Università degli Studi di Padova

Dipartimento di Studi Linguistici e Letterari

Corso di Laurea magistrale in
Lingue Moderne per la Comunicazione e la Cooperazione Internazionale
Classe LM-38

Tesi di Laurea

Legal Translation: from Family Law to International Child Abduction

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Anno Accademico 2019 / 2020

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INTRODUCTION

This dissertation focuses on the translation of four English legal documents. They have all been chosen both for their content and their stylistic features. Indeed, the first has specific common-law features, while the other three show some crucial aspects related to international law, in particular international child abduction. This dissertation provides a general overview of both common law and civil law and shows how some relevant aspects indicated in the texts are dealt with in the two legal families, with specific reference to the United Kingdom and Italy.

The aim of this dissertation is also to list some common characteristics of legal texts and some of the theories concerning legal translation. Later, some of the most important translation strategies and procedures are examined and employed for the analysis of the four legal translations. Another section is devoted to an interesting subject which concerns translators and their profession, i.e. the translators' code of conduct. Moreover, the role of experts is examined by presenting the main rules that apply to them in both civil and criminal matters, with special reference to translators and interpreters working for the court. The last section covers the four documents into detail, discussing their terminological and stylistic issues and the translation strategies adopted.

Chapter 1 introduces the common-law and civil-law families and explains the main differences between them. Section 1.1 provides a brief overview of family law and international child abduction, with special reference to the 1980 Hague Convention on the Civil Aspects of International Child Abduction, the United Nations Convention on the Rights of the Child (CRC) and the Revised Brussels II Regulation. Moreover, it tries to explain some notions such as habitual residence and wrongful removal; it indicates the aim of these conventions and regulations and mentions their main features in order to highlight their similarities and differences. Section 1.2 explains how international laws are incorporated in the United Kingdom, especially in relation to family matters and child abduction. It examines first the relation between domestic and international law by making a distinction between monist and dualist doctrine and between transformation and incorporation. Then, it explains the structure of the court of the United Kingdom with reference to family matters. Moreover, it focuses on laws relating to children and on the introduction of international laws, specially adopted to deal with these circumstances. Some changes related to Brexit are also mentioned and briefly explained. Section 1.3

analyses the reception of international law and the conventions on international abduction in the domestic law of Italy. Some concepts are defined in order to better understand certain aspects of the conventions, such as the right of access and parental responsibility.

Chapter 2 provides a general overview of legal translation. It starts by giving some definitions of legal translation and explaining how it can be classified. Later, it focuses on the connection between a language and a specific national legal system. Section 2.1 deals with the main linguistic, lexical, syntactical and pragmatic features of written legal texts and on the most serious difficulties for legal translators. The first difficulty concerns technical terms and the Plain Language Movement has been mentioned since many efforts have been made recently to make legal language easier and clearer and to reduce the use of unnecessary technical terms. The second difficulty concerns vague and abstract terms with a flexible meaning. The third is related to the unique and complex syntax of legal language, the use of passives, nominalizations, repetitions, euphemisms and archaisms. Moreover, many terms deriving from French and Latin seem to be used in English legal texts, while Italian texts have recently started to borrow English terms too. Section 2.2 concerns the basic competences of a legal translator. Section 2.3 analyses the concept of translation strategy and its evolution: at the beginning, translators preferred literal translation; then, they began to interpret the text and to be more creative. This section also explains the difference between foreignising and domestication. In addition, it focuses on tools and resources employed by translators, with special reference to CAT tools and online resources. Section 2.4 focuses on terminology, that is to say the study of terms, and examines the difficulty linked to the absence of equivalent terminology across different languages. As regards equivalence, the concept is further analysed, distinguishing between three categories of equivalence: near equivalence, partial equivalence and non-equivalence. Furthermore, with regard to incongruency, Section 2.4 explains some common and practical methods which can be adopted by translators in order to overcome this problem. Some examples are borrowings and neologisms. Section 2.5 deals with ethics and codes of conduct concerning translators. It introduces the concept of ethics and ethical norms that apply to translators and it lists some general obligations approved by the FIT (Fédération Internationale des Traducteurs). As regards specific national codes of conduct, this section mentions both the Italian and the English code of conduct. The Italian code is known as Code of Professional Ethics and Conduct,

made by the Italian Association of Translators and Interpreters (AITI). A special section is dedicated to legal translators and interpreters. The English code is called Code of Professional Conduct, made by the Institute of Translation and Interpreting (ITI). The most relevant standards of conduct, duties, rules and profession values are listed and explained in this section. Lastly, Section 2.6 focuses on the role of experts both in civil and criminal proceedings, with special reference to translators and interpreters working for the court. It starts by drawing a distinction between "consulenti tecnici d'ufficio" and "esperti" in civil proceedings and between "ausiliari" and "esperti" in criminal proceedings. This section focuses on the Italian legal system and its rules about experts, interpreters and translators. It explains their role and lists some key articles concerning their appointment, work, requirements and the disciplinary sanctions they could receive in case of a breach of duty. Then, it also presents some articles explaining the role of translators and interpreters who work for the court and distinguishes between "simple" and sworn translators. Lastly, it mentions the crime of false opinion or interpretation of which legal translators can be accused.

The third and last chapter is divided into four parts. First, a brief analysis of translations is provided: it gives a definition of the four texts that have been translated and that are discussed in the following sections and it mentions the register and terminological resources used. Section 3.1 contains the translation of the four source texts. Section 3.2 introduces the translation strategies employed during the translation process of the four legal documents. A distinction is made between direct and oblique translation. Furthermore, the section mentions some strategies employed to fill the gaps. The classification of translation procedures is the one proposed by Vinay and Darbelnet. Nevertheless, other strategies are explored, such as simplification, explicitation and compensation. Section 3.3 focuses on the translation analysis and criticism of the four legal texts. First, it provides a general overview of the documents and identifies some common features of the source texts. Second, it discusses the use of capital letters, the strategies used for names of acts, corporations, specific and culture-bound terms. Third, it discusses some terminological choices concerning those terms which required a deeper search and which were essential for the comprehension of the three documents on international child abduction. Fourth, it shows some examples of translation procedures such as explicitation, simplification, transposition and modulation. Moreover,

redundancy is discussed in order to decide whether to replace repetitions with synonyms and punctuation is also examined.

1. COMMON LAW AND CIVIL LAW

Each political society in the world has its own law. By contrast, international law attempts to govern relations between states and international commerce on a world-wide or regional scale (David & Brierley 1985: 17). The most important legal families are three: the Romano-Germanic family, common law family and the family of Socialist law. However, there are other systems, situated outside these three traditions (David & Brierley 1985: 21). The Italian legal system is linked to the Romano-Germanic family or civil-law family (Campanella 1994-1995: 61), whereas the English legal system is linked to the common-law family.

The Romano-Germanic family originated in Europe. It has developed from the Roman concept of *ius civile,* where law is conceived as a rule of conduct strictly linked to principles of justice and morality. The term Romano-Germanic refers to the joint effort of the universities of both Latin and Germanic countries which, from the twelfth century and on the basis of the compilations of the Emperor Justinian, developed a juridical science common to all (David & Brierley 1985: 21-22). The first most obvious characteristic of the Romano-Germanic family is the fact that it is codified. Codification means that the whole law is organised in a coherent systematic form (Stein 1991-1992: 1594). However, as pointed out by Watson (1981: 3), "The claim that the main distinction between civil law systems and common law systems is that the former are codified and the latter are not is full of defects." The codification of civil law is a modern phenomenon. Another important characteristic is that civil law makes a distinction between public law and private law. Indeed, the first question that a civil-law lawyer is asked is whether he is a publicist or a privatist, since they practice in different courts and follow different procedures (Stein 1991-1992: 1595). Publicists deal with cases where one of the parties is a public authority. On the contrary, privatists deal with relationships between individuals. Therefore, in this case, the state is not involved. Furthermore, as far as civil law is concerned, legal scholars deal with aspects of doctrine, whereas the administration and legal practitioners deal with the application of law (David & Brierley 1985: 21).

The common-law family includes the law of England and those laws modelled on English law. The origins of common law are linked to royal power. It was developed for cases of threat to the peace of the English kingdom, or when the intervention of royal power was required to deal with important matters (David & Brierley 1985: 23). Common

law originated in Medieval England and has remained quite independent from the history and development of the *ius commune* on the Continent (Pozzo 2019: 76). In the common-law language it is indeed possible to find Latinisms but they depend on the work of ecclesiastics inside the royal court. Indeed, Latin was not only the language of Roman law, but also the language of the élite and of the learned people (Pozzo 2019: 76). Latin remained the language of education until 1731. That is why even today the language of common law is still rich in Latinisms (Pozzo 2019: 77). After the Norman conquest, many French terms were introduced in the law of England and the union of Latin, French and English is also what makes common law so peculiar and sometimes untranslatable (Pozzo 2019: 77-78).

According to Campanella (1994-1995: 60), one of the main differences between common law and civil law is the use of juries, which is frequent in common-law systems and quite unusual or almost inexistent in civil-law systems. Moreover, as already mentioned, civil-law rules derive from a codified and written tradition, whereas civil-law rules derive from old unwritten English tradition (Campanella 1994-1995: 60). Another difference between common law and civil law is that common law is much less abstract than the legal rule of the Romano-Germanic family and seeks to provide the solution to a trial rather than to formulate a general rule of conduct for the future. It was formed primarily by judges who had to resolve individual disputes (David & Brierley 1985: 23). Thus, if on the one hand civil law tries to analyse each case in order to find the general rule which could be applied also for future cases, on the other hand common law is more focused on finding a solution for each individual case. The role of a civil-law judge is to discover and apply "the appropriate law to the issue before him", whereas common law finds its source of law in the judiciary (Campanella 1994-1995: 60). Consequently, in civil-law systems the judge occupies the most prestigious position, whereas in common-law systems the highest position is occupied by law professors (Campanella 1994-1995: 61).

As for the difference between public law and private law, common law applies both to the government and the individual citizen, and the same courts deal with both public and private law. The difference between the two is largely a matter of the type of remedies available when a public body is one of the parties, even though common-law

lawyers use the term public law when they refer to constitutional and administrative law (Stein 1991-1992: 1596).

The so-called inquisitorial procedure of civil law can be traced back to the cognition procedure where professional magistrates dealt with the whole case and there was no lay participation. On the contrary, under the adversarial procedure of common law, a trial is a kind of oral battle in which each party, backed by his own witnesses, confronts the other on a fixed day. The proceedings are oral and the witnesses must give their evidence in public. Each party must come to the trial completely prepared and the parties control what issues are raised (Stein 1991-1992: 1598-1599). The judge ensures that the questions asked to the witnesses are relevant and the method of cross-examination is fair; he or she does not directly initiate lines of questioning. At the conclusion of the case, the judge sums up the evidence and the relevant rules of law (Stein 1991-1992: 1599). If on the one hand the common-law trial is oral and judges do not intervene by asking questions themselves, on the other hand the civil-law procedure is more bureaucratic. It is made of a series of meetings and written communications between the representatives of the two parties and the judge. Everyone knows in advance what points will be raised, and it is always possible to ask for an adjournment in order to enable the parties to obtain further evidence. Although the parties suggest questions to which their opponent should reply, the points are raised by the judge who asks the questions, at least formally. The role of the judge is to discover the true basis of the dispute, to bring to light all aspects of the case. All the evidence of the proceedings is written down and filed away. Thus, a considerable amount of evidence is accumulated (Stein 1991-1992: 1599).

The main effects of this difference of procedures are: the relationship between fact and law and a different attitude towards evidence. The aim of the common-law procedure is to limit the area of dispute to a number of facts, reduce it to precise terms from which laypeople would have enough information to make a decision about whether to condemn the defendant. These facts are asserted by one party and denied by the other. Then the final decision is up to the jury. The jury never has to justify its verdict with reasons. In common law, legal issues tend to be strictly confined within certain categories of fact-situations (Stein 1991-1992: 1599). A common-law lawyer begins his or her argument with an examination of the facts in order to identify the legal issues raised by the case. When the relevant rules are derived from earlier cases cited as precedents, each party

mentions those precedents that support his or her own position and emphasises the facts of his or her case relevant to those precedents (Stein 1991-1992: 1600-1601). A common-law lawyer begins the discussion of the case by discussing the facts and only later comes to the relevant rules of law.

The civil-law procedure is a system of wholly written law. The rules can be interpreted in different ways but they remain unchanged until there is an express enactment to modify them. As a result, the legal rules of civil law have to be expressed in general terms and the civil-law lawyer tends to treat as questions of fact issues that for the common-law lawyer would be questions of law (Stein 1991-1992: 1600).

> When a common-law lawyer asks what the case is about, he is thinking of the facts, with a view to identifying the material circumstances of the case and to showing that they fall within the scope of one rule rather than another. When a civil-law lawyer asks what the case is about, he generally refers to the legal issue defined in a general way (Stein 1991-1992: 1601).

The second point resulting from the difference of procedures between common law and civil law concerns a different attitude towards evidence (Stein 1991-1992: 1601). On the one hand, common law has a preference for publicity and for oral testimony; on the other hand, civil law has a preference for secrecy and for written proof. It is more straightforward for a jury made of laypeople to deal with oral evidence rather than with written documents that might be difficult to comprehend. Furthermore, in the adversarial procedure of common law, it is assumed that a witness is more likely to tell the truth if he or she testifies in public, so that what he or she says can be immediately challenged in cross-examination. On the contrary, in civil law, it is assumed that the witness is more likely to tell the truth in private before a judge since he or she is neutral and the witness would not be inhibited that everything they say could be publicly challenged by the other party (Stein 1991-1992: 1601).

Since civil law prefers written proof over oral testimony, certain types of documents prepared by professionals such as notaries public have been given a special status so that their contents cannot be challenged. In common law, legal documents are valid as long as they satisfy the requirements of signature and witnesses, whoever has prepared them. If their validity is challenged, proof must be made by oral testimony (Stein 1991-1992: 1601-1602). The differences between the two systems are clear and evident. Nevertheless, over the centuries, these two families have tended to draw closer together.

For certain purposes, it is possible to speak of one great family of western law (David & Brierley 1985: 24).

1.1. INTERNATIONAL CHILD ABDUCTION

International abduction is related to the concept of family. According to Miles et al (2019: 1), the idea we have of family is different from the reality. The world of advertising would have us believe that we all live in households composed of two parents and their children and that family implies a group linked by blood relationship and by marriage, and commonly by a shared home. However, in most cases, the reality of domestic life is not a traditional one. The census showed in 2001 that just 51 per cent of the adult population was married; by 2011, the proportion had fallen to 47 per cent. Divorce is becoming more and more common; the number of couples living together without getting married is increasing and 48 per cent of children are now born to parents who are not married. Some children are adopted, fostered or parented by people other than their biological parents. Same-sex couples are gaining social acceptance and have more or less identical legal recognition to that of mixed-sex couples. In certain ethnic minority communities it is common to have extended families of more than two generations and/or adult siblings. Many people share households with friends in platonic relationships. Increasing numbers of young people remain in their parents' homes also when they are adult. Many individuals choose to live alone; some couples physically live apart and yet still regard themselves as being together (Miles et al 2019: 1-2). Although they do not count as traditional families, all of these groups may consider themselves as family. Contemporary family law is dealing with the problem of deciding which families can be included in family law, regulating their relationships and determining whether it is possible to confer more rights and duties on some categories of family than others. Family law has changed significantly over these decades. Its function is no longer related to the functioning families but to the pathology of family breakdown (Miles et al 2019: 2).

As Miles et al put it (2019: 2),

> Divorce and its financial consequences, domestic abuse, disputes over the upbringing of children, and protection of children from abuse within the home now constitute the core of family law.

One of the main issues is domestic abuse, which was formerly known as domestic violence (Miles et al 2019: 201). The term refers to

> any incident or pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse between those aged 16 or over who are, or have been, intimate partners or family members regardless of gender or sexual identity (HM Government, 2018: 13).

Historically, domestic abuse was considered as a private problem. Thus, the state failed to protect victims. Nowadays, the government's main objectives and responsibilities include the prevention, reduction and punishment of domestic abuse, and the support of the victims (Miles et al 2019: 199).

Another crucial aspect closely related to family law is child abduction. In particular, this paragraph focuses on international child abduction which is increasing due to mixed marriages and globalisation. People from all over the world meet and, if they fall in love, they might decide to start a family. However, sometimes relationships turn up to be more complicated than one might think and children are the first victims. One possible explanation of the increase in child abduction can be the reformation of custody laws. Another explanation could be linked to the growing number of marriages between people of different nationality (Buck 2014: 277). When the marriage or the relationship ends, the couple may feel the need to return to their native country.

The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (HCCH 1980 Child Abduction Convention) is a multilateral treaty whose purpose is to protect children from the harmful consequences deriving from their wrongful removal and retention across international boundaries. Its procedure leads to the prompt return of the child to their habitual residence and the protection of their rights.

> The goal is to further the interests of all children affected by international child abductions collectively without individualized best-interests inquiries. The drafters sought to achieve this goal through a single overarching rule: wrongfully removed or retained children must be returned to their habitual residence as quickly as possible (Vivatvataraphol 2009: 3335).

When the Hague Convention was being prepared in the 1970s, the assumption was that the father was more likely to abduct children and take them abroad because of some bitterness caused by a deteriorating relationship with the mother and the restriction on the time he could spend with his child. However, this stereotype was challenged by the surveys carried out in the 1990s. The real issue is that there is no fully developed statistical evidence on international child abduction and the empirical evidence is incomplete and always changing. Consequently, it is quite difficult to understand the underlying causes of this phenomenon, the type of family scenario which could cause it and the main features of a parent who is likely to abduct his or her child. Nevertheless, Lowe (2011)

estimated that in 2008, 69 per cent of taking persons were the mothers, 28 per cent were fathers and the remaining 3 per cent were the grandparents, institutions or other relatives. His research made it clear that the stereotype of the father did not reflect the reality (Buck 2014: 276). Another example concerns England and Wales. An examination of the applications of 1996 found that in the majority of cases, the mother was the abductor (Report for Congress 2004: 347).

In March 1979, the Special Commission for the Child Abduction Convention met for the first time to discuss an approach to the issue of international abductions. The Commission agreed that each Member State would have a Central Authority in order to facilitate cooperation across borders, that a parent could apply for automatic return of an abducted child within 6 months of the abduction, and that, even if more than 6 months had passed, a court could only assume jurisdiction for a merits hearing if it considered that country the habitual residence of the child. These principles were the foundation of the preliminary draft treaty made by the Special Commission. The present form of the Child Abduction Convention was prepared during the Fourteenth Session of the Hague Conference from October 6 to October 25, 1980. Before the Hague Conference, Adair Dyer, then deputy secretary general of the Hague Conference, started investigating the legal and sociological aspects of international child abductions (Vivatvataraphol 2009: 3333-3334). His results were taken into account and are now part of the current Child Abduction Convention.

As previously mentioned, one of the objects of this Convention is to ensure the prompt return of children who have been wrongfully removed to their State of habitual residence. The notion of habitual residence is not defined in the Convention and is left to be determined as a question of fact. However, it is crucial within the definition of wrongful removal or retention. The underlying concept is that "a child should be returned to the country where he or she has the most obvious connection prior to a wrongful removal or retention" (Buck 2014: 291). The identification of the habitual residence of the child is fundamental for two reasons. First, it allows to understand which country has the relevant jurisdiction. Secondly, the Hague Convention only applies to children who are habitual resident in a Contracting State before the breach of custody or access rights (Buck 2014: 291). The term is interpreted from the child's point of view: it considers whether the child has been removed from the family and social environment where he or

she has made his or her cultural, educational and social experiences. It does not depend on national citizenship or on the expectations of either parent (Walsh & Savard 2014: 33). The Convention can only be applied when the countries involved are signatory states. Otherwise, the action for return will be dismissed (Walsh & Savard 2006: 32).

According to the status table available on the HCCH website (2020a), 101 countries are contracting parties to the Convention. The objectives of the Child Abduction Convention are twofold, as explained in the following Article:

> Article 1 1980 Hague Convention
>
> The objects of the present Convention are –
>
> a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and
>
> b) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.

This treaty came after many years of deliberation. It was initially signed by four states, that is to say France, Canada, Switzerland and Greece. It was adopted by a unanimous vote of the states which were present (Forowicz 2010: 108). It provides practical measures not only to secure the return of the child but also "to ensure that the rights of custody and of access under the law of one Contracting State are effectively respected in other Contracting States" (Hague Convention, Article 1, paragraph 2, letter b). Article 5 of the Convention explains these two rights:

> Article 5 1980 Hague Convention
>
> For the purposes of this Convention –
>
> a) "rights of custody" shall include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence;
>
> b) "rights of access" shall include the right to take a child for a limited period of time to a place other than the child's habitual residence.

The aim of the Convention is also to re-establish the status quo that existed before the abduction and to serve as a deterrent for parents who engage in forum shopping. This term was introduced into English law by Lord Pearson in a case and he also tried to explain it. He described it as a plaintiff who by-passes his or her natural forum and brings his or her action in some other forum, known as alien forum, which would possibly give him or her benefits that he or she would not be granted in the natural forum. The natural

forum refers to the state with which the parties and the dispute have the closest link (Fawcett 1985: 141). In plain terms, forum shopping is the practice of choosing between two or more courts in order to select the one which is more likely to provide the most favourable outcome.

The 1980 Hague Convention first defines the concept of wrongful removal or retention; secondly, in the case of wrongful removal or retention, the country of refuge or requested State shall make a return order. Then, the child is returned to the country from which he or she has been removed to re-establish the status quo prior to the abduction and any dispute will be addressed in the court of the habitual residence of the child (Buck 2014: 285). Once the court finds that the child has been removed from his or her habitual residence, the court has to establish whether the removal or retention is wrongful, that is to say whether it is in breach of the right of custody. The return remedy cannot be invoked when there is only a violation of the rights of access (Walsh & Savard 2006: 34). Furthermore, the Convention states that each Contracting State shall designate a Central Authority, that is to say a domestic governmental office, to discharge the operations under the Convention. Central Authorities shall co-operate to ensure the return of the children. The Hague Convention became the legal *modus operandi* in situations of international child abduction. Nevertheless, the interpretation varies from one court to another, thus giving an uneven application in each Contracting State (Forowicz 2010: 108-109).

In 1989, the UN General Assembly adopted the United Nations Convention on the Rights of the Child (CRC), which then came into force in 1990. This is the only international treaty which has been welcomed with the near universal acceptance (Kenworthy 2002: 344). The United States is the only UN member nation that has not ratified the UN Convention. According to the UN Treaty Collection (2020), there are 196 parties to the Convention. Only the States that have ratified a treaty will be bound by its terms in international law (Buck 2014: 43). Forowicz (2010: 123) adds that this Convention "has been ratified more quickly and by more governments than any other human rights instrument", it is supported both at European and international level and "it has also acquired the status of most highly ratified instrument in international law".

