition of legal discourse (2005: 21), according to which "est juridique tout discours qui a pour objet la création ou la réalisation du droit". Therefore, his classification is limited to texts that create or enforce the law (corresponding to the first function identified by Danet) and, more specifically, he takes the text producer as the criterion for his classification. The text producers he considers are the legislator, the judge, and "les gens de loi". The choice of this criterion leads him to state that "le texte juridique présente trois caractéristiques qui le distinguent des autres : il s'agit d'un texte *normatif* disposant d'un *style* et d'un *vocabulaire* particuliers" (Gémar 2002: 166, emphasis in the original).

A similar approach is adopted by Mattila (2006: 4–5), who does not provide a definition of legal language, but uses the sub-groups of lawyers (legal authors, legislators, judges, administrators, and advocates) as the main criterion to divide legal language into sub-genres, each of which possesses particular characteristics in terms of vocabulary and style. Mattila (2006: 4) explicitly recognizes that "[t]he division of legal language into sub-genres is a relative matter". He also admits that other classification criteria can be used, such as the branches of law, which have a great impact on the terminology used, and notes that "scores of terms" can be found in criminal law that are almost never used in texts on the law of property or constitutional law" (Mattila 2006: 5).

3.2 Classifications of legal language in translation studies

Legal language has also been extensively examined within Translation Studies. Although not specifically devoted to legal language, Sager's book *Language Engineering and Translation: Consequences of Automation* contains a particularly interesting remark on laws and regulations in his section entitled "Choice of purpose (Intention + Expectation)" (Sager 1993: 67ff.) In this section, five purposes for a speech act are identified, i.e. the social, informative, directive, discursive, and evaluative function. The description of these purposes within Sager's framework of communicative theory for translation is beyond the scope of the present work, but one of the categories is worth mentioning here. Indeed, according to Sager (1993: 70), "[d]irective messages are reader-oriented", since "if readers respond in the expected way, or more specifically, do what they have been told, the com-

munication has been successful", but "[t]he directive purpose may apply to a limited number of readers only, as in laws and regulations where the purpose is informative for the general reader and directive for the specific group of people listed, or falling into the categories set out".

Another translation studies scholar who has classified legal texts according to their function is Šarčević. In her view, a bipartite system in which legal language has only two primary functions, i.e. regulative (also known as "prescriptive") and informative (or "descriptive"), as proposed by Trosborg (see Section 3.1) or Wiesmann (2011: 1, following Kelsen 1979: 76), is insufficient to describe the whole spectrum of existing legal texts. For this reason, drawing on Bocquet (1994: 2), Šarčević (1997: 11) opts for dividing legal texts into three groups according to their function, i.e. "primarily prescriptive", "primarily descriptive but also prescriptive", and "purely descriptive" texts. Primarily prescriptive texts (i.e. laws, regulations, codes, contracts, treaties and conventions) and purely descriptive texts (i.e. texts written by legal scholars, such as legal opinions, textbooks, and articles) resemble categories already mentioned by other authors. Primarily descriptive but also prescriptive texts, on the other hand, are "hybrid texts", and the example provided by Šarčević (1997: 11) herself is "judicial decisions and instruments to carry on judicial and administrative proceedings such as actions, pleadings, briefs, appeals, requests, petition, etc.". On reflection, this observation is very much in line with Tiersma's characterisation of judicial opinions illustrated above, although the classifications proposed by the two authors differ considerably.

Borja Albi and Hurato Albir (1999) limit their analysis to the British and Spanish legal systems and concentrate on the discursive situation ("situación discursiva"), while still considering the primary and secondary functions ("función dominante y secundaria") of legal texts. They identify six genres or categories (Borja Albi and Hurtado Albir 1999: 156), based on the typology of legal texts proposed by Borja Albi (1998). In their classification, the factors determining the communicative situation are the sender ("emisor"), the receiver ("receptor"), the register ("tono"), the mode ("modo"), and the purpose ("finalidad"), while the possible functions are instructive ("instructiva"), argumentative ("argumentativa"), explanatory ("expositiva"), and other, unspecified functions. Each of the six resulting categories contains a range of genres for English and Spanish, and some of the English genres are reported in brackets: i) normative texts ("textos normativos"; acts, statutes, bills, norms), ii) judicial texts ("textos judiciales"; writs of summons, acknowledgment of service, claims, pleadings, judgments, orders, injunctions), iii) jurisprudence ("jurisprudencia"; legal judgments recorded in Law Reports), iv) works of reference ("obras de referencia"; dictionaries, encyclopedias, templates), v) scholarly texts ("textos docrinales"; textbooks, manuals, casebooks), and vi) public and private texts for the application of law ("textos de aplicación del derecho (públicos y privados)"; contracts, wills, legal briefs, deeds). The expressed aim of this typology is to lay the basis for a critical comparison of British and Spanish legal genres, which is necessary in the teaching-learning

process of English-Spanish legal translation. However, this typology is particularly interesting in that it is more detailed than the classifications mentioned so far and in that it considers "jurisprudence" as a separate genre.

Cavagnoli (2008: 289–291) proposes two possible classifications of legal texts, one based on text types ("classificazione di testi giuridici per tipologia testuale") and the other based on the topic ("classificazione di testi giuridici per argomento") or, in other words, the relevant branch of law. The topic-based classification is reproduced in Table 1.

<table>
<tr><th>Public law</th><th>Private law</th><th>International and EU law</th></tr>
<tr><td>Constitutional law
Administrative law
• general part
• special part (environment, energy, law enforcement…)
Fiscal law</td><td rowspan="2">Civil law
– family
– succession
– ownership/law of property
– obligations
Employment law
Commercial law
Criminal procedural law</td><td rowspan="2">EU law
Public international law
Private international law</td></tr>
<tr><td>Criminal law
• general part
• special part (offences)
Criminal procedural law</td></tr>
</table>

Table 1. Cavagnoli's (2008: 291, my translation) classification of legal texts based on topic.

With regard to Table 1, two remarks can be made. The first is that the subfields included in the columns on public law and private law are closely related to the Italian legal system and thus reflect the typical distinction made in this specific national context. The second remark is that, as Cavagnoli (2008: 291) herself admits, although this classification is simpler and more clear-cut compared to the classifications that take other criteria into account (such as her own alternative classification based on text types), it is of little help to both legal practitioners and legal linguists. This is in line with the view expressed by Trosborg (1997: 24) on the of limited relevance of the subject matter as a classification criterion (see Section 3.1). However, for the purposes of this work, it is interesting to notice that Cavagnoli recognizes that judgments cannot be matched with one single topic presented in the Table but are rather spread across various categories.

Drawing on the work carried out by numerous scholars, and in particular by Mortara Garavelli (2001), Cavagnoli starts by affirming that legal texts can be divided on the basis of their function into three groups: normative texts, interpretative texts, and applicative texts. Though recognizing that, as in any other classification, there are many cases in which the functions of a text overlap (Cavagnoli 2008: 289), she keeps this tripartite model and further groups different text types under the three headings, as shown in Table 2.

<table>
<tr><th>Normative texts</th><th>Applicative texts (praxis)</th><th>Interpretative texts (legal doctrine)</th></tr>
<tr><td>➢ Laws
➢ Legally binding acts
➢ Codes of practice
➢ International and supranational rules</td><td rowspan="2">➢ Procedural acts
➢ Pre-procedural acts
➢ Appeals
⇦ Judgments</td><td rowspan="2">➢ Textbooks
➢ Monographs
➢ Conference proceedings
➢ Articles in scientific journals
➢ Essays
➢ Legal commentaries
➢ Preparatory texts for laws
➢ Notes to judgments</td></tr>
<tr><td>⇨
➢ Contracts, obligations
➢ Administrative acts</td></tr>
</table>

Table 2. Cavagnoli's classification (2008: 291, my translation) of legal texts based on text types.

Two other scholars in translation studies who concentrate on legal English and are interested in the notion of "genre" are Alcaraz Varó and Hughes (2002). According to them, a genre is "each of the specific classes of texts characteristic of a given scientific community or professional group and distinguished from each other by certain features of vocabulary, form and style, which are wholly function-specific and conventional in nature" (Alcaraz Varó and Hughes 2002: 101). Their interest in the notion of genre stems from its relevance for the theory and practice of specialised translation, given their belief that "[t]he identification of genre is of great assistance to translators since it helps them focus on the particular needs and functions being catered for in a given original, and to look further and deeper into the nature of the particular texts they are dealing with" (Alcaraz Varó and Hughes 2002: 103). The relationship between genre and translation is of little concern here and the scholars do not provide a classification as systematic as the ones discussed above. However, they offer further evidence of the terminological uncertainty depicted by Kurzon by affirming that "[b]y 'genre,' or 'text type', we mean each of the specific classes of text characteristic of a given scientific community or professional group and distinguished from each other by certain features of vocabulary, form and style, which are wholly function-specific and conventional in nature" (Alcaraz Varó and Hughes 2002: 101). In their work, "genre" and "text type" are thus used interchangeably, a standpoint which is not shared by many scholars, such as Borja Albi (2007: 142–143). However, two points are worth mentioning. The first is that, while Alcaraz Varó and Hughes are in line with some previous authors in considering both written and oral genres, they also include what they call "legal English in popular fiction" in their analysis, i.e. "the fictional representation of the law commonly found in popular novels of the detective story or thriller type" (Alcaraz Varó and Hughes 2002: 149), which is not considered a prototypical legal genre.[3] The second point is that, in their review

3 For instance, Vegara Fabregat (2006) also includes legal fiction as a genre in the macrocategory of legal texts. However, this is in stark contrast with the position held by Sacco (1992: 490),

and discussion of legal genres, which is addressed at trainees in legal translation, they deal with law reports and judgments separately, although they recognize a high degree of similarity between the two genres. Furthermore, they make a distinction – though implicitly – between sub-genres of judgments based on the topic (in particular, they mention "divorce judgements, debt judgements, judgements in default, judgements on appeal" (Alcaraz Varó and Hughes: 2002 101).

The last translation studies scholar who deals with legal language and legal translation mentioned here is Cao (2009: 415). According to her, legal translation is "a type of specialist or technical translation, a translational activity that involves a special language use, that is, language in a legal context" (Cao 2009: 415). This language goes beyond what she calls "language of the law" and also includes "the language about the law" and "the language used in other legal communicative situations".

3.3 ECtHR judgments as a text genre

As discussed above, many different classifications of legal language(s) have been proposed and they are based on various sets of criteria. Judgments, which have always resisted classification on the basis of either subject matter or function, occupy different positions in them. In this section, a closer look is taken at the judgments delivered by the ECtHR considered as a legal genre.

Generally speaking, it can be said that judgments as a text genre have been studied by two groups of authors. The first, numerically larger, group includes scholars that analyse judgments passed by national judicial authorities. Within this group, authors can be found who concentrate on one legal system and thus on one language only (see, for instance, Ondelli 2006; Vázquez-Orta 2010, 2013) and authors who conduct contrastive analyses (see, for instance, Alcaraz Varó and Hughes 2002; Goźdź Roszkowski and Pontrandolfo 2013; Pontrandolfo 2011, 2016; Rega 1997; Scarpa and Riley 1999). The second group comprises authors interested in judgments delivered by international and supranational courts. Most of the studies belonging to this group are about the case-law of the European Court of Justice (ECJ). Indeed, the literature on ECJ judgments is vast and focuses on various interrelated linguistic aspects like the relationship between law and language in the production of ECJ case-law (Berteloot 2000; McAuliffe 2011, 2013a; Sousa Domingues 2017), multilingualism (Łachacz and Mańko 2013; McAuliffe 2012; Paunio 2013; Wright 2018) and translation (McAuliffe 2008, 2009; Mulders 2008) at the ECJ. However, despite such abundance, research on the linguistic (i.e. textual, terminological, phraseological, stylistic, etc.) features

who believes that the techniques used to translate legal fiction may significantly differ from the techniques used in proper legal translation.

of ECJ case-law still seems limited (see, for instance, the studies by Ioriatti Ferrari 2014; Jopek-Bosiacka 2013; Trklja 2017, 2018).

Within the research on international and supranational case-law, the linguistic studies carried out on the judgments rendered by the ECtHR can be considered even more peripheral than those focussing on ECJ judgments. As already mentioned, the present work intends to contribute to the efforts in this research field by shedding light on some linguistic features of the judgments delivered by the Grand Chamber of the ECtHR. To do so, these judgments are considered as a legal genre following the multidimensional approach adopted by the GENTT research group[4]. According to this group, "genre is conceived as a notion that includes formal aspects (conventionalised forms), sociocultural aspects (social occasions) and cognitive aspects (purposes of the participants)" (Borja Albi 2013: 36). In this regard, it is worth noting that the GENTT group recognises that "both the intrinsic complexity and variation of genres from one culture to another sometimes make it difficult to establish the limits of a genre" (Borja Albi et al. 2009: 62), an aspect that emerges clearly in contrastive studies on national case-law. However, the texts examined in this work are produced by a judicial body which is not national. This has several consequences. In the work of the ECtHR at least two cultural and legal layers interplay, i.e. the supranational and the national layer. In other words, the ECtHR is called upon to solve legal disputes in the light of supranational law, which is the expression of a shared, negotiated intention or, in other words, compromise. This, however, does not occur in a cultural or legal vacuum, but rather on a nation-bound cultural and legal substratum that belongs to the single States involved. The resulting judgments are therefore to be considered as a genre, but the set of elements characterising them is not linked to a traditionally conceived nation-bound culture, but rather to a "compromise culture", in our case, the shared European culture of human rights. On this basis, the model of genre analysis proposed by the GENTT group for translation purposes is considered as providing a suitable framework for describing the judgments rendered by the ECtHR, although with minor adjustments.

The "genre characterization system" proposed by the GENTT group (Borja Albi et al. 2009: 65) was developed as the starting point in the methodology for the organization of doctoral research in specialized translation. It comprises the seven blocks of data presented in Table 3.

4 The GENTT (Géneros Textuales para la Traducción/Textual Genres for Translation) group is a research group of the Department of Translation and Communication at Universitat Jaume I, Castellón de la Plana, Spain. It is directed by Isabel García-Izquierdo. More information can be found on www.gentt.uji.es (accessed 25/06/2019).

1. GENRE	Denomination in the different working languages
2. SUBGENRE	If applicable
3. COMMUNICATIVE SITUATION	Register: socio-professional field, mode, level of formality; participants: sender(s), receiver(s); and function
4. FORMAL ISSUES	Grammatical cohesion (connectors, metadiscursive elements, collocations, deixis, ellipsis, etc.); Lexical cohesion (terminology, phraseology, semantic fields, etc.). Includes contrastive aspects
5. MACRO-STRUCTURE	Identification of the fundamental parts of the text, of the moves
6. RELATION TO OTHER GENRES	Systems of genres, Bazerman (1994)
7. COMMENTS	Bibliographical references, interesting websites, etc.

Table 3. GENTT genre characterization template (Borja Albi et al. 2009: 65).

The sections devoted to "genre" and "subgenre" are briefly discussed below, while the "communicative situation" and the "macro-structure" are subjected to a more in-depth examination in Sections 3.4 and 3.5. The "formal issues" and the last two sections in the GENTT template ("relation to other genres" and "comments") are not considered relevant for the purposes of this work.

3.3.1 The genre and sub-genre of ECtHR Grand Chamber judgments

On the basis of the GENTT genre characterization template, the texts used to compile the corpus described in Section 5.1.5 can be said to belong to the genre "judgment", which is a "conventional denomination of the genre" (Borja Albi et al. 2009: 65). The first section can be divided into sub-genres and, given the examples provided by the authors of the template, this sub-categorisation is made on the basis of the topic and purpose of the genre (the authors give sales agreement, licence agreement, and franchising agreement as examples of sub-genres of "agreement").

In the case of ECtHR judgments, the sub-genre may be identified by applying two criteria which, however, may overlap with some of the aspects included in the communicative situation. In particular, one possible way of identifying sub-genres may be to consider the judicial formation delivering the judgment. In this way, three possible sub-genres could be established, i.e. judgments rendered by Committees, Chambers, or the Grand Chamber. In this regard, it must be noted that the ECtHR can also sit also in a single-judge formation (see Section 1.5); the judge in this case does not pass a judgment but rather declares an application inadmissible. Another possible way of identifying sub-genres could be that of considering the Article(s) of the European Convention on Human Rights that the respondent State has allegedly violated.

While the communicative situation may be considered invariable in all the resulting sub-genres, these two criteria can determine differences in the formal features of the sub-genres, especially as regards terminology, given that the Articles of the Convention deal with specific rights (e.g. right to life, prohibition of torture, right to liberty and security, just to name a few). As is further illustrated in Section 5.1.4 on the text selection criteria for the corpus used for the present study, the sub-genre considered consists in the judgments rendered by the Grand Chamber only for the alleged violation of Articles 6, 7, or 8 of the ECHR. Therefore, the information provided in the following subsections is limited to this sub-genre and is not meant to describe other ECtHR judgments.

3.4 The communicative situation of ECtHR Grand Chamber judgments

The communicative situation section of the GENTT genre characterization template gathers data that can be subsumed under three subheadings, namely register, participants, and function. According to the GENTT template, in analysing the register three aspects need to be taken into account, i.e. the socio-professional field, the mode, and the level of formality. In their discussion on the benefits of carrying out research activities by applying this template, Borja Albi et al. (2009: 70) provide an example concerning "judicial decisions", i.e. the type of text analysed here. They note that a judicial decision "is produced within the socio-professional field of law"; as regards mode and level of formality, all ECtHR judgments can be characterised as written and highly formal.

With reference to the participants in the communicative setting, in the same example on judicial decisions Borja et al. (2009: 70) indicate that "the sender is the court and the receiver is the citizen affected by the decision". However, based on what has been illustrated in Sections 1.1 and 2.6 with regard to the need of disseminating the Court's most relevant cases and the principles of the ECHR through them, this view seems not to fit the sub-genre under examination. Indeed, the communicative situation of ECtHR judgments is characterised by a plurality of participants. To understand such a plurality, the function of the sub-genre must be considered and cannot be simplified as in Borja et al. (2009: 70), who state that "the function is to impose a path of action on someone". The link between the participants and the function of the text clearly emerges from Trosborg's four-dimensional model (1997: 18, see Section 3.1), in which tenor is subdivided into interactional tenor (concerning the relationship between the sender and the receiver) and functional tenor (relating to the communicative functions realized through speech acts). This link is particularly relevant in the analysis of ECtHR judgments, since we need to consider the participants in the communicative situation in order to understand what the functions of these judgments are, and vice versa.

The "sender" of an ECtHR judgment is the Grand Chamber, i.e. a panel of seventeen judges. This is particularly interesting because it brings us back to the

complexity of the drafting process described in Chapter 2. Although the sender is the ECtHR in the form of one of its possible formations, this sender actually consists of a panel. Therefore, when a decision is reached unanimously, the sender delivers a judgment that expresses a shared view. However, when the decision is not unanimous, a degree of polyphony emerges, which may have a direct impact on the macro-structure of the judgment, with separate – concurring or dissenting – opinions being written by individual judges and published in a separate section of the judgment (see Section 3.5.7).

The "receivers" of ECtHR judgments are the parties to the case. These are always States in the case of inter-State applications, while in individual applications the parties are States as respondents and a variable number of individuals – in most cases natural persons, but companies as well – as applicants. The parties have a direct interest in the outcome of the case, and the main function of a Grand Chamber judgment, as well as any other judgment delivered by other judicial formations of the ECtHR, "is to elaborate the 'minimal standards' in respect to rights and liberties protected under the convention and to impose those standards upon the Member States" (Garlicki 2009: 396). In practical terms, this means that the ECtHR's task is to rule on whether the civil and political rights set out in the European Convention on Human Rights have been violated or not. Therefore, the ECtHR scrupulously examines each of the questions as to the facts, the law, and the practice (administrative or judicial) involved. This gives rise to a full legal debate on the terms of the Convention to be applied (Ost 1992: 284), which is reflected in the text of the judgment. If, after such a debate, the ECtHR finds that either the Convention or its Protocols have been violated, then it grants the remedies available under its law, namely just satisfaction, individual measures, or general measures. Therefore, in the case of a violation, Grand Chamber judgments have at least two main functions, i.e. to declare the violation and to grant remedies.

However, it must be borne in mind that, under Article 36 of the ECHR, in all cases before a Chamber or the Grand Chamber third parties may submit written comments and take part in the hearings. These parties may be a High Contracting Party one of whose nationals is an applicant; any High Contracting Party that is not a party to the proceedings; other international institutions, such as the Council of Europe Commissioner for Human Rights, the European Commission, and the OSCE; national human rights institutions, such as the Equality and Human Rights Commission for England and Wales and the European Group of Human Rights Institutions; NGOs with an interest in the protection of human rights, such as the AIRE Centre and Amnesty International; bar associations; and participants in academic litigation projects, such as the Human Rights Centre of Ghent University and the Human Rights Centre and the Transitional Justice Network at the University of Essex. Given their interest in the cases, third parties should be considered as indirect receivers of ECtHR judgments.

In the same vein, since "[t]he national courts must realize that both the text of the Convention and the ECtHR's case law are binding on all member-states" (Gar-

licki 2009: 397), the decisions taken by the ECtHR should also affect the other member States that are not parties to the case. It follows that the functions of Grand Chamber judgments are not limited to holding that there has (not) been a violation of the Convention or its Protocols and, if need be, grant the appropriate remedies. In fact, the additional function of these judgments is to contribute to the dissemination and enforcement of the principles enshrined in the ECHR and of the ECtHR case-law beyond the boundaries of the States directly involved in the cases at stake.

The variety of direct and indirect participants in the communicative situation under examination and the characteristics of the supranational arena where this communication takes place contribute to the complexity of the factors that need to be accounted for when analysing this legal genre. The cases discussed before the ECtHR move from a national cultural and legal dimension to a supranational dimension. This change of setting involves not only reliance on a different type of law, but also a change in the linguistic regime, with a shift from national languages to the two official languages of the ECtHR. And, given that in most cases neither all the parties to the case nor all the judges at the ECtHR are native speakers of either English or French, the vast majority of direct and indirect participants in the communicative situation are native speakers of languages other than the languages in which ECtHR judgments are published, an aspect that should not be overlooked when either drafting or studying ECtHR case-law.

This aspect can also be related to the possible levels of *vertical* variation involved in specialised discourse, which distinguishes levels of communication on the basis of the senders' and receivers' levels of education and therefore on the basis of the degree of specialisation. To address this point, Cloître and Shinn's (1985) model may be useful. In their model, the following four levels of scientific communication are envisaged: (i) intra-specialist communication (from specialist to specialist in same field), (ii) inter-specialist communication (from specialist to specialist across fields), (iii) didactic/pedagogical communication (from specialist to non-specialist, e.g. pupil, trainee, student), (iv) popular communication (from specialist to laypeople, i.e. the largest audience possible). When trying to match the participants in the communicative situation described above with the levels proposed by Cloître and Shinn, however, some caution should be exercised. This is because of the great variety of participants and of the types of legal and judicial sources involved in ECtHR case-law. The most apparently straightforward way to describe this communicative situation would be to associate it with intra-specialist communication, given that the sender is a court and the direct receivers are States and/or applicants assisted by their legal counsels. Nevertheless, it should be borne in mind that the participants may have variable degrees of knowledge and that the human rights legal field is not a homogeneous legal domain but rather applies to several branches of law and layers of law.

Starting with the sender, i.e. the Grand Chamber, it can be said that it is the most knowledgeable specialist in the field of European human rights. However,

in order to deliver its judgments, it also needs to acquire the necessary knowledge in the national legal aspects relevant to the case to be decided upon; in this regard, some judges forming the panel may be considered, at least at the time when the case reaches the ECtHR, more knowledgeable than others (see Section 2.4). As for the direct receivers, both the States and the legal counsel assisting the applicants are expected to be well-acquainted with both the national and the supranational legislation and case-law. Once an ECtHR judgment is delivered, the direct receivers are also supposed to have no difficulties in interpreting its content and recognising the elements in it which are embedded in the national legal and/or judicial system, although the judgment may be drafted in a language different from the national one. On the contrary, as regards indirect receivers in the form of other member States to whom ECtHR case-law aslo applies, the same degree of knowledge of the national legal and/or judicial system of the respondent State cannot be taken for granted. Therefore, the presence of elements pointing at the foreign national system may consitute an obstacle to communication. However, the ECtHR often adopts a number of strategies to facilitate the understanding of "alien" elements and thus contribute to the dissemination of its own principles. Still, despite the use of these strategies, the resulting texts could hardly be considered comprehensible for the non-legally educated, which means that, although the principles enshrined in ECtHR case-law apply to a population of around 800 million, in order for them to be shared efficiently other forms of dissemination and mediation should be implemented.

3.5 The macro-structure of ECtHR Grand Chamber judgments

ECtHR judgments follow a formulaic, prefabricated structure, divided into sections and subsections. An explanation for such a structure can be found in Driedger (1982: 78), according to whom dividing a text into ordered sections and subsections "provides a visual aid to comprehension by breaking up solid blocks of type; it delivers the sentence in packages, so to speak, making it easier for the mind to grasp the whole. It does visually what the reader would do mentally without it."

Drawing on the general structure models of ECtHR judgments provided by Caliendo (2004: 297–298) and White (2009: 3–4), Table 4 below reproduces the division into sections and subsections that can be found in judgments rendered by the Grand Chamber. This structure model has been developed by taking into consideration the judgments analysed in Chapters 5 and 6 and listed in Appendix 1 and contains both the headings of sections and subsections and some examples of formulaic parts and phrases that are recurrent in each section and subsection. However, given the limited number of judgments included in the corpus, the model does not preclude the existence of other recurrent parts and formulaic phrases in ECtHR case-law.