The CRC is also a good example of a law-making treaty. Treaties can be traditionally divided into two types: law-making treaties and treaty-contracts. The former have a general relevance; the latter bind two or a few states. Bilateral and multilateral

treaties or conventions are perfect examples of treaty-contracts. However, if multilateral treaties receive a significant political support from other states, they establish a global or general impact, thus becoming multilateral law-making treaties (Buck 2014: 42). The CRC seeks to change the historical attitudes toward children that have not allowed them to enjoy their rights by underlining the concept of children as holders of their own human rights. It combines political, civil, economic and social rights which are related to children. Furthermore, the UN Convention is often considered as the "most comprehensive and detailed international human rights charter to date" (Kenworthy 2002: 344-345).

Under the Revised Brussels II Regulation of 2003, abductions and the enforcement of orders for contact or access in the European Union are governed by the Hague Convention of 1980 (Buck 2014: 280). Article 24, paragraph 3 of the Charter of Fundamental Rights of the European Union recognises the right of the child to maintain a relationship with both his or her parents:

> Article 24 Charter of Fundamental Rights of the European Union
>
> (The rights of the child)
>
> 1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
>
> 2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
>
> 3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

This contact should be direct and maintained on a regular basis in order to allow the child to develop a personal relationship with them. This right is only limited when it is contrary to the best interests of the child. In cases of wrongful removal of the child, the Court states that this right must be respected since it represents the child's best interests. If another child's interest is considered to be more important than the right to keep a personal relationship and direct contact with both his or her parents, then this right should be limited (Agenzia dell'Unione europea per i diritti fondamentali e Consiglio d'Europa 2016: 83-84).

The first key point of the Regulation is to preserve the jurisdiction of the courts of the habitual residence of the child, also known as requesting State, until the child has

acquired habitual residence in another country. The second key point is the presumption of the child's right to participate in the proceedings and to be heard, unless he or she does not have the right age or degree of maturity. The third point reinforces the policy of peremptory return of the child to the child's habitual residence by stating that the court in the requested State "cannot make a non-return order on basis of 'grave risk of harm' where adequate protective arrangements would exist for the child after the return". The fourth point concerns the case of a non-return order issued by the requested State. In this case, "the left-behind parent may still litigate the issue of residence/custody on its merits in the requesting State", and the court that made the non-return order will be overridden by the requesting state's court (Buck 2014: 281-283). The Brussels IIa Regulation prevails over the national law of the Member States of the European Union and takes precedence over the Hague Convention 1980 (Beaumont et al 2015: 40). All the Member States of the European Union are bound by it, except for Denmark (EUR-Lex 2020). One significant issue is stated by Article 11 which allows the courts of the habitual residence of the child to insist on the return of the child after a non-return order based on Article 13 of the Convention (Beaumont et al 2015: 40).

> Article 13 1980 Hague Convention
>
> Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that –
>
> a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or
>
> b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.
>
> The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.
>
> In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.
>
> Article 11 Council Regulation (EC) No 2201/2003
>
> (Return of the child)
>
> 1. Where a person, institution or other body having rights of custody applies to the competent authorities in a Member State to deliver a judgment on the basis of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (hereinafter "the 1980

Hague Convention"), in order to obtain the return of a child that has been wrongfully removed or retained in a Member State other than the Member State where the child was habitually resident immediately before the wrongful removal or retention, paragraphs 2 to 8 shall apply.

2. When applying Articles 12 and 13 of the 1980 Hague Convention, it shall be ensured that the child is given the opportunity to be heard during the proceedings unless this appears inappropriate having regard to his or her age or degree of maturity.

3. A court to which an application for return of a child is made as mentioned in paragraph 1 shall act expeditiously in proceedings on the application, using the most expeditious procedures available in national law.

Without prejudice to the first subparagraph, the court shall, except where exceptional circumstances make this impossible, issue its judgment no later than six weeks after the application is lodged.

4. A court cannot refuse to return a child on the basis of Article 13b of the 1980 Hague Convention if it is established that adequate arrangements have been made to secure the protection of the child after his or her return.

5. A court cannot refuse to return a child unless the person who requested the return of the child has been given an opportunity to be heard.

6. If a court has issued an order on non-return pursuant to Article 13 of the 1980 Hague Convention, the court must immediately either directly or through its central authority, transmit a copy of the court order on non-return and of the relevant documents, in particular a transcript of the hearings before the court, to the court with jurisdiction or central authority in the Member State where the child was habitually resident immediately before the wrongful removal or retention, as determined by national law. The court shall receive all the mentioned documents within one month of the date of the non-return order.

7. Unless the courts in the Member State where the child was habitually resident immediately before the wrongful removal or retention have already been seised by one of the parties, the court or central authority that receives the information mentioned in paragraph 6 must notify it to the parties and invite them to make submissions to the court, in accordance with national law, within three months of the date of notification so that the court can examine the question of custody of the child.

Without prejudice to the rules on jurisdiction contained in this Regulation, the court shall close the case if no submissions have been received by the court within the time limit.

8. Notwithstanding a judgment of non-return pursuant to Article 13 of the 1980 Hague Convention, any subsequent judgment which requires the return of the child issued by a court having jurisdiction under this Regulation shall be enforceable in accordance with Section 4 of Chapter III below in order to secure the return of the child.

1.2. THE RECEPTION OF INTERNATIONAL LAW IN THE UK

This paragraph explains how the United Kingdom deals with international child abduction and focuses on the reception of international law in the British domestic law. Firstly, it is crucial to analyse the relationship between domestic law and international law. There are two different debates: the first concerns the difference between the monist

and the dualist doctrines; the second concerns the two doctrines of transformation and incorporation. The first area of debate focuses on the monist and the dualist doctrines. On the one hand,

> the "monist doctrine asserts that domestic and international law are part of a single, integral legal order and, if there is a conflict between the two, international law ('the law of nations') should prevail" (Buck 2014: 53).

On the other hand, the dualist doctrine asserts that domestic and international law are separate. As a result, they do not affect each other and neither system prevails over the other (Buck 2014: 53).

The second area of debate focuses on the doctrines of transformation and incorporation. Essentially, it analyses how domestic courts deal with international law. The doctrine of transformation is based on the dualist approach and underlines the importance of a transformative act of adoption in order for the domestic law to digest rules of international law. This changes from one nation to another. For instance, in the United Kingdom, this passage will be achieved through an Act of Parliament. On the contrary, the doctrine of incorporation is based on the monist approach and asserts that international law does not need a ratification procedure since it is automatically incorporated within the domestic legal system (Buck 2014: 53-54). However, the doctrine of incorporation can only be applied to international customary law, whose key feature is that it is binding on all states (Buck 2014: 48). International treaties are handled differently. In dualist nations, treaties are not automatically part of domestic law. For instance, in the United Kingdom, ministers sign and ratify international treaties but the Parliament has to produce an Act before the treaty will have binding legal effect (Buck 2014: 54).

The Court structure of the United Kingdom concerning family matters and matters relating to children has three tiers: the High Court, the county courts and the magistrates' courts (Report for Congress 2004: 344). The magistrates' courts have a significant civil jurisdiction. They hear family proceedings under the Domestic Proceedings and Magistrates' Courts Act (DPMCA) 1978 and the Children Act (CA) 1989. Justices who sit in these courts must not be more than three and they must be members of the so-called family panel, that is to say a group of people appointed to handle family matters. They deal with the lowest level of proceedings, i.e. supervision orders, parental contact and

maintenance relating to spouses and children (Slapper & Kelly 2014: 212-213). The county courts were introduced in 1846 to deal with relatively small-scale litigation and claims, such as divorce and matrimonial matters. Decisions are made by circuit judges and district judges. The latter are appointed by the Lord Chancellor (Slapper & Kelly 2014: 213). If on the one hand the county courts deal with fast-track cases, on the other hand the High Court handles more challenging and higher value civil cases. The High Court was created in 1873 as a part of the Supreme Court of Judicature. The Supreme Court of the United Kingdom was created by the Constitutional Reform Act 2005. It replaced the House of Lords as the final court of appeal and the new official collective name for the High Court, the Court of Appeal and the Crown Court, previously called The Supreme Court of Judicature, became the Senior Courts of England and Wales (Slapper & Kelly 2014: 213).

The High Court is one of the Senior Courts of England and Wales and it is divided into three administrative divisions: the Court of Chancery, the Queen's Bench Division and the Family Division. Judges of the High Court sit generally in the Royal Courts of Justice in the Strand, London, although they may sit anywhere in England and Wales. The number of the judges is fixed by statute. The High Court includes the Vice Chancellor, the Lord Chief Justice who presides over the Queen's Bench Division and the President who presides over the Family Division. Moreover, it includes the Senior Presiding Judge and 108 High Court judges (Slapper & Kelly 2014: 215-216).

The Family Division of the High Court was created by the Administration of Justice Act 1970 (Slapper & Kelly 2014: 218). It deals with the highest level of family proceedings and it comprises specialist family judges. International cases are heard in the High Court (Report for Congress 2004: 344). In particular, the Family Division has jurisdiction in all family matters including matrimonial issues, both at first instance and on appeal, proceedings relating to minors under the Children Act 1989, legitimacy, adoption and non-contentious probate cases (Slapper & Kelly 2014: 218-219). It consists of two High Court judges and hears appeals from decisions of magistrates' and country courts concerning family matters (Slapper & Kelly 2014: 220). Although oral evidence is quite common because of the possibility to cross-examine the facts, affidavits or statements in advance are relied upon to a great extent in cases where children are involved. Furthermore, these hearings are not accessible to the public. On the contrary,

they are in chambers, with parties and their lawyers present. The aim is to protect confidentiality and to discourage publicity (Report for Congress 2004: 344).

In the second half of the twentieth century, laws relating to children have increased and become more and more complex. Both private and public law needed to be reviewed. The Children Act of 1989 was the main instrument used to deal with these situations and its principles did not change even though it has been much amended. The current child legislation has been built on these principles. Under the Children Act, the state will intervene in cases of significant harm, that is to say in circumstances where the child is suffering harm or is likely to suffer harm. The aim of the Children Act was to provide intervention and support for children and families before an action by the state became necessary (Dixon & Welbourne 2013: 78). Moreover, it integrated new provisions in order to protect not only children who suffered from a significant harm by their parent but also those who were in need. Social need refers to the necessity to improve the situation and the future prospects of the child. The Children Act defined a minimum acceptable standard of child welfare, introduced the right for the state to intervene and the intervention of local authorities in matters related to healthcare and education (Dixon & Welbourne 2013: 79).

When a child is involved, many aspects of family law will be different from traditional forms of civil litigation. First, it is essential to give more importance and consideration to the interests of the child and not to the interests of the parties (Gillespie 2013: 521). Indeed, in many cases relating to children, the organization CAFCASS (Child and Family Court Advisory and Support Service) may be asked to become involved. The organization is made of social workers who will work with the family in order to better understand the nature of the dispute and the consequences on the child. If the child is old enough the officer will directly speak to the minor. “CAFCASS is independent of the parties and is accountable to the court. It provides an independent analysis of the issue and will make recommendations to the court” (Gillespie 2013: 522). According to the Family Proceedings Rules (FPR), i.e. specific rules which apply for family proceedings, the court is required to recommend the use of alternative dispute resolution (ADR) (Gillespie 2013: 549).

ADR has been defined as the different ways in which parties can settle civil disputes, with the help of a third party and without going to court. The most common

forms of ADR are arbitration, mediation and conciliation (Gillespie 2013: 556). Arbitration is the most formal of the ADR forms but it is quicker and more informal than litigation. It involves an independent third party who does not facilitate the agreement but instead makes a decision. This decision is normally binding and the courts will rarely interfere with it. Unlike arbitration, mediation is not binding. Moreover, the mediator does not make a decision but he or she has to structure the process of mediation and assist the parties in reaching a settlement, which will not be necessarily reached. Nevertheless, this form of ADR is encouraged because it is informal and inexpensive (Gillespie 2013: 556-557). Conciliation is probably not a form of ADR but a standard part of the litigation system. If on the one hand mediation requires both parties to be present in the room with the third party, in conciliation it is more common for the conciliator to meet with the parties separately in order to propose offers and counter-offers. However, it may happen that the parties are brought together after the early rounds, in which case mediation and conciliation seem quite similar. Like mediation, conciliation will not necessarily be successful, but it is worth a try (Gillespie 2013: 558).

In the United Kingdom, jurisdictions related to children were governed by Council Regulation (EC) 2201/2003 (Brussels IIR) and the Family Law Act 1986 (FLA 1986) (Stewart 2011: 80). However, the situation has changed after Brexit and Brussels IIa, also known as Brussels IIR or Brussels II bis, no longer applies to the United Kingdom. The FLA 1986 applies principally to jurisdictional conflicts within jurisdictions of the United Kingdom and covers any application under section 8 of the Children Act 1989 (Stewart 2011: 80). The Children Act 1989, section 8, makes provision for the issuance of the following orders: child arrangements order, prohibited steps order, specific issue order.

> Section 8 Children Act 1989
>
> (Child arrangements orders and other orders with respect to children)
>
> In this Act —
>
> “child arrangements order" means an order regulating arrangements relating to any of the following:
>
> (a) with whom a child is to live, spend time or otherwise have contact, and
>
> (b) when a child is to live, spend time or otherwise have contact with any person;

> "a prohibited steps order" means an order that no step which could be taken by a parent in meeting his parental responsibility for a child, and which is of a kind specified in the order, shall be taken by any person without the consent of the court;
>
> "a specific issue order" means an order giving directions for the purpose of determining a specific question which has arisen, or which may arise, in connection with any aspect of parental responsibility for a child.

As regards Brussels IIa, it is shorthand for European Council Regulation (EC) No 2201/2003 and is entitled "Matrimonial and parental judgments: jurisdiction, recognition and enforcement". Its purpose is to help international couples resolve disputes over their divorce and the custody of their children when more than one country is involved. One of its main objectives is to uphold children's right to maintain contact with both parents, even if they are separated or live in different countries which are Member States of the European Union. On 31 January 2020, the United Kingdom has formally left the European Union, thus ceasing to be one of its members. It is now going through a transition period which ends in December. Consequently, the Brussels IIa Regulation will no longer apply after this transition period and the United Kingdom will lose some protective provisions contained in Brussels IIa. It will therefore rely on the 1980 Hague Convention and the 1996 Hague Convention (Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children). The main differences concern the following aspects (Lexology 2020):

- the six-week time frame;
- parental responsibility;
- second attempt at return proceedings;
- protective measures;
- automatic recognition;
- legal aid.

With regard to the six-week time frame, Brussels IIa establishes that cases of child abduction should be dealt within six weeks. The 1996 Hague Convention does not contain such a provision. As for parental responsibility, it is important to mention Article 9:

> Article 9 Council Regulation (EC) No 2201/2003
>
> (Continuing jurisdiction of the child's former habitual residence)
>
> 1. Where a child moves lawfully from one Member State to another and acquires a new habitual residence there, the courts of the Member State of the child's former habitual residence shall,

> by way of exception to Article 8, retain jurisdiction during a three-month period following the move for the purpose of modifying a judgment on access rights issued in that Member State before the child moved, where the holder of access rights pursuant to the judgment on access rights continues to have his or her habitual residence in the Member State of the child's former habitual residence.
>
> 2. Paragraph 1 shall not apply if the holder of access rights referred to in paragraph 1 has accepted the jurisdiction of the courts of the Member State of the child's new habitual residence by participating in proceedings before those courts without contesting their jurisdiction.

The idea is that the child's habitual residence will remain in the former state during a three-month period after his or her move to another Member State. This is not established in the 1996 Hague Convention.

The United Kingdom will also lose the benefit of Article 11(6) to (8) for cases of child abduction, which allow an applicant to make a second attempt at return proceedings. Moreover, under the 1980 Hague Convention, a Member State can refuse to return a child if it considers that there is a grave risk of harm or if it would place the child in an intolerable situation. Under Brussels IIa, this could be avoided if and only if there were adequate protective measures in place to prevent that risk. Now, this will no longer be possible. As for automatic recognition, orders relating to parental responsibility will no longer be automatically recognised. Lastly, legal aid is not available for recognition and enforcement orders under the 1996 Hague Convention (Lexology 2020).

As already mentioned, in cases of child abduction the 1980 Hague Convention will still apply. Child abduction is the act of taking a child away without the consent of the persons who have the right to care for them. Abduction has long been associated to kidnapping and it was punished as a common-law criminal offence. In recent years, the problem has acquired an international dimension (Report for Congress 2004: 339). Episodes of local abduction within the same country are dealt by domestic courts. However, in cases of international abduction, the rights of the parent cannot be enforced in state courts. Consequently, an international agreement has been formulated in order to deal with this issue (Report for Congress 2004: 344). According to the status table available on the HCCH website (2020a), the Hague Convention on the Civil Aspects of International Child Abduction has been signed by the United Kingdom in 1984 and it has been ratified on August 1, 1986, when the Child Abduction Act 1985 came into effect (Report for Congress 2004: 344). The Child Abduction and Custody Act 1985 is the

enabling legislation which gives effect to the Hague Convention in the United Kingdom (Kenworthy 2002: 355).

The Central Authority for the Hague Abduction Convention in England and Wales is the International Child Abduction and Contact Unit (HCCH 2020b). When a Central Authority receives an application for the return of an abducted child, a solicitor who has experience in child abduction is assigned to the case. The solicitor or general attorney will take the client's instructions, gather the evidence and file affidavits of facts. The solicitor will receive a copy of the decision taken by a Court outside the United Kingdom and he or she will instruct a barrister to represent the applicant at the court hearing (Report for Congress 2004: 341). All applications for the wrongful removal of children are dealt with in London by a judge of the Family Division of the High Court. The Clerk of the Rules is a Court responsible for listing cases. It ensures that they are listed quickly and it checks the progress of the case. Usually, Hague Convention hearings are conducted on written evidence and submissions made by lawyers (Report for Congress 2004: 344-345). The High Court puts emphasis on the purpose of the Hague Convention to return wrongfully removed children. The approach is based on facts and on the examination made for each individual case. Each case has different implications and they must be thoroughly evaluated.

All the states that have signed the Convention have agreed that their Courts will return an abducted child to his or her habitual residence, that is to say the country he or she came from, unless there are some circumstances which allow the child to remain in the new country (Stewart 2011: 92-93). However, these circumstances are quite rare. The Convention establishes some strict rules in order to determine whether the removal or the retention can be defined as abduction (Report for Congress 2004: 344-346).

> For example, where a parent takes a child out of the home country without the permission of the other parent or where the child has been taken out of the home country with the other parent's permission, but the child is not returned as expected, but instead is retained by the other parent (Stewart 2011: 93).

Abduction is linked to the violation of a parent's custody rights. This term does not mean being a primary carer of the child but does require more than basic contact and an involvement in the decisions concerning the child. "In England and Wales, it is crucial to establish whether a parent has parental responsibility under the Children Act of 1989, since parental responsibility qualifies as custody rights for the purpose of the Convention"

(Stewart 2011: 93). The child may not be ordered to return to his or her home country if there is clear evidence of consent of the child or where there is a real risk of physical or psychological harm or intolerable situation in the event of his or her return. These are the only defences that can prevent the child from coming back to his or her habitual residence.

However, if a parent whose child has been abducted by the other parent applies for his or her return within 12 months of the abduction, the Court in the new country is bound to order the return of the child. The Court may choose not to return the child only if one of these defences has been established or if it considers that the return is not in the child's best interests. If the parent applies after the 1 year period, the new country must still order the return of the child unless it is demonstrated that there is one of these defences or that the child is now settled in the new country and in the new environment (Stewart 2011: 93). Furthermore, the Court may not order the return of the child if it is proved that the child objects to being returned and "has attained an age and degree of maturity at which it is appropriate to take account of their views" (Stewart 2011: 93).

The Court appoints a child welfare officer in order to determine whether a child is old enough or mature enough to have his or her objections considered before issuing the order. The Court welfare officer, appointed for objectivity purposes, present the findings in Court after the examination of the child. Nevertheless, the final decision is up to the Court, which will decide whether to order the child's return or not (Kenworthy 2002: 355-356). The views and the objections of the child have to be taken into account since the order will affect his or her life. However, sometimes the child can be influenced by the parents or other adults who live with him or her (Stewart 2011: 94).

The United Kingdom accepts that the Hague Convention does not determine a threshold age for the child to be heard. However, according to the Courts, the younger the child is the less likely it is that he or she will be old enough or mature enough to be taken into consideration by the Court. It will appoint a Court welfare officer in order to examine the objections and the degree of maturity of the child in an independent way. After analysis by the Court welfare officer, if the child is considered to be old enough and mature enough to have his or her objections taken into account, the Court shall exercise its discretion whether to still order the child's return or not. The role of the Court is also to balance the views of the child with the policies and objectives of the Hague Convention (Kenworthy 2002: 359).

1.3. THE RECEPTION OF INTERNATIONAL LAW IN ITALY

The fourth and last paragraph tries to describe how Italy deals with international child abduction and focuses on the reception of international law in the Italian legal system. First, it may be important to underline one main difference between the Italian legal system and the law of England and Wales: the role of precedents. The authority recognized to precedents, i.e. judicial decisions or law interpretation, is defined by two principles established by the Court of Cassation, the Italian court of last resort which has jurisdiction over questions of law and not questions of fact (Timoteo 1994: 409). According to the Cornell Law School (2020a), a question of law is an issue which has to be resolved by a judge, not a jury, such as issues regarding the interpretation of a law, the identification of the relevant law or issues of facts which have been reserved for a judge. On the other hand, a question of fact (Cornell Law School 2020b) is an issue which has to be resolved by a trier of fact, that is to say a jury, which evaluates the evidence and hears the witnesses before making a decision. Consequently, in questions of law a judge needs to interpret the principles and rules applicable to the present case and to future cases, while in questions of fact the jury has to interpret the circumstances of the present case. Precedents are not a source of law in the Italian legal system and they are not formally binding. However, the judge can give the reason for his or her decision by referring to precedents of the Court of Cassation. Moreover, the judge can decide not to follow precedents of other Courts but he or she must give a convincing reason for this refusal. This means that if a judge follows a precedent, he or she does not have to justify his or her decision. If, on the other hand, the judge does not follow a precedent, he or she has to give adequate reasons (Timoteo 1994: 409-410).

The area of international abduction is governed by the Hague Convention on the Civil Aspects of International Child Abduction, which was signed on October 25, 1980 and ratified through Law No. 64 of January 15, 1994. After the ratification, the Convention entered into force on May 1, 1995 (Report for Congress 2004: 225). Over the last decades, cases of international child abduction have increased in Italy, due to the high number of migrants coming to Europe and to the increase in mixed marriages. Marriages are often characterised by social and cultural differences but one of the main issues is the difference in religious beliefs which may be a possible cause of conflict. Conflicts may end in separation or divorce of the couple and in the possible removal of the child by one

of the parent who wishes to return to their home country and to take the child with them. However, this is only possible with the consent of both parents and the judge intervenes in cases of breach of the rights of the other parent (Camera Minorile di Milano 2020).

The UN Convention on the Rights of Child was ratified and implemented in Italy with Law 176 in 1991. Article 11 claims the following:

> Article 11 Convention on the Rights of the Child
>
> 1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.
>
> 2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements".

One of the most useful instruments and multilateral agreements applied in cases of international abduction is the Hague Convention on the Civil Aspects of International Child Abduction. According to Article 3 of Law No. 64, the Italian Central Authority is the Central Office for Juvenile Justice at the Ministry of Justice pursuant to Article 6 of the Convention. If necessary, the Central Authority is assisted by the state attorney, known as Avvocatura dello Stato, and by the Juvenile Services of the Justice administration, known as Servizi minorili. It may also ask for the assistance of other public administrative bodies, the police or any agency or authority which carry out the same functions as those entrusted to the Central Authority under the Hague Convention (Report for Congress 2004: 225). The Convention requires the appointment of judicial and administrative authorities in all the Contracting States in order to ensure the implementation of the orders issued in other Contracting States and the cooperation with them (Timoteo 1994: 416).

The interested parties may apply for the return of a child wrongfully removed or to secure the rights of access through the Central Authority according to Articles 8 to 21 of the Hague Convention. Applications may also be filed directly through the appropriate authorities, pursuant to Article 29.

> Article 29 1980 Hague Convention
>
> This Convention shall not preclude any person, institution or body who claims that there has been a breach of custody or access rights within the meaning of Article 3 or 21 from applying directly to the judicial or administrative authorities of a Contracting State, whether or not under the provisions of this Convention.

According to the Convention, a parent can apply for the return of a child to his or her habitual residence only to enforce custody rights (Bailey 1996: 287-288). Article 5(b) of the Convention defines the right of access which includes "the right to take a child for a limited period of time to a place other than the child's habitual residence". Furthermore, custodian parent refers to the parent with day-to-day care of the child, whereas access parent or non-custodian parent means the parent who does not have day-to-day control of the child. However, these terms have different meanings according to the domestic laws of the different Contracting States. For instance some of them, like England and Wales, have abandoned the use of the terms custody and access and have adopted the concept of parental responsibility (Bailey 1996: 88).

In Italy, parental responsibility refers to the power to make all the decisions which are "necessary for the care and the moral and material assistance of the child" (Boele-Woelki et al 2003: 40). Parents have to support, educate and guide their children by considering their inclinations and they also have to promote their physical and mental well-being. If on the one hand material assistance is more linked to the expenses and needs of the child, moral assistance implies the duty to a constant relationship with the child, spending time with him or her and providing attention. If the parent does not live with the child, this obligation is still valid and is known as visiting right (Boele-Woelki et al 2003: 40). Moral assistance also includes the education of the child. All potential conflicts must be resolved by balancing the opposing positions and respecting the view of the child. In particular, parents do not have the right to choose their child's religion, they cannot oppose the cultural-ideological choices of the child and they cannot use violence to educate children since it is unlawful. "Such decisions point out that a child is no longer only an object to protect, but a holder of rights" (Boele-Woelki et al 2003: 41).

Italian domestic law protects minors through the criminal courts and some behaviours are punished as crimes in the Penal Code. These include sexual abuse, abuse of the means of discipline, maltreatment and corruption of minors. Article 570 of the Penal Code also punishes parents who violate their duties of family care. Local authorities must intervene in case of emergency even in the absence of a court order if a child is found in a dangerous place. Then, the Juvenile Court will check whether this situation is real (Dixon & Welbourne 2013: 112). The Italian criminal law also punishes the crime of

removing a child under the age of 14 from the custodian parent by imprisonment from 1 to 3 years.

> Art. 574 c.p.
>
> (Sottrazione di persone incapaci)
>
> Chiunque sottrae un minore degli anni quattordici, o un infermo di mente, al genitore esercente la responsabilità genitoriale, al tutore, o al curatore, o a chi ne abbia la vigilanza o la custodia, ovvero lo ritiene contro la volontà dei medesimi, è punito, a querela del genitore esercente la responsabilità genitoriale, del tutore o del curatore, con la reclusione da uno a tre anni.
>
> Alla stessa pena soggiace, a querela delle stesse persone, chi sottrae o ritiene un minore che abbia compiuto gli anni quattordici, senza il consenso di esso, per fine diverso da quello di libidine o di matrimonio.
>
> Si applicano le disposizioni degli articoli [525] e [544] [c.p.p. 689].

The punishment will be harsher when the abducted child is also deprived of his or her personal freedom, since the perpetrator of the crime may be subject to the provisions of Article 605 of the Penal Code on abduction, known as sequestro di persona.

> Art. 605 c.p.
>
> (Sequestro di persona)
>
> Chiunque priva taluno della libertà personale è punito con la reclusione da sei mesi a otto anni.
>
> La pena è della reclusione da uno a dieci anni, se il fatto è commesso:
>
> 1) in danno di un ascendente, di un discendente, o del coniuge;
>
> 2) da un pubblico ufficiale, con abuso dei poteri inerenti alle sue funzioni.
>
> Se il fatto di cui al primo comma è commesso in danno di un minore, si applica la pena della reclusione da tre a dodici anni. Se il fatto è commesso in presenza di taluna delle circostanze di cui al secondo comma, ovvero in danno di minore di anni quattordici o se il minore sequestrato è condotto o trattenuto all'estero, si applica la pena della reclusione da tre a quindici anni.
>
> Se il colpevole cagiona la morte del minore sequestrato si applica la pena dell'ergastolo.
>
> Le pene previste dal terzo comma sono altresì diminuite fino alla metà nei confronti dell'imputato che si adopera concretamente:
>
> 1) affinché il minore riacquisti la propria libertà;
>
> 2) per evitare che l'attività delittuosa sia portata a conseguenze ulteriori, aiutando concretamente l'autorità di polizia o l'autorità giudiziaria nella raccolta di elementi di prova decisivi per la ricostruzione dei fatti e per l'individuazione o la cattura di uno o più autori di reati;
>
> 3) per evitare la commissione di ulteriori fatti di sequestro di minore.

To be more specific, in cases of international child abduction, the Penal Code states the following:

> Art. 574 bis c.p.
>
> (Sottrazione e trattenimento di minore all'estero)
>
> Salvo che il fatto costituisca più grave reato, chiunque sottrae un minore al genitore esercente la responsabilità genitoriale o al tutore, conducendolo o trattenendolo all'estero contro la volontà del medesimo genitore o tutore, impedendo in tutto o in parte allo stesso l'esercizio della responsabilità genitoriale, è punito con la reclusione da uno a quattro anni.
>
> Se il fatto di cui al primo comma è commesso nei confronti di un minore che abbia compiuto gli anni quattordici e con il suo consenso, si applica la pena della reclusione da sei mesi a tre anni.
>
> Se i fatti di cui al primo e secondo comma sono commessi da un genitore in danno del figlio minore, la condanna comporta la sospensione dall'esercizio della responsabilità genitoriale.

In cases where a foreign minor is abducted and brought to Italy, the steps are almost the same. First, the parent applies for his or her return to the foreign Central Authority that examines the application and make contact while the Italian Authority. Then, the Italian police locate the child and make initial contact with the parent who abducted the child in order to understand if they are willing to return the minor. If they refuse to return the child, the Central Authority sends the petition and all the related documentation to the Juvenile Court where the child is located and a hearing is scheduled (Consulenza Legale Italia 2020). The parent who filed the application does not need to take part to the hearing but he or she can participate in order to explain their position. The court will also arrange a meeting in order to talk with the parent who abducted the child and listen to their reasons (Stewart 2011: 229). If the judge orders the return of the child, then he or she must be returned immediately (Consulenza Legale Italia 2020).

According to Law No. 64, the Italian Central Authority makes all the necessary preliminary investigations and then sends the documentation to the Public Prosecutor of the Juvenile Court. The Central Authority makes an urgent request for the peremptory return of the child or for the exercise of the rights of access. The presiding judge decides the date of the hearing in chambers and communicates the date to the Central Authority. The applicant is informed so that he or she may appear and be heard, being responsible for his or her own expenses. On the date of the hearings, the Court will hear the parent responsible for the care of the minor, the Public Prosecutor and, when appropriate, the minor (Report for Congress 2004: 225). The Juvenile Court has jurisdiction to implement

orders issued in other Contracting States for the protection of children, repatriate minors and return the children to the person with custody rights. Any party directly interested may apply to the Central Authority through the Public Prosecutor (Timoteo 1994: 416). According to the implementing legislation, proceedings must take place in chambers and the decision must be made in a short period of time. Moreover, appeals to a petition to the Court of Cassation, also known as Supreme Court, are limited (Report for Congress 2004: 229).

The civil courts responsible for cases of separation or divorce also handle issues of child's custody and access rights. The courts establish the extent of the contribution of the non-custodian parent to the support and education of the child. The civil courts also deal with some aspects of the Hague Convention, with the Juvenile Courts and the Guardianship Judges. They are responsible for issues related to family relations, custody and divorce (Report for Congress 2004: 227). As for Juvenile Courts, they were not established until 1934. They have jurisdiction in all cases related to minors and they are composed by four individuals who preside over the cases: an appeals court judge, a court magistrate and two citizens, a man and one woman, whose role is to assist in court proceedings. The court is divided into three sections: civil, administrative or rehabilitative and penal (Winterdyk 2002: 298). Its role is to secure the prompt and safe return of children wrongfully removed and to ensure the effective exercise of rights of access for the non-custodian parent under the 1980 Hague Convention.

Although Italy lacks a comprehensive Children Act, the Civil Code defines a negative parental behaviour as a behaviour that leads to injuries or is detrimental to children, thus justifying the intervention of the court to protect the child (Dixon & Welbourne 2013: 110-111). In a few special circumstances, for example in cases of loss of parental authority in connection with criminal matters, the competence belongs to the Penal Courts. The Court of Appeal is the court where appeals are heard. Under Law No. 64, applications related to the provisions of the Convention are submitted to the Juvenile Courts, where ordinary and honorary magistrates sit (Report for Congress 2004: 226-227). Law enforcement concerning the Hague Convention is carried out by the Public Prosecutor. If the parent who has abducted the minor refuses to comply with the order, the Chief Public Prosecutor asks the assistance of the police Minor Division and of social services in order to remove the child (Report for Congress 2004: 227).

The implementation of the Convention has proved to be a significant instrument for all the Contracting States. There is freedom of interpretation for all the parties but, since the aim was to establish some uniform rules in order to protect the children's rights, courts must strive for uniformity of interpretation, and this principle is stated in many of their judgements. Without this principle, the efficacy of the Convention would be weakened (Bailey 1996: 303). By observing and analysing the Italian implementing legislation, it appears that the Italian courts adhere to the main objectives and principles of the Hague Convention (Report for Congress 2004: 229). Furthermore, a comparative study carried out in 1999 by researchers at the Cardiff University has shown that 59 per cent of applications sent to Italy resulted in a voluntary return or in a return ordered by the judge. The average in the other countries was 50 per cent. This result is quite impressive (Camera Minorile di Milano 2020).

2. LEGAL TRANSLATION

> The more globalized we become, the more cultural hybridity we create and encounter, and the more we must translate, to the extent that translation is now all around us, everywhere, all the time (Pym 2008: 70).

The demand for legal translation is increasing all over the world because of globalisation, which is creating more novel links between people and different countries. Indeed, Bambi (2012: 28-29) states that we are not dealing with a simple bilingualism, but with a more complex and somehow more dangerous and challenging phenomenon of multilingualism, which acts on different levels: the European level and the globalisation level. The challenge is more difficult because each legal system has its particular identity and a rich tradition. Legal translation has become increasingly important since the end of World War I, when uniform translational law rules were designed in order to implement international commercial contracts (Grasso 2014: 73). Unidroit is the International Institute for the Unification of Private Law which was set up in 1926 to adopt such uniform rules by the stipulation of international conventions. Over the last 50 years, the number of international trade negotiations that rely on contracts and pleadings between parties with different national origins has increased, thus leading to an increasing need for legal translation. At the same time, the demand for translation within the European Union institutions has increased (Grasso 2014: 73).

It is essential to start by giving a definition of legal translation. According to Cao (2010: 191), legal translation is a type of technical translation which refers to the rendering of legal texts from the Source Language (SL) into the Target Language (TL). According to Schubert (2010: 350), the word technical refers to the content of the documents that we are translating and is concerned with documents in languages for specific purposes (LSP). "LSP texts […] are generally characterized by specific features at the lexical, morphological, word-formational, syntactic and text-linguistic levels" (Schubert 2010: 352). These include, for instance, the use of specific terms from the lexical point of view, the use of morphological forms which are quite uncommon in general language, longer sentences, special verbs valencies from the syntactic point of view and recurrence of terms instead of variations (Schubert 2010: 352). Nonetheless, Fiorelli (2008: 430-431) states that the language of the law cannot simply be defined as a technical language. This definition would not be entirely correct. The language of the law

is not linked to a single aspect of our existence. Law and language reflect all aspects of human existence. They reflect our actions and our words. The language of the law has no limits: it concerns both abstract and concrete objects, and it uses both specific and less technical terms and expressions. Leali (2017: 4-5) agrees on the fact that the language of the law cannot simply be defined as a technical language. Most of the language used in law is part of our everyday vocabulary but there are clearly many technicalities and specific expressions that are only used by experts.

Before giving other definitions of legal translation, it is important to make a distinction between language of the law and legal language. According to Kurzon (1989: 283-284), "language of the law is the language or the style used in documents that lay down the law, in a very broad sense". These documents include legislation, contracts, deeds, wills and statutes. On the contrary, legal language "is the language used when people talk about the law", for example in legal textbooks, lawyers' speeches and judges' decisions (Kurzon 1989: 284). The judge is not laying down the law but he or she is declaring it. Trosborg (1997: 19-21) proposes a different approach from the twofold division of Kurzon and she uses the term legal language to refer to all uses of legal language. The language of the law is part of legal language, a superordinate term with specific domains and genres which need to be specified.

Šarčević (1997: 9) defines legal translation as a "special-purpose communication between specialists, thus excluding communication between lawyers and non-lawyers". Biel (2008: 22) describes it as "a special type of LSP translation which involves crosslinguistic communication in the legal context". However, there are some differences between legal translation and other types of LSP translations. For instance, legal translation is more culture-specific compared to other LSP texts concerning medicine, science or technology. This is due to the fact that legal concepts are usually linked to a specific national legal system, with its own specific history and principles (Šarčević 1997: 232). "Culture-bound terms refer to concepts, institutions and personnel which are specific to the SL culture" (Harvey 2000: 358).

Legal translation shares some characteristics of technical translation and some of general translation (Cao 2007: 8). It can be classified according to the subject matter of the source text into the following categories: 1) translating domestic statutes and international treaties; 2) translating private legal documents; 3) translating legal scholarly

works; 4) translating case law (Cao 2007: 8). Cao (2010: 193-194) gives a definition of the first two categories and then explains the translation of international legal instruments. Common legal text types include private legal documents, domestic legislation and international legal instruments. Domestic legislation involves two types of situations: the first is found in bilingual and multilingual jurisdictions where two or more languages are the official legal languages; the second is found in monolingual countries where laws are translated into foreign languages for information purpose. Private legal documents include agreements and contracts. They are drafted and used by lawyers in their daily practice and they often contain archaic words and expressions. Sentences tend to be long, complex and rich in passive structures (Cao 2010: 193-194). The translation of legal instruments in international or supranational bodies such as the United Nations and the European Union forms a special area of legal translation practice. One important principle in multilingual law is equal authenticity: all the texts of an international treaty written in the different official languages must have equal legal force (Cao 2010: 193-194). As for bilingual jurisdiction, we can cite Italy as an example. Indeed, Italy tends to give importance to linguistic minorities, thus recognising their language which will also be used in courts (Brutti 2019: 50). For instance, the region of Trentino-Alto Adige has recognised the use of German and Ladin in legal proceedings, due to the presence of German-speaking and Ladin-speaking minorities. Moreover, English influences many sectors of the Italian legal system (Brutti 2019: 50).

Legal translation can also be classified according to the status of the source text into the following categories: 1) translating enforceable law such as statutes; 2) translating non-enforceable law, such as legal scholarly works (Cao 2007: 8). According to Šarčević (1997: 11), legal translations can also be divided according to the functions of the legal texts in the source language into the following categories: 1) primarily prescriptive, which contain rules of conduct or norms. They include normative texts such as laws, regulations, contracts, treaties etc.; 2) primarily descriptive and also prescriptive, i.e. legal decisions and other legal instruments used to carry on judicial and administrative proceedings; 3) purely descriptive, i.e. scholarly works written by legal scholars such as legal opinions or law articles. Descriptive legal texts have a merely informative function, while normative legal texts have a primarily prescriptive function (Mattiello 2010: 131). They impose

obligations, give permission and rights. Consequently, their register is quite formal and their style is impersonal (Mattiello 2010: 131).

However, these classifications do not take into consideration the factors depending on the target text, such as the function or status of the translated texts. These factors must be analysed. According to Cao (2007: 9-10), it is possible to identify four variants or sub-varieties of legal texts in the written form: 1) legislative texts produced by law-making authorities; 2) judicial texts produced in the judicial process by judicial officers and other legal authorities; 3) legal scholarly texts produced by academic lawyers or legal scholars; 4) private legal texts that include texts written by lawyers, e.g. wills, contracts and also texts written by non-lawyers, e.g. private agreements and witness statements. Legislative texts are not intended for the general public but lawyers and judges have to interpret them because they are of general application (Mattiello 2010: 131). That is why legislative acts have to be precise and unambiguous but also all-inclusive (Mattiello 2010: 131). It is crucial for translators to understand the legal status and the communicative purpose of both the source and the target texts as they may have an impact on the resulting translation and they can vary from the source text to the target text (Šarčević 1997). Harvey (2000: 357) also underlines the importance of taking into account the intended function of the target text and the nature of the addressee. This is part of the so-called communicative elements and they are crucial since the function of the target text may be different from the function of the source text.

In addition, Cao (2010: 191) proposes another form of classification for legal translation according to the purposes of the target text: 1) normative purpose, i.e. the production of equally authentic legal texts in bilingual and multilingual jurisdictions. The texts written in different languages must have the same legal force (Cao 2013: 416). "By virtue of the act of adoption, such texts are not mere translation of the law, but the law itself" (Šarčević 1997: 20); 2) informative purpose, i.e. the translation of legal documents with the aim of providing information to the target readers. This is quite common in monolingual jurisdictions (Cao 2013: 417); 3) general legal or judicial purpose, i.e. translations which are mostly descriptive. These documents may be used as evidence and have legal consequences. This type of legal translation may also include ordinary texts written by laypeople, such as affidavits (Cao 2013: 417). The term legal translation is used both for translations of law and for other communications in legal settings.

Legal translation plays a key role in plurilingual countries, that is to say countries with two or more official languages. In general, they have one legal system but there are also some countries which are bilegal, i.e. they have two legal systems or a mixed legal system (Šarčević 1997: 14). Mixed jurisdictions imply the coexistence of different legal traditions with their own language and law is translated from one culture to another. There are cases where a legal system combines elements of a civil law system with those of a common law system, such as Canada, Louisiana and Scotland, but there are also cases where a legal system includes features of both common law and Islamic law, etc. (Brutti 2019: 50).

One of the main issue linked to legal translation is the connection between one language and a specific national legal system. As a result, when translating, it is essential to take into account the differences in law, linguistic and culture, since each legal language is the result of a special history and culture (Cao 2010: 191-192). Legal language is not universal but it is linked to a national legal system and it reflects the society in which it has been formulated (Weisflog 1987: 203 quoted in Cao 2010: 192). Cultural differences represent one of the main challenges in legal translation. It is crucial to overcome these barriers since the most important general characteristic of any legal translation is that it is culture-specific (Weston 1983: 207 quoted in Cao 2010: 193). Each national law represents an independent legal system with its own terminological apparatus (Šarčević 1997: 13). This has implications for legal translation. As already mentioned, there are different legal systems or families. Moreover, David and Brierley (1978: 18) state that each legal system has its own "vocabulary used to express concepts" and "is linked to a view of the social order itself which determines the way in which the law is applied and shapes the very function of law in that society". The elements of the source legal system cannot be simply transposed into the target legal system. Thus, the main challenge that legal translators have to face is the incongruency of the legal systems in the source and the target language (Šarčević 1997: 13). Written legal language reflects legal culture and it also refers to the way in which legal problems are approached and solved. It confronts the translator with its multi-faceted implications (Smith 1995: 190-191). Furthermore, each legal language has its own particular style.

Although the law of a country is influenced by its culture, legal translators are concerned firstly with legal transfer, not cultural transfer (Šarčević 1997: 12). Costantinesco, a comparative lawyer, underlines this aspect:

> Il s'agit, d'aboutir, par une traduction linguistique faite d'une langue à l'autre, à une transposition juridique faite d'un droit à l'autre. Dans ce processus, la traduction linguistique est secondaire ; c'est la transposition juridique qui représente l'opération principale (1974: 147 quoted in Šarčević 1997 : 12).

It seems clear that legal translation is both an interlingual and a legal transfer from one legal system to another. However, legal transfer represents the primary task. Legal translation is not a mere process of transcoding, i.e. substituting concepts and institutions of the source legal system by concepts and institutions of the target legal system (Šarčević 1997: 12). Indeed, "linguistically equivalent legal notions will frequently have different contents in different jurisdictions" (Kischel 2009: 7). The problems of comparative law are linked to the differences between legal systems, legal families and legal styles and they seem more evident when two jurisdictions share the same language, like the German and the Austrian jurisdictions (Kischel 2009: 9). One cannot speak of a single German language; on the contrary, it is essential to distinguish between the German language of Germany, Italy, Austria, Switzerland and Belgium (Kischel 2009: 9). Therefore, "the question in legal translation is not which translation is right, but, much more modestly, which one is less wrong" (Kischel 2009: 7).

2.1. MAIN FEATURES OF WRITTEN LEGAL TEXTS

According to Cao (2007: 20-21), the language of the law has particular linguistic, lexical, syntactical and pragmatic features, due to its nature and function. First, legal language is complex and unique. Second, there are frequent performative markers due to the fact that legal expressions perform acts and create facts. Third, its style is formal and impersonal (Cao 2007: 22). Danet (1980: 471-473) uses two criteria to classify the types of language use in legal settings: the mode of language use and the style, which goes from informal to formal. She identifies three modes of language use and four styles, placing legal discourse towards the formal end of the scale. The three modes are: written, spoken-composed and spoken-spontaneous. As regards the four styles, they can be divided into the following groups: frozen, formal, consultative and casual. Frozen legal language comprises documents such as contracts wills and insurance policies; formal legal

language includes the language used in statutes, appellate opinions or lawyers' briefs; consultative style is found in witnesses' testimonies and lawyer-client interaction; casual style is found only in informal conversations.