Logo GRAND CHAMBER	**Opening section**
CASE OF XXX v. MEMBER STATE *(Application no. XXX/XX)*	
JUDGMENT STRASBOURG date	
In the case of surname/initials v Member State, The European Court of Human Rights, sitting as a Grand Chamber composed of: (title,) name and surname, *President*, (titles,) names and surnames, *judges*, and (title,) name and surname, XXX *Registrar*, Having deliberated in private on date(s), Delivers the following judgment, which was adopted on (the last-mentioned) date:	
PROCEDURE 1. The case originated in an application (no. XXX) against Member State lodged with the Court/the European Commission of Human Rights ("the Commission") under Article no. of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by no. national(s), Mr/Ms surname ("the applicant(s)"), on date. 2. The applicants (applied to the Court through Mr/Ms surname and) are represented by Mr/Ms XXX, a barrister practising in XXX/of the XXX Bar. The XXX Government ("the respondent Government/the Government") were represented by their Agent, Mr/Ms XXX, and by their co-Agent, Mr/Ms XXX/assisted by Mr/Ms XXX, Deputy Co-Agent. 3. The applicant(s) alleged a violation of Article XXX of the Convention/alleged that there had been a breach of Article XXX of the Convention on account of XXX/complained in particular of a violation of Article XXX of the Convention, as a result of XXX. 4. The application was allocated to the XXX Section of the Court (Rule 52 § 1 of the Rules of Court). […] X. On date the (XXX) Government (and the applicant) requested, in accordance with Article XXX of the Convention and Rule XXX, that the case be referred to the Grand Chamber. On date a panel of the Grand Chamber accepted that request. X. The composition of the Grand Chamber was determined according to the provisions of Article 27 §§ 2 and 3 of the Convention and Rule 24. X. A hearing took place in public in the Human Rights Building, Strasbourg, on date (Rule 59 § 3). There appeared before the Court: (a) *for the (respondent) Government* Mr/Ms XXX, *deputy co-Agent/Co-Agent;* Mr/Ms XXX, *Adviser*, (b) *for the applicant(s)* Mr/Ms XXX, of the XXX Bar/Lawyer, *Counsel;* Mr/Ms XXX, *Adviser*, (c) *for the third-party intervener* Mr/Ms XXX, *Third-party intervener*, Mr/Ms XXX, of the XXX Bar/Lawyer, *Counsel*. (d) *for the Government of XXX* Mr/Ms XXX, *Agent*, Mr/Ms XXX, *Adviser(s)*.) The Court heard addresses by XXX. […]	**Procedure section**

THE FACTS I. THE CIRCUMSTANCES OF THE CASE In case of one applicant: X. The applicant was born in year and lives in place (country). In case of more than one applicant: X. The no. applicants are citizens of country. [For every applicant the year of birth and the place and country of abode are specified afterwards.] […] II. RELEVANT DOMESTIC LAW AND PRACTICE [can be further subdivided into subsections] X. OTHER RELEVANT PROVISIONS	**Facts section**
THE LAW (I. THE GOVERNMENT'S PRELIMINARY OBJECTION) [can be further subdivided into subsections] (I. ADMISSIBILITY OF THE APPLICATION) II. ALLEGED VIOLATION OF ARTICLE no. OF THE CONVENTION (TAKEN IN CONJUNCTION WITH ARTICLE no.) (…) The parties' submissions The Court's assessment (XX. ARTICLES 46 AND 41 OF THE CONVENTION / APPLICATION OF ARTICLES 46 AND 41 OF THE CONVENTION / APPLICATION OF ARTICLE 41 OF THE CONVENTION) A. Article 46 of the Convention B. Article 41 of the Convention	**Law section**
FOR THESE REASONS, THE COURT (UNANIMOUSLY) X. *Joins to the merits*, unanimously, the respondent Government's preliminary objection with respect to the applicability of Article 6 of the Convention; X. *Declares*, unanimously, the remainder of the application admissible; X. *Holds*, unanimously, that Article 6 of the Convention is applicable in the instant case and, consequently, *dismisses* the respondent Government's preliminary objection; X. *Holds*, by ten votes to seven, that there has been no violation of Article 6 of the Convention. X. *Dismisses* the remainder of the applicant's claim for just satisfaction. X. *Dismisses* the Government's preliminary objection; X. *Dismisses* the Government's preliminary objection;	**Operative part of the judgment**

In case the judgment is delivered at a public hearing: Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on date. name surname — name surname (Deputy) Registrar — President *In case the judgment is notified in writing:* Done in English and in French, and notified in writing on date, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court. name surname — name surname Deputy) Registrar — President *In case the judgment contains separate, concurring or dissenting opinions:* In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the concurring opinion(s) of Judge(s) XXX is/are annexed to this judgment. initials In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment: (letter) concurring opinion of Judge XXX (joined by Judge(s) XXX); (letter(s)) (letter) dissenting opinion of Judge XXX (joined by Judge(s) XXX). initials	**Closing section**
CONCURRING OPINION OF JUDGE SURNAME (JOINED BY JUDGE(S) XXX) *(Translation)* DISSENTING OPINION OF JUDGE XXX (JOINED BY JUDGE(S) XXX) *(Translation)*	**Separate opinions section**

Table 4. Structure model of ECtHR Grand Chamber judgments derived from the analysis of the judgments listed in Appendix 1.

3.5.1 Opening section

The opening section, which is also referred to as the "introductory unit", comprises the logo, "the title of the judgment, the case application number and date of delivery, followed by the list of judges composing the Chamber" (Caliendo 2004: 298). It is interesting to notice here that despite "[a]ll judgments are drafted in a manner that allows the identification of the names and the position taken by all participating judges", the ECtHR differs from some constitutional and supreme courts in not disclosing the name of the judge rapporteur in the text of the judgment (Garlicki 2009: 396). When the case is to be heard by the Grand Chamber, the panel is made of seventeen judges, all the names and surnames of whom are listed in the opening section and usually preceded by the relevant title.

3.5.2 Procedure section

The Procedure section is the first section in ECtHR judgments to contain numbered paragraphs. It provides information on the parties involved (identity and nationality of the applicant and denomination of the respondent State), as well as information on their representatives and advisers. In this section, the number of the application lodged with the European Commission of Human Rights is repeated and the number of the relevant Article(s) of the Convention for the Protection of Human Rights and Fundamental Freedoms is referred to.

A short form of the designations of bodies, parties and legal instruments introduced for the first time in this section, or an alternative reference for them, is usually provided in brackets and then used consistently throughout the remaining parts of the judgment, as can be seen in the following example (emphasis added):

> 1. The case originated in an application (no. 64890/01) against the Italian Republic lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Italian national, Ms Angelina Apicella ("the applicant"), on 29 October 1998. (*Case of Apicella v. Italy*)

The following paragraphs in the Procedure section describe the legal history of the case within the ECtHR, i.e. "the proceedings that have taken place up to the adoption of the judgment: lodging of the application (and a brief summary of the applicant's complaints); allocation of the case to a Chamber/the Grand Chamber; exchange of pleadings ('memorials'); hearing, if any" (Weston 2005: 452). In the cases brought before the Grand Chamber, in the Procedure section the allocation of the cases to one of the Sections of the Court and their subsequent relinquishment or referral to the Grand Chamber is always mentioned.

3.5.3 Facts section

According to Caliendo (2004: 298), the Facts section comprises two subcategories, i.e. the "circumstances of the case" and "relevant domestic law". However, a closer look at the judgments under examination reveals that a further subcategory dedicated to "other relevant provisions" is not infrequent.

In the "circumstances of the case" subsection, further information on the applicant(s) may be provided (e.g. year of birth, place of abode), the events that led to the legal action before a national court are described diachronically, and the legal proceedings before the domestic courts are summarised, as can be seen in the example below (emphasis added):

> 7. The applicant was born in 1938 and lives in Italy.
> A. The judicial decisions concerning the applicant
> 8. The applicant was placed in detention on 23 December 1993.

9. Several sets of criminal proceedings were brought against him, as a result of which he was sentenced to terms of imprisonment for, among other offences, membership of a mafia-type criminal organisation, drug trafficking and illegal possession of firearms. On 27 December 2001 the public prosecutor at the Milan Court of Appeal ordered that the applicant's sentences be aggregated and fixed the overall term at thirty years. (*Case of ENEA v. Italy*)

In the subcategory on domestic law, the relevant legal provisions of the respondent State are specified. This subsection generally opens with the recollection of domestic legislation, which can range from constitutional legislation to ordinary laws and from national codes of procedure to regional legislation, such as in the following examples (emphasis added):

32. Article 112 of the Italian Constitution provides:
"The public prosecutor's office has a duty to prosecute."
33. Article 589 of the Criminal Code lays down that the penalty for involuntary manslaughter is imprisonment of between six months and five years. (*Case of Calvelli and Ciglio v. Italy*)

47. Section 39 of Law no. 2359/1865 provided that, where land was expropriated, the compensation to be paid should correspond to its market value at the time of the expropriation. (*Case of Scordino v. Italy*)

15. The allowance for the families of disabled civilians is governed by Article 26 of Regional Law no. 11 of 15 March 1984, the relevant parts of which provide:
"For three years after the entry into force of the present Law, local public health services shall be authorised to grant an allowance to families who undertake to provide direct care for persons suffering from mental or physical disabilities who are incapable of attending to their own primary needs and require constant assistance.
The allowance shall be granted in pursuance of the following objectives:
(a) returning to their families disabled people formerly in full-time institutional care;
(b) encouraging the practice of caring for disabled children within the family ...;
(c) socialising the disabled person and improving his relations with those around him;
(d) improving the lives of the families of disabled persons;
(e) creating a favourable environment for the life of the disabled person;
...
The amount of the family carers' allowance shall be 25% of the daily charge for attendance on persons hospitalised full-time." (*Case of Mennitto v. Italy*)

However, this section is not limited to statutory sources of law, since it often contains also extracts from case-law. In cases against Italy, these are mainly extracts from judgments and orders, as illustrated in the following example (emphasis added):

1. The departure from precedent of 2004
22. On appeal from decisions delivered by the courts of appeal in "Pinto" proceedings, the Court of Cassation, sitting as a full court (*Sezioni Unite*), gave four judgments (nos. 1338, 1339, 1340 and 1341) on 27 November 2003, the texts of which were deposited with the registry on 26 January 2004, quashing the appeal court's decision and remit-

ting the case for a rehearing. It held that "the case-law of the Strasbourg Court is binding on the Italian courts regarding the application of Law no. 89/2001".
In its judgment no. 1340 it affirmed, *inter alia*, the principle that
"the court of appeal's determination of non-pecuniary damage in accordance with section 2 of Law no. 89/2001, although inherently based on equitable principles, must be done in a legally defined framework since reference has to be made to the amounts awarded, in similar cases, by the Strasbourg Court. Some divergence is permissible, within reason." (*Case of Apicella v. Italy*)

As can be inferred from the short selection of examples provided, in the "relevant domestic law" subsection references to national law are made in two different ways: the relevant source may be invoked and its content summarised (see dashed underlined text in the examples above), or extracts of the invoked source are quoted in inverted commas (see underlined text in the same examples). Since this aspect is recognised as being relevant for the discussion of creativity in the language of the ECtHR, it will be further elaborated in Chapter 6.

The third subsection contains – as its heading suggests – other relevant provisions, the variety of which is extensive, going beyond legislative and judicial sources, and depends on the case at hand. For instance, in the cases examined for the present work, recurrent reference is made to documents published by the Committee of Ministers of the Council of Europe, such as the Third annual report on the excessive length of judicial proceedings in Italy for 2003 (administrative, civil and criminal justice) (CM/Inf/DH(2004)23), the Interim Resolution ResDH(2005)114 concerning the judgments of the European Court of Human Rights, and documents produced by the European Commission for the efficiency of justice (CEPEJ). In the same subsection, international legislative instruments may also be referred to, especially when such sources were relied on by the applicants in the domestic courts. One such example are the Protocols Additional to the Geneva Conventions of 12 August 1949. As regards the reference method, this subsection is similar to the "relevant domestic law" subsection, since it combines quotations and summaries.

3.5.4 Law section

This section is divided into a variable number of subsections according to the peculiarities of the case at hand, but its content is entirely based on the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms. For instance, some of the judgments analysed start with the description of the Government's preliminary objection, followed by the Court's assessment of the admissibility of the application. All the judgments contain a subsection devoted to the alleged violation of at least one Article of the Convention as claimed by the applicant and, where appropriate, a subsection devoted to the application of Articles 46 (Binding force and execution of judgments) and 41 (Just satisfaction) of the Convention.

Since the Law section is the part of the judgment that contains the grounds for the Court's decision expressed in the following operative part, i.e. the Court's legal reasoning and argumentation, and given its strong dependence on the specific circumstances of the case, it is impossible to identify a fixed structure for it that would suit any and all ECtHR judgments. However, as a general rule, it can be stated that this section contains the parties' submissions, where "parties" includes not only the applicant(s) and the respondent Government, but also the so-called "intervening parties", i.e. third parties which are entitled or have leave, under Article 36 of the ECHR, to submit written comments and to take part in hearings. The parties' submissions are then followed by the Court's assessment of every issue raised. It begins by summarising or developing the relevant principles from its case-law, before applying those principles to the case at hand. The final part of this section contains the Court's assessment of any damages and the costs and expenses claimed by the applicant and the relevant default interest.

In the Law section, the ECtHR's explicative way of drafting judgments comes to the fore in its full expression, since "the main idea is to show what legal norms (precedents) are governing the outcome of the case and how those norms (precedents) find application to the facts of the case" (Garlicki 2009: 395). Given that "[t]he Court is of the opinion that consistence of its jurisprudence constitutes one of the legitimizing factors for its – sometimes quite extensive – interpretation of the Convention", it "always attempts to place its new judgments within the context of the already existing case law" (Garlicki 2009: 395). However, new judgments, especially those delivered by the Grand Chamber, are frequently meant to develop, or at least to clarify and consolidate, the existing case-law. It follows that in such cases "the Court's preference is to apply the technique of distinguishment, i.e., while confirming earlier precedents to indicate new (factual or legal) elements of the case that allow reformulation of the Court's position". Only exceptionally does it decide to overrule a precedent (Garlicki 2009: 395).

3.5.5 The operative part of the judgment

The operative part of the judgment, also known as the "*dispositif*" (White 2009: 4), opens with the standardised formula "For these reasons, the Court", which may or may not be followed by the adverb "unanimously" in accordance with the decisions taken by the judges in the panel. The range of verbs that follow this formula is rather limited, with the three most common verbs in the judgments analysed here being "dismisses", "holds", and "joins to the merits", followed by "declares", "decides", and "refuses".

Where there is no unanimity on all the issues covered in the operative part, the voting on each issue is specified using the expression "by [no.] votes to [no.]". This brings to mind the fact that, while the identity of the judges is always disclosed in the opening section, the information on the votes cast by the individual

judges remains anonymous. However, judges are entitled to submit separate opinions, which are published at the end of the judgment, after the Closing section, which may reveal their vote.

Although not directly linked to the study presented in this work, an observation made by Garlicki (2009: 396) is worth quoting in full:

> The level of unanimity cannot have any impact on the binding effect of judgments. It may, however, influence their persuasive authority: a judgment adopted by a tiny majority indicates that there are divergent positions within the Court. That is why, particularly on the Grand Chamber level, there is a clear preference for drafts that are able to attract a clear majority of participating judges. On the other hand, if the Convention is seen as a 'living instrument,' the process of its development must also show more dynamics and divergences.

Furthermore, it should be emphasised that the issues to be decided upon vary in relation to the case at hand. However, one issue on which the Court must always express its final decision is whether there has been a violation of the Article(s) invoked by the applicant(s). If the Court is satisfied that there has been a violation, it may need to decide also on the issue of just satisfaction under Article 41 ECHR and shall order the respondent State to pay the applicant(s) an amount in respect of pecuniary or non-pecuniary damage, any costs and expenses and possibly interests within a specified period of time.

3.5.6 Closing section

The Closing section of ECtHR judgments is, again, very formulaic. According to the method of delivery of the judgment, two versions of the closing sentence that precedes the names and surnames of the Registrar and the President can be found. When the judgment is delivered at a public hearing, the date and the place of such delivery are specified (i.e. Human Rights Building, Strasbourg), while when the judgment is notified in writing, the date and the relevant Rule of Court are indicated (i.e. Rule 77, §§ 2 and 3). Both versions, however, mention the language in which the judgment was done; since the judgments analysed for the purposes of this work were all rendered by the Grand Chamber, all of them were done in both official languages of the ECtHR, i.e. in English and in French.

In case the decisions set forth in the operative part of the judgment were not taken unanimously, a further sentence is added to specify that separate (concurring or dissenting) opinions are annexed to the judgment and the relevant provisions are referred to (Article 45, § 2 of the Convention, and Rule 74, § 2 of the Rules of Court). When there are separate opinions, this sentence is followed by the initials of the President and the Registrar.

3.5.7 Separate opinions

Separate opinions, whether concurring or dissenting, are typical of Grand Chamber judgments. Their presence is first inferred from the operative part of the judgment and then enunciated in the final part of the Closing section. They are annexed to the judgment, with concurring opinions generally preceding dissenting opinions. In contrast to what precedes the separate opinions, which, in the case of a Grand Chamber judgment, is said to be done in English *and* French, the texts of separate opinions are written by the judges issuing them in *either* English *or* French. As a consequence, when these opinions are translated, this is specified in brackets immediately after the heading of the opinion.

Since separate opinions express the view of single judges rather than the ECtHR and are drafted individually rather than by a panel of judges following a fixed structure, they are not considered for the purposes of the study presented in Chapters 5 and 6. However, on a different note, it is worth mentioning what Ost (1992: 284) observed with regard to the reception of judgments containing separate opinions:

> It is sometimes submitted that individual opinions undermine the authority and credibility or the judicial decision: on the contrary, they reinforce them especially if the obligation to give reasons for a decision is fulfilled properly and the authority of a judgment derives from its intrinsic rationality rather than from an 'argument' of authority.

The possibility to express a separate opinion is considered particularly relevant, since it allows majority opinions to "suffer to a lesser extent from the need to reach an agreement with all judges, which might result in vague and opaque reasoning" (Senden 2011: 21). Moreover, a difference in style and tone can be noticed between majority opinions (mainly expressed in the Law section) and separate opinions. Since in the latter judges are "not constrained by trying to find agreement with fellow judges", the tone is often much more personal than in the majority opinions (Senden 2011: 21).

In this chapter, an overview of existing classifications of legal language in legal linguistics and translation studies has first been presented with a view to providing the theoretical background for considering ECtHR case-law as a legal genre. In the second part of the chapter, the GENTT genre characterization template has been introduced and applied. The aim was on the one hand to elucidate the details of the communicative situation underlying ECtHR case-law, with a focus on participants, and, on the other, to delineate the macro-structure of the judgments, which has been subdivided into seven sections. The next chapter is a discussion of system-bound elements (SBEs) as a particular type of culture-bound elements (CBEs) and serves as an introduction to Chapters 5 and 6, where an empirical study on Italian SBEs in ECtHR judgments is presented.

4 From *culture*-bound to *system*-bound elements

As stated in the Introduction, the purpose of the study presented in Chapters 5 and 6 is to start shedding some light on the presence of elements belonging to national statute law and case-law in the judgments delivered by the European Court of Human Rights. These national legal and judicial elements are hereinafter referred to as "system-bound elements" (SBEs) and their presence is believed to imply a process of recontextualisation: elements originally embedded in a national legal and judicial system migrate from their natural context into a different environment. This process implies a change in the target audience: while in their natural environment the readers are supposed to have a shared knowledge of the underlying system, in the new environment the readership is expected to be much broader (potentially the whole population of the member States of the Council of Europe) and to have a different background legal knowledge. Furthermore, during such a migration, when the language of the national legal and judicial system is not the same as the language used to express supranational law, SBEs are frequently deprived of their original linguistic form and assume a new one in the other language. However, despite this change, they maintain a close relationship with their original environment and no "legal transplant"[1] (Watson 1974) is involved.

1 Please note that here "legal transplant" is intended as the moving of a legal notion, a rule or a system of rules from a legal system to another rather than from a country to another, as originally proposed by Watson.

This is essentially the same as what happens when a so-called "culture-bound element" (CBE) is found during the translation process: by way of simplification, it could be said that, unless the circumstances require otherwise, the translator should try to make the CBE comprehensible in the target language while maintaining the reference to the source culture. In the present work, a strong correlation is posited between CBEs and SBEs. More precisely, SBEs are considered a type of CBEs. Since the investigation in the field of CBEs has a long tradition in translation studies, in what follows an overview of how these elements have been defined and classified in translation studies is provided, so as to lay the foundation for further discussion of SBEs. Given that SBEs are usually designated by terms, a brief overview of what has been written so far about the terminology in ECtHR case-law is then provided.

4.1 Culture-bound elements in translation studies: Definitions

The term "culture-bound elements" seems to have a self-evident meaning. However, ever since the "cultural turn in translation studies" (Bassnett and Lefevere 1990: 1–13), culture-bound elements have received considerable attention in translation studies. This resulted in a remarkable proliferation of studies on the topic, which were mainly focused on the possible solutions to the problems posed by the need to transfer CBEs from one language and culture into another language and culture. Given the abundance of authors working in this area of research and the diverse perspectives from which it can be approached, it should come as no surprise that there is neither a shared, universal definition of what culture-bound elements are nor a single term to refer to them. In fact, in translation studies a vast array of terms has been used to refer to culture-specific elements, namely "cultural words" (Ivir 1987: 36; Newmark 1988), "cultural categories" (Newmark 1988: 95), "culture-specific concepts" (Baker 1992: 21, although she also uses "culture-specific items" and "culture-specific words"), "cultural references" (Mailhac 1996; González Davies and Scott-Tennent 2005), "culture-specific items" or "CSIs" (Aixelá 1996; Cómitre Narváez and Valverde Zambrana 2014), "culture-bound terms" (Díaz-Cintas and Remael 2007: 200; Harvey 2000; Schäffner and Wiesemann 2001: 32), "culture-bound or culture-specific phenomena and terms" (Schäffner and Wiesemann 2001: 32), "realia" (Robinson 2003; Florin 1993; Leppihalme 2001), "culturemes" (Whithorn 2014: 160; Nord 1997: 34; Katan 2009: 79), "cultural referents" (Santamaria 2010), "culture-bound elements" (Hagfors 2003), "allusions" (Leppihalme 1997), and "extralinguistic culture-bound references (ECRs)" (Pedersen 2005: 2). All of the terms reported seem well-founded, but in this volume "culture-bound elements" (CBEs) is preferred. The reason for this preference lies in the fact that it allows to avoid the need to distinguish between the concept (or the referent) and the terminological unit or other form of linguistic expression used to designate them.

Despite this abundance of designations, Aixelá (1996: 57) notes that "when speaking about 'cultural references', 'socio-cultural terms', and the like, authors avoid any definition, attributing the meaning of the notion to a sort of collective intuition". According to the same author, defining these elements may result in a slippery activity, since "in a language *everything* is culturally produced, beginning with language itself" (Aixelá 1996: 57, emphasis in the original). This is in line with Tomaszczyk's remark (1984: 289) that, while only those items which represent objects, ideas, and other phenomena that are truly unique to a given speech community should be included in the set of culture-bound lexical units, "it is relatively easy to argue not just that the boundary between culture-bound and universal is a very fuzzy one, but that in fact there is no such thing as non-culture-specific or universal vocabulary, and that culture-specificity is merely a matter of degree". These views notwithstanding, some attempts have in fact been made to develop a definition capable of encompassing the full spectrum of aspects that allow an element to be considered as culture-bound. For instance, in 1969 Vlahov and Florin (1969, quoted in Ranzato 2016: 53) defined "realia" as "words or composed locutions typical of a geographical environment, of a culture, of the material life or of historical-social peculiarities of a people, nation, country or tribe and which, thus, carry a national, local or historical colouring and do not have precise equivalents in other languages". Almost fifteen years later, Florin (1993: 122) defined "realia" as "those elements […] in the original that are intimately bound up with the universe of reference of the original culture". Mailhac (1996: 133–34), in turn, stated that a "cultural reference" is "any reference to a cultural entity which, due to its distance from the target culture, is characterized by a sufficient degree of opacity for the target reader to constitute a problem", a definition that led to the distinction between opaque and transparent cultural references.

In her seminal work on functionalist approaches to translation, Nord (1997: 34) defined "cultureme" as "a cultural phenomenon that is present in culture X but not present (in the same way) in culture Y". Following Vermeer (1983, in Nord 1997: 34, and Nord 2000: 204), Katan (2009: 79) described "culturemes" as "formalized, socially and juridically embedded phenomena that exist in a particular form or function in only one of the two cultures being compared", a definition that is particularly interesting here given its specific reference to the juridical sphere.

"Cultural references" is the designation used by Olk (2001: 30), who defines them as "those lexical items in a source text which, at a given point in time, refer to objects or concepts which do not exist in a specific target culture or which deviate in their textual function significantly in denotation or connotation from lexical equivalents available in the target culture". The same designation is used by González Davies and Scott-Tennent (2005: 166) in their discussion of the type of training undergraduate students should receive to improve their translation competence in relation to items embedded in the source culture. For them, cultural references are "[a]ny kind of expression (textual, verbal, non-verbal or

audiovisual) denoting any material, ecological, social, religious, linguistic or emotional manifestation that can be attributed to a particular community (geographic, socio-economic, professional, linguistic, religious, bilingual, etc.) and would be admitted as a trait of that community by those who consider themselves to be members of it". In their view, "[s]uch an expression may, on occasions, create a comprehension or a translation problem" (González Davies and Scott-Tennent 2005: 166).

A different standpoint is offered by Pedersen (2005: 2), who concentrates on subtitling and is the first to expressly include the target audience rather than the target culture in his discussion. In his view, an "extralinguistic culture-bound reference (ECR)"[2] is a "reference that is attempted by means of any culture-bound linguistic expression, which refers to an extralinguistic entity or process, and which is assumed to have a discourse referent that is identifiable to a relevant audience as this referent is within the encyclopedic knowledge of this audience". Pedersen (2005: 2) also specifies that ECRs cause what he names "translation crisis points". The choice of the adjective "extralinguistic" in his designation is no coincidence, since "ECRs are expressions pertaining to realia, to cultural items, which are not part of a language system" (Pedersen 2005: 2) and thus exclude so-called "intralinguistic culture-bound references", i.e. idioms, proverbs, slang, and dialects. On their part, Díaz-Cintas and Remael (2007: 200) also emphasise the extralinguistic aspect when defining "culture-bound terms" as "extralinguistic references to items that are tied up with a country's culture, history, or geography, and tend therefore to pose serious translation problems".

The definitions surveyed so far highlight different aspects of culture-bound elements, but in translation studies consensus seems to have been reached on the fact that these elements are linguistic items referring to concepts – in the broad sense of the term – that are "so heavily and exclusively grounded in one culture that they are almost impossible to translate into the terms – verbal or otherwise – of another" (Robinson 2003: 186). As can be noted from the definitions provided above, recurrent emphasis in translation studies is posed on two aspects. The first is the relationship between a source text item and the relevant source culture on the one hand and the target text item and the relevant target culture on the other. The second aspect, which is inextricably intertwined with the first, consists in the possible translation problems arising from such a relationship. As Newmark (1988: 94) put it, "[f]requently where there is cultural focus, there is a translation problem due to the cultural 'gap' or 'distance' between the source and target languages". The same idea is also expressed by Aixelá (1996: 58), who sees culture-bound elements as "textually actualized items whose function and connotations in a source text involve a translation problem in their transference to a target text, whenever this problem is a product of the non-existence of the

2 For a critical stance on the shortcomings of using the adjective "extralinguistic" to refer to these elements, see Ranzato (2016: 57).

referred item or of its different intertextual status in the cultural system of the readers of the target text", but highlights the fact that the source text-target text relationship is always to be seen as dynamic. Indeed, Aixelá (1996: 57) claims that "in translation a CSI does not exist of itself, but as the result of a conflict arising from any linguistically represented reference in a source text which, when transferred to a target language, poses a translation problem due to the nonexistence or to the different value (whether determined by ideology, usage, frequency, etc.) of the given item in the target language culture". Katan's definition of culturemes may be said to be in line with Aixelá's standpoint: although not focussing on the linguistic rendering of culturemes explicitly, in Katan's definition the need to compare two cultures for an element to be considered a cultureme clearly emerges. In other words, to identify an originally innocuous element as a potentially problematic one, comparison is key.

4.2 Culture-bound elements in translation studies: Classifications

As has been seen so far, much has been said on culture-bound elements in translation studies. It must thus be expected that, beyond various definitions, several classifications have also been developed. The reasons for this abundance lie in the selection of different classification criteria, the particular field of application within translation studies, and the wide range of elements that can be considered culture-bound. This aspect clearly emerges from Finkel's observation (1962: 112, cited in Ranzato 2016: 53) that these elements "stand out from the common lexical context, they distinguish themselves for their heterogeneity, and consequently they require a reinforcement of attention in order to be decoded". Likewise, Aixelá (1996: 57) acknowledges the variety of elements that may fall within this category by noting that "[t]here is a common tendency to identify CSEs with those items especially linked to the most arbitrary area of each linguistic system – its local institutions, streets, historical figures, place names, personal names, periodicals, works of art, etc. – which will normally present a translation problem in other languages".