Furthermore, the language of the law presents some specific linguistic features that distinguish a legal text from a non-legal text. Translators should analyse and understand these features before translating a legal document. First, the content of a legal text is different from other types of technical texts: "the basic function of law is regulating human behaviour and relations by setting out obligation, permission and prohibition in society" (Cao 2010: 194). They are expressed through words such as 'may' or 'shall'. 'May' confers a right or privilege, while 'shall' imposes an obligation (Cao 2010: 194). According to Kurzon (1989: 285), 'may' and 'shall' are two examples of formulaic expressions which can be found in legal documents written in a formal style. Other examples are: words such as 'whereas', which introduces a preamble; the conjunction 'where' instead of 'if' to introduce a conditional clause. Other syntactic features of the language of the law include an impersonal style and long, convoluted and complex sentences (Williams 2004: 114-115). The impersonal is reinforced by the use of passive forms and the third singular and plural persons. This stresses the idea of impartiality and authoritativeness, especially in legislative texts. However, in certain types of legal documents such as wills the first person singular is used abundantly (Williams 2004: 114-115).

Kurzon (1997: 131-132) states that sentences tend to be very long in statutes, which are also divided up into paragraphs. Moreover, some old-fashioned contracts are made of one sentence only. Such length depends on syntactic complexity. However, a survey of sentence length in British statutes from 1970 to 1990 shows a significant decrease in sentence length because of the growing awareness of the importance of simplifying the language of the law (Kurzon 1997: 131-132). From a syntactic point of view, another non-lexical feature of the language of the law is the excessive use of subordination (Leali 2017: 10-13) or the use of intricate patterns of both coordination and subordination (Williams 2004: 113). For clarity purposes, it would be better to end the period and start a new sentence. Indeed, in long texts full of dependent clauses, it is often difficult to find the subject, especially when pronouns are used to replace different subjects (Leali 2017: 10-13). Repetitions can also be a good idea.

One of the most serious difficulties for translators are the technicalities of its vocabulary, the complex and obscure syntax and the antiquated diction (Alcaraz & Hughes 2002: 7-9). Indeed, the language of the law is full of technical and administrative expressions which tend to be obscure and sometimes ambiguous (Brutti 2019: 51). First, it is important to divide the lexical items into two groups: symbolic items and functional items (Alcaraz & Hughes 2002: 16). The symbolic group includes the terms that refer to things or ideas linked to the world of reality. For instance, we can cite the terms and expressions 'contract', 'tort', 'guilty', 'liable', 'beyond reasonable doubt' and many others (Alcaraz & Hughes 2002: 16). The functional group includes words or phrases with no direct referents in reality but which bind together the different concepts. Some examples are: articles, deictics, modals, units like 'subject to', 'hereinafter', 'whereas', 'in view of', 'as in section 2 above', 'in accordance with order 14' and so on (Alcaraz & Hughes 2002: 16). The symbolic group may be further subdivided into three subgroups: purely technical vocabulary, semi-technical vocabulary and common vocabulary. Purely technical terms are those that can only be found in legal contexts. Their meaning is clear and cannot be changed but their translation can be discussed in order to find the best equivalent. Examples are: 'barrister', 'solicitor', 'estoppel' and so on (Alcaraz & Hughes 2002: 16). The context is crucial to understand these terms but at the same time the text cannot be understood without these terms. Semi-technical terms are words or phrases taken from the common vocabulary, which have acquired an additional meaning in the specialist context. These terms are polysemic and more difficult for a translator to recognise, also because they are numerous and complex from a semantic point of view (Alcaraz & Hughes 2002: 16-18). Lastly, common vocabulary includes everyday terms in general use, regularly found in legal texts. They represent the majority of the vocabulary found in legal documents. Some examples are: 'paragraph', 'section 2', 'subject-matter' and so on (Alcaraz & Hughes 2002: 16-18).

Serianni (1985: 270 quoted in Cortelazzo 2006: 137-138) defines technical terms as "particolari espressioni stereotipiche, non necessarie, a rigore, alle esigenze della denotatività scientifica, ma preferite per la loro connotazione tecnica", which means that these terms are not always necessary but they are mainly used for their technical connotation and for stylistic reasons. Moreover, he distinguishes between those that are necessary and those that are 'collateral'. He introduces and explains the concept of 'LSP

collocations' in the language of medicine. Cortelazzo (2006) has adopted the same categories for the language of the law, by proving that both the language of medicine and the language of the law present the so-called 'LSP collocations'. He points out one problem linked to these technical terms: "Il tecnicismo specifico s'impara, perché è necessario, il tecnicismo collaterale molto meno, proprio perché se ne può fare a meno" (Cortelazzo 2006: 137). LSP collocations are more difficult because they can easily be replaced by more common terms, thus being limited to the group of experts.

Cortelazzo (2006) follows the categories used by Serianni (2005: 131-159) in order to make a list of legal LSP collocations that can be found in some Italian judgements delivered by the Court of Cassation. These categories are: 1) relational adjectives, such as 'criminoso', 'contravvenzionale', 'prescrizionale', 'probatorio', 'processuale', etc. These adjectives have a specific meaning and are linked to generic nouns; 2) absence of the indefinite article in compound propositions, such as 'mediante ricorso per cassazione' or 'mediante applicazione nei confronti dello stesso'; 3) verbs used in different ways than in common language like 'avere diritto di', 'configurarsi in' and so on; 4) compound prepositions such as 'ai sensi di', 'a carico di', 'a seguito di' but also prepositions such as 'avverso' instead of 'contro' in sentences like 'avverso la sentenza', or the use of 'in' before the name of a city instead of 'a' in sentences like 'nato in Roma' instead of 'nato a Roma'; 5) lexical LSP collocations, i.e. nouns that have acquired a specialised connotation like the word 'soggetto' used for all persons who have rights and duties and verbs related to the different stages of a legal proceeding like 'lamentare' for 'denunciare', 'presentare' followed by 'ricorso, istanza', 'proporre' followed by 'ricorso, appello, impugnazione', 'pronunciare' for 'emettere una sentenza'. All these examples confirm the possibility to use the categories established by Serianni not only in the language of medicine but also in the language of the law (Cortelazzo 2006: 139). However, over the last few years, many efforts have been made to reduce the presence of LSP collocations in legal texts in order to make the language more straightforward (Cortelazzo 2006: 139-140). One of the Plain Language proposals is to avoid "abstruse technical terms where possible" and "to eliminate all unnecessary words and expressions within the text" (Williams 2004: 120). This tendency is partly due to the ancient custom when clerks were paid by the page, thus trying to make legal documents as verbose as possible (Tiersma 1999: 41).

Even though the Plain Language Movement was born and started to operate in all major English-speaking countries, it has not been wholly confined to English and other similar initiatives have developed in other countries like Sweden and more recently Italy (Williams 2004: 115-117). The aim of these groups is not only to modify and simplify legal language but also to "democratize government, extend legal rights, and encourage efficiency, also by providing courses which train people in the skills of text revision and in drafting handbooks and guidelines" in order to bring the language of the law closer to ordinary people (Williams 2004: 116). However, it is not always possible for legal drafters to make the text less difficult since the first criterion they need to follow is the underlying function of the text. Thus, they should try to use easier words and expressions, but only if this does not create ambiguity (Williams 2004: 123).

Furthermore, although lawyers always strive to be as precise as possible, legal language is also full of words and expressions with a vague or flexible meaning (Tiersma 1999: 79). "Perhaps the best known illustration of flexibility is the word reasonable in expressions like reasonable care, beyond a reasonable doubt and the legendary reasonable man" (Tiersma 1999: 79). The definition of reasonable cannot be given in advance. It depends on the situation and it may change over time. Other examples of vague terms are the expressions 'the best interests of the child', 'due care and attention', 'good faith' (Šarčević 1997: 233) and words like 'obscene' or 'indecent' (Tiersma 1999: 79-80). Although we might agree that these two words refer to something offensive or not appropriate, there is no precise standard of decency. The problem with flexible terms is that on the one hand, they give judges and juries considerable freedom when they have to decide what is obscene and what is not; on the other hand, if a law tries to be more precise and forbids the use of certain words or actions, it may not recognise that the concept of indecency may be different across place and time (Tiersma 1999: 79-80). Abstract language is quite common in constitutions, where the use of general terms is used to avoid giving a precise definition so that they can endure through time and adapt to different circumstances and changing societies. On the contrary, it will not be appropriate in statutes or private documents. For instance, a statute cannot prohibit any indecent language but it has to prohibit something more specific in order for the public to know what they cannot say or do. Likewise, in contracts and wills lawyers strive to be as precise

as possible because they do not want their words to be misinterpreted (Tiersma 1999: 80-81).

Another challenge for legal translators is the unique morphology and syntax of legal language. For instance, British statutes tend to have long sentences. On the contrary, statutes of the civil law are typically made up of shorter sentences and a simpler syntax (Alcaraz & Hughes 2002: 18-19). Furthermore, legal English has many restrictive connectors, i.e. subordination and parenthetic restriction. Another feature is the frequent use of the passive voice. The result is the suppression of the agent who is responsible for the act and it is quite easy to preserve the same effect in the target language (Alcaraz & Hughes 2002: 18-19). However, it can sometimes lead to ambiguity and obscurity since the identity of the agent is not clear (Brutti 2019: 51). Indeed, in passive sentences the subject becomes the object of the action, rather than the actor. Moreover, the actor is found in the so-called 'by phrase'. This by phrase could be omitted, leaving out any reference to the responsible party (Tiersma 1999: 75-76). Passives may also occur for other reasons, especially when they are used in statutes and court orders. Legislators and judges usually prefer to use passive structures in order to appear more objective, authoritative and less personal. For instance, judges will start an order with 'it is ordered' instead of 'I order' (Tiersma 1999: 75-76). Passives tend to be less common in contracts, where each actor has to be emphasised (Tiersma 1999: 76-77).

The identity of the actor can be obscured and omitted not only through passives but also through nominalizations (Tiersma 1999: 74-79). Nominalization is a process where a verb or an adjective is converted into a noun. Sometimes, this tendency leads to the creation of neologisms, that is to say new words or expressions. However, some of them might cause some confusion. An example is the following: 'abbisognevole della nomina di un tutore' (Leali 2017: 17). It seems clear that the complexity of nominal style can have serious consequences on the accessibility of legal texts. On the one hand, the style is more precise, all-inclusive and unambiguous; on the other hand, it might slow down the access to information. Legal Italian shows more examples of nominal style, while legal English generally prefers the simplicity of verbal style (Mattiello 2010: 134-135).

The predominant use of nominal construction in normative legal texts has three primary functions: it favours textual cohesion and reduces redundancy due to repetition;

it condenses information, thus promoting all-inclusiveness and textual efficiency; it increases the degree of imposition on the addressee (Mattiello 2010: 136-140). Nevertheless, both English and Italian nominalization are linked to abstractness, which is connected with formality and objectivity. This means that the text will have a more official or even ceremonial tone (Mattiello 2010: 141). Moreover, nominalization can also lead to a difficulty in disambiguation and interpretation, since the text is less transparent (Mattiello 2010: 141-142). Lastly, it is also important to highlight that nominal constructions allow the reader to refer back to previously mentioned concepts, thus following the logical progression of the text and obtaining the effect of stability of reference and continuity (Mattiello 2010: 142-143). To sum up, it seems that on the one hand, nominalization favours all-inclusiveness, textual cohesion and continuity; on the other hand, it might slow down the process of accessibility and comprehension for a non-expert. Steadman (2013: 70-71) analyses the use of nominalizations in legal documents and suggests avoiding them. Nominalizations should be replaced by the verb forms of the words, due to the fact that verbs make sentences more powerful and more easily understandable.

Legal language is also rich in hypothesis and indicators of condition. It is generally quite dense and complex in syntax (Alcaraz & Hughes 2002: 19-21). Nevertheless, the judicial summary of the facts of the case does not present this type of style. Its style is plain and simple. When translating complex sentences, it may be necessary to break them down, while it may be necessary to make simple sentences more complex (Alcaraz & Hughes 2002: 19-21).

Furthermore, in legal documents it is crucial to investigate those expressions or words that have a special meaning in legal discourse. We can cite ‘hereto’, ‘notwithstanding’, but also words such as ‘privilege’, ‘interest’ or ‘trustee’ that can be found in legal documents and that have been judicially defined. There can be no ambiguity about their meaning since their definition has already been established (Kurzon 1997: 132).

Another feature is the so-called excessive redundancy, caused through the repetition of lexical items (Kurzon 1986: 49). Other devices such as synonymy and hyponymy are avoided. Pronouns are also avoided since they may cause ambiguity (Kurzon 1986: 49). Indeed, the problem with pronouns is that the antecedent is often

uncertain and in this case ambiguity will inevitably arise. Therefore, lawyers try to avoid pronouns which are common in ordinary speech and prefer to repeat nouns or names in order to enhance precision and avoid ambiguity. This is quite useful in contracts, where it is crucial to distinguish the parties (Tiersma 1999: 71-73). "Besides this repetition of certain lexical items, the 'flavour of the law' is enhanced by the frequent use of multiword prepositional structures such as 'in respect of', 'in accordance with', 'pursuant to' etc." (Williams 2004: 113). As for the pronoun 'it', on the other hand, it is used in such expressions as 'it is agreed as follows' as a subject-filler (Kurzon 1986: 49).

The two demonstratives 'this' and 'that' are used both as determiners and as pronouns and they can be distinguished by the feature of proximity. 'This' means close to the speaker, while 'that' means not close to the speaker. Their use is quite restricted in legal documents but other cohesive devices can be found more frequently (Kurzon 1986: 50-55). For instance, in cases of noun repetition, the adjectives 'said', 'such' and 'same' are quite common: we can say "the said property" or "such persons" when the property and the persons have already been mentioned; 'same' is used not only in the expression 'same as' but also in the phrase 'the same' as a noun-substitute (Kurzon 1986: 56). Moreover, the adverb 'hereby', which can only be found in legal documents, is an archaic form of 'in this' or 'by this', where 'this' refers to the document at hand (Kurzon 1986: 56).

One of the most interesting but also difficult features of legal documents is the use of euphemisms (Leali 2017: 13-14). Sometimes, the language of the law uses periphrases, neologisms or old expressions in order to mitigate what has been claimed. These euphemisms are used as politically correct ways of expressing ideas (Leali 2017: 13-14). Not only are they used to sweeten some aspects of real life but they also represent a demonstration of empathy towards weaker classes who need protection. For example, the language of the law uses euphemisms when talking about deaf and blind people. They are usually called 'audiolesi' and 'non vedenti', i.e. hearing-impaired and visually-impaired (Leali 2017: 15).

Another feature of legal documents is the inclusion of archaisms or rarely used words and expressions (Williams 2004: 112). Some examples can be: 'altresì', 'di guisa che', 'per il ché' for the Italian legal language (Leali 2017: 17-18) and the adverbial expression 'hereinafter' or adjectives such as 'aforesaid' for the English legal language

(Williams 2004: 112). The language of the law is also full of foreign words and expressions, especially from Latin (Williams 2004: 112). More recently, Italy has started to borrow words from English too (Leali 2017: 17-18). With regard to English legal language, it presents many terms deriving in particular from French and Latin, as a result of the Norman domination of England (Williams 2004: 112). Today, there are still several Norman lexical items used in legal English, such as 'court', 'judge' and 'appeal', which have become naturalised as English words. A French expression used today in legal English is 'acquis communautaire', which indicates the entire body of EU law (Williams 2004: 112). As for Latin, it is important to remember that the Latin used in legal texts was adapted to the needs of English law. Some examples of Latin expressions used in legal English are: 'ex parte', which means 'on behalf of' and 'ratio legis' which means 'the reason for' or 'the principle behind' (Williams 2004: 112).

Leali (2017) studies the obscurity of legal language and the main traits of the so-called legalese. Legalese refers to obscure terms used in the language of the law that could be easily replaced by other common terms. Among the non-lexical traits, he highlights its prolixity (Leali 2017: 7), which means that in legal texts, it is quite common to find long sentences and many words used to express a concept that could be expressed with less words. Technology seems to contribute to the prolixity of legal texts: judges tend to copy large portions of previous judgements and the reasons for their decisions is often hidden in these pages which are not always necessary. Both the judge and the parties involved in the legal proceeding have to be clear and concise (Leali 2017: 9-10). The Plain Language movement suggests reducing long sentences to a more manageable size. However, reducing sentence length is just part of a more general commitment to deal with the so-called bureaucratese or officialese in order to produce documents that can be more easily understood by the whole population (Williams 2004: 121-122). The problem with legalese is that it does not make the language of the law more elegant, but instead it makes it complex and almost unpleasant (Leali 2017: 17-18). The language of the law clearly has its specific features that makes it kind of a sacred language for experts only. However, this excessive use of archaic terms, neologisms, Latin expressions and so on is no longer a synonym of elegance and sophistication but just an expression of narcissism and vanity (Leali 2017: 22-24). Furthermore, since the language of the law is linked to the exercise of power, it becomes more and more crucial to make it simpler in order not to threaten

our society. Powerful people take advantage from the inaccessibility of this language because otherwise their power could be questioned. Consequently, the problem is no longer legal but moral (Leali 2017: 24-26).

Nevertheless, the goal of this section is not to analyse the factors that may lead to an obscure language but to underline the importance of taking into consideration its implications and try to make the language of the law clearer and less ambiguous (Leali 2017: 24-26). Indeed, Steadman (2013: 64) claims that "one of the most important modern rules regarding drafting legal documents is deleting legalese and substituting plain English instead". Certainly, this is not easy since there are drafters who prefer to write in the language they are accustomed to and others who do not agree with the choice of plain language. However, this change will eventually become universally required because it leads to a "clear and understandable language" (Steadman 2013: 64-65), so it would be better to start getting used to it.

The last typical syntactic feature of the language of the law that is going to be mentioned is the use of multiple or double negatives, that is to say words or expressions with a negative semantic value, like the sentence 'he is wrong'. The semantically positive antonym would be 'he is right' (Ondelli & Pontrandolfo 2016: 146-147). The advocates of Plain Language claim that affirmative constructions are preferable and that negative sentences and double negatives should be avoided (Ondelli & Pontrandolfo 2016: 146-147). Multiple negatives are more complex and ambiguous (Ondelli & Pontrandolfo 2016: 162). Written legal documents do not necessarily contain all these features. Nevertheless, "the compound effect often makes them extremely difficult to decipher without specific training" (Williams 2004: 115).

2.2. COMPETENCES OF THE LEGAL TRANSLATOR

Translation works with the concept of translator competence, as a way of describing the different skills and knowledge which distinguish an expert professional from a non-expert (Kelly 2010: 89). Šarčević (1994) discusses legal translator training and qualifications, especially in relation to authentic legal instruments or parallel texts. Legal translation requires indeed some special skills (Cao 2014: 103). In the past, many translators used to learn the skills and knowledge required for a translator informally: through self-learning, training on the job or in unstructured apprenticeships (Cao 2014: 107). Training programs

for legal translators have only started to appear recently. These training programs are fundamental because legal translation is a specialist type of translation, with its unique and peculiar challenges and difficulties. A competent general translator will not necessarily be a competent legal translator. He or she must be trained in legal translation in order to deal with its issues and solve its problems (Cao 2014: 107).

Translators have to be trained in legal translation for several reasons. First, legal translations produce not only linguistic but also legal consequences since they involve law (Cao 2014: 107-109). Second, each jurisdiction has its own legal process and system. Therefore, legal language is foreign to any lay person, including translators, and when they have to deal with a foreign language, the difficulty increases and doubles (Cao 2014: 107-109). Third, training and professional development for legal translators is crucial because any mistake could lead to serious consequences. As a result, although legal translators are not lawyers, they must have a basic understanding of the nature of law and legal language and of the impact they may have on legal translation (Cao 2014: 109). Nevertheless, Grasso (2014: 73) highlights the fact that "there are very few 'ideal' legal translators who complete both a legal and a linguistic course of studies with the same level of specialisation". Consequently, these professionals need very specialised and reliable resources to conduct their research and fill their gaps.

During the process of translation, it is crucial to follow some steps (Alcaraz & Hughes 2002: 23): first, translators should understand clearly the source text and its main ideas; second, they should try to find some equivalent terms in the target language for the concepts expressed in the source language; third, they should follow the principle of 'naturalness' of target-language expression, which means that when searching for equivalents, they should strive to make the text closer to the target language rather than the source language (Alcaraz & Hughes 2002: 23).

However, when teaching legal discourse to LSP students, it is essential to teach them not only the main features of the language in which the text is written, but also and more importantly the subject matter, so that they can understand the content of the text (Kurzon 1997: 135-136). The term 'discourse' refers to the speech situations that are part of the judicial process (Kurzon 1997: 133). Specialised translators must have translation skills but they also have to know the particular subject matter they are translating (Kurzon 1997: 135-136), since all LSP translation is interdisciplinary.

Students should acquire the competences that they will need when facing a specialised text (Kurzon 1997: 136). Certainly, when dealing with non-native students, language learning has to be a priority but other elements can and should also be introduced. For more advanced students, "it is the discourse structure of the texts that should be at the centre of teaching". "The language then becomes a means to learn the subject matter – the elements of English law – and not an end in itself" (Kurzon 1997: 136).

To summarise, legal translators must be competent in both translation and law, in both linguistics and the source and the target legal systems. Furthermore, when comparing different legal systems, they should be able to consult and understand the original sources of law instead of relying on monolingual or bilingual law dictionaries (Šarčević 1994: 304).

2.3. TRANSLATION STRATEGY

For a long time, translation strategy has depended only on text type, thus leading to the creation of text typologies, the first of which were based on subject matter (Šarčević 2000: 1-2). Later, a new translation typology was introduced and translation theorists turn their attention to the function of the particular text type and the pragmatic aspects of texts. German scholars started to consider translation as a cultural transfer. Indeed, translators do not simply reproduce the source text, but they are on the contrary text producers who create "a new text on the basis of the communicative factors of reception in each situation" (Šarčević 2000: 1-2). Thereafter, the main emphasis was shifted to the communicative function or purpose of a translation (Šarčević 2000: 2). Hans Vermeer's skopos theory has modernized translation theory. In traditional translation, translators are expected to reconstruct the source text in the target language. The function of the text is the same in both the source and the target texts. Vermeer's functional approach presumes that the same text can be translated differently on the basis of the communicative function of the target text. Nevertheless, when choosing a translation strategy for legal texts, one must take into consideration the legal rules which govern these types of texts. In legal translation, legal considerations must prevail (Šarčević 2000: 2).