The most frequently cited classification is the one proposed by Newmark (1988: 103ff., adapted from Nida 1945), who distinguishes five groups of CBEs, namely "ecology" (i.e. geographical features typical of a culture's homeland, flora, fauna, etc.), "material culture (artefacts)" (i.e. food, clothes, housing, transport), "social culture – work and leisure", "organisations, customs, activities, procedures, concepts", which is further subdivided into political and administrative, religious and artistic, and "gestures and habits". In line with Katan's broad definition of culturemes, the fifth category in Newmark's classification includes CBEs that are not necessarily expressed by linguistic means. A similar aspect emerges also in Chiaro's definition of culture-specific references in relation to audiovisual translation. According to Chiaro (2009: 156), "CSRs [culture-specific references]

are entities that are typical of one particular culture, and that culture alone, and they can be either exclusively or predominantly visual (an image of a local or national figure, a local dance, pet funerals, baby showers), exclusively verbal or else both visual and verbal in nature". As noted by Ranzato (2016: 58), however, while being noteworthy for emphasising the significant visual element in CBEs, this definition has the drawback of being limited to a single culture, whereas "on many occasions cultural elements may belong to more than one culture".

Following an approach similar to Newmark's, Florin first proposes a thematic classification based on the material or logical groups to which realia pertain and then suggests two other possible classifications, namely a temporal and a geographical classification. The thematic classification includes ethnographical realia, which "belong to everyday life, work, art, religion, mythology, and folklore" (Florin 1993: 123), and social and territorial realia. As far as the geographical classification is concerned, Florin (1993: 123) himself states that "geographical categories are obvious", while as regards the temporal classification, he acknowledges that "realia may be most conveniently divided into the *modern* and the *historical* categories" (Florin 1993: 123, emphasis in the original).

Another classification attempt is provided by Gudavičius (1985, as quoted in Staskevičiūtė and Baranauskienė 2005: 203), whose scheme combines different criteria and consists of three categories, i.e. things denoting material culture (everyday life and work realia, specific agricultural work and geographic realia, endemic clothes and footwear, national cuisine and musical instruments); things and phenomena denoting spiritual or intangible culture (national dances and songs, folk feasts, national folk customs and habits and mythological notions); and historical realia (domestic objects, social and political realia, and religious words.

Nedergaard-Larsen's classification (1993: 210–211) is also thematic and groups realia into four main categories under the following headings: geography, history, society and culture, each of which is further divided into subcategories. Interestingly enough, in her classification culture is considered separate from, for instance, history and society, while in most classifications put forward by other scholars culture is an overarching notion embracing these fields.

In the first decade of the new millennium, other taxonomies were proposed, such as the one by Ramière (2004: 104), who focuses on subtitling and dubbing and subdivides CBEs in extralinguistic geographical, historical, and socio-cultural references. Largely drawing on Grit's classification (2004), according to which CBEs are subdivided into historical, geographical, private institutional, public institutional, unitary, and socio-cultural concepts, Díaz-Cintas and Remael (2007: 201) devise a taxonomy comprising three main groups, namely geographical, ethnographic, and socio-political references. Given its further subdivision into more specific categories, the latter is considered, together with Grit's classification, one of the most detailed taxonomies developed up to now.

Although the main aim of the classifications listed so far is to provide a scheme capable of including any CBE, it is generally recognised that "exhaustive classifica-

tion is not feasible" (Leppihalme 2011: 127), since "[t]ypologies of realia as a rule reflect the type of textual material examined: realia in a contemporary institutional text will differ from those in an 18th century comedy or a television soap opera".

4.3 System-bound elements as a type of culture-bound elements

The illustration of CBEs in the sections above makes it clear that a wide range of elements may fall within this category and that they can be found in translation-mediated communicative settings as diverse as child literature, audiovisual translation, and media interpreting. When describing CBEs as items that come to the fore because of the translation difficulties they may pose, the reason for such difficulties has been said to lie in the differences between the source and target languages and, more importantly, cultures.

The attempts to define the notion of "culture" proposed to date are almost countless[3] and the purpose here is certainly not to add a further definition. The backdrop of the following discussion on the relationship between CBEs and system-bound elements are the "traditional" definitions of "culture" provided by two translation studies scholars. The first is Larson (1984: 431), who defines culture as "a complex of beliefs, attitudes, values, and rules which a group of people share", while the second is Newmark (1988: 94), according to whom culture is a "way of life and its manifestations that are peculiar to a community that uses a particular language as its means of expression". In the former definition a broad term such as "rules" is used, which can be expected to contain any type of rule accepted and shared by a group of people, including legal rules. The latter definition does not contain an express reference to rules, but when identifying the categories that can be considered culture-bound, Newmark explicitly mentions legal items in his fourth category, namely "organisations, customs, ideas". This is in line with the examples of "cultural elements and systems" that "frequently do not match between any two cultures" listed by Bugarski (1985: 159), who explicitly mentions law among other elements. Similarly, Mayoral Asensio and Muñoz Martín (1997: 144), who deal with "segmentos del texto original marcados culturalmente" ("culturally-marked source-text segments"), maintain that the spectrum of items that fall within this category is wide and, among others, specifically mention institutional names and legal and administrative concepts. Likewise, Katan (2009: 79) includes "juridically embedded phenomena" in his definition of cultureme, while Whithorn (2014: 161) talks about "legal culturemes".

There is indeed no doubt that law constitutes part of a culture. In Mattila's words (2006: 105), since law is "entirely created by humans", it is "always linked to the culture of any particular society: it therefore constitutes a social phenomenon". Considering that legal concepts and norms are human constructions that

3 As far back as 1952, Kroeber and Kluckhohn compiled a list of 164 definitions of "culture".

are bound to a specific legal system and that such a legal system is, in turn, the product of a specific culture, three conclusions of a very general nature can be drawn. The first is that legal concepts differ from legal system to legal system. The second is that there are variable degrees of comparability of legal systems in general and of legal concepts in particular, depending on the relationship between the legal systems and the respective legal families and their historical development. The third is that this variability affects the translatability of the legal terms used to refer to legal concepts. In other words, due to the inextricable connection between a culture and its legal system, the legal terms of each legal system are also a type of culture-bound element. However, these conclusions reflect the traditional view of legal systems as the product of national cultures. It should not be overlooked that legal systems other than national ones exist, within which new forms of legal culture develop, and that nowadays national and supranational legal and judicial systems are in a state of constant interaction and interrelation. Therefore, in line with the designation chosen for "culture-bound elements", in this work legal terms and concepts that, in a context requiring comparison, appear to be embedded in one legal system, be it national, regional, or international, are referred to as "system-bound elements" (SBEs).

So far, and especially in Section 4.1, the word "term" has been used several times to refer to the linguistic facet of SBEs. This is no coincidence, since they are generally designated by specialised terminological units. For this reason, in the following section, the literature on the legal terminology that can be identified in ECtHR case-law – to our knowledge extremely scarce – is summarised. As illustrated below, the role of SBEs in such literature is only marginal. However, on the basis of the empirical study presented in Chapters 5 and 6, it can be anticipated that SBEs may go beyond what is generally considered a term.

4.4 Legal terminology in ECtHR case-law

Terminology is considered "the most visible and striking linguistic feature of legal language as a technical language" (Cao 2007: 53). Given the difficulties posed by terminology to legal translators, in translation studies the body of literature devoted to legal terminology is extensive. However, academic attention has generally been directed to terminological issues deriving from the comparison of national legal systems, while leaving "decision-making on legal terminology at international organizations, despite its relevance for institutional translation quality, […] largely unexplored" (Prieto Ramos and Guzmán 2018: 81). Moreover, most research in this field has been conducted on the European Union, i.e. the "largest and most multilingual supranational entity in the world" (Prieto Ramos 2018: 1), with special emphasis on law-making. Nonetheless, multilingual institutional communication is far from being a prerogative of the EU and does not concern law-making only. On the contrary, it includes a

wide array of forms of communication, ranging from legislative acts through judicial decisions[4] to informative texts on institutional powers and activities meant for the general public.

One of the first scholars to venture outside EU-related aspects of legal translation and terminology was Prieto Ramos (2014), who identified three categories of terms generally included in the terminology management systems of international organisations. These categories somehow show a degree of similarity with the categories of terms found in ECtHR judgments, as discussed below. The first group of terms in this typology consists in "terms designating shared concepts created in the international system and recognized as established terminology within the specific scope of competence of a particular organization" (Prieto Ramos 2014: 128). In other words, these terms designate concepts developed within the international legal system. The second group comprises "terms previously existing in some jurisdiction or legal tradition and borrowed to be used with a shared meaning in the international system". This means that a legal transplant occurs, which not only is the result of the recontextualization of the term, possibly through secondary term formation (Sager 1990: 80; for an example in the EU context, see Peruzzo 2012), but may also imply a change in the underlying concept, since it may be adapted to the new legal setting, usually through the addition of "a new legal layer of legal content to the original term" (Prieto Ramos 2014: 128). Finally, the third group consists in "terms designating culture-bound or system-specific concepts to be identified as such in the international context" (Prieto Ramos 2014: 129). The third category in Prieto Ramos's typology includes terms referring to concepts and institutions whose relation with the original national legal system must remain evident even when they are used in texts produced by international institutions. As in the previous category, the transfer from their original context expressed in one language to an international context, possibly expressed in another language, may require translation.

In addition to this attempt to categorise legal terminology in international institutional settings, the legal terminology specifically used by the ECtHR has also been marginally addressed in the literature. Brannan (2013: 923), who approaches the subject from an insider translator's perspective, acknowledges that "[t]he legal terminology used by an international court will necessarily be adapted to its specific features". In the case of the ECtHR, the factors affecting terminological choices are manifold, i.e. the Court's "role of supervising human rights protection under the 1950 Convention, with the right of individual petition, its broad territorial jurisdiction covering diverse legal systems, and of course the use of its limited number of official languages" (Brannan 2013: 923). Broadly speaking, Brannan (2013: 909) states that the terminology ECtHR translators deal with in judgments and decisions can be subdivided into two categories, i.e.

4 Please note that here the term "decision" is used to refer to any type of judicial act delivered by any international court, regardless of the judicial formation, the type of proceedings and the purpose of the proceedings.

"terms that would be used by a national practitioner in the relevant language", and "the supranational language that has evolved in general international law or that is specific to the Court itself, being enshrined in its basic texts or case-law". Despite recognising these two broad categories, in Brannan's works the focus is on the "supranational terminology", which "transcends domestic realities" (Brannan 2013: 911). In his view, this category is not to be seen as unitary, since it may contain four different types of terminological units, as shown in Table 5 and further discussed below.

Types of terms	**Sub-types of terms**	**Examples**
Supranational terms	Convention-specific terms – terms that are not used in other legal contexts – terms that are used in other legal contexts but designate "autonomous concepts"	just satisfaction criminal charge
	jurisprudential creations	margin of appreciation
	linguistic precedents	legitimate aim
	generic terms	pre-trial detention
National terms		civil party

Table 5. Classification of terminology possibly found in ECtHR case-law proposed by Brannan (2013: 909ff.).

The first type of supranational terms is derived from the European Convention on Human Rights and is thus made of so-called "Convention-specific terms" (Brannan 2013: 913). The examples provided by Brannan himself are "just satisfaction" (Article 1 ECHR), "abuse of the right of individual application" (Article 35, § 3 ECHR), and "exhaustion of domestic remedies" (derived from the wording of Article 35, § 1 ECHR[5]). However, since the Convention may be amended by protocols, it should be borne in mind that these terminological units may not have been present in the original version of the Convention. Moreover, this category also contains terminological units that exist at the national level but have been developed in such a way as to "come to designate 'autonomous concepts' that are interpreted independently of their domestic meaning" (Brannan 2013: 914). The designation "autonomous concept" itself was created by the European Commission on Human Rights in 1968, when it stated that "the term 'civil rights and obli-

5 Article 35, § 1 ECHR reads as follows (emphasis added): "The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken."

gations' cannot be construed as a mere reference to the domestic law of the High Contracting Party concerned but relates to an autonomous concept which must be interpreted independently, even though the general principles of the domestic law of the High Contracting Parties must necessarily be taken into consideration in any such interpretation"[6]. This phenomenon is well reported in Letsas (2004: 282–283), who also provides the following examples: "criminal charge", "civil rights and obligations", "possessions", "association", "victim", "civil servant", "lawful detention", and "home". On the other hand, the example of "reasonable time" is given by Weston (2005: 456), who states that the Court may give "a supranational or non-culture bound meaning, independent of any meaning attributed by a State's national legislation or case-law" to terms in the Convention.

The second type of supranational terminological units consists in "jurisprudential creations" (Brannan 2013: 916), which are perceived as unfamiliar in national legal contexts. Therefore, these terms do not appear in the text of the ECHR but are rather created and developed in ECtHR case-law. These terminological units seem to be rare in ECtHR case-law (Weston 2005: 455–56; Brannan 2013: 916) and the example generally provided is the so-called doctrine of the "margin of appreciation"[7].

The third type comprises other terms and expressions that are commonly used in ECtHR case-law but are not unknown in national contexts. These terms and expressions constitute so-called "linguistic precedents" (Brannan 2013: 917ff.; see also Weston 2005: 458), and the main point raised by Brannan is that they may pose problems both to drafters and translators, since they may not be properly used, while their consistency is vital to avoid any problem concerning the correct interpretation of ECtHR case-law. The examples provided by Brannan (2013: 918) are stock expressions that are expected to be used consistently (unless a new meaning is to be conveyed), i.e. "practical and effective", "legitimate aim", and "pressing social need".

The fourth type refers to "generic terms" (Brannan 2013: 920), which are used because of their capacity to serve as umbrella terms, i.e. to cover a variety of (quasi-)equivalent national legal concepts. The preference in this case is to avoid, when possible, the use of national terminology, although the resulting term may sound unnatural or not particularly idiomatic to a native speaker, and the example provided is "pre-trial detention", with its less frequent variant "detention pending trial".

In addition to supranational terminology, due to its procedure and to the macro-structure of its judgments (see Section 3.5), the ECtHR also has to reckon with national terminology. According to Brannan (2013: 922), one of the possible

6 *Twenty-One Detained Persons v Germany*, EComHR (1968), available at http://echr.ketse.com/doc/3134.67-3172.67-3188.67-3189.67-etc-en-19680406/ (accessed 22/01/2019).

7 Another example, which I owe to James Brannan (private discussion, August 2019), is "pilot judgment".

options in this case are "literal translations" and he mentions "civil party" as an example, but does not delve further in the terminological units referring to SBEs. Given that the latter are the topic of Chapters 5 and 6, the discussion of their features is deferred to the next chapters.

The use of all these different types of terminological units in ECtHR case-law, which may sound unusual to native speakers of the official languages of the ECtHR, may lead to a language that can be considered unnatural, bordering on the jargon. However, as Brannan puts it, "there are good reasons for using such terms, whether to ensure the consistency of case-law and its application *erga omnes* in a large number of States or merely to cater for the pan-European readership" (Brannan 2013: 923).

This chapter has discussed how culture-bound elements (CBEs) have been defined and classified in translation studies and has argued that system-bound elements (SBEs) are a type of CBEs. Based on the assumption that SBEs are commonly designated by terms, the scant literature dealing with legal terminology in ECtHR case-law has been surveyed to suggest that further investigation is needed to develop an understanding of the role of CBEs in this legal genre.

5 An empirical study of Italian SBEs in ECtHR Grand Chamber judgments: Methodology

The empirical study presented here is both corpus-based and corpus-driven (Biber 2009). It is corpus-based because the underlying hypothesis is that ECtHR judgments involving a Contracting Party as a respondent State contain elements referring to the national legal and judicial system of that State and thus the assumption is that the investigation of a corpus made of such judgments may reveal the presence of system-bound elements. It is corpus-driven, on the other hand, because the linguistic information available so far on SBEs in ECtHR judgments is so scarce that the analysis of an ECtHR corpus is seen as a *sine qua non* to unveil the linguistic forms possibly assumed by SBEs in supranational case-law.

The first step to be taken in this type of study is thus to build an *ad hoc* corpus. In the following sections, the text selection criteria are first illustrated, and the resulting corpus is then described. Given the peculiarities of the elements to be extracted from the corpus, a specific, non-linear methodology was devised, which is also described in greater detail below.

5.1 ECtHR Grand Chamber judgments: Text selection criteria

The study presented in this volume is based on a monolingual corpus made of sixteen ECtHR judgments listed in Appendix 1 selected on the basis of four crite-

ria: (1) the judicial formation delivering the judgment, (2) the respondent State, (3) the time of delivery, and (4) the articles of the European Convention on Human Rights allegedly violated by the respondent State. Each criterion is briefly illustrated below.

5.1.1 Criterion 1: Judicial formation

As described in Chapter 2, the ECtHR has a complex linguistic regime based on two official languages, and the language of its judgments depends on a number of factors. However, due to their relevance and the need to disseminate their content to an audience as wide as possible, Grand Chamber judgments are customarily made available in both English and French (unlike the mainly monolingual Chamber judgments). Given that the aim of this study was to observe the behaviour of Italian system-bound elements in judicial texts expressed in English, only Grand Chamber judgments were taken into account, leaving aside all other forms of ECtHR judicial decisions and judgments.

5.1.2 Criterion 2: Respondent State

The second criterion relates to the respondent State, i.e. the State against which one or more applicants submit their application to the ECtHR. Again, since the aim of the study was to investigate the behaviour of Italian system-bound elements in ECtHR judgments, only cases involving Italy as the respondent State were selected. This does not mean that Italian SBEs are found solely in judgments against Italy. In fact, the ECtHR frequently engages in comparative law analyses in its argumentations and thus needs to refer to national system-bound elements that do not belong to the legal system of the respondent State. Furthermore, the ECtHR allows so-called "third party interventions" (see Section 1.7.2). It follows that Italian SBEs may also be found in judgments against a respondent State other than Italy.[1] However, their frequency in these contexts is expected to be considerably lower than in judgments in which Italy is actually a party.

1 See, for instance, the following paragraph in Grand Chamber's judgment in *Rohlena v. the Czech Republic* (Application no. 59552/08), where Italian loan words and loan words from other languages occur (emphasis added):

> 28. It transpires from the legal systems of the Contracting States that there is a need to distinguish between two situations, the second of which is in issue in the present case:
> (a) a "continuing" criminal offence (trvající trestný čin, Dauerdelikt, infraction continue, reato permanente), defined as an act (or omission) which has to last over a certain period of time – such as the act of assisting and giving shelter to members of an illegal organisation, dealt with by the Court in the case of Ecer and Zeyrek v. Turkey (nos. 29295/95 and 29363/95, ECHR 2001II); and
> (b) a "continuous" criminal offence (pokračující trestný čin, fortgesetzte Handlung, infraction continuée, reato continuato), defined as an offence consisting of several acts all of which contain

5.1.3 Criterion 3: Time of delivery of judgments

The third criterion is the period of delivery of the judgments selected, which is 2000-2018. The reason for this choice lies in the considerable changes that the functioning of the ECtHR was subject to in the 1990s described in Sections 1.3 and 1.4: in order to ensure a sufficient uniformity of the texts to be included in the corpus, only judgments delivered in compliance with the same rules in the same period were selected.

5.1.4 Criterion 4: ECHR articles allegedly violated

Finally, in order to limit the number of judgments to be included in the corpus, only certain articles of the ECHR allegedly violated by Italy were used as a further selection criterion. In particular, in the cases selected, Italy was accused of having violated Article 5 (Right to liberty and security), Article 6 (Right to a fair trial) or Article 7 (No punishment without law). The reason for choosing these articles is that they may all somehow be associated with criminal procedure, a field in which the author has developed a certain expertise in previous research projects (e.g. Gialuz et al. 2014, 2017; Peruzzo 2013a, 2013b, 2014a).

5.1.5 ECtHR Grand Chamber judgments: Corpus description

By applying the criteria described above to the search function available in HUDOC[2], the official web portal where ECtHR judgments and decisions are published, sixteen judgments were selected (see Appendix 1), for a total of 246,506 tokens and 8,038 types[3]. However, the texts that were actually included in the corpus do not correspond to the full texts retrieved from the portal. The reason for this choice lies in the rigid structure of ECtHR judgments discussed in Section 3.5. To be more precise, the Opening and the Closing sections, which contain the list of the judges forming the judicial panel and which provide information on the languages, the place and date of delivery, and the signatures respectively, were excluded due to their repetitiveness and the complete absence of SBEs in them. The same was done with the separate (concurring or dissenting) opinions possibly following the Closing section, although the presence of system-bound

---

the elements of the same (or similar) offence committed over a certain period of time – such as the intentional, continuous and large-scale concealment of taxable amounts that was in issue in the case of Veeber v. Estonia (no. 2) (no. 45771/99, ECHR 2003I).

2 HUDOC, available at https://hudoc.echr.coe.int/ (last visited 29/10/2018).

3 The data concerning the number of tokens and types provided here and further in the chapter were obtained by using AntConc, available at https://www.laurenceanthony.net/software.html.

elements in separate opinions is not to be excluded completely. The reason for leaving out separate opinions is that they are handed down by individual judges rather than by the judicial panel dealing with the case at stake, so they do not reflect the drafting procedure used for the rest of the text of the judgment. The resulting corpus thus contains the Procedure, Facts, Law, and Operative part sections of the selected judgments, whose respective numbers of tokens and types as contained in the corpus are specified in Table 6.

Section	Tokens	Types
Procedure	8,097	910
Facts	82,735	5,638
Law	152,491	5,930
Operative part	3,183	344

Table 6. Number of tokens and types in the corpus of Grand Chamber judgments divided per section.

Before addressing the methodology used to extract Italian SBEs, it should be pointed out that this study is product-oriented, in so far as it considers only the English final versions of the judgments included in the corpus. However, it should not be forgotten that, in cases against Italy, Grand Chamber judgments have hitherto usually been first drafted in French, which is the *de facto* original language, and then translated into English. Once delivered, both language texts are considered authentic and official.

5.2 Extraction of Italian SBEs: Methodology

The methodology adopted to extract Italian SBEs from the ECtHR corpus described above combines semi-automatic term extraction with "event templates" as developed within the field of frame-based terminology. An event template for ECtHR judgments was developed in order to make an educated guess as to the main semantic fields (hereinafter "categories") to which the Italian SBEs in the corpus may belong to. Based on the so-devised categories, a list of keywords was used to extract SBEs and further search strings in a circular way. The presence of Italian expressions in the corpus then required the adoption of an *ad hoc* method to isolate them from the rest of the corpus, which is in English.

5.2.1 Event templates

The notion of "frame", defined as a "system of concepts interrelated in such a way that one concept evokes the entire system" (Faber et al. 2005, in line with

Fillmore and Atkins 1992), made its appearance in the study of terminology in the first years of the new millennium, when Faber et al. (2005) recognised its potential. Indeed, the notion had already been exploited in lexicology, where Fillmore and Atkins (1992) laid the foundations for the so-called "'frame-based' dictionary", in which "relationships between (senses of) semantically related words will be linked with the cognitive structures (or 'frames'), knowledge of which is presupposed for the concepts encoded by the words" (Fillmore and Atkins 1992: 75). The idea of such a frame-based dictionary, in turn, stems from frame semantics (Fillmore 1982), an approach to the study of lexical meaning based on the research carried out by Fillmore and his team ever since the mid-1970s.

Faber et al. (2005) noticed "an obvious affinity" between frame semantics and terminology, given that they apply a similar conceptual organisation to their object of study. However, the two disciplines have devoted a different degree of attention to the notion of "frame": while frames have been extensively applied in lexicology, lexicography and syntax,[4] the same cannot be said to have occurred in terminology and terminography. Building on frame semantics, Faber and her research group developed frame-based terminology (Faber et al. 2005; Faber et al. 2006; Faber et al. 2007), within which "[t]he specification of the conceptual structure of specialized domains is a crucial aspect of terminology management" (Faber et al. 2006: 191).

In frame-based terminology, a conceptual structure is understood as a schematised abstraction which should reflect – at least partially – the complexity and the dynamic nature of real-life events or processes. Such a conceptual structure represents a prototypical event or process (Faber et al. 2006: 191–192) and can be used as a framework to arrange the concepts – and thus the terms referring to them – in a terminological knowledge base (TKB). These structures assume the form of so-called "event templates" (Faber et al. 2006: 192)[5]. When designing a TKB focusing on a specialised domain, it must be borne in mind that event templates can vary significantly depending on the knowledge area they are applied to and on the degree of granularity pursued. A single, uniform, all-encompassing template suitable for any kind of TKB is therefore a mere illusion: a specific template needs to be created for each domain or sub-domain. The same holds true when event templates are used, within terminology, for purposes other than terminology management, as is the case in this study.

4 See, for instance, the *International Journal of Lexicography Special Issue "FrameNet and Frame Semantics"*, edited by Thierry Fontenelle, which is entirely devoted to Frame Semantics and, more specifically, to the FrameNet project, a computational lexicography project entirely based on Frame Semantics and run by the International Computer Science Institute and the University of California, Berkeley. For other research in these fields see also Boas (2005) and Martin (2006).

5 Event templates may be intended as "larger chunks of knowledge" (Geeraerts 2010: 222), which are also referred to as "Idealized Cognitive Models" (Lakoff 1987) or "frames" (Fillmore 1976; Fillmore 1985). For an in-depth examination of the differences between Lakoff's Idealized Cognitive Models and Fillmore's frames, see Geeraerts (2010: 222–225).

In line with the prototypical conceptual structures reproducing events or processes proposed by frame-based terminology, in this study event templates are considered particularly useful in term extraction. Event templates are the representation of frames which, as cognitive structuring devices, can be seen as a means for understanding language. A well-known example is the typical commercial event, in which the whole scenario is "'activated' in the mind of anybody who comes across and understands any of the words 'buy', 'sell', 'pay' […]" (Fillmore 1976: 25). The advantage of using event templates in term extraction lies in the highly efficient topic-related vocabulary activation capacity of frames and of event templates used to represent prototypical events or processes.

The idea of using backbone structures for the extraction of terms and knowledge-rich contexts (Meyer 2001) from texts or corpora is not new in terminology. For instance, in termontography (Temmerman and Kerremans 2003) the search for terminological data and their subsequent classification in terminological records are preceded by the creation of so-called "categorisation frameworks" (Kerremans et al. 2003: 663), i.e. "language-independent frameworks of interrelated categories" (Kerremans 2004: 263) which support the gathering of relevant information and make it possible to establish extraction criteria (Kerremans 2004: 268). However useful categorisation frameworks may be, they present relations through glosses in one or several languages, which may seem a drawback compared to event templates. Indeed, in event templates a limited number of relations is established during the design phase, since the usage of uncontrolled natural language is seen as a potential risk: such a leeway may lead terminographers to create an endless list of relations even when existing relations could be exploited due to their affinity. Moreover, although termontography allows any type of intercategorial relation to be included in categorisation frameworks, it seems more focused on the categories themselves than on the dynamism of the process or event in which such categories occur.

However, by combining the potential of event templates to represent the dynamism of a specific process or event with the categorisation frameworks highlighted in the early stages of the terminological workflow, event templates can be developed which can help the extraction of terminological data from a corpus (Peruzzo 2014b: 158). Since SBEs are generally designated by terms (see Section 4.3), event templates have actually been exploited to extract SBEs from the corpus described in Section 5.1.5.

The starting point for the creation of an event template for SBE extraction has been the macro-structure of Grand Chamber judgments presented in Section 3.5. Indeed, the subdivision of ECtHR judgments into sections suggests the existence of a sequence of steps that lead from an initial situation to a final judicial decision. Therefore, an ECtHR judgment itself could be seen as an event whose main phases can be summarised in an event template. In the event template shown in Figure 6, the main activities carried out in each phase by the ECtHR and reported in the text of its judgments are succinctly described in the light grey boxes under

the four headings, which correspond to the four sections taken into account for the building of the corpus.