Traditionally, literal translation has been the golden rule for legal texts, which followed the principle of fidelity to the source text. Indeed, translators had to reproduce

both the form and the substance of the source text (Šarčević 2000: 3). In the history of legal translation, linguists were often blamed for faults and defects in the quality of their translations. They were not capable of making even linguistic decisions. Thus, they chose literal translation and they just reproduced the source text (Šarčević 1997: 116). "If decoding a text is problematic for a lawyer, it is even more so for the translator" (Harvey 2002: 181). That is why literal translation dominated legal translation until relatively late in the XXth century. "Literal translation is characterized by the use of linguistic equivalents such as literal equivalents, borrowings, and naturalizations" (Šarčević 1997: 233). When speaking of linguistic equivalence, it is important to make a distinction between linguistic equivalents and natural equivalents. The former are created to designate concepts which are unknown in the target legal system; the latter are terms that already exist in the target legal system. If two terms are translation equivalents, it means that they can both be used to refer to the other term, but it does not mean that they are identical from a conceptual point of view because there is no such thing as absolute equivalence (Šarčević 1997: 233-235).

However, today things have changed and legal translators do not reproduce literally the source text. They have a certain degree of freedom and creativity (Šarčević 1997). Interpretation is inevitably part of the translation process. Moreover, if translators have a solid training and knowledge in law and interact with both the sender and the receiver of the text, they should be able to interpret the text (Harvey 2002: 182). Generally speaking, diversity "is acceptable as long as it does not pose a threat to uniform interpretation" (Šarčević 1997: 192). As a result, any diversity which changes the substance and the interpretation of the source text is not acceptable. Furthermore, translators should not try to clarify vague clauses, ambiguities or intentionally obscure points because a linguistic diversity which is apparently harmless can later lead to major interpretation differences. Translators carry a heavy weight, since they have to choose carefully each word and consider all possible interpretations and misinterpretations. Their priority "is to achieve the greatest possible interlingual concordance so as to prevent any ambiguity that could result in international disputes, unnecessary litigation or legal uncertainty" (Šarčević 2000: 8).

In order to minimise ambiguity, translators should follow the standard format prescribed by the institutions for each type of parallel text. As a rule, the visual appearance

must be the same for both the source and the target text. “Undoubtedly the greatest constraint imposed on legal translators is the mandatory use of standard formulae” (Šarčević 1997: 117). Translators can be creative in the non-standardized parts of legal texts but they have to respect and follow the principle of language consistency. This means that once an equivalent has been chosen, translators should not use synonyms but they should stick to the same term and repeat it. Synonyms may confuse the reader so that he or she may think that reference is being made to a different concept. This is also true in cases where equivalents already exist and translators must use the terminology used in other instruments which are already in force (Šarčević 1997: 118).

In addition, connectors are crucial in legal texts. Indeed, the misinterpretation of conjunctive or disjunctive connectors may change the outcome of the decision. They are fundamental in determining whether a person has committed a crime or whether a contracting party has fulfilled its obligation (Šarčević 1997: 151). Their role should never be underestimated. For instance, it is quite common to see a series of conditions in a column, especially in common-law jurisdictions. The fact that they are set apart makes them easier to understand (Šarčević 1997: 152). Obviously, each jurisdiction has its drafting style and its mode of expression, since they depend on cultural and language differences.

> For instance, common law drafters tend to favor the use of the basic conditional sentence because it expresses commands and permissions more directly. For their part, civil law drafters often use variations of the conditional sentence which express the same substance in a less direct manner (Šarčević 1997: 167).

Bocquet comments on the way orders are expressed in civil law. “La particularité de ces ordres est celle de n’être jamais directement exprimés : ce sont des ordres implicites et paradoxaux” (1994: 15 quoted in Šarčević 1997 : 167). This means that orders in civil law are quite implicit and never directly expressed. On the other hand, common-law statutes are more detailed, precise and complex. Common-law lawyers tend to repeat words and entire phrases, while civil-law lawyers try to avoid repetition whenever possible (Šarčević 1997: 167).

Furthermore, drafters should follow conventional rules of punctuation, which vary from language to language. For instance, English rules of punctuation are not so strict. Courts in the United Kingdom do not regard punctuation as part of the text alterable only by amendment and they do not take it into account when constructing statutes. On the

contrary, civil-law systems give more importance to punctuation and they take it into consideration when constructing statutes and other legislative texts (Šarčević 1997: 179). Therefore, it seems evident that rules of punctuation cannot be imposed from one language to another. According to Baker (1996: 182), punctuation tends to be changed in translation in order to simplify and clarify the text. Whenever they alter the punctuation of the source text, translators tend to make it stronger, which means that commas become semicolons or periods and semicolons become periods. Strengthening punctuation is a subconscious strategy used to make things easier and simpler (Baker 1996: 182).

When talking about translation strategies, it is important to distinguish foreignising from domestication. The former is SL oriented, whereas the latter is TL oriented (Biel 2008: 24). According to Venuti (1998), foreignising tries to evoke a sense of foreign while domestication seeks to ensure immediate understanding and assimilation to the target language audience. The former sends the reader abroad and underlines the cultural differences of the source text, while the latter brings the author back home by making the text closer to the cultural values of the target audience. Sometimes, domesticating strategies are linked to economic considerations but they are always related to cultural and political developments. Indeed, this strategy has often been used in the service of specific domestic agendas. As all technical translations, legal translations are also mainly domesticated because they must be immediately understood in order to make the communication clear and smooth (Venuti 1998).

Moreover, translators must be invisible (Biel 2008: 24). They should strive to find a natural equivalent in the target language which would have the same function and designate the same concept of the source legal system. A legal translation is indeed an independent text and it must function without recourse to the source text (Biel 2008: 25). In addition, an equivalent of a term should be established, which means that it should be used repeatedly and adopted by the speech community and it should have a specific reference to its legal system which gives it its correct meaning. Therefore, a translator has to conduct terminology mining in order to find an equivalent of the legal term and check whether it is established (Biel 2008: 26). The term selected must be sufficiently documented in order to avoid the proliferation of terms coined by translators (Cabré 2010: 360). Translators are encouraged not to coin new terms, but instead to use those that have already been used several times and that have been adopted by the community.

Translators also use reference books to learn the meaning of terms and their conditions of use and they may also consult experts with competence in the source language (Cabré 2010: 359).

With regard to reference books, it is fundamental to make a distinction between textual resources and terminological resources. The first provide information about a specific subject. They include manuals, monographs and articles, as well as encyclopaedias. This search is done preferably via the Internet because it allows translators to search for terminological information in specialised textual corpora (Cabré 2010: 361). On the other hand, terminological resources are used to solve terminological issues concerning equivalents. They include dictionaries, vocabularies or specialised lexicons, terminology standards and terminological databases. Aligned parallel corpora are very useful because they provide terminological equivalents in context. Terminological banks are also fundamental since they represent knowledge data banks. They can always be updated, they can also store a large number of terms and information related to them, such as collocations and phraseology, they can be used as monolingual, bilingual or multilingual dictionaries and they can be accessed online (Cabré 2010: 361-362).

The main resources used to conduct terminology mining and to solve terminological problems are: dictionaries, both monolingual and bilingual, online tools, search engines and discussion forums (Biel 2008: 26). As for dictionaries, in particular dictionaries of law, it is possible to distinguish between monolingual and bilingual dictionaries. The first provide definitions of legal concepts and enable the translator to understand a concept from the source language before finding its equivalent. The second provides equivalents in the target language. However, there are many potential equivalents and they provide little or no information on the degree of equivalence (Biel 2008: 27-30). Moreover, translators do not have enough knowledge to choose the right sense of a term in case of polysemy. Therefore, it is necessary to conduct a deeper research. Another problem is connected to the unavailability of electronic versions of LSP dictionaries which could reduce the time required to find an equivalent due to the fear of copyright violations. Furthermore, LSP dictionaries do not contain the most recent terms (Biel 2008: 27-30).

Online tools refer to all the technological developments that help reduce time and efforts. Firstly, computers reduce typing and editing speed. Secondly, CAT tools help translators work faster and improve the quality of their translations. Indeed, they ensure terminological consistency by providing a potential translation for terms or sentences that have already been translated. It is also possible to use electronic term banks and to create glossaries for each client or for each project (Biel 2008: 30). A term bank is a database which contains approved terminology and related information. Most term banks or term bases are multilingual, thus containing data in different languages, like SDL Trados (SDL Trados 2020). The Internet is part of the online tools which facilitate the work of a translator and include online law collections, search engines such as Google and discussion forums. Online law collections are a very useful and authoritative knowledge base. One of the most important databases for EU translators is EUR-Lex, which provides a bilingual view of legislation and retrieve an equivalent from the context. It functions as a parallel corpus and provides a well-established translation equivalent for the term or expression that has been searched (Biel 2008: 30).

Internet should have transformed completely the world of translation, especially the legal one. It should allow for quicker research and it should be a useful and reliable tool for sharing legal and terminological information. However, the following aspects also need to be taken into consideration: the web offers many resources which first need to be checked in order to understand whether they are reliable or not; second, some terminological problems require very long and extensive researches (Grasso 2014: 75). Furthermore, translators cannot find ready-made solutions to their problems online. Except for IATE, the EU's multilingual term base, there exists no online English-Italian and Italian-English legal dictionary (Grasso 2014: 75). IATE stands for Inter-Active Terminology for Europe and it has been used by the EU institutions since 2004 (Grasso 2014: 76).

Search engines like Google include dictionaries, encyclopaedias and updated legal information. They allow the translator to check the frequency of collocations, to look for comparable and parallel corpora. Translators have also access to official translations. This can help them resolve the polysemy and choose between the different equivalents thanks to their contextualisation, frequency and geographical origin (Biel 2008: 30-32).

Discussion forums are an example of interactive tools where translators ask terminological questions in order to solve their doubts. One of the most important discussion forums is ProZ.com, a global translator community. Discussion forums function as a glossary since the answers provide information on equivalents (Biel 2008: 32-34). They are very useful in case of researches concerning legal terminology. "They are a sort of 'last resort' for translators who post their queries in these websites for their colleagues' expert advice" and often find suggestions or solutions for further researches (Grasso 2014: 75-76). These groups are also a way for translators to emerge from their professional isolation (Grasso 2014: 75-76).

Recently, LSP dictionaries have been replaced by electronic and online tools since translators are working under a lot of pressure and the market requires them to be more and more precise, accurate but also faster. These new tools are very useful because they improve not only the speed but also and more importantly the quality of translations (Biel 2008: 35). However, according to Grasso (2014: 74-75) there is still a remarkable gap between offline and online sources in terms of quality, since the former are more precise and reliable. Legal translators prefer to use electronic and online tools because they need quick and precise answers to their legal and translation problems (Grasso 2014: 74-75). Their deadlines are always very strict even though they need time to carry out their researches and make their translation as accurate as possible. Clients tend to underestimate the difficulty of legal translation and of these researches and continue to be very demanding with respect to deadlines (Grasso 2014: 74-75).

2.4. TERMINOLOGY

Terminology deals with the study of terms (Cabré 2010). Terms are terminological units that can be described from three different points of view: linguistic, cognitive and communicative. From the linguistic perspective, terms are lexical units of language that acquire a specialised value when used in certain contexts. They have a special meaning recognised within expert communities (Cabré 2010: 357). From the cognitive point of view, terms represent nodes of knowledge which are necessary in a field of specialty. All the nodes constitute the conceptual structure of a field. From the communicative point of view, terms are discourse units used to identify individuals as members of a professional group and allow them to transfer their knowledge to other future experts or to the general

public (Cabré 2010: 357). These three perspectives are inseparable but they are treated separately for scientific purposes. The terminological density of texts depends on their level of specialization: the more the text is specialised, the more terminology it will have. Therefore, the second role of terms is the transfer of specialised knowledge about a special domain (Cabré 2010: 358).

According to the terminologist Sager (1998: 259) translation and terminology function on two different levels, both from the cognitive and the linguistic point of view. Translation deals with the manipulation of texts and its purpose is to find the right equivalent in another language. Thus, it moves from the linguistic item to the abstract unit called concept. On the contrary, terminology starts from the concept in order to identify the appropriate term. Translation deals with the language in use, while terminology deals with the language as an abstract system. Concept and term are two of the three key notions associated with terminology which have been identified by Sager (1998: 259-261). Definition is the third notion. Concepts are units of thought used to organise our knowledge of the world. Terms are the designation of a concept belonging to a particular discipline. The definition is the link between the linguistic system and the conceptual structure, that is to say between the term and the concept designated by the term.

A basic linguistic difficulty in legal translation is the absence of equivalent terminology across different languages (Cao 2010: 192). “It is generally acknowledged that finding suitable equivalents of legal terms is a source of constant and time-consuming problems faced by legal translators in their practice”. This phase takes up to 75 per cent of translation time (Biel 2008: 22). According to Sager (1998: 261), terms are different from words because words function in general reference while terms have special reference. They are depositories of knowledge and behind each term there is a clearly defined concept related to other concepts that make up the knowledge structure (Sager 1998: 261). Legal terms are points of access to various concepts. Moreover, they are interrelated and embedded in cultural and cognitive models which are linked to a specific national legal system (Biel 2008: 22-24). Two legal systems will probably have different sets of facts and different sets of consequences. This raises a question of equivalence in legal translation (Biel 2008: 24).

Equivalence is no longer regarded as a relationship of identity but as a relationship of similarity. Identity is just an illusion and is not possible in legal translation (Biel 2008:

24). Šarčević (1997) regards equivalence as the search for equal intent. Nida (1964: 159) identifies two types of equivalence: formal equivalence and dynamic equivalence. The former focuses on the message itself. The target message is often compared with the source message because there must be a correspondence between them. The purpose is to determine the level of accuracy and correctness. The latter, later called 'functional equivalence' (Munday 2016: 68) is more oriented towards the source culture and the receptor response (Nida 1964: 166). It is based on 'the principle of equivalent effect' (Rieu and Phillips 1954 quoted in Nida 1964: 159) where "the relationship between receptor and message should be substantially the same as that which existed between the original receptors and the message" (Nida 1964: 159). The goal of dynamic equivalence is to find the closest natural equivalent to the source-language message (Nida 1964: 166).

When searching for equivalents, translators should start by identifying the issue and determining how the same issue is handled in the target legal system. This will lead to what has previously been called 'functional equivalent', that is to say the concept which has the same function as the concept in the source legal system. However, the acceptability of this term must be proved in order to establish the degree of equivalence between the two concepts (Šarčević 1997: 235-236). The comparative process is made of different steps: the first one is to determine the characteristics of the source term in order to qualify them as essential or accidental. Essential means that they are necessary, whereas accidental means that they are additional (Šarčević 1997: 237). The same process is repeated for the functional equivalent. The last step consists in a process of matching the characteristics of the two terms. Šarčević (1997: 237-239) proposes three categories of equivalence: near equivalence, partial equivalence and non-equivalence. Near equivalence can be defined as follows:

> [it] occurs when concepts A and B share all of their essential and most of their accidental characteristics (intersection) or when concept A contains all of the characteristics of concept B, and concept B all of the essential and most of the accidental characteristics of concept A (inclusion) (Šarčević 1997: 238).

Near equivalence is the ideal degree of equivalence. However, in the majority of cases, functional equivalents are partially equivalent:

> [it] occurs when concepts A and B share most of their essential and some of their accidental characteristics (intersection) or when concept A contains all of the characteristics of concept B but concept B only most of the essential and some of the accidental characteristics of concept A (inclusion) (Šarčević 1997: 238).

In cases of partial equivalence, the acceptability of the term depends on the context and it is not reciprocal. Thus, it may happen that A can be used to translate B, but B cannot be used to translate A (Šarčević 1997: 241). Indeed, translators must pay attention to the so-called cognitive elements, that is to say the socio-cultural context of both the source and the target text, since the differences between the two legal systems are particularly relevant (Harvey 2000: 357).

Non-equivalence occurs when:

> only a few or none of the essential features of concepts A and B coincide (intersection) or if concept A contains all of the characteristics of concept B but concept B only a few or none of the essential features of concept A (inclusion) (Šarčević 1997: 239).

In this case, the functional equivalent is not acceptable. If there is no functional equivalent in the target legal system, it is possible to speak of exclusion (Šarčević 1997: 239).

Translators can sometimes compensate for the incongruency by using methods of lexical expansion (Šarčević 1997: 250-255). From a legal point of view, the most effective method is to spell out the intended meaning in neutral language by using paraphrases or definitions so that lawyers from all over the world and from different legal systems can understand it. If it is not possible to compensate for the incongruency or in cases of non-equivalence, translators must use alternative equivalents. However, the best solution in these cases is to select neutral terms, that is to say non-technical terms (Šarčević 1997: 250-255).

Translators may also decide to use borrowings, i.e. foreign terms belonging to the source text. Borrowings are particularly effective in the parallel texts of international conventions because in these cases national courts have only one choice, that is to say to apply the foreign concept (Šarčević 2000: 9). Hoffer (2002: 1) defines borrowing as "the process of importing linguistic items from one linguistic system into another" and it "occurs any time two cultures are in contact over a period of time". If the term is transparent or has already been explained in the context, the transcription or borrowing may be used alone (Harvey 2000: 361). Sometimes, the functional equivalent is followed by the borrowing in parenthesis (Šarčević 1997: 256) or the transcription is followed by a gloss or a note. They are especially useful in cases where the reader has no knowledge of the source language since they explain conceptual or procedural differences, thus making the term no longer ambiguous. Nevertheless, translators are supposed to be

invisible and this process makes on the contrary their presence intrusive. This strategy can also be appropriate in cases where the reader prefers clarity over fluency (Harvey 2000: 361). Visconti (2017: 78-79) explains that the introduction of borrowings into a new language can lead to some serious repercussions on the meaning that the term will have in the other language. Indeed, if the new term refers to a concept which was previously unknown or which required the use of a periphrasis, then the new term will just expand the vocabulary of the target language. If on the other hand the new term shares some features with one or more words of the target language, then this can cause a conflict between terms that are partially synonyms. This instability can be solved either by eliminating one of the terms or by diversifying them and defining their semantic fields (Visconti: 2017: 78-79).

Borrowings are usually adapted from the morphological or the phonological point of view in order to be perfectly incorporated in the new legal system and culture (Brutti 2019: 52). The Italian language tends to borrow many words from English and this is also typical of the university world. Indeed, a significant number of subjects are now taught in English and this shows a general tendency to prefer English over Italian (Brutti 2019: 52). Sometimes, borrowings may lead to the so-called false friends because the term may change its function or meaning (Brutti 2019: 53-55). A false friend is a word with a different meaning from a similar-sounding or similar-looking word in another language. These similarities are often confusing (Macmillan Dictionary 2020), like the French word ‘actuellement’ and the English word ‘actually’, which look and sound the same but have different meanings (Cambridge Dictionary 2020). According to Brutti (2019: 52), the expression false friends refers to those terms which are similar from a lexical perspective but do not designate the same concept. Experts in comparative law should first understand the meaning of the word in its original context and then translate it.

If translators refuse to use borrowings and there is no neutral term to express the intended meaning, they will be forced to create a neologism (Šarčević 1997: 259-262). Neologisms refer to three types of terms: 1) those which already exist in ordinary language or in another area of specialization and acquire a legal meaning; 2) those existing in a third legal system; 3) new terms created by translators themselves. The most popular type of neologism is literal equivalent: an example can be found in the proper names of institutions. Instead of assigning a new meaning to existing legal terms, it is

quite usual to use terms from ordinary language and assign them a legal meaning, thus creating new legal terms (Šarčević 1997: 259-262).

According to Cabré (2010: 363), neologisms represent the second degree of involvement that translators have to face when they are confronted with a terminological problem. At the first degree, translators consult dictionaries and databases but, if the problem is not solved, they write the original term with quotation marks or explain the concept through a paraphrase. In the first degree, translators are passive in terminology (Cabré 2010: 363). At the second level of involvement, translators who cannot find a solution for the terminological problem may fill the gap with a neological term which must be documented in a footnote. As in the first level, translators do not participate in terminology work (Cabré 2010: 363). In the third level, translators start to be active in terminology and act as terminologists to find an equivalent. They create a new term proposal based on the patterns of term-formation in that specific field of specialty (Cabré 2010: 363). The fourth and last level occurs when translators resolve terminological issues by using their personal databases from which they derive the information they need. These databases contain terms and their equivalents from prior translators. They edit the term in a glossary so that it can be used in other future translations on the same topic. In this case, translators work as systematic terminologists (Cabré 2010: 364).

There are many problems related to legal translation (Brutti 2019: 52). First, the inexistence of a similar concept in another language, which means that some terms do not have a legal equivalent in another language. Second, some terms do have an equivalent in other languages but they do not share the same implications. For instance, the English term ‘rape’ and its Italian equivalent ‘stupro’. Third, some terms have an equivalent in another language but their meaning is not the same, like ‘contract’ in English, ‘contratto’ in Italian and ‘contrat’ in French (Brutti 2019: 52). All three of them are etymological equivalents, which means that they signify the same object but they are not identical from a conceptual perspective. For example, the English concept is considerably broader than its French equivalent, which is restricted to transactions involving mutuality of agreement and obligation (Šarčević 1997: 232). Fourth, the term belonging to a foreign legal system is the result of a specific culture and it cannot be translated. For instance, the English term ‘trust’ does not have an equivalent in Italian and it will be borrowed and adopted from the Italian legal system (Brutti 2019: 52). Another example is the term ‘equity’. They

both prove that all legal systems contain some terms which do not have a comparable equivalent in other legal systems, since the object or procedure designated by the term does not exist in other legal systems and they are peculiar to a specific legal family or system. These system-bound terms are often regarded as untranslatable (Šarčević 1997: 233). On the other hand, there are also several vague terms, which already exist in more legal systems but are interpreted differently according to the different jurisdictions (Šarčević 1997: 233). Furthermore, it may happen that the same term refers to different concepts in different legal systems. For example, the term 'domicile' has one meaning in English law and different meanings in American jurisdictions. Even 'Sache' has different meanings in German and Austrian law (Šarčević 1997: 232). There are also cases where the same concept is described by different terms in different jurisdictions with the same official language or cases where a term has been transplanted into another legal system, thus taking on different meanings (Šarčević 1997: 232).

Since the meaning of legal texts is determined primarily by legal context, the presumption of equal meaning of parallel texts is an illusion (Didier 1990: 235 quoted in Šarčević 1997: 70). Although it is codified by Article 33(3) of the Convention on the Law of Treaties, which states that "The terms of the treaty are presumed to have the same meaning in each authentic text", it can rarely be achieved in practice in the parallel texts of a legal instrument (Šarčević 2000: 4-5). Therefore, the goal of legal translation is not to produce a text with the same meaning as the source text. The second presumption of parallel legal texts is the equal effect (Didier 1990: 221 quoted in Šarčević 1997: 71). The translator should produce a text that will lead to the same legal effects and consequences. In order to do that, a translator must be able to understand the meaning of words, sentences, what legal effects the text is supposed to have and how to achieve that in the other language. The presumption of equal effect has priority over that of equal meaning. However, both are subordinate to the presumption of equal intent, which means that "the translator should strive to produce a text that expresses the intended meaning and achieves the intended legal effects in practice" (Šarčević 2000: 5). Furthermore, equal intent can be divided into micro and macro. The macro intent is generally associated to the communicative function of the text. The micro intent is identified as the specific purpose of that particular text (Šarčević 1997: 73).

Even though translators must understand the source text in order to express the same meaning and achieve the same legal effects of the source text, they should not overstep their authority and give their own legal interpretation of the text (Šarčević 1997: 87). They have to convey what is said in the source text and not what they think it should say. The perfect communication and a reliable translation occur when all the parallel texts of a legal instrument are interpreted and applied uniformly by the courts. This is known as uniform interpretation and application (Šarčević 2000: 5).

The greatest obstacle to uniform interpretation and application is the incongruity of legal systems, that is to say the fact that each national law has its own terminology and conceptual structure. This makes extremely difficult and almost impossible to achieve uniform interpretation and application (Šarčević 2000: 5-6). Different authentic texts of a single instrument will be interpreted and applied in the same manner if they derive their meaning from the same legal system. This is the case of plurilingual countries with one legal system like Switzerland and Belgium. When more than one legal system is involved, the process of uniform interpretation is more difficult since the source and the target legal systems are different. This happens for example in plurilingual countries with two legal systems or a mixed legal system, such as Canada and India (Šarčević 2000: 5-6). The situation is similar in international and European law, where efforts to unify the law have not been successful so far. Therefore, international and European instruments derive their meaning from different national legal families. Nevertheless, European lawyers have established a judicial control in order to limit the jurisdiction of national courts, which are also accountable to a specialised court, i.e. the European Court of Justice (Šarčević 2000: 6).

2.5. ETHICS AND CODE OF CONDUCT

In the Western tradition, translation and interpreting ethics was first conceived in terms of fidelity to the original text, which means that translators and interpreters had to reproduce the same message without changing it (D'Hulst & Gambier 2018: 444). That is why the issue of fidelity has always been a major and common concern among them. However, over the past thirty years, translation ethics has been the subject of much debate (D'Hulst & Gambier 2018: 444). Translators have an ethical responsibility. Thus, their task cannot be viewed simply as a linguistic transfer. On the contrary, translation and

interpreting are linked to the social and political situation (Inghilleri & Maier 2009: 102). The relationship between ethics and professional services is referred to as 'deontology of ethics', that is to say "ethics perceived as a set of objective rules or duties that decide ethical behaviour irrespective of their consequences" (Inghilleri & Maier 2009: 102). Great emphasis is placed on notions such as "impartiality, neutrality, accuracy and fidelity" (Inghilleri & Maier 2009: 102).

Ethical principles can be divided into personal and professional ethical norms (Asensio 2014: 44). The former refer to personal decisions of the individual about what is right and wrong. They affect only the particular individual and cannot be imposed on other people belonging to a community. The latter are generally known as 'codes of ethics' or 'deontological codes'. They affect the entire professional organisation. Indeed, "professional ('deontological') rules or principles are binding for the members of the corresponding association and the consequence of breaching them is expulsion from the related association" (Asensio 2014: 44). These cases are judged by special committees within the professional association. Professional rules usually include the following general obligations of the Translator's Charter, approved by the FIT (Fédération Internationale des Traducteurs) Congress at Dubrovnik in 1963:

> Section I (FIT 1963)
>
> GENERAL OBLIGATIONS OF THE TRANSLATOR
>
> 1. Translation, being an intellectual activity, the object of which is the transfer of literary, scientific and technical texts from one language into another, imposes on those who practise it specific obligations inherent in its very nature.
>
> 2. A translation shall always be made on the sole responsibility of the translator, whatever the character of the relationship of contract which binds him/her to the user.
>
> 3. The translator shall refuse to give to a text an interpretation of which he/she does not approve, or which would be contrary to the obligations of his/her profession.
>
> 4. Every translation shall be faithful and render exactly the idea and form of the original – this fidelity constituting both a moral and legal obligation for the translator.
>
> 5. A faithful translation, however, should not be confused with a literal translation, the fidelity of a translation not excluding an adaptation to make the form, the atmosphere and deeper meaning of the work felt in another language and country.
>
> 6. The translator shall possess a sound knowledge of the language from which he/she translates and should, in particular, be a master of that into which he/she translates.

7. He/she must likewise have a broad general knowledge and know sufficiently well the subject matter of the translation and refrain from undertaking a translation in a field beyond his competence.

8. The translator shall refrain from any unfair competition in carrying out his profession in particular, he/she shall strive for equitable remuneration and not accept any fee below that which may be fixed by law and regulations.

9. In general, he/she shall neither seek nor accept work under conditions humiliating to himself/herself or his/her profession.

10. The translator shall respect the legitimate interests of the user by treating as a professional secret any information which may come into his/her possession as a result of the translation entrusted to him/her.

11. Being a "secondary" author, the translator is required to accept special obligations with respect to the author of the original work.

12. He/she must obtain from the author of the original work or from the user authorization to translate a work, and must furthermore respect all other rights vested in the author.

However, as pointed out by Asensio (2014: 45), point 1 is too general for official translation; point 9 is quite subjective, thus not being applicable; point 7 does not correspond to common professional practice.

As already mentioned, professional associations have established some codes of ethics and conduct to which translators and interpreters are bound, with sets of rules concerning both obligations and working conditions (D'Hulst & Gambier 2018: 445). This dissertation will focus on the Italian and the British codes of ethics and conduct.

According to the Code of Professional Ethics and Conduct made by the Italian Association of Translators and Interpreters (Associazione Italiana Traduttori e Interpreti, AITI), translators and interpreters have to ensure communication between people speaking different languages (AITI 2020a). The violation of the norms indicated by the code will be sanctioned. The first duty is the duty of honesty and dignity (AITI 2020a): translators and interpreters cannot and shall not alter voluntarily the source text for ideological or personal reasons. Personal opinions must be expressed separately from the original message. The second duty is linked to loyalty and fairness (AITI 2020a): translators and interpreters have to be fair and objective in order to be trusted by their clients. Moreover, they shall not benefit from any information obtained in the course of their work. The third duty is the duty of diligence (AITI 2020a). This means that translators and interpreters have to abide by the terms and conditions of the job, as requested by their clients. Fourth, they have to maintain secrecy about the information

and documents they have access to in the course of their work (AITI 2020a). This duty continues also after the conclusion of the professional relationship. A breach of this duty is only possible in cases of legal obligations or requests made by the authorities.

The fifth duty is the duty of independence (AITI 2020a): translators and interpreters are free to decide which linguistic choice is better to achieve their goal. The sixth duty is linked to the degree of expertise (AITI 2020a). Indeed, translators and interpreters should take a job only if it concerns a language and a specialisation they are qualified in. Translators can only translate into their mother tongue. The seventh is the duty of lifelong learning, i.e. to update constantly (AITI 2020a). This means that translators have to improve not only their language skills but also their general and specialised knowledge. The eighth duty concerns tax compliance, while the ninth is the duty to avoid conflict of interest (AITI 2020a). Indeed, the client has to be informed in the event of personal, economic or ideological reasons which could represent a conflict of interest, thus undermining the quality and objectivity of the work. The tenth regards publicity, which has to be true and correct (AITI 2020a). The eleventh and last duty is the prohibition of misleading advertising (AITI 2020a).

As regards the relation between translators or interpreters and their clients, it has to be built on trust. If a mistake has been made, translators and interpreters have to inform their clients promptly. They can also ask for explanation and clarification if some elements of the documents they are working on are not clear. This is not a sign of incompetence. On the contrary, it shows professional behaviour, whose aim is to achieve the best possible result (AITI 2020a).

The Italian Association of Translators and Interpreters website also has a separate section for legal translation and interpreting (AITI 2020b). First, it is crucial to underline the fact that working in this area requires great responsibility and sound professional knowledge, deriving from both a specific education and long experience on the field (AITI 2020b). The Legal Translators and Interpreters Committee (TIGG) has been founded in the Nineties by the AITI members in order to improve the language skills of those working in the legal sector, standardise the levels of required linguistic competence according to the Common European Framework of Reference for Languages and establish some basic rules for translators and interpreters working in the legal sector (AITI

2020c). The section related to interpreters will not be examined in this chapter since the whole dissertation only deals with legal translation.

As regards legal translators, they are defined as translators who work from a foreign language into their mother tongue. Furthermore, they have to fulfil some precise requirements (AITI 2020b):

- comprehensive knowledge of the foreign language and culture, which corresponds to the C1 level according to the Common European Framework of Reference for Languages;
- knowledge of both the Italian and the foreign language judicial system;
- knowledge of constitutional law, international law, criminal law, laws and rules on immigration, etc.;
- knowledge of legal translation theories and methodologies;
- knowledge of legal terminology and concepts;
- knowledge of legal style rules and conventions.

AITI also lists some rules that can be helpful to select and choose the right potential legal translator or interpreter (AITI 2020b):

- membership of a professional association which issues a quality assurance certification;
- language certificate for the foreign language (minimum level: C1);
- specific training in recognised professional associations;
- excellent knowledge of translation or interpreting techniques;
- sound knowledge of the source language culture;
- extensive knowledge of legal terminology of both the Italian and the foreign language judicial system;
- general knowledge of the different areas of law;
- proof of past work experience.

With reference to the United Kingdom, qualified translators and interpreters are required to adhere to the standards of conduct, competence and practice illustrated in the ITI (Institute of Translation and Interpreting) Code of Professional Conduct of 2016. “Any member found to be in breach of the Code may be subject to disciplinary action, up to and including revocation of membership, by the Institute” (ITI 2016: 4). There are some professional values that must be respected (ITI 2016: 5):

- to be accurate, faithful and impartial when conveying the meaning of the source text;
- to maintain secrecy about any confidential information;
- to represent qualifications honestly;
- to continue education in language and professional practice;
- to share knowledge and experience;
- to abide by the terms agreed;
- to ask for due compensation;
- to try to settle any dispute amongst the parties directly involved.

These professional values are almost the same as the principles provided by the AITI Code of Professional Ethics and Conduct. Furthermore, the ITI Code indicates some principles that members are required to adhere to (ITI 2016: 5):

- honesty and integrity;
- professional competence;
- client confidentiality and trust;
- relationships with other members.

The principle of honesty and integrity concerns many aspects. The first is advertising (ITI 2016: 6): the information included by members in advertising must be relevant, legal, honest and truthful, neither misleading nor unfair to anyone. The second is conflicts of interest (ITI 2016: 6): members shall be impartial and disclose any conflict of interest that might affect this impartiality, thus withdrawing from the contract. The third is integrity (ITI 2016: 6): members shall act with impartiality, honesty and fairness and shall not be influenced by any self-interest or the interests of others. Moreover, "members should not be party to any statement that they know to be untrue, misleading, unfair to others, or contrary to their own professional knowledge" (ITI 2016: 7) and they should seek advice when dealing with a situation that is outside their knowledge. The fourth is corruption and bribery (ITI 2016: 7): a member acts corruptly if he or she offers "a gift or advantage to someone with the intention of persuading them to act against their professional obligations and/or the interests of those to whom they owe a duty (such as a client)" (ITI 2016: 7). Furthermore, members cannot accept incentives or remunerations that can be considered as bribes. The fifth concerns media and public statements (ITI 2016: 7):

members who make public statements are identified as members of the Institute. Thus, they shall respond with dignity and professionalism.

The second principle is the principle of professional competence (ITI 2016: 8). First, all members are required to continue their professional development in order to offer the "highest possible standards of work by maintaining and updating their language skills, subject knowledge or any other skills or knowledge necessary for the work" (ITI 2016: 8). In addition, members should not accept work that is beyond their competence. A special section is dedicated to both translation and interpreting. However, interpreting will not be taken into consideration in the present work. As regards translation,

> Members shall translate only into a language that is either (i) their mother tongue or language of habitual use, or (ii) one in which they have satisfied the Institute that they have equal competence. They shall translate only from those languages in which they can demonstrate they have the requisite skills (ITI 2016: 8).

Moreover, errors and ambiguities in the source text must be reported to the client (ITI 2016: 8). With reference to contractual arrangements, members should provide the client with their written terms and conditions before starting the work. They shall not accept work contrary to the provisions of the Code or work that they believe may be illegal. In addition, they shall not voluntarily mistranslate (ITI 2016: 9-10). As regards competition for work, members shall act "fairly and ethically with potential clients and competitors" (ITI 2016: 11) and not try to gain unfair advantage to the detriment of others.

The third principle is confidentiality (ITI 2016: 13). This means that members shall treat any information as confidential and not to be communicated. "This clause shall not apply to any information that is required to be disclosed pursuant to any applicable laws or the order of any competent court or other regulatory authority" (ITI 2016: 12). Moreover, members cannot derive any gain from privileged information. The fourth and last principle concerns relationships with other members: all members must assist and act respectful and loyal to each other (ITI 2016: 12).

2.6. THE ROLE OF EXPERTS

This section focuses on the difference between 'consulenti' and 'esperti' for civil matters and between 'ausiliari' and 'esperti' for criminal matters in Italy. This difference is important in order to understand the role of translators and the category to which they belong. Furthermore, it mentions some rules related to experts, their requirements and

activity. This section mainly deals with Italy and its rules since the translations examined are from English into Italian. In addition, almost the same differences exist in the United Kingdom and, more importantly, this dissertation is not about law but about translation. Therefore, it seems more useful for an Italian translator to know the rules that apply to them according to their national legal system. It also analyses the rules concerning their appointment and activity when working as experts, the difference between a simple and a sworn translator and the consequences of a false testimony or interpretation.

It seems important to make a distinction between two categories known as 'esperti' and 'consulenti tecnici d'ufficio (CTU)' concerning civil matters. First, because one of the documents translated is an expert report; second, because translators belong to one of these categories. However, this distinction is not codified, i.e. it is not subject to a legal provision. On the contrary, it derives from the doctrine. The premise is that the judge has only legal authority and competence. He or she is no expert in medicine, engineering, psychology or other technical and specialised matters. Therefore, the judge addresses an expert when dealing with evaluations that require scientific, technical or artistic skills (Spanò & Tedeschi 2012: 98). Indeed, article 61 of the Italian Code of Civil Procedure states the following:

> Art. 61 c.p.c
>
> (Consulente tecnico)
>
> Quando è necessario, il giudice può farsi assistere, per il compimento di singoli atti o per tutto il processo, da uno o più consulenti di particolare competenza tecnica.
>
> La scelta dei consulenti tecnici deve essere normalmente fatta tra le persone iscritte in albi speciali formati a norma delle disposizioni di attuazione al presente Codice.

Each court has its own Register of Experts or Technical Consultants.

Moreover, article 220 of the Italian Code of Criminal Procedure states that "La perizia è ammessa quando occorre svolgere indagini o acquisire dati o valutazioni che richiedono specifiche competenze tecniche, scientifiche o artistiche". This means that the expert is asked to give his or her opinion when specific skills are required. Consequently, the judge seeks help from 'consultenti tecnici d'ufficio (CTU)' or 'esperti (experts)'. The basic difference is that the 'consulenti tecnici d'ufficio' establish and assess the facts based on what the judge has asked them to evaluate (Di Marco & Sichetti 2010: 6). Therefore, they express an opinion and make an evaluation. Moreover, they can either

assist the judge and the parties or conduct their own investigation, with the judge or by themselves. In the first case, 'CTUs' help the judge, providing him or her with clarifications and expressing their opinion. In the second case, their role is more active and they have to write a final report with the results of their investigation (Balena 2004: 106-107). On the contrary, the 'esperti' only have to assist the judge without expressing their opinions. Translators belong to the second category. Indeed, they do not make evaluations but they only have to translate faithfully documents or witness' statements. Nevertheless, it is crucial to underline that the experts' role is to help the judge so that he or she will interpret the evidence presented more accurately. Then the judge has the final say (Balena 2004: 105-106). Despite the difference between 'CTUs' and 'esperti', the rules of the Italian Code of Civil Procedure concerning their appointment, requirements and work are almost the same:

> Art. 191 c.p.c.
>
> (Nomina del consulente tecnico)
>
> Nei casi previsti dagli articoli 61 e seguenti il giudice istruttore, con ordinanza ai sensi dell'articolo 183, settimo comma, o con altra successiva ordinanza, nomina un consulente, formula i quesiti e fissa l'udienza nella quale il consulente deve comparire.
>
> Possono essere nominati più consulenti soltanto in caso di grave necessità o quando la legge espressamente lo dispone.

Article 191 governs the appointment of an expert: the judge can appoint an expert, set the date for the hearing and decide what questions to ask him or her.

> Art. 192 c.p.c.
>
> (Astensione e ricusazione del consulente)
>
> L'ordinanza è notificata al consulente tecnico a cura del cancelliere, con invito a comparire all'udienza fissata dal giudice.
>
> Il consulente che non ritiene di accettare l'incarico o quello che, obbligato a prestare il suo ufficio, intende astenersi, deve farne denuncia o istanza al giudice che l'ha nominato almeno tre giorni prima dell'udienza di comparizione; nello stesso termine le parti debbono proporre le loro istanze di ricusazione, depositando nella cancelleria ricorso al giudice istruttore.
>
> Questi provvede con ordinanza non impugnabile.

Article 192 explains that experts are asked to appear at the court hearing. However, if they cannot accept, they have to inform the court with at least a three-day notice.

> Art. 193 c.p.c.

(Giuramento del consulente)

All'udienza di comparizione il giudice istruttore ricorda al consulente l'importanza delle funzioni che è chiamato ad adempiere, e ne riceve il giuramento di bene e fedelmente adempiere le funzioni affidategli al solo scopo di fare conoscere al giudice la verità.

The expert takes an oath before the court to faithfully accomplish his or her responsibilities, with the sole purpose of discovering the truth.

Art. 194 c.p.c.

(Attività del consulente)

Il consulente tecnico assiste alle udienze alle quali è invitato dal giudice istruttore; compie, anche fuori della circoscrizione giudiziaria, le indagini di cui all'articolo 62, da sé solo o insieme col giudice secondo che questi dispone. Può essere autorizzato a domandare chiarimenti alle parti, ad assumere informazioni da terzi e a eseguire piante, calchi e rilievi.

Anche quando il giudice dispone che il consulente compia indagini da sé solo, le parti possono intervenire alle operazioni in persona e a mezzo dei propri consulenti tecnici e dei difensori, e possono presentare al consulente, per iscritto o a voce, osservazioni e istanze.

This article examines the role of the expert and what he or she is asked to do. As regards the requirements of a 'CTU', it is crucial to cite the following articles:

Art. 13 disp. att. c.p.c.

(Albo dei consulenti tecnici)

Presso ogni tribunale è istituito un albo dei consulenti tecnici.

L'albo è diviso in categorie.

Debbono essere sempre comprese nell'albo le categorie: 1. medico-chirurgica; 2. industriale; 3. commerciale; 4. agricola; 5. bancaria; 6. assicurativa.

According to this article, every court has a register of experts divided into categories.

Art. 14 disp. att. c.p.c.

(Formazione dell'albo)

L'albo è tenuto dal presidente del tribunale ed è formato da un comitato da lui presieduto e composto dal procuratore della Repubblica e da un professionista iscritto nell'albo professionale, designato dal consiglio dell'ordine, o dal collegio della categoria, cui appartiene il richiedente l'iscrizione nell'albo dei consulenti tecnici.

Il consiglio predetto ha facoltà di designare, quando lo ritenga opportuno, un professionista iscritto nell'albo di altro ordine o collegio, previa comunicazione al consiglio che tiene l'albo a cui appartiene il professionista stesso.

Quando trattasi di domande presentate da periti estimatori, la designazione è fatta dalla camera di commercio, industria e agricoltura.

Le funzioni di segretario del comitato sono esercitate dal cancelliere del tribunale.

Art. 15 disp. att. c.p.c.

(Iscrizione nell'albo)

Possono ottenere l'iscrizione nell'albo coloro che sono forniti di speciale competenza tecnica in una determinata materia, sono di condotta morale specchiata e sono iscritti nelle rispettive associazioni professionali.

Nessuno può essere iscritto in più di un albo.

Sulle domande di iscrizione decide il comitato indicato nell'articolo precedente.

Contro il provvedimento del comitato è ammesso reclamo, entro quindici giorni dalla notificazione, al comitato previsto nell'articolo.

Article 15 explains that an expert can be added to the register if he or she has a special technical skill in a specific field, is a member of a professional association and is not registered in more than one register. His or her moral conduct is also fundamental. A committee is responsible for the applications, as described in article 14.

Art. 16 disp. att. c.p.c.

(Domande d'iscrizione)

Coloro che aspirano all'iscrizione nell'albo debbono farne domanda al presidente del tribunale.

La domanda deve essere corredata dai seguenti documenti:

1. estratto dell'atto di nascita;
2. certificato generale del casellario giudiziario di data non anteriore a tre mesi dalla presentazione;
3. certificato di residenza nella circoscrizione del tribunale;
4. certificato di iscrizione all'associazione professionale;
5. i titoli e i documenti che l'aspirante crede di esibire per dimostrare la sua speciale capacità tecnica.

Article 16 lists all the necessary documents for the application.

Art. 17 disp. att. c.p.c.

(Informazioni)

A cura del presidente del tribunale debbono essere assunte presso le autorità di polizia specifiche informazioni sulla condotta pubblica e privata dell'aspirante.

Art. 18 disp. att. c.p.c.

(Revisione dell'albo)

L'albo è permanente. Ogni quattro anni il comitato di cui all'articolo deve provvedere alla revisione dell'albo per eliminare i consulenti per i quali è venuto meno alcuno dei requisiti previsti nell'articolo o è sorto un impedimento a esercitare l'ufficio.

Every four years, the committee has to remove from the register those people who no longer meet all the requirements or those who can no longer pursue their activity.

Art. 19 disp. att. c.p.c.

(Disciplina)

La vigilanza sui consulenti tecnici è esercitata dal presidente del tribunale, il quale, d'ufficio o su istanza del procuratore della Repubblica o del presidente dell'associazione professionale, può promuovere procedimento disciplinare contro i consulenti che non hanno tenuto una condotta morale specchiata o non hanno ottemperato agli obblighi derivanti dagli incarichi ricevuti.

Per il giudizio disciplinare è competente il comitato indicato nell'articolo.

The committee is responsible for punishing those who have not fulfilled their obligations or those who have engaged in improper conduct.

Art. 20 disp. att. c.p.c.

(Sanzioni disciplinari)

Ai consulenti che non hanno osservato i doveri indicati nell'articolo precedente possono essere inflitte le seguenti sanzioni disciplinari:

1. l'avvertimento;
2. la sospensione dall'albo per un tempo non superiore ad un anno;
3. la cancellazione dall'albo.