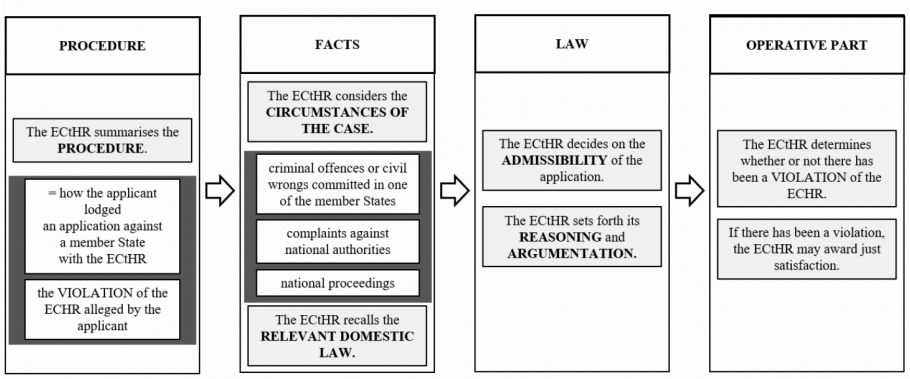

Figure 6. Event template developed for the extraction of SBEs from the ECtHR corpus.

A closer look at Figure 6 reveals that, in reality, such an event template hides a potentially infinite number of event templates, created specifically to describe the back story of each case separately. This is somehow represented in the two dark grey boxes in Figure 6.

In the Procedure section, the steps taken by the applicants to take their cases before the ECtHR can constitute an event template of their own, which is in any case established by the Court itself, since the procedure to lodge an application is provided for in the Rules of Court.

On the other hand, the Facts section reveals a considerably higher degree of variability because every case reaching the ECtHR originates in a national context and has its own peculiarities. The past events recounted in this section could be included in an event template of their own. Nevertheless, creating a separate event template for every single case was not considered a convenient solution for the purposes of this study, which approached ECtHR case-law from a more general perspective. The focus was thus centred on the shared traits of the Facts section rather than on the specificities of each case. Since the purpose of the Facts section is to illustrate the issue of legal relevance existing between the applicants and the respondent States, the elements that generally characterise it are the circumstances of the case and the relevant domestic law. This means that what can be found in this section is the following: a review of the facts occurred in the member State, the participants involved, the legal provisions allegedly violated, the complaints raised against national authorities, and an account of the proceedings before national judicial authorities.

Keeping to the event template in Figure 6 and considering what has been said about the content of the four sections in Section 3.5 on the macro-structure, the most relevant sections in terms of presence of SBEs were expected to be the

Facts and Law section, while the Procedure and the Operative part section were considered less productive from the outset due to the fact that they are considerably shorter and highly formulaic. These expected differences notwithstanding, this event template served as the basis for the identification of the categories of system-bound elements that were considered likely to be found in the corpus, which are described in the next section.

5.2.2 Categories of SBEs

Given the event template presented in Figure 6 and what has been said so far about the procedure before the ECtHR and the Court's case-law, it shall come as no surprise that the first category of SBEs expected to be found in the corpus are elements referring to Italian judicial authorities.

On account of the alleged Article violations chosen as a selection criterion (see Section 5.1.4), the second category of SBEs contains expressions designating criminal offences under Italian statute law. However, the presence of references to civil wrongs cannot be excluded, so this second category is considered broad enough to contain different forms of violations of both civil and criminal legislation.

The third category, which is evidently linked to the previous ones and clearly emerges from the event template in Figure 6, relates to the references to Italian legislation, be it statute law or case-law. Indeed, the ECtHR frequently recalls national legislation when describing the circumstances of the fact and the proceedings before national judicial authorities, apart from the specific section devoted to the relevant domestic law.

Finally, the fourth category envisaged is designed to include whatever expression may have a connection with the Italian judicial procedure and is therefore expected to contain the highest number of SBEs of the four. The reason for identifying such a broad category is essentially practical and can be inferred from the event template in Figure 6: although the applicants may complain about the violation of the same Articles of the European Convention on Human Rights, the circumstances of the single cases and the type of proceedings conducted even within the same member State are considerably diverse. The specificity of every case would thus require the creation of several categories related to different aspects of national proceedings, but such a fine-grained categorization would imply treating every judgment as a text in itself rather than as a part of a corpus.

5.2.3 Keywords

After identifying the four categories of SBEs expected to be found in the corpus, a semi-automatic term extraction procedure was adopted based on keywords and coding (i.e. corpus annotation).

The coding followed a non-linear progression and was performed by means of QDA Miner Lite, a qualitative data analysis tool[6]. Based on the event template presented in Figure 6 and on the awareness of the macro-structure of ECtHR judgments illustrated in Section 3.5, a preliminary list of keywords to be used in the extraction process was drawn up (see Appendix 2). These keywords were used as search words in the Text Retrieval function of the analysis tool, which works like the Search function in concordancing tools such as AntConc. Within the hits obtained through this procedure, the terms or expressions that were considered instances of Italian SBEs were annotated using one of the four codes corresponding to the SBE categories, i.e. "Italian judicial authorities", "Criminal offences and civil wrongs under Italian law", "Italian legislation", and "Italian judicial procedure". This process is considered as non-linear since the hits obtained by means of the Text Retrieval function led to the identification of other possible keywords to be used to detect further interesting terms or expressions. To make these steps clearer, a concrete example is given below.

The first keyword used to detect terms referring to Italian judicial authorities was the noun [court]. This word has a very high frequency rate in the corpus, given that the judgments it is built of are passed by an institution that is called "Court" itself and that a number of different courts are generally mentioned in such judgments that belong to different jurisdictions, such as the Italian and the French Court of Cassation or the International Criminal Court. A quick look at the rough data indeed revealed the presence of 2,065 hits of the keyword [Court] (capitalised) in the corpus. Although one of the solutions to identify all the cases in which the keyword [court] (either capitalised or not) could have been to check every single hit, this option was discarded as it was considered unpractical and time-consuming, due to the number of hits of certain keywords (e.g. [proceedings] – 547 hits). Therefore, the first step to speed up the SBE extraction process was to combine the first relevant results of the keyword search with the observation of the co-text and the structure of the judgment. What became evident was that the keyword [court] did not work as an element of a term referring to an Italian type of court in the Procedure and Operative part sections of the judgments, while it did so in the Facts section, where both the factual and procedural events occurred in Italy prior to the filing of the case before the ECtHR are recollected, as well as in the Law section. Taking a closer look at one of the cases included in the corpus (*Calvelli and Ciglio v. Italy*), the numbers of hits of the noun [court] correspond to the figures presented in Table 7 below.

6 The software used for text annotation is QDA Miner Lite, v 2.0, available at https://provalisresearch.com/products/qualitative-data-analysis-software/ (last accessed 25/01/2019).

	Procedure	Facts	Law	Operative part
Number of hits referring to the ECtHR	4	0	19	1
Number of hits referring to Italian courts	0	26	8	0

Table 7. Number of hits of the keyword [court] (either capitalised or not) in *Calvelli and Ciglio v. Italy*.

In particular, the next step involved the observation of the co-text surrounding the keyword [court]. To show this step, in Table 8 the eight relevant hits found in the Law section of *Calvelli and Ciglio v. Italy* are listed.

On 17 March 1994 E.C. appealed to the Catanzaro **Court** of Appeal.
bringing an action in the relevant civil **court** (see paragraphs 32-33 above).
made against the doctor by a civil **court**. However, the case file shows that in
in the civil proceedings in the Cosenza **Court** of First Instance, the applicants entered in
a judgment in the civil **court** could also have led to disciplinary action
the case, the caseload of the Cosenza **Court** of First Instance and the fact that
Furthermore, the proceedings before the **Court** of Appeal and the **Court** of Cassation had been conducted with exemplary
and ended on 17 October 1995 when the Catanzaro **Court** of Appeal's judgment of 3 July 1995

Table 8. Concordances of the keyword [court] (either capitalised or not) referring to Italian SBEs in the Law section of *Calvelli and Ciglio v. Italy*.

In Table 8, the linguistic elements surrounding the keyword [court] that were relevant for the present study have been underlined. What can be immediately noticed by looking at these concordances is that the co-text provides different types of information. The first is that the keywords used may be just one of the elements that constitute a longer expression referring to an SBE. This could somehow have been anticipated, since in the legal and judicial domains multi-word terminological units are more frequent than single-word terms. In this corpus, examples of these SBEs are "Court of First Instance", "Court of Appeal" and "Court of Cassation". Therefore, for the purposes of this study, the expressions recognised as referring to Italian SBEs were retained, while those expressions designating concepts or notions not embedded in the Italian legal and judicial system (e.g. "Court" meaning the ECtHR or "Court of Cassation" meaning the French Court of Cassation) were discarded.

From a methodological perspective, the observation of the co-text provides further keywords to be used in the search for SBEs. For instance, strings such as [appeal to], [bring an action in], [proceedings in the], and [proceedings before the]

may be used to retrieve other Italian SBEs, as in the examples provided in Table 9, in which both the search strings and the newly detected Italian SBEs are highlighted.

Case	Concordance
Markovic and Others v. Italy (Facts section)	No appeal to the ***Consiglio di Stato***, sitting in its judicial capacity, shall lie
Markovic and Others v. Italy (Facts section)	first four applicants brought an action in damages in the **Rome District Cour**t under Article 2043 of the Italian Civil Code
Markovic and Others v. Italy (Facts section)	brought to an end, *ipso jure*, the proceedings in the **Rome District Court**
Scozzari and Giunta v. Italy (Facts section)	has not been informed of the outcome of the proceedings before the **Court of Cassation**

Table 9. Examples of co-text used as search string to identify Italian SBEs in the corpus.

The methodology illustrated so far was repeated circularly until the starting keywords and the search strings extrapolated from the concordances yielded no new results in the form of SBEs. However, cases like the one in the first example provided in Table 9, where an Italian designation is used for an SBE, posed a further methodological issue. Indeed, the presence of expressions in the original "third" or "hidden" language has been accounted for, though only *en passant*, in the literature, with both Brannan (2013: 922; 2017: 107-111) and Weston (2005: 457, footnote 19) acknowledging that, in case of doubt or when the term plays a particularly significant role in the judgment, the original expression may be included in brackets after the translation. However, as the example above shows, original-language terms are also attested outside brackets and without being accompanied by a translation gloss, and more instances were expected to occur in the corpus. Since to our knowledge no software existed which is capable of automatically extracting words in one language from a corpus of texts mostly written in another language and given that the literature on term extraction and corpus linguistics revealed no method that could be replicated for this purpose, an *ad hoc* methodology was devised to extract all the expressions in Italian possibly designating an SBE.

5.2.4 *Ad-hoc* methodology for extracting Italian expressions

For the extraction of Italian expressions from the ECtHR corpus a software programme for corpus-linguistics analysis was used. The software was TaLTaC[27], a programme for the automatic analysis of textual corpora which combines two approaches, i.e. text analysis and text mining. The tool was originally developed by the Università degli Studi di Salerno and the Sapienza Università di Roma for

7 Available at http://www.taltac.it/it/index.shtml (last accessed 25/10/2018).

the Italian language, but nowadays it can be used to analyse corpora in four other languages, namely English, French, Spanish, and German. TaLTaC[2] comes with built-in so-called "statistical-linguistic resources", which are meant to be used to explore user corpora and consist in lexicons of frequency, thematic or linguistic dictionaries, knowledge bases of various types, etc.

Despite its advanced functions, TaLTaC[2] fails to support mixed-language content. Put differently, the software neither distinguishes portions of text in different languages nor is able to extract automatically words or phrases in one language from a corpus mainly in another language. This means that it is provided with no specific tool for the extraction of foreign words and phrases that do not belong to the vocabulary of the main language of the corpus. This shortcoming, however, does not overshadow one of its useful functions, namely the possibility to compare a corpus with a word frequency list. This function compares the relative frequency of the words in the built-in lists with that of the words in a user's corpus and shows whether a word is over- or under-represented in the corpus. The higher the difference between the frequencies, the more peculiar the word to the corpus (Bolasco 1999: 223). This function can also be used to identify words that are exclusive of either the word frequency list or the user's corpus.

The comparison function was considered a viable option for the extraction of Italian expressions[8]. Indeed, the linguistic peculiarities of a corpus generally come to the fore when the corpus itself is compared with at least one word frequency list of the same language. However, since here the purpose was to isolate Italian expressions from an English corpus, the comparison was performed between the English corpus described in Section 5.1.5 and an Italian word frequency list (POLIF2002[9]). The software classifies the words in the word list and in the corpus into three groups, i.e. words in common to the compared sources, words exclusive to the user's corpus, and words exclusive to the word frequency list. The assumption was thus that the Italian expressions in the English corpus could be found in the first group, while the two other groups of words produced by TaLTaC[2] could be ignored.

The *ad hoc* methodology produced a 788-word list of Italian expressions possibly referring to SBEs. Each entry on this list was then validated manually to identify proper SBEs and discard the inevitable noise. At this point it should be noticed that each candidate had to be assessed separately to delete false positive results (such as homographs in the two languages, e.g. "assume") and duplicates (mainly due to capitalised and non-capitalised words) on the one hand, and to identify possible multi-word units on the other, since the list obtained contained

8 This methodology for the extraction of loan SBEs has already been presented in Peruzzo (2019). However, the results obtained for the present study have been analysed within a different theoretical framework.

9 POLIF2002 contains over 50,000 different word forms extracted from POLIF, a corpus of both written and spoken samples of contemporary standard Italian of over 4 million words (Bolasco and Morrone 1998).

single words only. The presence of particles such as articles and prepositions in the list indicated that the Italian expressions in the corpus were syntactically more complex units, such as multi-word terms and other formulaic expressions formed by at least two of the words in the list, e.g. *gravi indizi di colpevolezza* and *se ritiene di non essere in grado di decidere allo stato degli atti*.

The manual validation of the list allowed for the isolation of SBEs from words that do not refer to notions embedded in the Italian legal or judicial systems, which were also present in the corpus. Examples of non-SBEs designated by Italian expressions are *flessioni* (floor exercises), *opinionista* (opinion columnist), and *poltrone reclinabili* (reclining seats). In the same vein, anthroponyms and toponyms such as *Durante*, *Abbate*, *via Botteghe Oscure*, and *Palazzo Madama* were excluded. A further category that was deleted relates to the press and other published materials (e.g. *Corriere della Sera*, *Il Giornale*, *l'Espresso*, *Rivista diritto internazionale*). Finally, culture-bound terms related to the history of Italy were also excluded (e.g. *anni di piombo*, *Tangentopoli*).

The extraction performed following the methodology illustrated above allowed for the retrieval of 401 expressions designating Italian SBEs, the analysis of which is presented in Chapter 6.

6 An empirical study of Italian SBEs in ECtHR Grand Chamber judgments: Analysis

The extraction performed following the methodology illustrated in Chapter 5 allowed for the retrieval of 401 expressions designating Italian SBEs, which are listed in Appendix 3. In Section 6.1 and its subsections, the frequency and distribution of these instances are discussed, while a closer linguistic analysis is provided in Section 6.2.

6.1 Italian SBEs in Grand Chamber judgments: Frequency and distribution

The methodology presented in Chapter 5 produced a list of a total of 401 expressions referring to Italian SBEs that fall within the categories identified through the use of the event template described in Section 5.2.1, i.e. "Italian judicial authorities", "Criminal offences and civil wrongs under Italian law", "Italian legislation", and "Italian judicial procedure". At this stage, a terminological clarification is called for. So far, the word "expression" has been used to refer to the designation of an Italian SBE. This has been done deliberately, since the methodology adopted revealed from the outset that not all the SBEs were legal concepts or legal institutions designated by what most people would consider a terminological unit, such as "summary procedure (*giudizio abbreviato*)". Indeed, in certain cases non-terminological units were extracted from the corpus which however are part of the linguistic repertoire of Italian legal experts and practitioners. Exam-

ples are "on the ground that the offenders could not be identified (*perché ignoti gli autori del reato*)" and "objective situation effectively permitting every individual to be aware of the acts in question (*situazione oggettiva di effettiva conoscibilità, da parte di tutti, degli atti medesimi*)". Therefore, when possible the words "term" or "terminological unit" have been avoided. However, in this chapter the word "instance" is preferred to "expression", and the reasons are explained below.

The word "instance" is used here to refer to one linguistic form or expression with its own frequency rate. In the corpus analysed, Italian SBEs are designated by either one instance (which is here referred to as "univocal instance", see Section 6.1.1) or more than one instance, and every instance has its own number of hits. Therefore, the number of instances does not correspond to the number of SBEs extracted from the corpus: rather, the total number of individual SBEs equals the total number of clusters (i.e. 170) as discussed in Section 6.1.2 (note that univocal instances count as individual clusters). Two examples from the category "Italian judicial authorities" are provided here to clarify this point. In the corpus, the Italian SBE *Commissione Tributaria Provinciale* is designated solely by "District Tax Commission", which means that the relevant cluster contains only one instance. On the other hand, the SBE *giudice dell'udienza preliminare* is referred to by using four different instances, each of which with its own frequency rate (see Table 10).

Instances	**No. of hits**
preliminary hearings judge	15
GUP	7
preliminary hearings judge (*giudice dell'udienza preliminare* – "the GUP")	1
preliminary hearings judge (*giudice dell'udienza preliminare*)	1

Table 10. Instances of the SBE *giudice dell'udienza preliminare* as extracted from the corpus and respective numbers of hits.

The figure 401 mentioned above thus refers to the number of instances extracted from the corpus. However, it does not reflect the frequency of the instances, which is in turn expressed as the number of hits (see Table 11).

Categories	**Instances**		**No. of hits**	
Criminal offences and civil wrongs under Italian law	69	17.21%	151	5.62%
Italian legislation	42	10.47%	682	25.37%
Italian judicial authorities	63	15.71%	807	30.02%
Italian judicial procedure	227	56.61%	1,048	38.99%
Total	401	100.00%	2,688	100.00%

Table 11. Number of instances referring to Italian SBEs extracted from the corpus ordered by relevant number of hits.

A glance at the figures in Table 11 reveals (to no one's surprise) that the highest number of instances and hits was found in the category "Italian judicial procedure". This is so because this category was intended as a broad repository of all the SBEs that have a connection with Italian judicial procedure and that cannot be classified into the other categories. Therefore, in this category we find SBEs as diverse as the formulae used to dismiss an accused person, the grounds for imposing precautionary measures, various types of orders, and so on.

On the other hand, the category with the fewest hits is "Criminal offences and civil wrongs under Italian law", which, however, is not the category with the fewest instances. This is so for essentially two reasons. The first is the limited array of instances that may fall within the categories "Italian legislation" and "Italian judicial authorities" compared to the wide boundaries of the other two categories. The second is that the ECtHR needs to review all the stages of the case and the relevant law, which means that in the judgments references to judicial authorities that have previously dealt with the same case and to legislation both occur with a high frequency.

However, a table only containing the number of instances and hits fails to really shed new light on the presence of elements with a national origin in the international case-law produced by the ECtHR. Indeed, the second step in the analysis has taken into consideration the well-defined structure of ECtHR judgments in order to investigate the frequency of SBEs in each individual section of the judgment, as shown in Table 12.

Category	Procedure	Facts	Law	Operative part	Total no. of hits per category
Criminal offences and civil wrongs under Italian law	1	90	59	1	151
Italian legislation	0	368	312	2	682
Italian judicial authorities	5	459	339	4	807
Italian judicial procedure	10	433	595	10	1,048
Total no. of hits per section	16	1,350	1,308	17	2,688
	0.60%	50.22%	48.55%	0.63%	

Table 12. Distribution of hits of Italian SBEs extracted from the corpus in individual sections, ordered by total number of hits per category.

What emerges from Table 12 is that the number of hits in the Procedure and in the Operative part sections is almost irrelevant compared to the number of hits in the other two sections. Indeed, these two sections account for 0.60% and 0.63% of the total number of hits respectively. On the other hand, the Facts section slightly outnumbers the Law section with 50.22% compared to 48.55%. These differences may be explained by considering two facts. The first is that the Facts and the Law sections are much longer and richer in terms of types and tokens and therefore more lexically diverse compared to the Procedure and the Operative part sections (see Table 6 in Section 5.1.5). The second is that not only are the latter sections much shorter, but they are also remarkably more formulaic and standardised than the other two sections. This explains why the likelihood of encountering SBEs in the Procedure and Operative part sections is almost non-existent.

6.1.1 Hapaxes and univocal instances

The observation of the number of hits per each instance provides evidence to the fact that many of the instances identified in the corpus are hapaxes, i.e. instances that occur only once in the corpus or, in other words, instances for which the number of hits equals 1. As can be seen in Table 13, the total number of hapaxes in the corpus amounts to 216, which corresponds to 53.87% of the total number of instances retrieved from the corpus.

Category	No. of instances that are hapaxes per category	% compared to the no. of instances
Criminal offences and civil wrongs under Italian law	43	62.32%
Italian legislation	16	38.10%
Italian judicial authorities	26	41.27%
Italian judicial procedure	131	57.71%
Total no. of instances that are hapaxes	216	53.87%

Table 13. Number of instances of Italian SBEs that are hapaxes in the ECtHR corpus.

Another interesting aspect is that for more than 80% of the instances retrieved from the corpus (see Table 14) at least one alternative linguistic form (e.g. synonym or acronym) was identified. For example, the Italian SBE *legittimo impedimento* is referred to as either "legitimate impediment" or "legitimate reason for not attending". The remaining 19.20% of instances fall within what is here termed "univocal instances", i.e. the instances for which no synonyms were found. Two

examples in the "Criminal offences and civil wrongs under Italian law" category are "attempted murder" (for the Italian SBE *tentato omicidio*) and "concealing a body" (*occultamento di cadavere*), while in the category "Italian judicial procedure" we find "precautionary measure" (*misura cautelare*) and "*carabinieri*".

Category	No. of univocal instances per category	% compared to the no. of instances
Criminal offences and civil wrongs under Italian law	29	42.03%
Italian legislation	2	4.76%
Italian judicial authorities	15	23.81%
Italian judicial procedure	31	13.66%
Total no. of instances that are univocal terms	77	19.20%

Table 14. Number of instances of Italian SBEs that are univocal hapaxes in the ECtHR corpus.

Considering the frequency of univocal instances in the corpus and focusing on the number of hapaxes, what emerges is that, of the 77 univocal instances retrieved, 43 actually have a frequency of 1 (see Table 15). Examples of univocal instances that occur only once are "judge supervising enforcement" (for the Italian *giudice dell'esecuzione*) and "false imprisonment with a view to extortion" (*sequestro di person a scopo di estorsione*). The figures recorded in Table 15 thus mean that more than 55% of the univocal instances are also hapaxes and that these instances amount to slightly more than 10% of all the instances retrieved from the corpus.

Category	No. of instances that are hapaxes and univocal instances per category	% compared to the total no. of instances that are hapaxes per category	% compared to the no. of instances per category
Criminal offences and civil wrongs under Italian law	19	44.19%	27.54%
Italian legislation	1	6.25%	2.38%
Italian judicial authorities	4	15.38%	6.35%
Italian judicial procedure	19	14.50%	8.37%
Total no. of instances that are hapaxes and univocal instances	43	19.91%	10.72%

Table 15. Number of instances of Italian SBEs that are hapaxes and univocal instances in the ECtHR corpus.

The most interesting element of the data presented in Table 15 is the figure related to the category of criminal offences and civil wrongs under Italian law, which corresponds to slightly more than a quarter of the total number of instances falling within this category. This figure may be explained with reference to the aim pursued by the ECtHR, which not only decides whether there has been a violation of the European Convention on Human Rights in a single case, but also ensures that its principles are disseminated throughout its Contracting Parties. Therefore, while the ECtHR needs to recall the circumstances of the case, the facts and the legal characterisation of the events and acts occurred at the domestic level, it then reflects on these elements from a more general perspective. This may be one of the reasons for specific expressions referring to crimes or civil wrongs under Italian law being used only once in the corpus. Nevertheless, there may also be other reasons, and two examples are provided here to illustrate them.

> 13. In the article the applicant, after referring to the proceedings brought by Mr Caselli against Mr G. Andreotti, a very well-known Italian statesman accused of aiding and abetting the Mafia (*appoggio esterno alla mafia*) who has in the meantime been acquitted at first instance, expressed himself as follows: […] (*Case of Perna v. Italy*)

> 30. On 9 September 1997 the Florence Youth Court ordered the two children's placement at "Il Forteto", pursuant to Article 333 of the Civil Code (*Condotta del genitore pregiudizievole ai figli* – "parental behaviour harmful to the children"), suspended the father's and the mother's parental rights pursuant to Article 330 of the Civil Code (*Decadenza dalla potestà sui figli* – "lapse of parental rights"), ordered that if the parents refused to comply, the decision was to be enforced with police assistance, and granted the parents the right to visit the younger son only, such visits to take place on the cooperative's premises and in the presence of members of its staff. […] (*Case of Scozzari and Giunta v. Italy*)

In the first example, the SBE "aiding and abetting the Mafia (*appoggio esterno alla mafia*)" is not directly related to the case to be decided upon by the ECtHR, but rather contributes to the building of a clearer picture by providing additional information to the description of the facts. On the other hand, in the second example the SBE "*Condotta del genitore pregiudizievole ai figli* – 'parental behaviour harmful to the children'" appears in brackets after the reference to a piece of domestic legislation. Therefore, once the content of the article referred to is briefly mentioned using the Italian heading and its English translation in brackets, in the remaining parts of the text there is no need to repeat the SBE, since recalling the reference number of the article is sufficient.

Going back to the discussion of hapaxes and unique instances, the other side of the coin is that not all univocal instances are also hapaxes, as shown in Table 16.

	No. of univocal instances that are not hapaxes per category	% compared to the no. of instances
Criminal offences and civil wrongs under Italian law	10	14.49%
Italian legislation	1	2.38%
Italian judicial authorities	11	17.46%
Italian judicial procedure	12	5.29%
Total no. of univocal instances that are not hapaxes	34	8.48%

Table 16. Number of univocal instances of Italian SBEs that are not hapaxes in the ECtHR corpus.

What Table 16 tells us is that less than a tenth of all the instances extracted from the ECtHR corpus are univocal instances with a frequency higher than 1. In other words, this means that there are certain SBEs that occur several times in the corpus but for which always the same expression is used and which are therefore not characterised by synonymy. However, a great variety in terms of frequency can be noticed, since twenty-five unique instances that are not hapaxes have a frequency between 2 and 10, six between 11 and 20, two between 21 and 30 and 41 and 50, and one (i.e. "preventive measures") occurs 109 times in the corpus. Although, as already noted, the "instances" as observed in this study go beyond what are traditionally considered terminological units, the figures in Table 16 seem to provide further corroboration to the research findings that have challenged the univocity principle in terminology, i.e the principle according to which each designation should ideally refer to only one concept, while for each concept only one designation should be used. In the following section, more information is provided in this regard.

6.1.2 Clusters

In the previous section, it has been shown that, in most cases, there is no univocity between an instance and an SBE. In other words, synonymy is a feature of ECtHR judgments and more than one instance may be used to refer to the same SBE. For this reason, the extracted instances have been grouped into what are here called "clusters". The actual number of clusters created with the extracted instances is summarized in Table 17.

Category	No. of instances	No. of clusters	No. of hits
Italian legislation	42	13	682
Italian judicial authorities	63	24	807
Criminal offences and civil wrongs under Italian law	69	43	151
Italian judicial procedure	227	90	1,048
Total	401	170	2,688

Table 17. Number of instances referring to Italian SBEs, clusters and hits extracted from the ECtHR corpus.

To understand the figures in Table 17, two remarks should be made. The first is that in this study a cluster is conceived as a broad container for instances that point to a legal concept, notion or institution belonging to the Italian legal system extracted from a corpus. Therefore, a cluster is created only when at least one SBE is identified in the corpus. As a consequence, a cluster necessarily contains at least one instance, but the actual number of instances grouped under a cluster may be variable. For example, only one instance was found to refer to *permesso di uscire dal carcere* (i.e. "prison leave"), which means that the cluster contains a univocal instance, while two instances were included in the cluster referring to *concorso di reati* (i.e. "cumulative offences" and "'cumulative offences' (*concorso di reati*)") and five in the cluster for *giudice per le indagini preliminary* (i.e. "investigating judge", "preliminary investigations judge", "investigating judge (*giudice per le indagini preliminari*)", "judge responsible for preliminary investigations", and "preliminary investigations judge (*giudice per le indagini preliminari*)".

The second remark concerns the conceptual boundaries of these clusters. A cluster ideally contains linguistic expressions designating an Italian SBE. However, delimiting an SBE from another is far from straightforward and, at any rate, an excessively fine-grained grouping through clusters does not appear to add much of significance to the analysis. A couple of examples are provided to clarify this point.

The first example refers to a cluster included in the category "Italian judicial authorities" which contains the three instances retrieved in the corpus to refer to the *Procuratore Generale presso la Corte di Cassazione*, namely "Advocate-General [*Procuratore Generale*]", "Chief Prosecutor at the Court of Cassation", and "Prosecutor General at the Court of Cassation". The cluster can be considered to have clear-cut boundaries, since the instances refer to a specific type of Public Prosecutor under Italian law. On the other hand, in the category "Italian judicial procedure" we find another cluster whose instances do not point to exactly the same legal notion, but rather to a series of circumstances leading to the dismissal of the accused person. These circumstances are expressed in Italian through different prefabricated formulae, which in certain cases also occur in the corpus, as can be seen in Table 18.

Italian formula	Instance	No. of hits
perché ignoti gli autori del reato	on the ground that the offenders could not be identified	1
perché ignoti gli autori del reato	on the ground that the offenders could not be identified (*perché ignoti gli autori del reato*)	1
perché il fatto non sussiste	because the alleged facts had never occurred	1
perché il fatto non sussiste	on the ground that the alleged facts had never occurred	1
perché il fatto non sussiste	on the ground that the alleged facts had never occurred (*perché il fatto non sussiste*)	1
perché il fatto non sussiste, per non aver commesso il fatto, perché il fatto non costituisce reato o non è previsto dalla legge come reato	on the grounds that the alleged facts never occurred, he did not commit the offence, no criminal offence has been committed or the facts alleged do not amount to an offence in law	2
perché il fatto non sussiste, per non aver commesso il fatto, perché il fatto non costituisce reato o non è previsto dalla legge come reato	on the grounds that the case against him has not been proved, he has not committed the offence, no criminal offence has been committed or the facts alleged do not amount to an offence at law	1
perché è insufficiente o è contraddittoria la prova che il fatto sussiste	on the ground that no concrete evidence in support of that allegation could be found during the preliminary investigation and trial	1

Table 18. Instances included in the cluster "dismissal formulae".

A similar approach has been adopted for the cluster in the category "Italian legislation", which includes all the instances used to designate the Italian statute law in the form of a *Legge*, which are illustrated in Table 19.

Instance	No. of hits
Law	10
Law no. + Reference	183
Law no. + Reference + Title	4
Surname + Act	28
Title (Act) + Reference	5
Title (Act)	23
Act no.	38
Act	39
Law no. + Reference + Content	1

Table 19. Instances included in the cluster "Law".

The focus in this study was on the English expressions used to refer to the Italian term *Legge* and not on the single laws mentioned in the corpus. Rather than considering all the instances separately, they have been grouped in the cluster taking into account their linguistic form, which will be analysed later in this chapter. Therefore, the instances included in this cluster point to different Italian statutory instruments but have been grouped on the basis of the fact that they all belong to the same type of legislative act, which in Italian is designated by a single term.

The examples provided in Tables 18 and 19 also help understand that the data presented in Section 6.1.1 on the presence of hapaxes and univocal instances in the ECtHR corpus must be interpreted in the light of this loose method used to assemble the instances into clusters. In fact, what is considered a univocal instance in this study may well be part of a larger cluster if other judgments are added to the corpus, while the number of clusters may substantially change if stricter grouping criteria are introduced.

6.1.3 Frequency, distribution, and co-text

Another interesting aspect that emerged during the extraction of instances is the co-text in which the expressions occur. As seen in Chapter 1, the ECtHR's main role is to establish whether there has been a violation of the European Convention on Human Rights. To do so, it takes into account different sources of law, e.g. the national statute law and case-law of the respondent State, and a specific section in the structure of ECtHR judgments is devoted to the "relevant domestic law and practice". Furthermore, the ECtHR reviews the whole case up to that moment, which means that it refers back to national case-law and, when the case is brought before the Grand Chamber, also to prior Chamber case-law. To do so, the Court usually resorts to two different methods. The first consists in simply referring to, for example, the reference number of a statute law or case and, if need be, recall the main points relevant to the case. The second method is to give a quotation of the relevant law or judgment, which is not a rare practice.

At close scrutiny, the co-text in which Italian SBEs occur in the corpus can be said to fall within four main types:

(i) text produced directly by the Grand Chamber,
(ii) text quoted from previous ECtHR judgments,
(iii) text quoted from Italian sources (mainly statute law and case-law), and
(iv) text quoted from other sources (e.g. reports from NGOs, e.g. Amnesty International).

The final texts of the Grand Chamber judgments included in the corpus are the result of a drafting process that is far from straightforward. This is so both because of the high number of judges composing the judicial formation and of other staff of the Court and because of the peculiar linguistic regime adopted by

the ECtHR, based on two official languages only. As noted at the beginning of Chapter 5, while the English and the French versions of Grand Chamber judgments are equally authentic and valid, the English texts analysed here are translated from French. This must be borne in mind especially when the more linguistically relevant aspects are investigated, because it means that the solutions adopted by the Grand Chamber to refer to Italian SBEs derive from the choices made in the drafting process of the first "original" language of the judgment (i.e. French) rather than in English.

The only thing that is considered worth noting about the first type of co-text mentioned above is that it consists in all the portions of text that did not exist before the actual drafting of the judgment. In a similar vein, the fourth type is believed not to deserve particular attention and was actually discarded from the study, given that the number of hits referring to Italian SBEs in it was overall irrelevant and concerned a very limited number of texts included in the corpus.

On the contrary, the second type of co-text could be associated with what is generally referred to as "linguistic precedent" (Weston 1988: 687; Brannan 2018: 178ff.; 2013: 917ff.). The ECtHR needs its decisions to be consistent, and the language it uses should also be such that interpretation of the judgments is consistent. A linguistic precedent is a portion of text from previous judgments used in later judgments. What emerges from the examples provided in the literature, however, is that these portions of text are not always easily recognisable, since some expressions simply become stock phrases used by the ECtHR and their presence in later judgments does not need to be signalled in any way. Given the difficulty of identifying "unsignalled" linguistic precedents in ECtHR case-law, in the present study only those precedents that were explicitly marked in the corpus through the use of quotation marks were considered.

The quotations from national statute law and case-law are generally provided in quotation marks and, when the portion of text is particularly long or when it appears in the Relevant domestic law subsection, it is in quotation marks, indented, and in a smaller font, as in the following example:

> 32. Article 112 of the Italian Constitution provides:
> "The public prosecutor's office has a duty to prosecute." (*Case of Calvelli and Ciglio v. Italy*)

Reading a Grand Chamber judgment without taking into consideration the source of the cited portions of text is thus like watching a perfectly lip-synched film: the original language version disappears and the impression we have is that those portions of text are perfectly integrated with the other parts of the judgment. However, there are also cases where the viewer is reminded that some parts of the film have been dubbed. In the first example provided here, an Italian term is used to refer to a judicial body.

21. Article 31 of Royal Decree no. 1024 of 26 June 1924 provides:
"No appeal to the *Consiglio di Stato*, sitting in its judicial capacity, shall lie against acts or decisions of the government which involve the exercise of political power." (*Case of Markovic and Others v. Italy*)

In the second example, an Italian term is provided in square brackets after the English expression:

17. In written submissions dated 16 November 2001, Assistant Principal State Counsel at the Court of Cassation argued that the application for a preliminary ruling should be declared inadmissible as it concerned the merits of the claim, not the issue of jurisdiction. He stated as follows:
"The governmental bodies defending this claim have requested a preliminary ruling on the issue of jurisdiction, arguing that:
[...]
(b) paragraph 5 of Article VIII of the London Convention of 19 June 1951, which Italy ratified by Law no. 1335 of 1955, does not provide any basis for the action either, as it applies to damage caused in the receiving State.
The government seek to show through this jurisdictional issue that the Italian legal system does not contain any provision or principle capable of providing a basis for the alleged personal right [*diritto soggettivo perfetto*] or of guaranteeing it in the abstract.
[...]" (*Case of Markovic and Others v. Italy*)

Although the problem of the original language may go unnoticed, the fact that the quotations from national statute law and case-law are the result of translation first from Italian into French and then into English should not be underestimated, because these steps may lead to final texts that are different from the possible texts obtained through direct translation. Yet, it should also be remembered that translators at the ECtHR are not prevented from consulting the Italian source text when necessary. However, this is an aspect that goes beyond the scope of the present study, which is product-oriented.

After having established that Italian SBEs in Grand Chamber judgments may occur in different types of co-text, the question to be addressed is how these SBEs are distributed among types of co-text. The answer to the question can be inferred from Table 20.

Type of co-text	No. of hits	
(i) text produced directly by the Grand Chamber	2,414	89.71%
(ii) text quoted from previous ECtHR judgments	37	1.37%
(iii) text quoted from Italian sources	240	8.92%

Table 20. Distribution of hits of Italian SBEs by type of co-text.

The distribution of Italian SBEs among different types of co-text is far from even, with a clear predominance in the portions of text produced directly by the Grand

Chamber, which is ten times higher than in the texts quoted from Italian sources, and figures that are barely above 1% in the texts quoted from previous ECtHR judgments. However, these figures become more meaningful when combined with the subdivision into sections of ECtHR judgments, as done in Table 21.

Category	Procedure			Facts			Law			Operative part		
	GC	ECtHR	ITA	GC	ECtHR	ITA	GC	ECtHR	ITA	GC	ECtHR	ITA
Italian judicial authorities	5	0	0	413	8	38	330	8	1	4	0	0
Italian judicial procedure	10	0	0	332	2	99	582	8	5	10	0	0
Criminal offences and civil wrongs under Italian law	1	0	0	75	2	13	58	1	0	1	0	0
Italian legislation	0	0	0	282	2	84	306	6	0	2	0	0
Total	16	0	0	1,102	14	234	1,276	23	6	17	0	0

Table 21. Distribution of hits of Italian SBEs by section and type of co-text ("GC": text produced directly by the Grand Chamber; "ECtHR": text quoted from previous ECtHR judgments; "ITA" text quoted from Italian sources).

The picture that emerges from Table 21 is that, in both the Procedure section and the Operative part section, SBEs occur only in the text produced directly by the Grand Chamber. As regards the Facts section, 1,102 hits are concentrated in the text produced directly by the Grand Chamber, which corresponds to almost four times the number of hits in the text quoted from Italian sources, while the number of hits in the text quoted from previous ECtHR judgments is extremely low (14 hits only). In the Law section the highest number of hits is also in the text produced directly by the Grand Chamber (1,276). However, in this same section an inverse trend can be noticed with respect to the Facts section, since the number of hits in the text quoted from Italian sources (6) is lower than that of hits in the text quoted from previous ECtHR judgments (23). At any rate, the sum of these two figures (29) corresponds to slightly more than 2% of total hits in the Law section (1,305).

6.2 Italian SBEs in Grand Chamber judgments: Linguistic analysis

In the previous section, the frequency and distribution of Italian SBEs in the ECtHR corpus were discussed. In this section, a more qualitative approach is adopted to investigate this aspect, with a focus on the linguistic form of SBEs.

6.2.1 Single-word instances and acronyms

The first feature to stand out when considering the SBEs from a linguistic perspective is the high predominance of multi-word instances compared to single-word instances. In Table 22, the number of single word instances divided per category is shown.

Category	No. of single-word instances per category
Italian legislation	6
Italian judicial authorities	2
Criminal offences and civil wrongs under Italian law	5
Italian judicial procedure	12
Total no. of single-word instances	25

Table 22. Number of single-word instances referring to Italian SBEs in the ECtHR corpus.

Table 22 shows that, in the analysed corpus, only twenty-five single-word instances referring to Italian SBEs were found, corresponding to 6.23% of the total number of SBEs identified in the corpus. Of these, it is noteworthy to notice that five are Italian words (e.g. "*magistrato*", "*carabinieri*", "*pentito*"), while six are acronyms. Among the latter, it should be noticed that four actually correspond to the Italian acronyms ("CIE", "CPP", "CSPA", and "GUP"), while the other two correspond to the acronym derived from the English translation of the Italian designation (i.e. "CCP", standing for "Code of Criminal Procedure" or "Codice di procedura penale" in Italian, and "RAC", standing for "Regional Administrative Court" or "Tribunale Amministrativo Regionale" in Italian). It should be borne in mind, however, that these are also univocal instances in only four cases, while in all the other cases these single-word instances are included in a cluster. In other words, the complete designations of these SBEs are not single-word instances, but rather longer lexical bundles that, for different reasons (mainly linguistic economy), are not used in their full form throughout the text. Two paragraphs from *Mennito v. Italy* are provided here to illustrate this:

> 10. As the USL did not reply, the applicant brought proceedings against it in the Campania Regional Administrative Court ("the RAC") on 2 August 1993. […]

12. The case was heard on 14 January 1997. In a judgment of 14 January and 4 February 1997, the text of which was deposited with the registry on 3 March 1997, the RAC observed in the first place that the applicant was not required to challenge the decision in issue as it did not contain a refusal to pay the full amount of the allowance. […]

The single-word instances mentioned above, however, raise a very interesting issue regarding the SBEs that were extracted from the corpus, i.e. the presence of Italian acronyms and words in texts that are predominantly written in English. This aspect is further discussed below.

6.2.2 Instances containing Italian words or acronyms

As already mentioned in Chapter 5, in the ECtHR corpus it is not impossible to find instances referring to Italian SBEs which are, in whole or in part, Italian expressions. In fact, in the empirical study presented here almost one in four instances extracted from the corpus (22.69%) is a linguistic form which either contains one or more Italian words or consists of an Italian word *tout court*. However, in contrast with what has already been acknowledged in the literature by Brannan (2013) and Weston (2005) (see Section 5.2.3), these Italian words do not appear only in brackets after a translation into the official language of the ECtHR, but are also used in other ways, as summarised in Table 23 and discussed below.

Category	English expression + Italian expression	Italian expression only	Combination of English expression and Italian acronym	Italian expression + English expression	Italian acronym	English expression + Italian expression + acronym	Total no. of instances containing Italian expressions per category
Italian legislation	3	0	0	0	1	0	4
Italian judicial authorities	5	1	0	0	1	1	8
Criminal offences and civil wrongs under Italian law	7	0	0	1	0	0	8
Italian judicial procedure	54	4	5	3	2	3	71
Total no. of instances containing an Italian expression	69	5	5	4	4	4	91

Table 23. Patterns in which Italian expressions are used in the ECtHR corpus and numbers of instances per category.

The figures in Table 23 show that the most frequent case in which Italian expressions are used in the ECtHR corpus (69 instances, i.e. 75.82% of instances containing or consisting of an Italian expression) is, indeed, the one already mentioned in the literature. What precedes the brackets is generally considered to be a "translation" in the language of the judgment, but a closer look at the instances extracted from the corpus is here in order so as to determine what these translations actually look like.

By way of example, the English expression preceding the Italian one may be a word-for-word translation, such as in "'a manifest error of law' (*evidente errore di diritto*)" and "'legitimate interest' (*interesse legittimo*)". In other cases, formulations in line with the observation made by Brannan (2013: 920) on the use of "generic terms" can be observed, although in these cases the generic terms are followed by Italian specialised terms in brackets, such as in "summary procedure (*giudizio abbreviato*)", "transfer (*cessione volontaria*)", and "alternative measure to detention (*semilibertà*)". In some other cases, the expressions used in English do not correspond, in terms of part of speech, to the Italian expressions in brackets. Examples of this are "statute-law is time barred [*decadenza*]" and "the provisions that had previously been applicable come back into force (*reviviscenza*)", where the paraphrase consists in a verbal construction rather than an abstract noun like the Italian term that follows in brackets.

In other cases still, what precedes the Italian expression is more similar to a paraphrase or an explanation than a literal (or loan) translation[1] or a generic term, such as in "persons against whom there is evidence (*indiziati*)". As concerns this solution, it can also be said that sometimes the paraphrase contains more detailed information on the Italian SBE compared to the information provided by the designation in brackets, such as in "preliminary ruling from the Court of Cassation on the question of jurisdiction (*regolamento preventivo di giurisdizione*)" and "substantial awards of compensation for expropriation (*serio ristoro*)", which may be explained in terms of background knowledge: while the Italian reader is expected to know what the term in brackets refers to, the reader of the English text may need additional information to get a clearer picture of the Italian legal and judicial reality.

A preference for paraphrases has been observed especially in relation to full phrases (which are here considered non-terminological SBEs) rather than specialised terms. Examples are "through the intermediary of a specially instructed representative [*per mezzo di procuratore speciale*]", "on the ground that the offenders could not be identified (*perché ignoti gli autori del reato*)" and "on the ground that the alleged facts had never occurred (*perché il fatto non sussiste*)"[2].

1 A loan translation, or calque, is "a translation technique applied to an SL [source language] expression and involving the literal translation of its component elements" (Palumbo 2009: 15).

2 Please note that two types of brackets are used based on the type of co-text in which the SBE occurs (see Section 6.1.3): when the SBE appears in portions of text produced directly by the Grand Chamber, the brackets are round, while when the SBE occurs in portions of text quoted from previous ECtHR judgments or from Italian sources, the brackets are square.

The last example, however, could also be used to point out another fact. The full form "on the ground that the alleged facts had never occurred (*perché il fatto non sussiste*)" is a hapax and is never repeated in this full form in the rest of the corpus, where three shorter variants occur, i.e. "because the alleged facts had never occurred" (1 hit), "on the ground that the alleged facts had never occurred" (1 hit), and "on the grounds that the alleged facts never occurred" (2 hits). This means that the linguistic form following the pattern "English expression + Italian expression" is not a univocal term but is rather part of a cluster comprising more than one instance. Of the 69 instances following this pattern, 54 belong to a cluster, while the remaining 15 are univocal terms *and* hapaxes at the same time. This means that they occur only once, and no other linguistic form is used to refer to the underlying SBE elsewhere in the corpus. Examples of these hapaxes are "offices of State Counsel [*Avvocatura dello Stato*]" and "'Notice to appear in appeal proceedings before the court sitting in private' (*decreto di citazione per il giudizio di appello davanti la Corte in camera di consiglio*)".

However, within the same pattern instances were also detected where a variety of English expressions are followed by the same Italian transcription in brackets. This is the case, for example, of "on the basis of the case file as it stands (*allo stato degli atti*)" and "on the basis of the steps in the proceedings taken at the preliminary investigation stage (*allo stato degli atti*)" and "refusal of entry (*respingimento*)" and "refusal-of-entry measure (*respingimento*)".

In the remaining 22 instances (24.18%) in which an Italian expression occurs, one pattern consists in the use of the Italian expression only. However, in this regard it should be noticed that three of the instances are univocal expressions, i.e. "*Consiglio di Stato*", "*carabinieri*", and "*magistrato*". Their use as univocal terms allows us to infer either that the Italian designations are considered to be already known to or sufficiently transparent for the potential readers of the ECtHR judgments, or that the context in which they are used compensates the possible lack of understanding of an Italian SBE. On the other hand, "mafioso"/"mafiosi" and "*pentito*"/"*pentiti*" are part of a cluster, but a difference can be seen right from the outset. The former are used in roman characters and without further explanation (the alternative expression identified in the corpus is "member(s) of the Mafia"), which may indicate that the expression has already been naturalised in English. On the other hand, "*pentito*"/"*pentiti*" has not entered the English vocabulary in the same way and, in order for it to be understandable, it needs an explanation in brackets which, curiously enough, contains the word "mafioso", i.e. "*pentito* (a former mafioso who has decided to cooperate with the authorities)".

The latter example is, in turn, one of the four instances that follow the pattern "Italian expression + English expression", all of which are hapaxes. A very similar instance is "*latitante* (that is to say, wilfully evading the execution of a warrant issued by a court)", where the brackets contain an explanation of the Italian term.

The same small number of instances is shared by two other patterns, i.e. an Italian acronym used on its own or an English expression followed by an Italian

expression and the corresponding acronym. It must be said, however, that, save for the case of "CPP", which refers to the Italian Code of Criminal Procedure and for which the full Italian expression is not given, in all the other cases where Italian acronyms are used on their own the full expression is given in the form of the second pattern mentioned here. In other words, an acronym such as "GUP" would not be particularly meaningful to a reader who has no knowledge of the Italian judicial system. For this reason, the first time the acronym appears in the corpus it is part of a longer string of words, i.e. "preliminary hearings judge (*giudice dell'udienza preliminare* – 'the GUP')", which explains the meaning of the SBE and makes it possible to use a shorter form in the rest of the text.

The last pattern involving Italian expressions detected in the corpus consists in hybrid forms obtained through the combination of an Italian acronym with English lexical elements. Table 23 shows that this pattern concerns five instances, but this figure needs to be interpreted cautiously, since all the instances identified refer to the same Italian SBE. One of these instances can be considered the full form, since it contains both the Italian expression and the relevant acronym ("high-supervision (*Elevato Indice di Vigilanza* – E.I.V.) prison unit"), while the other instances are derived forms ("E.I.V. prison unit", "E.I.V. regime", "high-supervision ("E.I.V.") unit", and "E.I.V. unit").

6.2.3 Instances not containing Italian words or acronyms

The most obvious way of making the link between an expression and the national system it belongs to clear is to introduce the SBE by using an instance containing an Italian expression and then refer to it by using the English expression only. An example is the cluster referring to the Italian concept of *respingimento*, where the three linguistic forms containing an Italian element are hapaxes ("refusal of entry (*respingimento*)", "refusal-of-entry measure (*respingimento*)", "shall refuse entry (*respinge*)"), while the other forms without the Italian elements are not ("refusal of entry", "refusal-of-entry measure", "refusal-of-entry order"). However, using a combination of English and Italian elements for a problematic SBE the first time it is mentioned and repeating the English element only later in the text is not the only solution adopted in the corpus. Indeed, in 310 instances retrieved from the corpus (77.31%), a direct connection to the Italian legal and judicial system is not made through the combination of English and Italian elements. Yet, this does not mean that the readers are left without clues enabling them to match what they read with the relevant national legal and judicial system.

A very important role in this regard is played by the section of the judgment and the co-text in which a given SBE appears, since they may very well contain the necessary information to match the linguistic elements with the correct legal or judicial system. The following two passages, which are extracts from *Khlaifia and Others v. Italy* (emphasis added), can clarify this point.

30. Two other migrants in respect of whom a refusal-of-entry order had been issued challenged those orders before the Agrigento Justice of the Peace.
[...]

33. Legislative Decree (*decreto legislativo*) no. 286 of 1998 ("Consolidated text of provisions concerning immigration regulations and rules on the status of aliens"), as amended by Laws no. 271 of 2004 and no. 155 of 2005, and by Legislative Decree no. 150 of 2011, provides inter alia as follows:
[...]

Article 14 (execution of removal measures)

"1. Where, in view of the need to provide assistance to an alien, to conduct additional checks of his or her identity or nationality, or to obtain travel documents, or on account of the lack of availability of a carrier, it is not possible to ensure the prompt execution of the deportation measure by escorting the person to the border or of the refusal-of-entry measure, the Chief of Police (*questore*) shall order that the alien be held for as long as is strictly necessary at the nearest Identification and Removal Centre, among those designated or created by order of the Minister of the Interior in collaboration (di concerto) with the Minister for Social Solidarity and the Treasury, the Minister for the Budget, and the Minister for Economic Planning. [...]"

Since both paragraphs occur in the Facts section, the reader may expect the content to refer to the national legal system, and the co-text provides further details to confirm this hypothesis. In paragraph 30 in the example, a national type of judicial body is mentioned ("Justice of the Peace") preceded by an Italian place name, while paragraph 33 provides even more coordinates meant to guide the reader. Indeed, the paragraph starts with an introductory sentence containing references to Italian legal provisions, which is followed by their actual wording in the form of direct quotations translated into English. From the observations made so far, it can be concluded that, while instances containing Italian words or acronyms could be easily recognized as pointing to SBEs, the same cannot be said for instances not containing Italian elements, which need to be considered in their co-text if they are to be interpreted correctly.

By shifting the focus on the linguistic form of the instances not containing Italian words or acronyms, the same trend as for the previous type of SBEs can be noticed: most of them correspond to a literal translation. However, two aspects must be emphasised here. The first is that the English version of the judgments under analysis is a translation from French, which means that the English expressions used to refer to the Italian SBE may have been obtained not by translating directly from Italian but rather from French. The second is that, of the 91 instances containing Italian words or acronyms analysed in Section 6.2.2, only twenty-five are univocal. The reason this is relevant to the discussion has to do with what was just mentioned above: in many cases, the Italian expression is first transcribed and accompanied by its translation in English, while in the rest of the text the English "translation" is only used, such as in the already mentioned examples "on the ground that the offenders could not be identified (*perché ignoti gli autori del reato*)" and "objective situation effectively permitting

every individual to be aware of the acts in question (*situazione oggettiva di effettiva conoscibilità, da parte di tutti, degli atti medesimi*)".

However, in the instances where the Italian expression is not transcribed, an attentive reader versed in the Italian legal and judicial system would recognise a loan translation of Italian terms, such as in the following examples: "lawyer holding a special authority" indicating the Italian *legale munito di procura speciale* and "District Tax Commission" and "Regional Tax Commission" standing for *Commissione Tributaria Provinciale* and *Commissione Tributaria Regionale* respectively. A less attentive reader, on the other hand, will have to rely on the co-text in order to identify such expressions as SBEs.

Another interesting aspect related to the loan translation of Italian expressions concerns the use of acronyms. Indeed, two instances were detected in the corpus which are the result of a loan translation process, but they are first accompanied by the acronym derived from them, i.e. "Code of Criminal Procedure ('the CCP')" (standing for *Codice di procedura penale* or *cpp*) and "Regional Administrative Court (the 'RAC')" (standing for *Tribunale Amministrativo Regionale* or *TAR*). This solution seems particularly convenient in terms of linguistic economy, since the full forms have a very low frequency (1 and 2 hits respectively), while the acronyms used on their own occur with a (much) higher frequency (104 and 14 hits respectively). The number of acronyms derived from a loan-translation process is lower compared to the number of Italian acronyms in the corpus. This is so because the use of loan-translation acronyms in ECtHR judgments is discouraged by the *English Style Manual*[3], which encourages the use of "the foreign-language abbreviation rather than an abbreviation based on the translated wording […], provided the foreign-language term (and translation) is given in full on the first occurrence (unless the abbreviation is well known, e.g. the PKK, or it would be too complicated to indicate the full term, in which case only a translation/explanation should be necessary)".

Just like for the instances analysed in Section 6.2.2, it is also worth noting that not all of the instances that do *not* contain Italian words or acronyms are obtained through loan translation: some of them are created through what is more similar to a paraphrase or an explanation. This is the case, for instance, of the Italian *legittimo impedimento*, for which in the corpus both the loan translation "legitimate impediment" and the more explicit form "legitimate reason for not attending" are used. Other instances still, such as "detention pending trial" and "pre-trial detention", could be considered as generic terms, since they convey the general meaning of the legal institution but may be applied to any national system in which a similar institution exists. Interestingly enough, as an exception to what has been described so far, in two instances terms that are generally associated with the common law tradition were identified to designate Italian SBEs,

3 I am indebted to James Brannan for pointing this out and providing me with a copy of the *English Style Manual* (Registry of the European Court of Human Rights, English Language Division and Publications Unit (2019), internal document).

i.e. "aiding and abetting the Mafia (*appoggio esterno alla mafia*)" and "application for bail". However, given that these two instances have a very low frequency (1 and 2 hits respectively) and that they are univocal terms, the presence of common law terms is not considered relevant for drawing conclusions about Italian SBEs in the ECtHR corpus.