There are three types of sanctions: warning, suspension or removal from the register.

Art. 21 disp. att. c.p.c.

(Procedimento disciplinare)

Prima di promuovere il procedimento disciplinare, il presidente del tribunale contesta l'addebito al consulente e ne raccoglie la risposta scritta.

Il presidente, se dopo la contestazione ritiene di dovere continuare il procedimento, fa invitare il consulente, con biglietto di cancelleria, davanti al comitato disciplinare.

Il comitato decide sentito il consulente. Contro il provvedimento è ammesso reclamo a norma dell'articolo ultimo comma.

The committee invites the expert before taking a decision and hears his or her arguments. The expert can file a complaint against the provision.

> Art. 22 disp. att. c.p.c.
>
> (Distribuzione degli incarichi)
>
> Tutti i giudici che hanno sede nella circoscrizione del tribunale debbono affidare normalmente le funzioni di consulente tecnico agli iscritti nell'albo del tribunale medesimo.
>
> Il giudice istruttore che conferisce un incarico a un consulente iscritto in albo di altro tribunale o a persona non iscritta in alcun albo, deve sentire il presidente e indicare nel provvedimento i motivi della scelta.
>
> Le funzioni di consulente presso la corte d'appello sono normalmente affidate agli iscritti negli albi dei tribunali del distretto. Se l'incarico è conferito ad iscritti in altri albi o a persone non iscritte in alcun albo, deve essere sentito il primo presidente e debbono essere indicati nel provvedimento i motivi della scelta.

Judges usually appoint experts who appear in the register of their court. If they appoint an expert who appears in the register of another court or a person who is not registered at all, they shall explain the reasons for their choice.

> Art. 23 disp. att. c.p.c.
>
> (Vigilanza sulla distribuzione degli incarichi)
>
> Il presidente del tribunale vigila affinché, senza danno per l'amministrazione della giustizia, gli incarichi siano equamente distribuiti tra gli iscritti nell'albo in modo tale che a nessuno dei consulenti iscritti possano essere conferiti incarichi in misura superiore al 10 per cento di quelli affidati dall'ufficio, e garantisce che sia assicurata l'adeguata trasparenza del conferimento degli incarichi anche a mezzo di strumenti informatici.
>
> Per l'attuazione di tale vigilanza il presidente fa tenere dal cancelliere un registro in cui debbono essere annotati tutti gli incarichi che i consulenti iscritti ricevono e i compensi liquidati da ciascun giudice.
>
> Questi deve dare notizia degli incarichi dati e dei compensi liquidati al presidente del tribunale presso il quale il consulente è iscritto.
>
> Il primo presidente della corte di appello esercita la vigilanza prevista nel primo comma per gli incarichi che vengono affidati dalla corte.

Assignments have to be given fairly to all the experts registered so that they do not exceed the recommended limit. Moreover, this guarantees transparency.

From a linguistic point of view, the principal standard rules are established in the Italian Code of Civil Procedure:

> Art. 122 c.p.c.

(Uso della lingua italiana. Nomina dell'interprete)

In tutto il processo è prescritto l'uso della lingua italiana.

Quando deve essere sentito chi non conosce la lingua italiana, il giudice può nominare un interprete.

Questi, prima di esercitare le sue funzioni, presta giuramento davanti al giudice di adempiere fedelmente il suo ufficio.

The Italian language is the official language in civil trials. In case of a trial before an Italian court, foreigners who do not know the Italian language have the right to an interpreter. The judge may appoint an interpreter who has to take an oath to faithfully fulfil his or her task.

Art. 123 c.p.c

(Nomina del traduttore)

Quando occorre procedere all'esame di documenti che non sono scritti in lingua italiana, il giudice può nominare un traduttore, il quale presta giuramento a norma dell'articolo precedente.

The judge may also appoint a translator when dealing with documents written in a foreign language. The translator will also take an oath before exercising his or her duties.

These rules refer to civil proceedings. Nevertheless, the judge can also appoint an expert in criminal proceedings and a distinction is made between 'ausiliari (auxiliaries)' and 'esperti (experts)'. Once again, the difference depends on what the judge asks this person to do. In this case, the applicable rules can be found in the Italian Code of Criminal Procedure:

Art. 348 c.p.p.

(Assicurazione delle fonti di prova)

1. Anche successivamente alla comunicazione della notizia di reato, la polizia giudiziaria continua a svolgere le funzioni indicate nell'articolo 55 raccogliendo in specie ogni elemento utile alla ricostruzione del fatto e alla individuazione del colpevole.

2. Al fine indicato nel comma 1, procede, fra l'altro:

    a) alla ricerca delle cose e delle tracce pertinenti al reato nonché alla conservazione di esse e dello stato dei luoghi;

    b) alla ricerca delle persone in grado di riferire su circostanze rilevanti per la ricostruzione dei fatti;

    c) al compimento degli atti indicati negli articoli seguenti.

3. Dopo l'intervento del pubblico ministero, la polizia giudiziaria compie gli atti ad essa specificamente delegati a norma dell'articolo 370, esegue le direttive del pubblico ministero ed inoltre svolge di propria iniziativa, informandone prontamente il pubblico ministero, tutte le altre attività di indagine per accertare i reati ovvero richieste da elementi successivamente emersi e assicura le nuove fonti di prova.

4. La polizia giudiziaria, quando, di propria iniziativa o a seguito di delega del pubblico ministero, compie atti od operazioni che richiedono specifiche competenze tecniche, può avvalersi di persone idonee le quali non possono rifiutare la propria opera.

Point number 4 explains that the criminal police may avail themselves of suitable persons when performing activities that require specific technical skills. It is not important whether these activities or operations are performed on their own initiative or by delegation from the Public Prosecutor.

The basic requirements for the 'ausiliari' are similar to the requirements for the 'CTUs' and are described in the following articles:

Art. 67 disp. att. c.p.p.

(Albo dei periti presso il tribunale)

1. Presso ogni tribunale è istituito un albo dei periti, diviso in categorie.

2. Nell'albo sono sempre previste le categorie di esperti in medicina legale, psichiatria, contabilità, ingegneria e relative specialità, infortunistica del traffico e della circolazione stradale, balistica, chimica, analisi e comparazione della grafia, interpretariato e traduzione.

3. Quando il giudice nomina come perito un esperto non iscritto negli albi, designa, se possibile, una persona che svolge la propria attività professionale presso un ente pubblico.

4. Nel caso previsto dal comma 3, il giudice indica specificamente nell'ordinanza di nomina le ragioni della scelta.

5. In ogni caso il giudice evita di designare quale perito le persone che svolgano o abbiano svolto attività di consulenti di parte in procedimenti collegati a norma dell'articolo 371 comma 2 del codice.

Like 'CTUs', 'periti (consultants)' have a register divided into categories. Judges appoint experts who appear in the register. If not, they explain the reasons for their choice.

Art. 67-bis disp. att. c.p.p.

(Elenco nazionale degli interpreti e traduttori)

1. Ogni tribunale trasmette per via telematica al Ministero della giustizia l'elenco aggiornato, in formato elettronico, degli interpreti e dei traduttori iscritti nell'albo dei periti di cui all'articolo 67. L'autorità giudiziaria si avvale di tale elenco nazionale e nomina interpreti e traduttori diversi da quelli ivi inseriti solo in presenza di specifiche e particolari esigenze.

2. L'elenco nazionale di cui al comma 1 è consultabile dall'autorità giudiziaria, dagli avvocati e dalla polizia giudiziaria sul sito istituzionale del Ministero della giustizia, nel rispetto della normativa vigente sul trattamento dei dati personali. Le modalità di consultazione dell'elenco nazionale sono definite con decreto del Ministro della giustizia, da adottarsi entro il termine di otto mesi dalla data di entrata in vigore della presente disposizione.

This article is particularly relevant since it deals with translators and interpreters appearing on the register. Any judicial authority uses this national register in order to appoint translators and interpreters. Under special circumstances, the judicial authority can decide to appoint a translator or an interpreter who does not appear on the register.

Art. 68 disp. att. c.p.p.

(Formazione e revisione dell'albo dei periti)

1. L'albo dei periti previsto dall'articolo 67 è tenuto a cura del presidente del tribunale ed è formato da un comitato da lui presieduto e composto dal procuratore della Repubblica presso il medesimo tribunale, dal presidente del consiglio dell'ordine forense, dal presidente dell'ordine, del collegio ovvero delle associazioni rappresentative a livello nazionale delle professioni non regolamentate a cui appartiene la categoria di esperti per la quale si deve provvedere ovvero da loro delegati.

2. Il comitato decide sulla richiesta di iscrizione e di cancellazione dall'albo.

3. Il comitato può assumere informazioni e delibera a maggioranza dei voti. In caso di parità di voti, prevale il voto del presidente.

4. Il comitato provvede ogni due anni alla revisione dell'albo per cancellare gli iscritti per i quali è venuto meno alcuno dei requisiti previsti dall'articolo 69 comma 3 o è sorto un impedimento a esercitare l'ufficio di perito.

This article mentions the role of the committee that decides whether a person can be added to the register and whether to remove someone from it. Every two years, the committee removes from the register those people who no longer meet all the requirements or those who can no longer pursue their activity.

Art. 69 disp. att. c.p.p.

(Requisiti per la iscrizione nell'albo dei periti)

1. Salvo quanto previsto dal comma 3, possono ottenere l'iscrizione nell'albo le persone fornite di speciale competenza nella materia.

2. La richiesta di iscrizione, diretta al presidente del tribunale, deve essere accompagnata dall'estratto dell'atto di nascita, dal certificato generale del casellario giudiziale, dal certificato di residenza nella circoscrizione del tribunale e dai titoli e documenti attestanti la speciale competenza del richiedente.

3. Non possono ottenere l'iscrizione nell'albo le persone:

a) condannate con sentenza irrevocabile alla pena della reclusione per delitto non colposo, salvo che sia intervenuta riabilitazione;

b) che si trovano in una delle situazioni di incapacità previste dall'articolo 222 comma 1 lettere a), b), c) del codice;

c) cancellate o radiate dal rispettivo albo professionale a seguito di provvedimento disciplinare definitivo.

4. La richiesta di iscrizione nell'albo resta sospesa per il tempo in cui la persona è imputata di delitto non colposo per il quale è consentito l'arresto in flagranza ovvero è sospesa dal relativo albo professionale.

This article concerns the documents and requirements for the application and the factors that prevent someone from being registered.

Art. 70 disp. att. c.p.p.

(Sanzioni applicabili agli iscritti nell'albo dei periti)

1. Agli iscritti nell'albo dei periti che non abbiano adempiuto agli obblighi derivanti dal conferimento dell'incarico possono essere applicate, su segnalazione del giudice procedente, le sanzioni dell'avvertimento, della sospensione dall'albo per un periodo non superiore a un anno o della cancellazione.

2. È disposta la sospensione dall'albo nei confronti delle persone che si trovano nelle situazioni previste dall'articolo 69 comma 4 per il tempo in cui perdurano le situazioni medesime.

3. È disposta la cancellazione dall'albo, anche prima della scadenza del termine stabilito per la revisione degli albi, nei confronti degli iscritti per i quali è venuto meno alcuno dei requisiti previsti dall'articolo 69 comma 3.

4. Competente a decidere è il comitato previsto 68.

Those who have not fulfilled their obligations can be punished by the committee with warning, suspension or removal from the list.

Art. 71 disp. att. c.p.p.

(Procedimento per l'applicazione delle sanzioni)

1. Ai fini dell'applicazione delle sanzioni previste dall'articolo 70, il presidente del tribunale contesta l'addebito al perito mediante lettera raccomandata con avviso di ricevimento, invitandolo a fornire deduzioni scritte entro il termine di dieci giorni dalla ricezione della raccomandata. Decorso tale termine e assunte se del caso informazioni, il comitato delibera a norma dell'articolo 68 comma 3.

Art. 72 disp. att. c.p.p.

(Reclamo avverso le decisioni del comitato)

1. Entro quindici giorni dalla notificazione, contro le decisioni del comitato può essere proposto reclamo sul quale decide una commissione composta dal presidente della corte di appello nel cui distretto ha sede il comitato, dal procuratore generale della Repubblica presso la corte medesima, dal presidente del consiglio dell'ordine forense, dal presidente dell'ordine o del collegio professionale cui l'interessato appartiene ovvero da loro delegati.

2. Della commissione non possono far parte persone che abbiano partecipato alla decisione oggetto del reclamo.

3. La commissione decide entro trenta giorni dalla ricezione degli atti.

The expert concerned can file a complaint against the decision of the committee within fifteen days from the notification. Then, a commission has to decide within thirty days.

As shown in these articles, even though civil and criminal proceedings establish different set of rules for experts, those related to their appointment and work are almost the same. Indeed, they need to be over eighteen, impartial, never have been convicted, registered in their professional association and in the register of court experts; they need to prove that they possess special technical skills; they cannot refuse when they are asked to work as experts unless there are valid reasons; they are bound by the duty of confidentiality. All these rules apply when the judge decides to appoint an expert. On the contrary, when a party of a legal proceeding wants to provide evidence written in a foreign language or wants to summon a person living abroad, his or her lawyer has to appoint an expert. The lawyer will contact a translator who will work as a private consultant.

A translator can then make a 'simple' or a sworn translation, depending on the need of the party. For the first type of translation, translators only have to translate the text and they are known as 'traduttori giuridici (legal translators)' (Traduzioni Bertelli 2020). They are specialised in the translation of legal documents. For sworn translations, translators have to take an oath before the court saying that the translation is equivalent to the original source document, thus having the same legal value as an official document (Bonnefous 2020). They take full responsibility for their work and they are called 'traduttori giurati (sworn translators)' (Traduzioni Bertelli 2020). They work for the court and their names are included in the Register of Experts (Albo dei Consulenti Tecnici d'Ufficio). The main purposes of sworn translations is to have facts recognised abroad and to make the law of a country applicable to foreign citizens (GlobaLexicon 2020).

As regards criminal liability, legal translators can be accused of 'falsa perizia o interpretazione', as explained in articles 372 and 373 of the Penal Code:

Art. 372 c.p.

(Falsa testimonianza)

Chiunque, deponendo come testimone innanzi all'Autorità giudiziaria o alla Corte penale internazionale, afferma il falso o nega il vero, ovvero tace, in tutto o in parte, ciò che sa intorno ai fatti sui quali è interrogato, è punito con la reclusione da due a sei anni.

Whoever gives false testimony by making a false statement or denying the truth shall be sentenced to imprisonment from two to six years.

Art. 373 c.p.

(Falsa perizia o interpretazione)

Il perito o l'interprete, che, nominato dall'Autorità giudiziaria, dà parere o interpretazioni mendaci, o afferma fatti non conformi al vero, soggiace alle pene stabilite nell'articolo precedente.

La condanna importa, oltre l'interdizione dai pubblici uffici, l'interdizione dalla professione o dall'arte.

The expert or the interpreter who gives false opinions or interpretations or makes false statements is punished according to the previous article. The expert will no longer practise his or her profession.

3. TRANSLATION ANALYSIS

The texts that were translated are an affidavit of a lawyer working in the Aboriginal Family Violence Prevention & Legal Service Victoria in Australia, a judgment related to a case of child abduction, an expert report and a court order. The affidavit is the only text that does not deal with the United Kingdom but with Australia. The legal system of Australia has not been analysed since the text was chosen not for its contents but for the fact that it represents a specific common-law genre. Moreover, Australia was a colony of Britain and, therefore, its legal system derives from and has many similarities with the British legal system. When Australia gained its independence from Britain, some aspects of their legal system changed somewhat (Legal translations 2020). It seemed relevant to include this type of text since it does not have an equivalent in civil law. Indeed, the Treccani dictionary (2020a) defines an affidavit as follows:

> Nel diritto britannico e nordamericano, dichiarazione scritta e confermata da giuramento, o affermazione solenne davanti a un magistrato o pubblico ufficiale; ha valore in giudizio, come prova, e differisce dalla deposizione perché meramente unilaterale.

According to this definition, an affidavit is a written statement, common in the British and American legal system, which can be used as proof in law court, generally in civil proceedings (Dizionario Simone 2020). That is the reason why the person swearing an affidavit has to take an oath before a commissioner for oath, promising officially to tell the truth in his or her statement (Dizionario Simone 2020).

The second text is a judgment related to a case of international child abduction where a child has been wrongfully removed from Italy by her mother. A judgment is defined as the final speech of the judge in which he or she announces his or her decision in a specific case (Kurzon 1986: 57). Indeed, in Italian the equivalent would be "sentenza" and the definition is the following:

> atto giurisdizionale con il quale il giudice, sulla premessa di alcuni fatti accertati e con riferimento alle norme applicabili ai fatti medesimi, conclude una causa civile, penale o amministrativa (Treccani 2020b).

This means that it is the final act of the judge where he or she takes a final decision about a case.

The third is an expert report made by an Italian lawyer who specialises in international matrimonial law and child abduction. According to Nuée (2015: 8) expert reports are documents written by experts who offer their opinions and responses to

specific problems about which they are consulted. Expert reports are inevitably linked to experts, i.e. specialists who are recognised as such by their peers in the same field and who are fit to provide an opinion that can be used to reach a decision. The report may also be assigned jointly to a group of experts (Nuée 2015: 8). These reports state facts, thus going beyond the role of witnesses:

> experts establish the facts and draw conclusions based on those facts, while witnesses do not have the right to draw conclusions and must limit themselves to testifying to what they have seen and heard (Nuée 2015: 8).

Indeed, their opinions tend to play a crucial role on the outcome of a decision, even though they are not binding on judges.

Lastly, the fourth text is an order issued after the withdrawal of the father's application for the child's summary return to Italy. An order is "a decision after a hearing that directs a party either perform or refrain from some act" (The Law Dictionary 2020a). These last three documents are part of the same proceeding.

The language used in the source documents ranges from neutral to formal. Consequently, one of the objectives was to maintain the same register in the target texts. As for the sources used during the translation process, online resources were preferred because they were more accessible but most importantly they were quicker to consult. Nevertheless, as previously pointed out (see Section 2.3), these sources tend to be less accurate and less reliable than offline sources. Thus, they should be used carefully and a more detailed analysis should be conducted before selecting a possible equivalent (Biel 2008: 24-25).

With regard to translation equivalents, it is crucial to underline two key aspects which have already been mentioned in the previous chapter. First, there is no such thing as identity between two terms. The goal is to find the closest equivalent to the source-language term. Second, legal translators should try to find a natural equivalent in the target language which would have the same function and designate the same concept as the source legal system (Šarčević 1997: 236). The text has to be understood immediately by the target readers who do not have access to the source text. This process is known as domestication (Venuti 1998).

With reference to terminological resources, online sources such as IATE and other online dictionaries were favoured. Then, every term or expression has been checked in

legal texts and documents accessible online. When two or more options were available, a deeper search was conducted for each of them, in order to analyse their meaning and context of use. Sometimes, it was quite useful to see how many times each term was found in the documents available online. In most cases, preference is given to a term which is more common and more frequent. Nevertheless, in specialised texts more frequent does not always mean more correct. Therefore, it is crucial to be careful and to check whether a term is established and how it is used in a specialised context.

The presence of specialised terminology is one of the key features of legal texts. Thus, it will also be one of the main characteristics of the four documents that are going to be examined. Furthermore, special attention will be paid to some translation procedures, the use of the passive voice, capital letters and punctuation.

3.1. TRANSLATION

AFFIDAVIT
VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL ANTI-DISCRIMINATION LIST
Application under section 83 of the Equal Opportunity Act 1995 (Vic)

ABORIGINAL FAMILY VIOLENCE PREVENTION & LEGAL SERVICE (VICTORIA)

Applicant

AFFIDAVIT OF REBECCA ANNE BOREHAM

I, **Rebecca Anne Boreham, lawyer**, of
Make affirmation and say:

A. Personal background

1. I have been the lawyer in the Mildura branch office of the Aboriginal Family Violence Prevention & Legal Service

AFFIDAVIT
TRIBUNALE CIVILE E AMMINISTRATIVO VITTORIANO SEZIONE ANTIDISCRIMINAZIONE
Applicazione ai sensi del paragrafo 83 dell'Equal Opportunity Act del 1995 (Victoria) (Legge sulle pari opportunità)

UFFICIO DI PREVENZIONE DELLA VIOLENZA DOMESTICA NELLE COMUNITÀ INDIGENE E DI PATROCINIO GRATUITO
(VICTORIA)

Richiedente

AFFIDAVIT DI REBECCA ANNE BOREHAM

Io, **Rebecca Anne Boreham, avvocato** di
Affermo che:

A. Storia personale

1. Lavoro come avvocato presso la sede di Mildura dell'Ufficio di Prevenzione della Violenza Domestica nelle Comunità

Victoria (**FVPLS**) since July 2008. In this position, I am responsible for the Mildura and district casework practice of FVPLS which includes the advice and representation, referral to support services and the supervision of Aboriginal and Torres Strait Islander (**ATSI**) paralegal workers in the regional office.

2. I commenced employment as a lawyer at the Murray Mallee Community Legal Service (**MMCLS**) in Mildura 2004, after having been employed there as a community legal education worker and paralegal since 2002. In my role as lawyer at this MMCLS I was responsible for delivering their Family Violence Intervention Order Court Support Scheme, at the Mildura Magistrates' Court.
3. In 2005 I commenced work as principal lawyer at the Mildura Aboriginal Corporation's Indigenous Family Violence Prevention & Legal Service (**MACIFVPLS**), and had branch offices at Dareton and Buronga New South Wales. In this position I was responsible for the legal practice which included compliance with all professional requirements of the legal practice. The MACIFVPLS was funded under the same program funding as FVPLS, delivering similar services, and wound up in June 2008 when this region's program funding was auspiced to FVPLS.

Indigene e di Patrocinio Gratuito di Victoria (**FVPLS**) da luglio 2008. In tale posizione, sono responsabile dell'ufficio di assistenza sociale del distretto e di Mildura del FVPLS che include sistemi di rappresentanza e consulenza, di rinvio ai servizi di assistenza e alla supervisione degli assistenti legali delle comunità indigene e degli abitanti delle Isole dello Stretto di Torres (**ATSI**) presso l'ufficio regionale.