In Section 6.2.2, quantitative figures have been provided concerning the preference for one pattern over other possible patterns identified when Italian words or acronyms are used in the corpus. In this section, a different approach has been adopted to describe the instances *not* containing Italian words or acronyms. The observation of these instances revealed a prevalence of what could be described as loan translations over other forms of designations. However, giving precise quantitative data in this regard would have meant tracing a clear-cut distinction between loan translations and other solutions, such as paraphrases or explanations. This task is far from straightforward and, in many cases, it would rely too much on subjectivity. For example, there seems to be little doubt that "preliminary investigations judge" can be considered as a loan translation of the Italian *giudice per le indagini preliminari*, but does the same apply when trying to describe solutions such as "investigating judge" or "judge responsible for preliminary investigations"? And even more complex cases may occur, such as the Italian SBE *esigenze cautelari*, whose cluster contains eight instances (Table 24).

circumstances warranting the adoption of a precautionary measure
conditions for a precautionary measure
conditions for the application of a precautionary measure (*misura cautelare*)
conditions for the application of a precautionary measure depriving a person of his liberty
grounds for decisions ordering precautionary measures
grounds for imposing precautionary measures
grounds for precautionary measures
serious need for precautionary measures

Table 24. Instances in the cluster referring to *esigenze cautelari*.

Without going into too much detail, suffice to say that in Italian the terminological unit consists of two words, while in the ECtHR corpus English solutions that are much longer were discovered. Of these, only one instance contains an Italian expression, which, however, refers to only one of the conceptual elements included in the SBE. Therefore, here and in the other instances included in the cluster, a loan translation (i.e. "precautionary measure") is used for one element only, while the remaining parts of the English expressions contain in most cases explanatory language.

Regardless of the different labels that can be given to Italian SBEs in the English version of the ECtHR judgments in the corpus, all the formulation patterns that have been described in Sections 6.2.2 and 6.2.3 can perhaps be related to the more general notion of "secondary term formation" (Sager 1990: 80). According to the generally accepted definition, this phenomenon "occurs as a result of (a) the monolingual revision of a given terminology [...], or (b) a transfer of knowledge to another linguistic community, a process which requires the creation of new terms in the target language" (Sager 2001: 251). Furthermore, secondary term formation is obtained through several methods, such as borrowing, loan translation, paraphrase, parallel translation, adaptation and creation *ex nihilo*, which "can be used simultaneously or sequentially and often give rise to several alternative or competing new terms. It can therefore take time before a terminology stabilizes in this field" (Sager 2001: 253). Although secondary term formation is a long-known phenomenon, in legal linguistics it seems to have received (limited) attention in recent years only and mainly with regard to the creation of a multilingual terminology capable of designating concepts belonging to the legal system of the European Union (see, for example, Fischer 2010: 28ff.; Peruzzo 2012, 2018: 128ff.; Šarčević 2015: 189ff.; Temmerman 2018). Little is known about its use within other supranational institutions.

On the basis of the definition provided above, the phenomenon of secondary term formation seems to share much with what has been observed here in relation to SBEs in the ECtHR corpus, especially as far as the "transfer of knowledge to another linguistic community" is concerned. Indeed, the need to refer to a legal concept or institution originally embedded in a national context expressed in one language in a supranational context expressed in another language makes the transfer of knowledge through "translation" inevitable. However, caution is needed here before concluding that all the phenomena observed in the corpus fall within secondary term formation.

The first reason for being cautious relates to the designation itself. As has been pointed out in Section 6.1 and illustrated by means of several examples, not all the SBEs extracted from the corpus would be unanimously recognised as terminological units, and a good example of this is provided by the circumstances leading to the dismissal of the accused person mentioned in Table 18 above. Therefore, while in most cases we could say that a *term* is created, in other cases what we see may be a *phraseological unit* (e.g. "by means of a reasoned decision [*con decreto motivato*]") or a *stock phrase* (e.g. "on the ground that the alleged facts had never occurred") rather than a term. Moreover, the drafting process involving translation may also require a term in the original language to assume a different linguistic form when moved to the supranational context so as to make the content more intelligible to the broad readership of the ECtHR case-law, as is the case for "the provisions that had previously been applicable come back into force (*reviviscenza*)" mentioned above.

Another reason for not jumping to the conclusion that all the instances retrieved from the corpus can be described as cases of secondary term formation is that the transfer of knowledge from one linguistic community to another may not lead to the stabilisation of the relevant term – or other linguistic expression – in the receiving language. It has been suggested that "[s]ometimes secondary term formation constitutes an isolated process when used to fill in specific terminology gaps in the target language" (Sanz Vicente 2012: 106, see also Peruzzo 2013: 153), and this can also apply to the other linguistic expressions just mentioned. However, it is the author's opinion that for a terminological unit to be properly considered as such it must have undergone a terminologisation process, i.e. not only must it have acquired or been attributed a specialised meaning in a specialised context, but it must also be recognised or used by the linguistic community in that context. Therefore, a term resulting from an isolated process should be seen as a neologism – a term in its embryonic phase whose future is impossible to predict. This is actually the case for the hapaxes that are also univocal instances that were identified in the corpus: they occur only once, and no further observations or predictions can be made on their degree of terminologisation based on the results obtained.

Another similarity can however be seen between secondary term formation and the phenomena observed in the corpus, i.e. the presence of linguistic variants for the same SBE, which can be perceived as a temporary lack of stability. Indeed, secondary term formation can be described as a process in which alternative designations exist and sometimes compete before one or more prevail over the others. The cluster shown in Table 24 above is a clear example of alternative designations used for the same SBE. Still, it is hard to draw conclusions as to the degree of terminologisation of these variants, since it is impossible to foresee whether in the future there will be the need to refer to the same SBE and, if so, whether the drafters and translators will prefer one alternative to the others or will decide to depart from the linguistic precedent and use yet another designation. Once again, it is fundamental not to overlook the types of co-text in ECtHR judgments, which may constitute a possible factor influencing this choice. Let's imagine, for example, an existing ECtHR judgment containing the quotation, and thus the translation, of the wording of an Article from a national legal provision. A good reason would certainly be needed to the drafter and the translator to decide *not* to re-use the same translation in a later judgment, thus departing from the linguistic precedent. The discussion of the life cycle of terms and other expressions referring to SBEs is, however, beyond the scope of this book. A diachronic approach would be required for this type of analysis.

Based on what has been said so far, the phenomena related to Italian SBEs observed in the ECtHR corpus can be associated with secondary term formation. Nevertheless, due to the broad definition of SBEs adopted in this study and to the other reasons just mentioned, secondary term formation seems too narrow a notion to describe what happens to a national SBE when it enters a supranational

text. In fact, when this occurs, translation and transfer of knowledge are involved, but they entail no legal transplant. In other words, the supranational legal system does not acquire a new legal concept, institution or rule for the simple fact of discussing them in a judicial decision. In line with Magris (2018: 17), the SBEs analysed here would perhaps be better characterised as examples of "stipulative correspondence". Stipulative correspondence consists in the relationship that is established between a term designating an SBE in the source language and the term used in the target language. It is thus a relationship at the lexical level only, since the SBE remains part of the original legal system and is not introduced in the legal system of the target language. With respect to Magris's own characterisation (2018), in the present study the concept of stipulative correspondence has been extended so as to include expressions that are not prototypically terminological units. As a result, building on Magris's notion, the phenomena observed and described in the present study could generally be considered as the result of a process of "creation of stipulative corresponding expressions" in the official language(s) of a supranational institution. These expressions could, in some cases, represent the first step in a terminologisation process.

To illustrate what is meant here, an example already given by Brannan (2013: 922) can be described in terms of the creation of a stipulative corresponding expression. The example concerns the concept referred to as *parte civile* in Italian and *partie civile* in French, which belongs to the civil law tradition and is unknown in the common law. According to Brannan (2013: 922), "[i]n an attempt to find a non-national term to reflect a domestic reality, the translator may opt for strict linguistic equivalence, unless the result is clearly meaningless". Therefore, the term "was initially translated as 'party claiming damages in criminal proceedings'", which can be considered as an example of a stipulative corresponding expression. However, the "explanatory rendering was abandoned as it became obvious that damages were not necessarily at stake" and was replaced by the stand-alone term "civil party". In the corpus under examination, "civil party" occurs along with "civil party in (the) criminal proceedings". Both "civil party" and "civil party in (the) criminal proceedings" are thus stipulative corresponding expressions, because they are labels identifying a national SBE in supranational case-law. By Brannan's own admission, "civil party" is now the most frequent term used to refer to this SBE in ECtHR case-law, which confirms that the term has undergone a terminologisation process. Designations for SBEs that occur with very low frequency may not be undergoing a similar terminologisation process; still, they can best be described as cases of stipulative correspondence given the kind of relationship that they establish with the corresponding notion in the "source" language.

When I first began working on this project, my intention was to write a book focussing on the techniques used to translate the terminology referring to national legal systems in the case-law of the European Court of Human Rights. However, when I started digging into the functioning of the ECtHR and its language regime, my attention was soon captured by the lack of descriptions and analyses specifically intended for linguists and translators. This made me deviate from my original plan: rather than presenting a linguistic study *in medias res*, I thought it would be more useful first to provide the readers with the background information necessary to understand why and how the ECtHR produces its case-law and to concentrate on the linguistic aspects involved in its drafting.

My goal in the first part of the book was therefore to write something informative as well as legally accurate for an audience interested in legal language and legal translation who cannot be assumed to be knowledgeable about the ECtHR. The contribution of this part of the book thus lies in its focus on the peculiarities of the language regime of the ECtHR (which has only two official languages, i.e. English and French) and on the consequences of this regime on the drafting process. Indeed, the final versions of the judgments published on the HUDOC portal (sixteen of which were used for the study presented in this book) are the result of multiple drafting and editing steps carried out by different professional profiles. Based on this assumption, a main thrust of the first part of the book is that it sheds light on the fundamental role played by translation in the drafting process, be it from and into the two official languages of the ECtHR or from the so-called "third" or "hidden" languages, i.e. the official languages of the member States of the Council of Europe.

I then dedicated the second part of the book to a product-oriented study on a corpus of ECtHR judgments. This study represents a major step forward in the research on the linguistic features of the supranational case-law produced by the ECtHR for two reasons. The first is that, to my knowledge, no corpus-driven or corpus-based study on these judgments has ever been conducted so far[1], a gap that this study has tried to narrow. The second is that the study required the revision, from a theoretical standpoint, of what I had initially considered as "terms referring to a national legal and judicial system". A preliminary observation of my corpus revealed that the "things I wanted to extract from the corpus" went beyond what is generally considered a "term" or "terminological unit" and included also expressions more similar to phraseological units and stock phrases typical of legal discourse. For this reason, I adopted a broader perspective and tried to characterise the linguistic expressions having a national dimension as types of "culture-bound elements". Drawing on this notion and considering the embed-

1 The only existing linguistic case-study on ECtHR judgments is reported in Caliendo (2004), but the corpus used in that case was made of only one judgment.

dedness of the underlying concepts and institutions in a national legal and judicial system, I decided to refer to them as "system-bound elements" (SBEs). This allowed me to take into account linguistic elements that would not be generally considered as terminological units and whose use is well established in Italian texts but almost unknown in supranational texts.

Apart from theoretical issues, the search for Italian system-bound elements in a corpus of ECtHR judgments also posed several methodological challenges. Extracting Italian SBEs from a corpus of slightly more than 246,500 tokens and distinguishing them from supranational elements or SBEs embedded in national legal and judicial systems other than the Italian one is not an easy task, and no specific tool exists which is able to do so automatically. For this reason, a methodology was first devised by combining event templates as applied in frame-based terminology and keywords. Since the corpus contained also Italian words and expressions, the methodology was then supplemented with an *ad hoc* method for their extraction. This methodology allowed for the retrieval of 401 instances of SBEs referring to 170 Italian legal and judicial concepts, notions and institutions, which were then analysed in terms of distribution, frequency, and linguistic form. For the purposes of the study presented in this book, the methodology adopted was considered successful, but further studies are desirable, possibly concerning SBEs from other national environments, in order to prove its validity.

The analysis of the SBEs retrieved from the corpus brought to the fore two salient aspects. The first is that it is impossible to describe the language of ECtHR judgments without sufficient knowledge of how they are drafted and what the role of translation is in the drafting process. In this regard, a major finding of this study is that SBEs may occur in four different types of co-text, namely (i) text produced directly by the Grand Chamber, (ii) text quoted from previous ECtHR judgments, (iii) text quoted from Italian sources, and (iv) text quoted from other sources. The observation of these types of co-text confirmed that translation is a crucial component in the drafting of ECtHR case-law. As regards co-text type (iii), there is little doubt that translation from a "third" language is needed to publish a judgment in the official languages of the ECtHR. Yet, translation is also needed in cases before the Grand Chamber, because drafts are first handed down in one official language and then translated into the other official language. In cases where Italy is the respondent State, judgments are usually first drafted in French and then translated into English; therefore, translation is involved in both co-text types (i) and (ii).

The second essential aspect that emerged from the study is that not only SBEs exist solely when a form of comparison and migration from one context to another is involved, but also that the knowledge transfer implied in this migration does not result in a legal transplant. When this migration also implies a transfer from one language to another, a form of translation is necessarily involved. The linguistic methods used to make this knowledge transfer possible have traditionally been studied within the framework of "secondary term formation" (Sager

1990: 80). However, this notion was not considered entirely suitable to describe the phenomena observed in the present study. On the one hand, if the focus is on *term* formation, then it is hard to incorporate in the framework elements whose linguistic expression fails to qualify as a terminological unit, as was the case for several of the SBEs identified in the analysis. On the other, term formation generally implies a certain degree of terminologisation, while the expressions observed in the analysed corpus are frequently the result of *ad hoc* translation choices. For these reasons, a different notion was taken into consideration, i.e. "stipulative correspondence" (Magris 2018: 17), which is the lexical relationship established between an SBE in its original linguistic context and the designation used to refer to the same SBE in a different linguistic context. It is a relationship at the lexical level only, since the expression used in the target language does not imply a legal transplant. All the linguistic methods used to refer to Italian SBEs in the English-language corpus were thus subsumed under the umbrella term "creation of stipulative corresponding expressions".

The findings presented in this work are clearly limited due to the methodology applied and the size of the corpus used for the analysis. As stated earlier, further research would be necessary to assess the validity of the methodology, and studies involving languages other than Italian and supranational bodies other than the ECtHR would be needed to further elucidate and possibly extend the concept of "system-bound element". Moreover, the idea of "stipulative correspondence" is still in its infancy and should be further explored, both from a synchronic and a diachronic perspective.

Despite these limitations, the study presented in this book is believed to be of relevance because it sheds light on a frequently overlooked phenomenon, namely that the texts of ECtHR judgments are more like a collage than a picture entirely drawn by the ECtHR itself. To use another metaphor, ECtHR judgments may be compared to a film. The Court is the director, who takes the main decisions, and is supported by the screenwriter, who drafts the actual texts of the judgments, and the director of photography, who makes sure that the judgments follow the prescribed standardised structure. The quotations from national statute law and case-law and from previous ECtHR judgments are part of the soundtrack. Given their origin, these quotations are not film scores, i.e. music written specifically to accompany the film, but rather already existing songs used instrumentally to give further meaning to the film scenes. However, for some of the songs to be used in the film, they first need to be translated. And, to finish in the same vein, given the importance and the effects of the decisions taken by the Grand Chamber, it comes as no surprise that the producer opts for audiovisual translation to enhance the distribution of the film.

Aixelá J. F. (1996) "Culture-Specific Items in Translation", R. Álvarez & C.-Á. Vidal (eds), *Translation, Power, Subversion*, Clevedon/Bristol/Adelaide, Multilingual Matters, pp. 52–78.

Alcaraz Varó E. & Hughes B. (2002) *Legal Translation Explained*, Manchester, St. Jerome.

Arold N.-L. (2007) *The Legal Culture of the European Court of Human Rights*, Leiden/Boston, Martinus Nijhoff Publishers.

Athanassious P. (2006) "The Application of Multilingualism in the European Union Context", ECB Legal Working Paper No. 2, https://ssrn.com/abstract=886048.

Baker M. (1992) *In Other Words: A Coursebook on Translation*, London/New York, Routledge.

Barkhuysen T. & van Emmerik M. (2009) "Legitimacy of European Court of Human Rights Judgments: Procedural Aspects", in N. Huls (ed.), *The Legitimacy of Highest Courts' Rulings. Judicial Deliberations and Beyond*, The Hague, T.M.C. Asser Press, pp. 437–449.

Bassnett S. & Lefevere A. (1990) "Introduction: Proust's Grandmother and the Thousand and One Nights: The 'Cultural Turn' in Translation Studies", in S. Bassnett & A. Lefevere (eds), *Translation, History and Culture*, London, Printer Publishers, pp. 1–13.

Berger V. (2006) "Les Missions du Greffe à la Cour Européenne", *Petites Affiches* 44, pp. 12–17.

Berger V., de Bruyn D., Clément J.-N., Depré S., Kaiser M., Lambert P. & Pettiti C. (1999) *La Procédure devant la Nouvelle Cour Européenne des Droits de l'homme Après le Protocole n. 11 : Actes du Séminaire Organisé à Bruxelles le 9 Octobre 1998, par les Instituts des Droits de l'homme des Barreaux de Paris et de Bruxelles*, Bruxelles, Bruylant/Nemesis.

Berteloot P. (2000) "La Traduction Juridique dans l'Union Européenne, en Particulier à la Cour de Justice", in *La Traduction Juridique: Histoire, Theorie(s) et Pratique. Legal Translation. History, Theory/Iesand Practice*, Geneva, Ecole de Traduction et Interprétation de l'Université de Genève, Association suisse des traducteurs, terminologues et interprètes, pp. 521–536.

Bhatia V. (1987) "Language of the Law", *Language Teaching* 20(4), pp. 227–234.

Biber D. (2009) "Corpus-Based and Corpus-Driven Analyses of Language Variation and Use", B. Heine & H. Narrog (eds), *The Oxford Handbook of Linguistic Analysis*, Oxford, Oxford University Press, pp. 159–191.

Biel Ł. (2007) "Translation of Multilingual EU Legislation as a Sub-Genre of Legal Translation", in D. Kierzkowska (ed.), *Court Interpreting and Legal Translation in the Enlarged Europe*, Warsaw, Translegis, pp. 144–163.

Boas H. C. (2005) "Semantic Frames as Interlingual Representations for Multilingual Lexical Databases", *International Journal of Lexicography* 18, pp. 445–478.

Bocquet C. (1994) *Pour une Méthode de Traduction Juridique*, Prilly, Éditions CB.

Bolasco S. (1999) *Analisi Multidimensionale dei Dati. Metodi, Strategie e Criteri d'Interpretazione*, Roma, Carocci Editore.

Bolasco S. & Morrone A. (1998) "La Construction d'un Lexique Fondamental de Polyformes selon Leur Usage", in S. Mellet (ed.), *Proceedings of JADT 1998*, Nice, Université Nice Sophie Antipolis, pp. 155–166.

Borja Albi A. (1998) "Estudio Descriptivo de la Traducción Jurídica. Un Enfoque Discursivo", Barcelona, Universitat Autònoma de Barcelona, PhD Thesis.

Borja Albi A. (2007) "Los Géneros Jurídicos", in E. Alcaraz Varó (ed.), *Las Lenguas Profesionales y Académicas*, Barcelona, Ariel, pp. 141–154.

Borja Albi A. (2013) "A Genre Analysis Approach to the Study of the Translation of Court Documents", *Linguistica Antverpiensia New Series* 12, pp. 33–53.

Borja Albi A., García Izquierdo I. & Montalt V. (2009) "Research Methodology in Specialized Genres for Translation Purposes", *Interpreter and Translator Trainer* 3(1), pp. 57–77.

Borja Albi A. & Hurtado Albir A. (1999) "La Traducción Jurídica", in A. Hurtado Albir (ed.), *Enseñar a Traducir. Teoría y Fichas Prácticas*, Madrid, Edelsa, pp. 154–166.

Brannan J. (2009) "Le Rôle du Traducteur à la Cour Européenne des Droits de l'Homme", *Traduire* 220, pp. 24–35.

Brannan J. (2013) "Coming to Terms with the Supranational: Translating for the European Court of Human Rights", *International Journal for the Semiotics of Law* 26, pp. 909–925.

Brannan J. (2017) "The Benefits and Challenges of Translating a Code of Criminal Procedure", in M. Gialuz, L. Lupária & F. Scarpa (eds), *The Italian Code of Criminal Procedure. Critical Essays and English Translation*, 2nd edition, Milano, Wolters Kluwer/CEDAM, pp. 97–112.

Brannan J. (2018) "Specificities of Translation at the European Court of Human Rights: Policy and Practice", in F. Preito Ramos (ed.), *Institutional Translation for International Governance. Enhancing Quality in Multilingual Legal Communication*, London, Bloomsbury, pp. 170–180.

Bugarski R. (1985) "Translation Across Cultures: Some Problems with Terminologies", in K. R. Jankowsky (ed.), *Scientific and Humanistic Dimensions of Language: Festschrift for Robert Lado on the Occasion of His 70th Birthday on May 31, 1985*, Amsterdam, John Benjamins, pp. 159–163.

Caflisch L. (2006) "The Reform of the European Court of Human Rights: Protocol No. 14 and Beyond", *Human Rights Law Review* 6(2), pp. 403–415.

Caliendo G. (2004) "Intercultural Traits in Legal Translation", in *14th European Symposium on Language for Special Purposes (LSP 2003)*, University of Surrey, pp. 296–301.

Cao D. (2007) *Translating Law*, Clevedon/Buffalo/Toronto, Multilingual Matters.

Cao D. (2009) "Legal Translation Studies", in C. Millán & F. Bartrina (eds), *The Routledge Handbook of Translation Studies*, London/New York, Routledge, pp. 415–424.

Cavagnoli S. (2008) "La Nota a Sentenza come Genere Unificante di Prassi e Dottrina Giuridica", in G. Garzone & F. Santulli (eds), *Il Linguaggio Giuridico. Prospettive Interdisciplinari*, Milano, Giuffrè Editore, pp. 285–303.

Chiaro D. (2009) "Issues in Audiovisual Translation", in J. Munday (ed.), *The Routledge Companion to Translation Studies*, revised edition, London/New York, Routledge, pp. 141–165.

Cloître M. & Shinn T. (1985) "Expository Practice: Social, Cognitive and Epistemological Linkages", in T. Shinn & R. Whitley (eds), *Expository Science. Forms and Functions of Popularization*, Dodrecth/Boston/Lancaster, Reidel, pp. 31–60.

Cohen M. (2016) "On the Linguistic Design of Multinational Courts: The French Capture", *International Journal of Constitutional Law* 14(2), pp. 498–517.

Cómitre Narváez I. & Valverde Zambrana J. M. (2014) "How to Translate Culture-Specific Items: A Case Study of Tourist Promotion Campaign by Turespaña", *The Journal of Specialised Translation* 21, pp. 71–112.

Committee of Ministers of the Council of Europe (2006/2017) "Rules of the Committee of Ministers for the Supervision of the Execution of Judgments and of the Terms of Friendly Settlements", https://rm.coe.int/16806eebf0.

Cornu G. (2005) *Linguistique Juridique*, 3rd edition, Paris, Montchrestien.

Costa J.-P. (2009) "Opening Speech", in *Ten Years of the "New" European Court of Human Rights. 1998-2008 Situation and Outlook. Proceedings of the Seminar, 13 October 2008, Strasbourg*, pp. 11–15.

Costa J.-P. (2017) *La Cour Européenne des Droits de l'Homme. Des Juges pour la Liberté*. 2nd edition, Paris, Dalloz.

Council of Europe (2014) *Bringing a Case to the European Court of Human Rights: A Practical Guide on Admissibility Criteria (with a Foreword by Dean Spielmann)*, 3rd edition, Oisterwijk, Wolf Legal Publishers.

Danet B. (1980) "Language in the Legal Process", *Law & Society Review* 14(3), pp. 445–564.

Derlén M. (2009) *Multilingual Interpretation of European Union Law*, The Hague, Kluwer Law International.

Derlén M. (2015) "A Single Text or a Single Meaning: Multilingual Interpretation of EU Legislation and CJEU Case Law in National Courts", in S. Šarčević (ed.), *Lan-*

guage and Culture in EU Law. Multidisciplinary Perspectives, Farnham/Burlington, Ashgate, pp. 53–72.

Derlén M. (2019) "Multilingualism and the Dynamic Interpretation of European Union Law", in G. Abi-Saab, K. Keith, G. Marceau & C. Marquet (eds), *Evolutionary Interpretation and International Law*, Oxford, Hart Publishing, pp. 329–338.

Díaz-Cintas J. & Remael A. (2007) *Audiovisual Translation: Subtitling*, Manchester/Kinderhook, St. Jerome Publishing.

Directorate General of Human Rights and Rule of Law of the Council of Europe (2014) "Reforming the European Convention on Human Rights: Interlaken, Izmir, Brighton and beyond. A Compilation of Instruments and Texts Relating to the Ongoing Reform of the ECHR", http://www.coe.int/t/dghl/standardsetting/cddh/reformechr/Publications/Compilation ReformECHR2014 __ en.pdf.

Directorate General of Human Rights and Rule of Law of the Council of Europe (2015) "Implementation of the European Convention on Human Rights, Our Shared Responsibility", in *Proceedings of the High-Level Conference on the Implementation of the European Convention on Human Rights, Our Shared Responsibility, Brussels, 26-27 March 2015*, Council of Europe.

Dollé S. & Ovey C. (2012) "Handyside, 35 Years down the Road", in J. Casadevall & E. Myjer (eds), *Freedom of Expression. Essays in Honour of Nicholas Bratza, President of the European Court of Human Rights*, Oisterwijk, Wolf Legal Publishers, pp. 541–551.

Dothan S. (2011) "Judicial Tactics in the European Court of Human Rights", *Chicago Journal of International Law* 12(1), pp. 115–142.

Driedger E. A. (1982) "Legislative Drafting Style:Civil Law versus Common Law", in J.-C. Gémar (ed.), *Langage du Droit et Traduction/The Language of the Law and Translation*, Montréal, Linguatech/Conseil de la Langue Française, pp. 63–81.

European Court of Human Rights (n.a.) "ECHR Registry", http://echr.coe.int/Documents/Registry __ ENG.pdf.

European Court of Human Rights (2009) "The Pilot-Judgment Procedure. Information Note Issued by the Registrar", http://www.echr.coe.int/Documents/Pilot __ judgment __ procedure __ ENG.pdf.

European Court of Human Rights (2010) *The Conscience of Europe: 50 Years of the European Court of Human Rights*, London, Third Millennium Publishing, http://www.constitutionalcourt.org.za/site/thecourt/history.htm#cases.

European Court of Human Rights (2014a) "The Court's Case-Law Translations Programme: Aims, Achievements and Remaining Challenges", http://www.echr.coe.int/Documents/HRTF __ standards __ translations __ ENG.pdf.

European Court of Human Right (2014b) "The ECHR in 50 Questions", http://www.echr.coe.int/Documents/50Questions __ ENG.pdf.

European Court of Human Rights (2015) "Bringing the Convention Closer to Home: Case-Law Information, Training and Outreach", in *Annual Report 2015 of*

the European Court of Human Rights, Council of Europe, http://www.echr.coe.int/Documents/Case_law_info_training_outreach_2015_ENG.pdf.

European Court of Human Rights (2016), "The Interlaken Process and the Court (2016 Report)", https://www.echr.coe.int/Documents/2016_Interlaken_Process_ENG.pdf.

European Court of Human Rights (2017a) "'Bringing the Convention Closer to Home'. The Court's Case-Law Translations Project (2012-2016): Achievements and Remaining Challenges", http://www.echr.coe.int/Documents/HRTF_standards_translations_ENG.pdf.

European Court of Human Rights (2017b) "ECHR Overview 1959-2016", http://www.echr.coe.int/Documents/Overview_19592016_ENG.pdf.

Faber P., León Araúz P., Prieto Velasco J. A. & Reimerink A. (2007) "Linking Images and Words: The Description of Specialized Concepts", *International Journal of Lexicography* 20(1), pp. 39–65.

Faber P., Márquez Linares C. & Vega Expósito M. (2005) "Framing Terminology: A Process-Oriented Approach", *Meta* 50(4).

Faber P., Montero Matínez S., Castro Prieto M. R., Senso Ruiz J., Prieto Velasco J. A., León Araúz P., Márquez Linares C. & Vega Expósito M. (2006) "Process-Oriented Terminology Management in the Domain of Coastal Engineering", *Terminology* 12(2), pp. 189–213.

Fillmore C. J. (1976) "Frame Semantics and the Nature of Language", *Annals of the New York Academy of Sciences: Conference on the Origin and Development of Language and Speech* 280, New York, New York Academy of Sciences, pp. 20–32.

Fillmore C. J. (1982) "Frame Semantics", in The Linguistic Society of Korea (ed.), *Linguistics in the Morning Calm*, Seoul, Hanshin, pp. 111–137.

Fillmore C. J. (1985) "Frames and the Semantics of Understanding", *Quaderni di Semantica* 6, pp. 222–254.

Fillmore C. J. & Atkins S. (1992) "Toward a Frame-Based Lexicon: The Semantics of RISK and Its Neighbors", in A. Lehrer & E. Kittay (eds), *Frames, Fields and Contrasts: New Essays in Semantic and Lexical Organization*, Hillsdale, Erlbaum, pp. 75–102.

Finkel A. M. (1962) "Ob Avtoperevode", in B. Aleksandrovič Larin (ed.), *Teorija i Kritika Perevoda*, Leningrad, Izdatel'stvo Leningradskogo universiteta.

Fischer M. (2010) "Language (Policy), Translation and Terminology in the European Union", in M. Thelen & F. Steurs (eds), *Terminology in Everyday Life*, Amsterdam/Philadelphia, John Benjamins, pp. 21–33.

Florin S. (1993) "Realia in Translation", in P. Zlateva (ed.), *Translation as a Social Action. Russian and Bulgarian Perspectives*, London/New York, Routledge, pp. 122–128.

Foster S. (2011) *Human Rights & Civil Liberties*. 3rd edition, Harlow, Longman.

Garlicki L. (2009) "Judicial Deliberations: The Strasbourg Perspective", in N. Huls, M. Adams & J. Bomhoff (eds), *The Legitimacy of Highest Courts' Rulings: Judicial Deliberations and Beyond*, The Hague, TMC Asser Press, pp. 389–397.

Geeraerts D. (2010) *Theories of Lexical Semantics*, Oxford, Oxford University Press.

Gémar J.-C. (2002) "Le Plus et le Moins-Disant Culturel du Texte Juridique. Langue, Culture et Équivalence", *Meta* 47(2), pp. 163–176.

Gerards J. (2009) "Judicial Deliberations in the European Court of Human Rights", in N. Huls (ed.), *The Legitimacy of Highest Courts' Rulings. Judicial Deliberations and Beyond*, The Hague, T.M.C. Asser Press, pp. 407–436.

Gialuz M., Lupária L. & Scarpa F. (eds) (2014) *The Italian Code of Criminal Procedure. Critical Essays and English Translation*, Padova, Wolters Kluwer/CEDAM.

Gialuz M., Lupária L. & Scarpa F. (eds) (2017), *The Italian Code of Criminal Procedure. Critical Essays and English Translation*, 2nd revised edition, Padova, Wolters Kluwer/CEDAM.

González Davies M. & Scott-Tennent C. (2005) "A Problem-Solving and Student-Centred Approach to the Translation of Cultural References", *Meta* 50(1), pp. 160–179.

Gotti M. (2012) "Text and Genre", in P. M. Tiersma & L. M. Solan (eds), *The Oxford Handbook of Language and Law*, Oxford, Oxford University Press, pp. 52–66.

Goźdź Roszkowski S. & Pontrandolfo G. (2013) "Evaluative Patterns in Judicial Discourse: A Corpus-Based Phraseological Perspective on American and Italian Criminal Judgments", *International Journal of Law, Language & Discourse* 3(2), pp. 9–69.

Grit D. (2004) "De Vertaling van Realia", *Denken over Vertalen*, pp. 279–286.

Gudavičius A. (1985) *Sopostavitelnaya Leksiko- Logiya Litovskovo i Russkovo Yazykov*, Vilnius, Mokslas.

Gutiérrez Arcones D. (2015) "Estudio sobre el Texto Jurídico y Su Traducción: Características de la Traducción Jurídica, Jurada y Judicial", *Miscelanea Comillas* 73(142), pp. 141–175.

Hagfors I. (2003) "The Translation of Culture-Bound Elements into Finnish in the Post-War Period", *Meta* 48(1–2), pp. 115–127.

Haider D. (2013) *The Pilot-Judgment Procedure of the European Court of Human Rights*, Leiden/Boston, Martinus Nijhoff Publishers.

Halliday M. A. K. & Hasan R. (1976) *Cohesion in English*, London/New York, Routledge.

Halliday M. A. K. & Hasan R. (1989) *Language, Context, and Text: Aspects of Language in a Social-Semiotic Perspective*, Oxford, Oxford University Press.

Harris D. J., O'Boyle M., Bates E. P. & Buckley V. M. (2014) *Law of the European Convention on Human Rights*, 3rd edition, Oxford, Oxford University Press.

Harvey M. (2000) "A Beginner's Course in Legal Translation: The Case of Culture-Bound Terms", *ASTTI/ETI*, pp. 357–369.

Hatim B. & Mason I. (1990) *Discourse and the Translator*, London, Longman.

Higgins R. (2007) "Speech by H.E. Judge Rosalyn Higgins, President of the International Court of Justice, to the General Assembly of the United Nations", *1st November*. http://www.icj-cij.org/files/press-releases/3/14113.pdf.

Ioriatti Ferrari E. (2014) "Found in Translation: National Concepts and EU Legal Terminology", in B. Pasa & L Morra (eds), *Translating the DCFR and Drafting the CESL: A Pragmatic Perspective*, Munich, Sellier European Law Publishers, pp. 233–245.

Ivir V. (1987) "Procedures and Strategies for the Translation of Culture", *Indian Journal of Applied Linguistics* 13(2), pp. 35–46.

Janis M. W., Kay R. S. & Bradley A. W. (2008) *European Human Rights Law. Text and Materials*, 3rd edition, Oxford, Oxford University Press.

Joos M. (1967) *The Five Clocks: A Linguistic Excursion into the Five Styles of English Usage*, New York, Harcourt, Brace & World.

Jopek-Bosiacka A. (2013) "Comparative Law and Equivalence Assessment of System-Bound Terms in EU Legal Translation", *Linguistica Antverpiensia New Series* 12, pp. 110–146.

Kalinowski G. (1965) *Introduction à la Logique Juridique*, Paris, Pichon et Durand-Auzias.

Katan D. (2009) "Translation as Intercultural Communication", in J. Munday (ed.), *The Routledge Companion to Translation Studies*, London, Routledge, pp. 74–92.

Keller H., Forowicz M. & Engi L. (2010) *Friendly Settlements before the European Court of Human Rights*, Oxford, Oxford University Press.

Kelsen H. (1979) *Allgemeine Theorie der Normen. Im Auftrag des Hans Kelsen Instituts aus dem Nachlaß*, Wien, Manz Verlag.

Kerremans K. (2004) "Categorisation Frameworks in Termontography", in R. Temmerman & U. Knops (eds), *The Translation of Domain-Specific Languages and Multilingual Terminology Management*, Antwerp, Hoger Instituut voor Vertalers en Tolken/Hogeschool Antwerpen, pp. 263–277.

Kerremans K., Temmerman R. & Tummers J. (2003) "Representing Multilingual and Culture-Specific Knowledge in a VAT Regulatory Ontology: Support from the Termontography Method", in R. Meersman & Z. Tari (eds), *On The Move to Meaningful Internet Systems 2003: OTM 2003 Workshops, OTM Confederated International Workshops HCI-SWWA, IPW, JTRES,WORM, WMS, and WRSM, Catania, November 3-7*, Berlin, Springer, pp. 662–674.

Kjeldgaard-Pedersen A. (2010) "The Evolution of the Right of Individuals to Seise the European Court of Human Rights", *Journal of the History of International Law* 12, pp. 267–306.

Kroeber A. L. & Kluckhohn C. (1952) *Culture: A Critical Review of Concepts and Definitions*. Cambridge, Mass., Peabody Museum of Archaeology & Ethnology, Harvard University.

Kurzon D. (1989) "Language of the Law and Legal Language", in C. Lauren & M. Nordman (eds), *Special Language: From Humans Thinking to Thinking Machines*, Clevedon/Philadelphia, Multilingual Matters, pp. 283–290.

Kurzon D. (1997) "'Legal Language': Varieties, Genres, Registers, Discourses", *International Journal of Applied Linguistics* 7(2), pp.119–139.

Łachacz O. & Mańko R. (2013), "Multilingualism at the Court of Justice of the European Union: Theoretical and Practical Aspects", *Studies in Logic, Grammar and Rhetoric* 34 (47), pp. 75–92.

Lakoff G. (1987) *Women, Fire and Dangerous Things: What Categories Reveal about the Mind*, Chicago, University of Chicago Press.

Larson M. L. (1984) *Meaning-Based Translation: A Guide to Cross-Language Equivalence*, Lanham/New York, University Press of America.

Leach P. (2011) *Taking a Case to the European Court of Human Rights*, 3rd edition, Oxford, Oxford University Press.

Lemmens K. (2018) "General Survey of the Convention", in P. van Dijk, F. van Hoof, A. van Rijn & L. Zwaak (eds), *Theory and Practice of the European Convention on Human Rights*, 5th edition, Cambridge/Antwerp/Portland, Intersentia, pp. 1–78.

Lemmens P. & Vandenhole W. (2005) *Protocol No. 14 and the Reform of the European Court of Human Rights*, Antwerpen/Oxford, Intersentia.

Leppihalme R. (1997) *Culture Bumps. An Empirical Approach to the Translation of Allusions*, Clevedon/Buffalo/Toronto/Sydney, Multilingual Matters.

Leppihalme R. (2001) "Translation Strategies for Realia", in P. Kukkonen & R. Hartama-Heinonen (eds), *Mission, Vision, Strategies, and Values: A Celebration of Translator Training and Translation Studies in Kouvola*, Helsinki, Helsinki University Press, pp. 139–148.

Leppihalme R. (2011) "Realia", in Y. Gambier & L. van Doorslaer (eds), *Handbook of Translation Studies, Volume 2*, Amsterdam/Philadelphia, John Benjamins, pp. 126–130.

Letsas G. (2004) "The Truth in Autonomous Concepts: How to Interpret the ECHR", *European Journal of International Law* 15(2), pp. 279–305.

Letsas G. (2007) *A Theory of Interpretation of the European Convention on Human Rights*, Oxford, Oxford University Press.

Magris M. (2018), "Introduzione", in M. Magris (ed.), *La Banca Dati TERMitLEX: Un Nuovo Modello Interdisciplinare per la Terminografia Giuridica*, Trieste, EUT Edizioni Università di Trieste, pp. 7–21.

Mailhac J.-P. (1996) "The Formulation of Translation Strategies for Cultural References", in C. Hoffmann (ed.), *Language, Culture and Communication in Contemporary Europe*, Clevedon, Multilingual Matters, pp. 132–151.

Maley Y. (1994) "The Language of the Law", in J. P. Gibbons (ed.), *Language and the Law*, London/New York, Routledge, pp. 11–50.

Malinverni G. (2000) "Le Régime Linguistique de la Procédure devant la Cour Européenne des Droits de l'Homme", in *Les Droits de l'Homme au Seuil du Troisieme Millenaire. Mélanges en Hommage à Pierre Lambert*, Bruxelles, Bruylant, pp. 541–548.

Marguénaud J.-P. (2012) *La Cour Européenne des Droits de l'Homme*, 6th edition, Paris, Dalloz.

Maringele S. (2014) *European Human Rights Law. The Work of the European Court of Human Rights Illustrated by an Assortment of Selected Cases*, Hamburg, Anchor Academic Publishing.

Martin W. (2006) "Frame-Based Lexicons and the Making of Dictionaries", in *Proceedings of the 12th Euralex International Conference, Turin, Italy*, Alessandria, Edizioni dell'Orso, pp. 281–293.

Mattila H. E. S. (2006) *Comparative Legal Linguistics*, Aldershot, Ashgate.

Mayoral Asensio R. & Muñoz Martín R. (1997) "Estrategias Comunicativas en la Traducción Intercultural", in Fernández Nistal P. & Bravo Gozalo J. M. (eds), *Aproximaciones a los Estudios de Traducción*, Valladolid, Universidad de Valladolid, Servicio de Apoyo a la Enseñanza, pp. 143–192.

McAuliffe K. (2008) "Enlargement at the European Court of Justice: Law, Language and Translation", *European Law Journal* 14(6), pp. 806–818.

McAuliffe K. (2009) "Translation at the Court of Justice of the European Communities", in F. Olsen, A. Lorz & D. Stein (eds), *Translation Issues in Language and Law*, Basingstoke/New York, Palgrave Macmillan, pp. 99–115.

McAuliffe K. (2011) "Hybrid Texts and Uniform Law? The Multilingual Case Law of the Court of Justice of the European Union", *International Journal for the Semiotics of Law* 24, pp. 97–115.

McAuliffe K. (2012) "Language and Law in the European Union: The Multilingual Jurisprudence of the ECJ", in L. M. Solan & P. M. Tiersma (eds), *The Oxford Handbook of Language and Law*, Oxford, Oxford University Press, pp. 200–216.

McAuliffe K. (2013a) "Precedent at the Court of Justice of the European Union: The Linguistic Aspect", in M. Freeman & F. Smith (eds), *Law and Language: Current Legal Issues, Volume 15*, Oxford, Oxford University Press, pp. 483–492.

McAuliffe K. (2013b) "The Limitations of a Multilingual Legal System", *International Journal for the Semiotics of Law* 26(4), pp. 861–882.

Mellinkoff D. (1963) *The Language of the Law*, Boston, Little, Brown & Co.

Meyer I. (2001) "Extracting Knowledge-Rich Contexts for Terminography. A Conceptual and Methodological Framework", in D. Bourigault, C. Jacquemin & M.-C. L'Homme (eds), *Recent Advances in Computational Terminology*, Amsterdam/Philadelphia, John Benjamins, pp. 279–302.

Mikaelsen L. (1980) *European Protection of Human Rights: The Practice and Procedure of the European Commission of Human Rights on the Admissibility of Applications from Individuals and States*, Alphen aan den Rijn/Germantown, Sijthhoff & Noordhoff.

Miller V. (1998) "Protocol 11 and the New European Court of Human Rights", in *Research Paper 98/109*, House of Commons Library.

Mori L. (ed.) (2018) *Observing Eurolects: Corpus Analysis of Linguistic Variation in EU Law*, Amsterdam, John Benjamins.

Mortara Garavelli B. (2001) *Le Parole e la Giustizia. Divagazioni Grammaticali e Retoriche su Testi Giuridici Italiani*, Torino, Giulio Einaudi Editore.

Mulders L. (2008) "Translation at the Court of Justice of the European Communities", in S. Prechal & B. van Roermund (eds), *The Coherence of EU Law. The Search for Unity in Divergent Concepts*, Oxford, Oxford University Press, pp. 45–59.

Nedergaard-Larsen B. (1993) "Cultural Factors in Subtitling", *Perspectives: Studies in Translatology* 1(2), pp. 207–241.

Newmark P. (1988) *A Textbook of Translation*, New York, Prentice-Hall International.

Nida E. A. (1945) "Linguistics and Ethnology in Translation-Problems", *Word* 1(2), pp. 194–208.

Nord C. (1997) *Translating as a Purposeful Activity. Functionalist Approaches Explained*, Manchester, St. Jerome Publishing.

Nord C. (2000) "What Do We Know about the Target-Text Receiver?", in A. Beeby, D. Ensinger & M. Presas (eds), *Investigating Translation*, Amsterdam/Philadelphia, John Benjamins, pp. 195–212.

Olk H. M. (2001) "The Translation of Cultural References: An Empirical Investigation into the Translation of Culture-Specific Lexis by Degree-Level Language Students", Canterbury, University of Kent, PhD Thesis.

Ondelli S. (2006) "Il Genere Testuale della Sentenza Penale in Italia", in G. Benelli & G. Tonini (eds), *Studi in Ricordo di Carmen Sànchez Montero, Volume 1*, Trieste, EUT Edizioni Università di Trieste, pp. 295–309.

Ost F. (1992) "The Original Canons of Interpretation of the European Court of Human Rights", in M. Delmas-Marty (ed.), *The European Convention for the Protection of Human Rights: International Protection versus National Restrictions*, Dordrecht/Boston/London, Martinus Nijhoff Publishers, pp. 283–318.

Palumbo G. (2009) *Key Terms in Translation Studies*, London, Continuum.

Paunio E. (2013) *Legal Certainty in Multilingual EU Law: Language, Discourse, and Reasoning at the European Court of Justice*, London/New York, Routledge.

Pedersen J. (2005) "How Is Culture Rendered in Subtitles?" *MuTra 2005 – Challenges of Multidimensional Translation: Conference Proceedings*, pp. 1–18.

Peruzzo K. (2012) "Secondary Term Formation within the EU: Term Transfer, Legal Transplant or Approximation of Member States' Legal Systems?" *JoSTrans* 18, pp. 175–186.

Peruzzo K. (2013a) "European English Terms for Italian Legal Concepts: The Case of the Italian Code of Criminal Procedure", *RITT* 15, pp. 145–57.

Peruzzo K. (2013b) "Terminological Equivalence and Variation in the EU Multi-Level Jurisdiction: A Case Study on Victims of Crime", Trieste, University of Trieste, PhD Thesis.

Peruzzo K. (2014a) "Capturing Dynamism in Legal Terminology: The Case of Victims of Crime", in R. Temmerman & M. Van Campenhoudt (eds), *Dynamics and Terminology. An Interdisciplinary Perspective on Monolingual and Multilingual Culture-Bound Communication*, Amsterdam/Philadelphia, John Benjamins, pp. 43–59.

Peruzzo K. (2014b) "Term Extraction and Management Based on Event Templates: An Empirical Study on an EU Corpus", *Terminology* 20(2), pp. 151–170.

Peruzzo K. (2018) "Diachrony in Legal Terminology: A Case Study on the Rights of Victims of Crime in the EU", *ASp* 74, pp. 113–134.

Peruzzo K. (2019) "When International Case-Law Meets National Law. A Corpus-Based Study on Italian System-Bound Loan Words in ECtHR Judgments", *Translation Spaces* 8(1), pp. 12–38.

Pontrandolfo G. (2011) "Phraseology in Criminal Judgments: A Corpus Study of Original vs. Translated Italian", *Sendebar* 22, pp. 209–234.

Pontrandolfo G. (2016) *Fraseología y Lenguaje Judicial. Las Sentencias Penales desde una Perspectiva Contrastiva*, Roma, Aracne editrice.

Popović D. (2007) "Le Droit Comparé dans l'Accomplissement des Tâches de la Cour Européenne des Droits de l'Homme", in L. Caflisch, J. Callenwaert, R. Liddell, P. Mahoney & M. E. Villiger (eds), *Droits de l'Homme. Regards de Strasbourg, Liber Amicorum Luzius Wildhaber*, Kehl, N.P. Engel Verlag, pp. 371–386.

Pozzo B. (2012) "Multilingualism and the Harmonization of European Private Law: Problems and Perspectives", *European Review of Private Law* 20(5–6), pp. 1185–1198.

Prieto Ramos F. (2014) "Parameters for Problem-Solving in Legal Translation: Implications for Legal Lexicography and Institutional Terminology Management", in L. Cheng, K. Kui Sin & A. Wagner (eds), *The Ashgate Handbook of Legal Translation*, Farnham, Ashgate, pp. 121–134.

Prieto Ramos F. (2018) "Institutional Translation: Surveying the Landscape at International Organizations", in F. Prieto Ramos (ed.), *Institutional Translation for International Governance. Enhancing Quality in Multilingual Legal Communication*, London, Bloomsbury, pp. 1–5.

Prieto Ramos F. & Guzmán D. (2018) "Legal Terminology Consistency and Adequacy as Quality Indicators in Institutional Translation: A Mixed-Method Comparative Study", in F. Prieto Ramos (ed.), *Institutional Translation for International Governance. Enhancing Quality in Multilingual Legal Communication*, London, Bloomsbury, pp. 81–101.

Rainey B., Wicks E. & Ovey C. (2017) *Jacobs, White, and Ovey: The European Convention on Human Rights*, 7th edition, Oxford, Oxford University Press.

Ramière N. (2004) "Comment le Sous-Titrage et le Doublage Peuvent Modifier la Perception d'un Film. Analyse Contrastive des Versions Sous-Titrée et Doublée en Français du Film d'Eli Kazan, A Streetcar Named Desire", *Meta* 49(1), pp. 102–114.

Ranzato I. (2016) *Translating Culture Specific References on Television. The Case of Dubbing*, London/New York, Routledge.

Rega L. (1997) "La Sentenza Italiana e Tedesca nell'Ottica della Traduzione", in *La Lingua del Diritto: Difficoltà Traduttive, Applicazioni Didattiche : Atti del Primo Convegno Internazionale, Milano, 5-6 Ottobre 1995*, pp. 117–126.

Robinson D. (2003) *Becoming a Translator*, 2nd edition, New York, Routledge.

Rowe N. & Schlette V. (1998) "The Protection of Human Rights in Europe after the Eleventh Protocol to the ECHR", *European Law Review* 23, pp. 3–16.

Ryssdall R. (1996) "The Coming of Age of the European Convention on Human Rights", *European Human Rights Law Review* 18(1), pp. 18–26.

Sacco R. (1992) "La Traduzione Giuridica", in U. Scarpelli & P. Di Lucia (eds), *Il Linguaggio Del Diritto*, Milano, Edizioni Universitarie di Lettere Economia Diritto, pp. 475–490.

Sager J. C. (1990) *A Practical Course in Terminology Processing*, Amsterdam/Philadelphia, John Benjamins.

Sager J. C. (1993) *Language Engineering and Translation: Consequences of Automation*, Amsterdam/Philadelphia, John Benjamins.

Sager J. C. (2001) "Terminology, Theory", in M. Baker (ed.), *Routledge Encyclopedia of Translation Studies*, London, Routledge, pp. 258–263.

Santamaria L. (2010) "The Translation of Cultural Referents: From Reference to Mental Representation", *Meta* 55, pp. 516–528.

Sanz Vicente L. (2012) "Approaching Secondary Term Formation through the Analysis of Multiword Units: An English–Spanish Contrastive Study", *Terminology* 18(1), pp. 105–127.

Scarpa F. & Riley A. (1999) *La Traduzione della Sentenza di Common Law in Italiano*, Trieste, EUT Edizioni Università di Trieste.

Schabas W. A. (2015) *The European Convention on Human Rights. A Commentary*, Oxford, Oxford University Press.

Schäffner C. & Wiesemann U. (2001) *Annotated Texts for Translation: English-German. Functionalist Approaches Illustrated*, Clevedon/Buffalo/Toronto/Sydney, Multilingual Matters.

Senden H. (2011) *Interpretation of Fundamental Rights in a Multilevel Legal System. An Analysis of the European Court of Human Rights and the Court of Justice of the European Union*, Antwerp, Intersentia.

Sousa Domingues J. (2017) "The Multilingual Jurisprudence of the Court of Justice and the Idea of Uniformity in European Union Law", *UNIO - EU Law Journal* 3(2), pp. 125–38.

Staskevičiūtė D. & Baranauskienė R. (2005) "Translation and Culture", *Jaunųjų Mokslininkų Darbai* 3 (7), pp. 201–206.

Steering Committee for Human Rights (2009) *Reforming the European Convention on Human Rights: A Work in Progress. A Compilation of Publications and Documents Relevant to the Ongoing Reform of the ECHR*, http://www.echr.coe.int/librarydocs/dg2/isbn/coe-2009-en-9789287166043.pdf.

Šarčević S. (1997) *New Approach to Legal Translation*, The Hague, Kluwer Law International.

Šarčević S. (2015) "Basic Principles of Term Formation in the Multilingual and Multicultural Context of EU Law", in S. Šarčević (ed.), *Language and Culture in EU Law. Multidisciplinary Perspectives*, Farnham/Burlington, Ashgate, pp. 183–205.

Temmerman R. (2018) "European Union Multilingual Primary Term Creation and the Impact of Neologisms on National Adaptations", *Parallèles* 30(1), pp. 8–20.

Temmerman R. & Kerremans K. (2003) "Termontography: Ontology Building and the Sociocognitive Approach to Terminology Description", in E. Hajicová, A. Kotešovcová & J. Mírovský (eds), *Proceedings of the 17th International Congress of Linguists (CIL17) (Prague, 24-29 June 2003)*, Prague, Matfyzpress.

Tiersma P. M. (1999) *Legal Language*, Chicago/London, University of Chicago Press.

Tiscornia D. (2007) "The Lois Project: Lexical Ontologies for Legal Information Sharing", in C. Biagioli, E. Francesconi & G. Sartor (eds), *Proceedings of V Legislative XML Workshop (San Domenico Di Fiesole, 14-16 June 2006)*, European University Institute, European Press Academic Publishing, pp. 189–204.

Tochilovsky V. (2008) *Jurisprudence of the International Criminal Courts and the European Court of Human Rights: Procedure and Evidence*, Leiden, Brill.

Tomaszczyk J. (1984) "The Culture-Bound Element in Bilingual Dictionaries", in R. R. K. Hartmann (ed.), *LEXeter '83 Proceedings. Papers from the International Conference on Lexicograpghy at Exeter, 9-12 September 1983*, Tübingen, Max Niemeyer Verlag, pp. 289–297.

Tomuschat C. (2009) "The European Court of Human Rights Overwhelmed by Applications: Problems and Possible Solutions", in R. Wolfrum & U. Deutsch

(eds), *The European Court of Human Rights Overwhelmed by Applications: Problems and Possible Solutions. International Workshop. Heidelberg, December 17-18, 2007*, Berlin/Heidelberg/New York, Springer, pp. 1–18.

Trklja A. (2017) "A Corpus Investigation of Formulaicity and Hybridity in Legal Language. A Case of EU Case Law Texts", in S. Goźdź -Roszkowski & G. Pontrandolfo (eds), *Phraseology in Legal and Institutional Settings*, London/New York, Routledge, pp. 89–108.

Trklja A. (2018) "A Corpus Investigation of Translation-Generated Diversity in EU Case-Law", in F. Prieto Ramos (ed.), *Institutional Translation for International Governance. Enhancing Quality in Multilingual Legal Communication*, London, Bloomsbury, pp. 156–170.

Trosborg A. (1997) *Rhetorical Strategies in Legal Language: Discourse Analysis of Statutes and Contracts*, Tübingen, Gunter Narr Verlag.

Turner B. (2013) *The Statesman's Yearbook 2014. The Politics, Cultures and Economies of the World*, Houndmills, Basingstoke, Palgrave Macmillan.

Valderrey Reñones C. (2004) "Análisis Descriptivo de La Traducción Jurídica (Francés-Español): Aportes Para Su Mayor Sistematización de Su Enseñanza", Salamanca, Universidad de Salamanca, PhD Thesis.

van Dijk P., van Hoof F., van Rijn A. & Zwaak L. (2006) *Theory and Practice of the European Convention on Human Rights*, 4th edition, Antwerpen/Oxford, Intersentia.

van Dijk P. & van Hoof G. J. H. (1998) *Theory and Practice of the European Convention on Human Rights*, 3rd edition, The Hague, Kluwer Law International.

van Els T. (2005) "Multilingualism in the European Union", *International Journal of Applied Linguistics* 15(3), pp. 263–281.

Vázquez-Orta I. (2010) "A Genre-Based View of Judgments of Appellate Courts in the Common Law System: Intersubjective Positioning, Intertextuality and Interdiscursivity in the Reasoning of Judges", in M. Gotti & C. Williams (eds), *Legal Discourse across Languages and Cultures*, Bern, Peter Lang, pp. 263–284.

Vázquez-Orta I. (2013), "Authoritative Intervention and (In)Directness in Legal Discourse: A Genre-Based Study of Judgements and Arbitration Awards", *Revista Española de Lingüística Aplicada* 26(1), pp. 91–104.

Vegara Fabregat L. (2006) "Los Géneros Jurídicos y Su Traducción al Castellano: Una Perspectiva Diferente", *Tonos Digital: Revista de Estudios Filológicos* 12, http://www.tonosdigital.es/ojs/index.php/tonos/article/view/47/46.

Vermeer H.-J. (1983) "Translation Theory and Linguistics", in R. Roinila, R. Orfanos & S. Tirkkonen-Condit (eds), *Näkökohtia Käänämisen Tutkimuksesta*, Joensuu, University of Joensuu, pp. 1–10.

Vlahov S. & Florin S. (1969) "Neperovodimoe v Perevode. Realii", *Masterstvo Perevoda* 6, pp. 432–456.

Watson A. (1974) *Legal Transplants*, Edinburgh, Scottish Academic Press.

Weston M. (1988) "The Role of Translation at the European Court of Human Rights", in F. Matscher & H. Petzold (eds), *Protecting Human Rights: The European Dimension. Studies in Honour of Gérard J. Wiarda*, 2nd edition, Köln/Berlin/Bonn/München, Carl Heymanns Verlag, pp. 679–689.

Weston M. (2005) "Characteristics and Costraints of Producing Bilingual Judgments: The Example of the European Court of Human Rights", in J.-C. Gémar & N. Kasirer (eds), *Jurilinguistique: Entre Langues et Droits / Jurilinguistics: Between Law and Language*, Montréal/Bruxelles, Bruylant - Les éditions Thémis, pp. 445–459.

Weston M. (2010) "Speaking unto Nations: The Language Dimension of the Court's Work", in *The Conscience of Europe: 50 Years of the European Court of Human Rights*, London, Third Millennium Publishing, pp. 77–79.

White R. C. A. (2009) "Judgments in the Strasbourg Court: Some Reflections", pp. 1–17, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1435197.

Whithorn N. (2014) "Translating the Mafia: Legal Translation Issues and Strategies", *JoSTrans* 22, pp. 157–173.

Wiesmann E. (2011) "La Traduzione Giuridica tra Teoria e Pratica", *InTRAlinea*, Special Issue: Specialised Translation II, pp. 1–9.

Wright S. (2018) "The Impact of Multilingualism on the Judgments of the EU Court of Justice", in F. Prieto Ramos (ed.), *Institutional Translation for International Governance. Enhancing Quality in Multilingual Legal Communication*, London, Bloomsbury, pp. 141–156.

Zwaak L., Haeck Y. & Burbano Herrera C. (2018) "Procedure before the Court", in P. van Dijk, F. van Hoof, A. van Rijn & L. Zwaak (eds), *Theory and Practice of the European Convention on Human Rights*, 5th edition, Cambridge/Antwerp/Portland, Intersentia, pp. 79–271.

Appendix 1
List of judgments included in the ECtHR corpus

- Calvelli and Ciglio v. Italy (Application no. 32967/96)
- De Tommaso v. Italy (Application no. 43395/09)
- Enea v. Italy (Application no. 74912/01)
- Ferrazzini v. Italy (Application no. 44759/98)
- Hermi v. Italy (Application no. 18114/02)
- Khlaifia and Others v. Italy (Application no. 16483/12)
- Labita v. Italy (Application no. 26772/95)
- Markovic and Others v. Italy (Application no. 1398/03)
- Mennitto v. Italy (Application no. 33804/96)
- N.C. v. Italy (Application no. 24952/94)
- Perna v. Italy (Application no. 48898/99)
- Pisano v. Italy ((Application no. 36732/97)
- Scoppola v Italy (No. 2) (Application no. 10249/03)
- Scordino v. Italy (No. 1) (Application no. 36813/97)
- Scozzari and Giunta v. Italy (Applications nos. 39221/98 and 41963/98)
- Sejdovic v. Italy (Application no. 56581/00)

All the judgments were retrieved from the HUDOC portal (https://www.echr.coe.int/).

Appendix 2
Preliminary list of keywords used to extract Italian SBEs from the ECtHR corpus

Category: Italian judicial authorities

court
corte
judge
tribunal
tribunale

Category: Criminal offences and civil wrongs under Italian law

alleged
crime
offence
to be accused of
to commit
to be suspected of

Category: Italian legislation

article
code
in accordance with
in compliance with
law
to provide
under

Category: Italian judicial procedure

hearing
phase
proceedings
procedure
stage
to order
to sentence

Appendix 3
List of instances referring to Italian SBEs extracted from the ECtHR corpus

The four tables below contain the instances of Italian SBEs extracted from the ECtHR corpus and are subdivided in accordance with the categories they belong to. The instances in the tables are grouped into clusters and ordered on the basis of the total number of hits per instance. In the tables, "ITA" stands for text quoted from Italian sources, "GC" for text produced directly by the Grand Chamber, and "ECtHR" for text quoted from previous ECtHR judgments.

Category: Italian judicial authorities

Instances grouped into clusters	Total no. of hits	ITA	GC	ECtHR
Court of Cassation	165	1	155	9
Court of Cassation, sitting as a full court	9	3	6	0
plenary Court of Cassation	6	0	6	0
full court	5	2	3	0
Court of Cassation, sitting as a full court (*Sezioni Unite*)	2	0	2	0
full Court of Cassation	2	0	2	0
Court of Cassation (First Section)	1	0	1	0
Court of Cassation, combined divisions	1	0	1	0
Court of Cassation, First Division	1	0	1	0
Court of Cassation, in plenary session	1	0	1	0
Court of Cassation, Section I	1	0	1	0
Court of Cassation, Section II	1	0	1	0
Court of Cassation, Third Criminal Division	1	0	1	0
First Division of the Court of Cassation	1	0	1	0
First Section of the Court of Cassation	1	0	1	0
full court of the Court of Cassation	1	0	1	0
Court of Appeal	128	9	119	0
court of appeal	18	7	9	2
appellate court	3	0	3	0
Youth Court	90	1	89	0
judge of the Youth Court	1	0	1	0
youth court	1	0	1	0

District Court	81	2	79	0
Criminal Court	7	0	7	0
district court	7	0	7	0
civil court	5	0	5	0
Court of First Instance	3	0	3	0
court of first instance	2	0	2	0
Civil Court	1	0	1	0
criminal court	1	0	1	0
court responsible for the execution of sentences	43	0	43	0
public prosecutor's office	34	3	31	0
Public Prosecutor's Office	5	2	3	0
prosecution service	2	1	1	0
Justice of the Peace	19	1	18	0
investigating judge	18	0	18	0
preliminary investigations judge	13	0	13	0
investigating judge (*giudice per le indagini preliminari*)	2	0	2	0
judge responsible for preliminary investigations	1	0	1	0
preliminary investigations judge (*giudice per le indagini preliminari)*	1	0	1	0
judge responsible for the execution of sentences	18	1	17	0
preliminary hearings judge	15	1	14	0
GUP	7	0	7	0
preliminary hearings judge (*giudice dell'udienza preliminare* – "the GUP")	1	0	1	0
preliminary hearings judge (*giudice dell'udienza preliminare*)	1	0	1	0
RAC	14	0	14	0
Regional Administrative Court	2	0	2	0
Regional Administrative Court ("the RAC")	2	0	2	0
Assize Court	13	0	9	4
guardianship judge	10	0	10	0
Assize Court of Appeal	9	0	9	0
Consiglio di Stato	9	1	8	0
District Tax Commission	7	0	7	0

President of the court responsible for the execution of sentences	3	0	3	0
appeal judge	2	1	1	0
magistrate's court, sitting as an employment tribunal	2	0	2	0
Advocate-General [*Procuratore Generale*]	1	1	0	0
Chief Prosecutor at the Court of Cassation	1	0	1	0
Prosecutor General at the Court of Cassation	1	0	0	1
judge supervising enforcement	1	1	0	0
Regional Tax Commission	1	0	1	0
special court	1	1	0	0
trial judge	1	0	1	0

Category: Italian legislation

Instances grouped into clusters	**Total no. of hits**	**ITA**	**GC**	**ECtHR**
Law no. + Reference	183	33	149	1
Act	39	6	32	1
Act no.	38	3	35	
Surname + Act	28	4	23	1
Title (Act)	23	0	23	0
Law	10	0	10	0
Title (Act) + Reference	5	0	5	0
Law no. + Reference + Title	4	1	3	0
Enabling Act	1	0	1	
Law no. + Reference + Content	1	0	1	0
CCP	104	1	102	1
Code of Criminal Procedure	25	2	22	1
Code of Criminal Procedure ("the CCP")	10	5	5	0
Code of Criminal Procedure ('the CCP')	1	0	0	1
Code of Criminal Procedure ['the CCP']	1	0	1	0
CPP	1	0	1	0
Italian Code of Criminal Procedure	1	0	1	

Legislative Decree no. + Reference	72	3	68	1
legislative decree	7	5	1	1
Legislative Decree	2	1	1	0
Legislative Decree (*decreto legislativo*) no + Reference + (Title)	1	0	1	0
Criminal Code	38	2	36	0
Civil Code	17	5	12	0
Italian Civil Code	2	1	1	0
Regional Law	13	2	11	0
Regional Law no. + Reference	3	0	3	0
Law	1	1	0	0
Official Gazette	10	3	7	0
Official Gazette (*Gazzetta ufficiale*)	1	0	1	0
Official Gazette (*Gazzetta ufficiale*) no. + Reference	1	0	1	0
Official Gazette no.	1	0	1	0
Code of Civil Procedure	7	3	4	0
Italian Code of Civil Procedure	1	0	1	0
Italian Constitution	7	0	7	0
Constitution	1	0	1	0
Wartime Military Criminal Code	7	0	7	0
Presidential Decree no. + Reference	5	0	5	0
Title (Presidential Decree no. + Reference)	1	0	1	0
Title (Act)	4	3	1	0
Title (Code)	3	0	3	0
Title (Act) + (Title in Italian)	1	0	1	
Constitutional Act no.	1	0	1	0

Category: Criminal offences and civil wrongs under Italian law

Instances grouped into clusters	**Total no. of hits**	**ITA**	**GC**	**ECtHR**
ill-treatment	21	0	21	0
murder	11	4	7	0
homicide	1	0	1	0
offence of homicide	1	0	1	0

defamation	10	0	10	0
offence of defamation	1	0	1	0
drug trafficking	10	0	10	0
offence of drug trafficking	1	0	1	0
[to be] a member of a mafia-type organisation	5	0	5	0
[to belong] to the Mafia	5	0	3	2
[to be] a member of the Mafia	3	0	3	0
[to belong] to a mafia-type organisation	2	0	2	0
membership of a mafia-type criminal organisation	2	0	2	0
[to be] members of the Mafia	1	0	1	0
[to belong] to a Mafia-type organisation	1	0	0	1
Mafia membership	1	0	1	0
membership of a mafia-type organisation	1	0	1	0
involuntary manslaughter	4	0	4	0
absconding	3	0	3	0
offence of absconding	1	0	1	0
allegedly illegal act of war	3	0	3	0
ill-treatment and sexual abuse	3	0	3	0
paedophile assault	3	0	3	0
paedophile abuse	2	0	2	0
abusing the children	1	0	1	0
paedophile violence	1	0	1	0
to indecently assault children	1	0	1	0
serious offence	3	0	3	0
attempted murder	2	0	2	0
cumulative offences	2	1	1	0
"cumulative offences" (*concorso di reati*)	1	0	1	0
offence against the constitutional order	2	2	0	0
offence of causing bodily harm	2	0	2	0
personal injury	2	0	2	0
offence relating to organised crime	2	2	0	0
serious offence involving the use of weapons or other violent means against the person	2	2	0	0
tobacco smuggling	2	0	2	0
"continuous offence" (*reato continuato*)	1	0	1	0
continuous offence	1	1	0	0

abuse of authority	1	0	1	0
abuse of authority for political ends	1	0	1	0
aiding and abetting the Mafia (*appoggio esterno alla mafia*)	1	0	1	0
Condotta del genitore pregiudizievole ai figli – "parental behaviour harmful to the children"	1	0	1	0
belonging to a criminal organisation that engaged in serious crime	1	0	1	0
concealing a body	1	0	1	0
defamation through the medium of the press (*diffamazione a mezzo stampa*)	1	0	1	0
false imprisonment with a view to extortion	1	0	1	0
handling illegal weapons	1	0	1	0
illegally carrying a weapon	1	0	1	0
illegal activities relating to drugs	1	0	1	0
illegal possession of firearms	1	0	1	0
unlawful possession of weapons	1	0	1	0
unauthorised possession of a firearm	1	0	1	0
launder money coming from illegal Mafia activities	1	0	1	0
Mafia offences	1	0	1	0
Mafia-related offences	1	0	1	0
offences relating to Mafia activities	1	0	1	0
offence of abuse of authority over persons who had been arrested or detained (Article 608 of the Criminal Code)	1	0	1	0
offence of breaching the terms of special supervision	1	0	1	0
offence of fraudulently holding themselves out as XXX	1	0	1	0
offence of wrongfully holding themselves out (*usurpazione di titolo*) as XXX	1	0	1	0
offences committed with a view to facilitating the activities of mafia-type criminal organisations	1	0	1	0
physical and mental ill-treatment	1	0	1	0
serious offences against children in their care	1	0	1	0
subversive activities (Act no. 152/1975, introduced …)	1	0	1	0

terrorist crime	1	0	1	0
the legal characterisation of the offence [*il titolo del reato*]	1	1	0	0
to sexually abuse (*atti di libidine violenti*)	1	0	1	0
voluntary manslaughter	1	0	1	0

Category: Italian judicial procedure

Instances grouped into clusters	**Total no. of hits**	**ITA**	**GC**	**ECtHR**
preventive measures	109	13	96	0
CSPA	92	0	92	0
reception centre	10	0	10	0
Early Reception and Aid Centre (*Centro di Soccorso e Prima Accoglienza* – "CSPA")	1	0	1	0
Early Reception and Aid Centre (CSPA)	1	0	1	0
reception centre for irregular migrants	1	0	1	0
summary procedure	74	4	63	7
trial under the summary procedure	12	0	12	0
summary proceedings	2	2	0	0
summary procedure (*giudizio abbreviato*)	1	0	1	0
refusal-of-entry order	39	0	39	0
refusal-of-entry measure	5	1	4	0
refusal of entry	2	1	1	0
refusal of entry (*respingimento*)	1	0	1	0
refusal-of-entry measure (*respingimento*)	1	0	1	0
shall refuse entry (*respinge*)	1	1	0	0
detention pending trial	32	3	29	0
pre-trial detention	10	0	10	0
E.I.V. unit	27	1	26	0
E.I.V. regime	2	0	2	0
high-supervision ("E.I.V.") unit	2	0	2	0
high-supervision unit	2	0	2	0
E.I.V. prison unit	1	0	1	0
high-supervision (*Elevato Indice di Vigilanza* – E.I.V.) prison unit	1	0	1	0
in absentia	26	3	23	0
trial *in absentia*	5	0	5	0

special supervision	25	2	23	0
special police supervision	7	0	7	0
measure of special supervision	2	0	2	0
special supervision measure	2	0	2	0
order for special supervision, compulsory residence or exclusion	1	0	1	0
special police supervision (*sorveglianza speciale di pubblica sicurezza)*	1	0	1	0
special police supervision measure	1	0	1	0
special supervision order	1	0	1	0
appeal hearing	24	0	24	0
appeal stage	4	0	4	0
special regime	23	0	23	0
special prison regime	20	0	20	0
special prison regime provided for by section 41 *bis* of the Prison Administration Act	2	0	2	0
prison regime provided for in section 41 *bis* of the Prison Administration Act	1	0	1	0
prison regime provided for in the second paragraph of section 41 *bis* of the Prison Administration Act ("Law no. 354 of 1975")	1	0	1	0
special prison regime provided for by section 41 *bis*	1	0	1	0
special prison regime under section 41 *bis*	1	0	1	0
special prison regime under section 41 *bis* of the Prison Administration Act	1	0	1	0
removal	22	3	19	0
"deportation" (*espulsione*)	1	0	1	0
administrative deportation	1	1	0	0
deportation (*espulsione*)	1	0	1	0
deportation measure	1	1	0	0
deportation of an alien	1	1	0	0
deportation order	1	1	0	0
detention pending removal	1	0	1	0
removal by escorting the person to the border	1	0	1	0
removal measures	1	0	1	0
removal of asylum-seekers	1	0	1	0
removal of irregular migrants	1	0	1	0
removal of migrants	1	0	1	0

monitoring of someone's correspondence	21	0	21	0
monitoring of correspondence	5	0	5	
monitoring of correspondence and telephone calls	3	0	3	0
house arrest	16	2	14	
house arrest (*arresti domiciliari*)	1	0	1	0
pentito / pentiti	15	1	14	0
pentito (a former mafioso who has decided to cooperate with the authorities)	1	0	1	0
grounds of appeal	14	4	8	2
precautionary measure	14	2	12	0
carabinieri	12	3	9	0
CIE	11	0	11	0
Identification and Removal Centre	1	1	0	0
Identification and Removal Centre (*Centro di Identificazione ed Espulsione* – "CIE")	1	0	1	0
leave to appeal out of time	11	0	11	0
application for leave to appeal out of time	9	0	9	0
preliminary hearing	9	2	7	0
preliminary hearing stage	2	0	2	0
effective knowledge	8	5	3	0
effective knowledge [*effettiva conoscenza*]	2	2	0	0
preliminary investigation	8	2	6	0
preliminary investigation stage	1	0	1	0
preliminary investigations stage	1	0	1	0
appeal to the Justice of the Peace	7	0	7	0
appeal with the Justice of the Peace	4	0	4	0
compulsory residence order	7	0	7	0
compulsory residence order requiring him to live in a named municipality (*obbligo di soggiorno*)	1	0	1	0
order for compulsory residence in a specified district	1	0	1	0
order for compulsory residence in a specified district (*obbligo del soggiorno in un determinato comune*)	1	0	1	0
prison leave	7	0	7	0
stay of execution of someone's sentence	7	0	7	0
stay of execution	2	0	2	0
stay of execution of someone's judgment	1	0	1	0

member of the Mafia	6	0	6	0
mafioso/mafiosi	4	0	4	0
objection to execution	6	0	6	0
objection to execution (*incidente d'esecuzione*)	1	0	1	0
Chief of Police (*questore*)	5	3	2	0
Prefect	4	1	3	0
Chief of Police	3	1	2	0
prefect	2	1	1	0
prefect (*questore*)	1	0	1	0
civil party	5	1	4	0
civil party in (the) criminal proceedings	2	0	2	0
suspension of someone's parental rights	5	0	5	0
[to suspend] someone's parental rights	4	0	4	0
[to declare] parental rights forfeit	2	2	0	0
[to deprive] someone of parental rights	2	0	2	0
Decadenza dalla potestà sui figli – "lapse of parental rights"	1	0	1	0
order suspending parental rights	1	0	1	0
"fugitive" (*latitante*)	4	0	4	0
latitante (that is to say, wilfully evading the execution of a warrant issued by a court)	1	0	1	0
admission of new evidence	4	0	4	0
production of fresh evidence	2	0	2	0
admission of evidence not contained in the file held by the Public Prosecutor's Office	1	0	1	0
admission of fresh evidence	1	0	1	0
admission of fresh evidence (*integrazione probatoria*)	1	0	1	0
production of new evidence	1	0	1	0
danger of reoffending	4	0	4	0
danger of his reoffending	2	0	2	0
danger that he might commit other similar offences	1	0	1	0
need to prevent the commisison of a criminal offence	1	0	1	0
extraordinary appeal on the ground of a factual error	4	0	4	0
extraordinary appeal	2	0	2	0

first-instance hearing	4	0	4	0
law XXX come back into force	4	0	4	0
the provisions that had previously been applicable come back into force (*reviviscenza*)	1	0	1	0
legitimate interest	4	0	4	0
"legitimate interest" (*interesse legittimo*)	2	0	2	0
"substantial evidence of guilt"	3	3	0	0
substantial evidence of his guilt	2	0	2	0
"substantial evidence" of the applicant's guilt	1	1	0	0
"substantial evidence of [his] guilt"	1	1	0	0
strong indication of guilt (*consistente fumus di colpevolezza*)	1	1	0	0
substantial evidence of his guilt (*gravi indizi di colpevolezza*)	1	0	1	0
substantial evidence of his guilt [*gravi indizi di colpevolezza*]"	1	1	0	0
Assistant Principal State Counsel at the Court of Cassation	3	0	3	0
Assistant Principal State Counsel	1	0	1	0
deputy chief of police	3	0	3	0
deputy chief of police (*vice questore*)	1	0	1	0
exclusion order	3	0	3	0
prohibitionon residence in a named district or province	1	0	1	0
first-instance proceedings	3	0	3	0
habitual offender	3	0	3	0
legitimate reason for not attending	3	2	1	0
legitimate impediment	1	0	1	0
magistrato	3	0	3	0
risk of evidence being tampered with	3	0	3	0
[need] to prevent interference with the course of justice	2	0	2	0
"personal right" (*diritto soggettivo perfetto)*	2	0	2	0
personal right [*diritto soggettivo perfetto*]	1	1	0	0
"deferred refusal of entry"	2	0	2	0
"deferred refusal-of-entry"	1	0	1	0
"deferred refusal-of-entry" orders	1	0	1	0
"deferred refusal-of-entry" procedure	1	0	1	0
"deferred" refusal of entry	1	0	1	0

application for bail	2	0	2	0
danger of his absconding	2	1	1	0
danger of absconding (Article 274 (b))	1	0	1	0
risk of the applicant's absconding, reoffending or tampering with evidence	1	0	1	0
risk that he might abscond	1	0	1	0
grounds for imposing precautionary measures	2	0	2	0
circumstances warranting the adoption of a precautionary measure	1	0	1	0
Conditions for a precautionary measure	1	0	1	0
conditions for the application of a precautionary measure (*misura cautelare*)	1	0	1	0
Conditions for the application of a precautionary measure depriving a person of his liberty	1	0	1	0
Grounds for decisions ordering precautionary measures	1	0	1	0
grounds for precautionary measures	1	0	1	0
serious need for precautionary measures	1	1	0	0
incapable of understanding the wrongful nature of his acts and of forming the intent to commit them	2	0	2	0
laissez-passer	2	0	2	0
on the basis of the documents contained in the file held by the Public Prosecutor's Office	2	0	2	0
unable to determine the case as it stands [*se ritiene di non essere in grado di decidere allo stato degli atti]*, shall order the investigation to be reopened.	1	1	0	0
on the basis of the case file as it stands	1	1	0	0
on the basis of the case file as it stands (*allo stato degli atti*)	1	0	1	0
on the basis of the file held by the Public Prosecutor's Office	1	0	1	0
on the basis of the steps in the proceedings taken at the preliminary investigation stage (*allo stato degli atti*)	1	0	1	0
the case cannot be determined as it stands	1	1	0	0
on the grounds that the alleged facts never occurred, he did not commit the offence, no criminal offence has been committed or the facts alleged do not amount to an offence in law	2	1	1	0

because the alleged facts had never occurred	1	0	1	0
on the ground that no concrete evidence in support of that allegation could be found during the preliminary investigation and trial	1	0	1	0
on the ground that the alleged facts had never occurred	1	0	1	0
on the ground that the alleged facts had never occurred (*perché il fatto non sussiste*)	1	0	1	0
on the ground that the offenders could not be identified	1	0	1	0
on the ground that the offenders could not be identified (*perché ignoti gli autori del reato*)	1	0	1	0
on the grounds that the case against him has not been proved, he has not committed the offence, no criminal offence has been committed or the facts alleged do not amount to an offence at law	1	0	1	0
prefecture	2	1	1	0
Prefecture	1	1	0	0
refusal-of-entry and removal order	2	0	2	0
refusal of entry combined with removal	1	1	0	0
to arrest *in flagrante delicto*	2	0	2	0
"global credibility" criterion – *attendibilità complessiva*	1	0	1	0
exclusion of evidence which is prohibited by law, manifestly superfluous or of no relevance to the proceedings	1	1	0	0
"a manifest error of law" (*evidente errore di diritto*)	1	0	1	0
"Notice to appear in appeal proceedings before the court sitting in private" (*decreto di citazione per il giudizio di appello davanti la Corte in camera di consiglio*)	1	0	1	0
"refusal of entry at the border"	1	0	1	0
"unjust" (*ingiusta*)	1	0	1	0
"voluntary agreement" for the transfer of the land	1	0	1	0
transfer (*cessione volontaria*)	1	0	1	0
by means of a reasoned decision [*con decreto motivato*].	1	1	0	0
acquittal on grounds of insufficient evidence	1	0	1	0
as there was insufficient evidence	1	0	1	0

alternative measure to detention (*semilibertà*)	1	0	1	0
appeal (*reclamo*)	1	0	1	0
co-defendant, Ms XXX (*chiamata di correo*)	1	0	0	1
execution of removal measures	1	1	0	0
execution of the removal	1	0	1	0
he shall acquire (*assume*)	1	1	0	0
judgment [*provvedimento*]	1	1	0	0
lawyer holding a special authority	1	1	0	0
notice to appear at the appeal hearing	1	0	1	0
notification of the appeal hearing	1	0	1	0
objective situation effectively permitting every individual to be aware of the acts in question (*situazione oggettiva di effettiva conoscibilità, da parte di tutti, degli atti medesimi*)."	1	1	0	0
offices of State Counsel [*Avvocatura dello Stato*]	1	1	0	0
on the merits [*nel merito*]	1	1	0	0
order banning someone from holding public office	1	0	1	0
perpetrator of a serious offence	1	0	1	0
persons against whom there is evidence (*indiziati*)	1	0	1	0
police authorities (*Questura*)	1	0	1	0
police authorities (*questura*)	1	0	1	0
preliminary ruling	1	0	1	0
preliminary ruling from the Court of Cassation on the question of jurisdiction (*regolamento preventivo di giurisdizione*)	1	0	1	0
preliminary ruling on the issue of jurisdiction	1	1	0	0
ruling on a question of jurisdiction	1	1	0	0
review by the Constitutional Court	1	0	1	0
statute-law is time barred [*decadenza*]	1	1	0	0
substantial awards of compensation for expropriation (*serio ristoro*)	1	0	1	0
substantial compensation (*serio ristoro*)	1	0	1	0
the 'clean hands' [*mani pulite*] inquiries	1	1	0	0
the words "correspondence for the purposes of court proceedings" ("*corrispondenza par ragioni di giustizia*")	1	0	1	0
through the intermediary of a specially instructed representative [*per mezzo di procuratore speciale*]	1	1	0	0