2. Ho iniziato a lavorare come avvocato presso l'Ufficio Legale della Comunità di Mallee Murray (**MMCLS**) a Mildura nel 2004, dopo essere stata assunta come addetta alla consulenza legale della comunità e come assistente legale dal 2002. Nel mio ruolo di avvocato presso il MMCLS, ero responsabile del progetto di sostegno sancito dal tribunale per l'intervento contro la violenza domestica presso la Magistrates' Court di Mildura.
3. Nel 2005 ho iniziato a lavorare come avvocato dirigente all'Ufficio di Prevenzione della Violenza Domestica nelle Comunità Indigene e di Patrocinio Gratuito della Mildura Aboriginal Corporation (**MACIFVPLS**), che aveva sedi staccate a Dareton e Buronga nel Nuovo Galles del Sud. In tale posizione, ero responsabile degli affari legali in cui rientrava l'incarico di soddisfare tutti i requisiti che sono insiti nella professione legale. Il MACIFVPLS è stato fondato con lo stesso programma del FVPLS con servizi analoghi, ed è stato sciolto nel giugno 2008 quando i finanziamenti di

4. During the last five years all of my work has been for ATSI people, including Barkindji, Latje Latje, Mutti Mutti Yorta Yorta, Pakanji, Nyimpa, and Numinjeri people from regions of Victoria, New South Wales and South Australia.

5. In the FVPLS Mildura office I am the only non-ATS1 worker; all other staff, being the Coordinator, Paralegal Worker and Office Manager, are all Koori.

6. I make this affidavit from my own knowledge save where otherwise indicated. Wherever I depose to matters based on information provided to me by others I believe that information to be true and correct.

B. FVPLS services

7. FVPLS provides legal assistance to ATSI victims/survivors of family violence and sexual assault in Victoria and to non-ATSI parents or carers of ATSI children. One of the roles of the FVPLS is to intervene with support and advice at an earlier stage before a family situation deteriorates.

8. FVPLS Mildura specialises in and provides services in relation to the following areas:

- Family violence intervention orders, and apprehended domestic violence orders in NSW;

questa regione sono stati trasferiti al FVPLS.

4. Negli ultimi cinque anni ho interamente dedicato il mio lavoro agli ATSI, comprese le comunità indigene dei Barkindji, Latje Latje, Mutti Mutti Yorta Yorta, Pakanji, Nyimpa e Nurninjeri, provenienti dallo Stato di Victoria, Nuovo Galles del Sud (NSW) e Australia Meridionale.

5. All'interno dell'ufficio FVPLS di Mildura sono l'unica lavoratrice non ATSI; il resto del personale, il coordinatore, l'assistente legale e il capoufficio, appartengono alla comunità Koori.

6. In questo affidavit mi attengo alla mia personale conoscenza dei fatti salvo dove diversamente specificato. Quanto riportato sulla base di informazioni fornite da terzi è da me ritenuto vero e corretto.

B. Servizi FVPLS

7. Il FVPLS fornisce assistenza legale a tutte le vittime/sopravvissuti ATSI di violenza domestica e sessuale nello stato di Victoria e a tutti i genitori o tutori non ATSI di bambini ATSI. Una delle funzioni del FVPLS è quella di intervenire attraverso sistemi di sostegno e di consulenza sin dall'inizio, prima che la situazione familiare si deteriori.

8. Il FVPLS di Mildura è specializzato nelle seguenti aree e fornisce servizi relativi a:

- Provvedimenti di intervento per violenza domestica e contro il favoreggiamento della violenza domestica nel NSW;
- Violenza sessuale;

- Sexual assault;
- Child protection;
- Victims of Crime Assistance (Victoria) and Victims Compensation (NSW) applications; and
- Family law (where it relates to family violence).

9. Often clients who contact or are referred to FVPLS have multiple legal problems as a result of ongoing and past family violence. This requires FVPLS lawyers to assist with a number of the legal issues detailed at paragraph 8. For example, clients who have been victims of family violence where children were present, often require assistance with obtaining Family Violence Protection Orders (Intervention Orders and Apprehended Violence Orders) against generally male perpetrators. This involves making applications at the relevant Magistrates' or Local Court for interim and final intervention orders generally in favour of mother and children. Where the Department of Human Services or Department of Community Services (NSW) has been notified, often out of a revelation about family violence, and commenced an application for a protection order in the Children's Court, FVPLS provides representation in this proceeding which may be lengthy dependant upon the nature and duration of orders made. Again, early contact with mother may assist in the repetition of "Stolen generation" in another guise. If Child Protection Proceedings have not issued Family Law assistance is often

- Tutela dei minori;
- Sistemi di assistenza a vittime di reati (Victoria) e risarcimento alle vittime (NSW); e
- Diritto di famiglia (quando riguarda la violenza domestica).

9. Spesso i clienti che contattano o che vengono indirizzati al FVPLS hanno molteplici problemi di natura giuridica a seguito di episodi di violenza domestica presenti o passati. Di conseguenza, gli avvocati FVPLS sono tenuti a fornire assistenza in numerose questioni legali delineate nel paragrafo 8. Per esempio, i clienti che hanno subito violenza domestica in presenza di minori, spesso necessitano di assistenza per ottenere il Provvedimento di Protezione per Violenza Domestica (Provvedimenti Restrittivi e di Intervento contro la Violenza), in genere nei confronti di uomini. In questa fase, è anche necessario presentare una domanda al Tribunale locale o alla Magistrates' Court di competenza per provvedimenti temporanei e definitivi, in genere a favore della madre e dei minori. Quando il Dipartimento dei Servizi Umani o il Dipartimento dei Servizi alla Comunità (NSW) è stato informato, spesso in seguito alla rivelazione della violenza domestica, e ha avviato la richiesta di un provvedimento di protezione presso il Tribunale dei minori, il FVPLS fornisce servizi di rappresentanza durante questo procedimento la cui durata può variare a seconda della natura e della durata dei

required to ensure arrangements for the children are secure and appropriate.

10. In providing legal advice and casework and undertaking other roles at FVPLS it is necessary to be aware of and sensitive to the broader issues of clients' lives. Issues relating to homelessness, mental health, physical ill-health, drug or alcohol use and past trauma are prevalent and need to be addressed if progress is to be made in relation to legal issues. Traumatic life history resulting from family dislocation, stolen generation issues, racism and discrimination often contribute to a client's presenting situation. Damaging experiences with the justice system mean there is a reluctance of victims/survivors to seek legal assistance through police, courts and lawyers. Many clients assisted by FVPLS have a history of childhood abuse including sexual assault. Often clients present for help with family violence and/or sexual assault issues including child protection matters, and during the course of their instructions also disclose childhood sexual abuse, witnessing violence between their own parents and involvement in the child protection system as children 'in need of care'. More

provvedimenti. Ancora una volta, un contatto immediato con la madre può aiutare nel ripresentarsi di una "Generazione rubata" sotto altre spoglie. Se il processo di protezione del minore non è giunto ad una conclusione, spesso è richiesto l'intervento del Tribunale di famiglia per assicurare che vengano presi degli accordi sicuri e appropriati per i minori.

10. Nel fornire assistenza legale e sociale e per tutti gli altri ruoli rivestiti dal FVPLS, è necessario essere consapevoli e sensibili di fronte alle questioni più ampie che riguardano la vita dei clienti. Problemi di mancanza di alloggio, salute mentale e fisica, assunzione di alcol o di sostanze stupefacenti e traumi passati sono diffusi e vanno affrontati se si vogliono compiere progressi nelle questioni di natura giuridica. Un passato traumatico legato a un allontanamento dal nucleo familiare, problemi di "generazione rubata", razzismo e altre forme di discriminazione spesso contribuiscono alla situazione rappresentata dal cliente. Esperienze traumatiche con la giustizia portano le vittime a essere riluttanti nel richiedere assistenza legale attraverso le forze di polizia, i tribunali e gli avvocati. Molti clienti assistiti dal FVPLS hanno un passato di abusi infantili, tra cui la violenza sessuale. Spesso i clienti chiedono aiuto per problemi di violenza domestica e/o violenza sessuale tra cui quelli legati alla protezione dei minori, e durante la fase istruttoria rivelano anche episodi di violenza sessuale infantile,

often than not the interventions by Police and Child Protection authorities during their childhood and their family's history has not been effective in making their lives safer or left them feeling that they and their families were not fairly dealt with.

avendo assistito a violenza tra i genitori e facendo parte del sistema di protezione dei minori in quanto minori "bisognosi di assistenza". Il più delle volte, gli interventi della polizia e delle autorità di protezione dei minori durante la loro infanzia e la storia della loro famiglia non è riuscita a rendere le loro vite più sicure o li ha lasciati con la sensazione che la loro situazione o quella delle loro famiglia non fosse stata gestita correttamente.

11. These issues are emotional and sensitive to address, and particularly in light of the history of racist attitudes and actions by white 'welfare' workers and services, there is often some difficulty in communicating around these issues by white workers with ATSI clients. In my experience these conversations are far less confronting for our ATSI clients if they are had with ATSI workers, who have a lived shared experience and understanding of ATSI history in Australia.

11. Questi problemi vanno affrontati con sensibilità tenendo conto della loro componente emotiva, e soprattutto alla luce della storia di azioni e atteggiamenti razzisti da parte di assistenti e servizi "sociali" bianchi, vi è spesso qualche difficoltà di comunicazione attorno a queste problematiche da parte di lavoratori bianchi con clienti ATSI. Nella mia esperienza, queste conversazioni creano molti meno attriti quando i clienti ATSI parlano con assistenti ATSI, che hanno vissuto esperienze simili e che comprendono la storia degli ATSI in Australia.

12. FVPLS assists children who are victims/survivors of family violence and sexual assault. The children may be secondary victims of violence having witnessed assaults upon their parent (generally the mother) and have suffered trauma as a result. The children may also be primary victims of family violence or sexual assault and require referral to specialist children's counselling and support services. I have observed that

12. Il FVPLS fornisce assistenza ai minori che sono vittime di violenza domestica e sessuale. Essi potrebbero essere vittime indirette quando assistono a violenze perpetrate su uno dei genitori (in genere la madre), subendo così un trauma. I minori potrebbero anche essere le vittime principali di violenza domestica o sessuale e richiedere un rinvio presso i servizi specializzati di consulenza e di sostegno. Ho potuto osservare che i

ATSI children feel more comfortable with a ATSI worker.

C. Benefits to clients and the community

13. With respect, the FVPLS, which caters primarily to ATSI women and children, would be in a better position to fulfil its aims if affirmative action criteria were included in its employment policy- both for women and for Aboriginal people.

14. In my experience working with ATSI people I have learnt that the family unit is the centre of cultural activity, economic interactions and the tradition has been that families stay very close, even after divorce and violence. Early intervention by a service such as ours can only attract the interest and trust of communities if we are seen to employ empathetic workers with the common knowledge shared with the clients of trauma and the origins of that trauma.

15. Employment of more ATSI staff at FVPLS is also a means by which to improve the accessibility of the justice system and legal system to the ATSI community. ATSI staff are best placed to advocate on behalf of clients for changes in the legal system to improve cultural sensitivity and accessibility.

16. The majority of the clients of FVPLS Victoria are women and children and the majority of perpetrators are male as is consistent with statistics relating to family violence in the broader

minori ATSI si sentono più a loro agio con un assistente ATSI.

C. Vantaggi per i clienti e per la comunità

13. Con tutto il rispetto, il FVPLS, che si rivolge in primo luogo alle donne e ai minori ATSI, realizzerebbe meglio il suo obiettivo se includesse dei criteri di azione positiva nella sua politica di lavoro- sia per le donne che per le comunità indigene.

14. Nella mia esperienza lavorativa a contatto con persone ATSI, ho imparato che il nucleo familiare è il centro dell'attività culturale, delle interazioni economiche e, secondo la tradizione, le famiglie restano molto unite, anche dopo un divorzio o episodi di violenza. Un intervento immediato da parte di un servizio come il nostro può solo stimolare l'interesse e la fiducia delle comunità se notano che assumiamo lavoratori empatici che condividono con i clienti esperienze comuni di traumi e delle origini di questi ultimi.

15. L'assunzione di più personale ATSI presso il FVPLS è anche un mezzo per migliorare l'accesso alla giustizia e al sistema legale da parte della comunità ATSI. Il personale ATSI si trova nelle condizioni migliori per battersi, per conto dei suoi clienti, per quei cambiamenti del sistema legale che possono migliorare la sensibilità culturale e l'accessibilità.

16. La maggior parte dei clienti del FVPLS di Victoria è composta da donne e minori e i principali autori di reati sono uomini. Questo è in linea con le statistiche relative alla violenza domestica nella comunità in

community. Women who have been victims of family violence or sexual assault at the hands of a male perpetrator often will not, and cannot, speak to a male about these issues.

17. Clients are referred to FVPLS Mildura branch office in the main by other ATSI support workers or support workers employed in ATSI organisations, and by our ATSI staff through their community connections. These workers are women. All of the staff employed at the Mallee Domestic Violence Service and Mallee Sexual Assault Unit are women. The Indigenous Family Violence Support Workers in the Loddon Mallee region are women. Other agencies that we have strong connections with and refer to, including the Victims of Crime Assistance & Counselling Program are staffed by women. This indicates acceptance amongst other community organisations working in this area that women who are victims of family violence/sexual assault prefer to be supported by women. Referrals also come to FVPLS Mildura branch office from female family members of the victim/survivor. Very rarely does a male family member contact our office on behalf of a female victim/survivor.

18. In my time working for ATSI people of Australia, it has been my experience that

senso ampio. Le donne vittime di violenza domestica o sessuale da parte di uomini spesso non parleranno e non riusciranno a parlare a un uomo di questi problemi.

17. I clienti sono indirizzati per lo più verso la sede del FVPSL di Mildura da altri lavoratori di sostegno ATSI o da lavoratori di sostegno impiegati in organizzazioni ATSI, e dal nostro staff ATSI attraverso le loro relazioni nella comunità. Questi lavoratori sono donne. Tutto lo staff impiegato presso l'Ufficio di Mallee per la Violenza Domestica e l'Unità per la Violenza Sessuale è costituito da donne. I Lavoratori di Sostegno contro la Violenza Domestica nelle Comunità Indigene nella regione Loddon Mallee sono donne. Altre agenzie con le quali intratteniamo stretti rapporti e a cui ci rivolgiamo, incluso il Programma di Consulenza & di Assistenza alle Vittime di Reati, sono formate da donne. Questo indica il riconoscimento all'interno di altre organizzazioni comunitarie impegnate nel settore che le donne vittime di violenza domestica o sessuale preferiscono essere aiutate da donne. Altre segnalazioni giungono alla sede del FVPLS di Mildura da parte di donne che fanno parte della famiglia della vittima. Sono molto rari i casi in cui un uomo facente parte della famiglia contatti il nostro ufficio per conto di una vittima donna.

18. Durante il mio lavoro per le persone ATSI in Australia, ho potuto osservare come

women clients will only instruct women lawyers in relation to family violence and sexual assault matters and will omit much of their story if instructing male lawyers. Often I have been instructed by female clients who have disclosed during their instructions to me details of sexual assaults and domestic violence assaults which they have not ever disclosed to their current partners and treating male doctors. In many instances I have been instructed by clients about sexual abuse that has occurred as part of domestic violence assaults which have been prosecuted by Police, but without any disclosure of the sexual abuse being made to the male detectives.

19. In my experience of my clients' cultures in Victoria, I have not experienced the taboo of a male client being unable to instruct a female lawyer. The Mildura office of FVPLS has the highest percentage of male clients, across all the FVPLS regions, and I have not experienced difficulties in obtaining full and frank instructions from these clients, including in relation to issues of childhood sexual abuse. In some situations my male clients have indicated that they would prefer their therapeutic, counselling, relationships to be with male counsellors, and FVPLS has been easily able to facilitate this under our present model of contracting out counselling services to psychologists in private practice.

delle clienti donne scelgano di farsi assistere unicamente da avvocati donna in relazione a questioni di violenza domestica o sessuale e omettano gran parte della loro storia se assistite da avvocati uomini. Spesso ho assistito clienti donne che durante l'istruttoria mi hanno rivelato dettagli della violenza domestica o sessuale subita, che non avevano mai raccontato ai loro partner attuali o al loro medico curante di sesso maschile. In molti casi ho assistito clienti che hanno subito violenza sessuale durante episodi di violenza domestica, perseguiti dalla polizia, che non hanno però rilasciato nessuna dichiarazione sulla violenza sessuale agli investigatori di sesso maschile.

19. Nella mia esperienza sulla cultura dei clienti di Victoria, non ho mai assistito a un cliente maschio incapace di rilasciare una dichiarazione a un avvocato donna. L'ufficio del FVPLS di Mildura registra la percentuale più alta di clienti uomini, rispetto a tutte le regioni del FVPLS, e non ho osservato nessuna difficoltà nell'ottenere una dichiarazione chiara e completa da parte di questi clienti, anche in relazione a episodi di violenza sessuale infantile. In alcuni casi, i miei clienti uomini hanno indicato la loro preferenza per terapisti uomini per i servizi di terapia e consulenza, e il FVPLS è riuscito facilmente ad assecondare le loro richieste attraverso il nostro modello attuale che esternalizza i servizi di consulenza presso degli psicologi che hanno studi privati.

Affirmed at:
In the State of Victoria, this 31st day of MARCH 2010
REBECCA BOREHAM
FVPLS Victoria
Before me

Dichiarazione effettuata:
Nello stato di Victoria, il giorno 31 MARZO 2010
REBECCA BOREHAM
FVPLS Victoria
In mia presenza

JUDGMENT

Neutral Citation Number: [2017] EWHC 1480 (Fam)
Case No: FD17P00037
IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL
Date: 20/06/2017

Before:
MR JUSTICE HAYDEN
Re: GP (wrongful removal)
Mehvish Chaudhry (instructed by **Dawson Cornwell Solicitors**) for the **Applicant**
Paul Hepher (instructed by **Terry Jones Solicitors**) for the **Respondent**
Hearing dates: 26th May 2017

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

MR JUSTICE HAYDEN

This judgment was delivered in private. The judge has given leave for this version of the judgment to

SENTENZA

Numero di Citazione Neutro: [2017] EWHC 1480 (Diritto di Famiglia)
Sentenza N°: FD17P00037
NELL'ALTA CORTE DI GIUSTIZIA (INGHILTERRA E GALLES)
SEZIONE DEL DIRITTO DI FAMIGLIA
Royal Courts of Justice
Strand, Londra, WC2A 2LL
Data: 20/06/2017

Presiede:
GIUDICE HAYDEN
Da: GP (sottrazione illecita)
Mehvish Chaudhry (istruito dallo studio legale **Dawson Cornwell**) per la **Ricorrente**
Paul Hepher (istruito dallo studio legale **Terry Jones**) per il **Convenuto**
Data delle udienze: 26 maggio 2017

- -

Sentenza Approvata

Ai sensi delle CPR PD 39A paragrafo 6.1 dispongo che non vengano presi appunti stenografici ufficiali di questa Sentenza e che le copie di questa versione vengano ritenute autentiche.

.....

GIUDICE HAYDEN

Questa sentenza è stata pronunciata in privato. Il giudice ha fornito il permesso di pubblicare questa

be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Mr Justice Hayden:

1. This is an application pursuant to the Child Abduction and Custody Act 1985 seeking the return of GP who, it is agreed, was wrongfully removed from Italy on the 10th February 2016 by her mother (M). GP is 11 years old and presently lives with her mother alternating between Shrewsbury during the week and Derby at the weekends. F lives in San Benedetto Del Tronto, Italy.

2. The Applicant father (F) was born in Italy, the Mother in Latvia. The couple married in Italy in May 2001. They were primarily based in San Benedetto Del Tronto but travelled periodically to Latvia. GP was born in Latvia in December 2005. The parties returned to Italy on a permanent basis in September 2010. GP started nursery.

3. It is plain that the marriage was in difficulty by November 2010 and early in 2011 Divorce proceedings commenced. Following the parties separation M removed GP from the family home to Sommacampagna, Northern Italy, 450 Km away. F reported this unlawful

versione della sentenza a condizione che (a prescindere dal suo contenuto) in ogni versione pubblicata venga rigorosamente preservato l'anonimato dei minori e dei membri della famiglia. Tutti, inclusi i rappresentanti dei media, devono assicurare il rispetto assoluto di questa condizione. La mancata osservanza sarà considerata un oltraggio alla corte.

Giudice Hayden:

1. Questa è una richiesta formulata ai sensi del Child Abduction and Custody Act del 1985 (Legge sulla Custodia e sulla Sottrazione di Minore) in cui si chiede il ritorno di GP che si è convenuto sia stata sottratta illegalmente dall'Italia dalla madre (M) il giorno 10 febbraio 2016. GP ha 11 anni e vive attualmente con sua madre alternando soggiorni a Shrewsbury durante la settimana e a Derby nei fine settimana. P vive a San Benedetto del Tronto in Italia.
2. Il padre (P) Ricorrente è nato in Italia, la Madre in Lettonia. La coppia si sposò in Italia nel maggio 2001. Risiedevano principalmente a San Benedetto del Tronto ma viaggiavano periodicamente in Lettonia. GP è nata in Lettonia nel dicembre 2005. Le parti sono ritornate in Italia su base permanente nel settembre 2010, dove GP ha iniziato la scuola dell'infanzia.
3. È chiaro che il matrimonio era in crisi a partire da novembre 2010 e all'inizio del 2011 sono iniziate le procedure di divorzio. A seguito della separazione delle parti, M ha sottratto GP dalla sua casa di famiglia portandola a Sommacampagna, nel Nord Italia, a 450

removal to the police and Court proceedings were commenced. In November 2014 M was sentenced to 1 year in prison for the removal of the child, by the 'Court of Ascoli Piceno, Criminal Division'. An appeal against that decision was rejected by the Court of Appeal in Ancona on the 12th January 2017. It is important to record a number of paragraphs from the judgment of that Court:

"On 17 January 2017 the Court of Appeal of Ancona delivered judgment (Justice Giuliana Basillia, Justice Marina Tommolini, Justice Cecelia Laura Cristina Bellucci) in relation to the Mother's appeal of the one-year sentence for removing the child to Northern Italy. The Court is referred to decision in relation to the Mother's appeal and the findings made in relation to the Mother's conduct within that judgment. In particular, the Court found as follows:

The Mother had acted in a pre-meditated manner, and unilaterally so as to separate the Father from his daughter, in order to pursue a romantic relationship.

The Mother's reports to the police were lacking in detail, generic, and contrived to lend support to her decision to unilaterally remove the child from her family home.

The Court dismissed the Mother's claims, finding that the child had a strong bond with her Father and wider family.

The Court further, found that the Mother removed the child for a protracted period of time and: "created a situation whereby she could keep the child under her exclusive control with the purpose of excluding Mr P from any decision and contact, and that she ceased that conduct

km di distanza. P ha denunciato alla polizia questa sottrazione illecita ed è stato avviato il procedimento giudiziario. Nel novembre 2014 M è stata condannata a 1 anno di reclusione per la sottrazione della minore dal 'Tribunale di Ascoli Piceno, Sezione Penale'. Il ricorso contro la sentenza è stato rigettato dalla Corte d'Appello di Ancona il 12 gennaio 2017. È fondamentale richiamare una serie di paragrafi della sentenza della Corte:

"Il 17 gennaio 2017 la Corte d'Appello di Ancona ha pronunciato la sentenza (Giudice Giuliana Basillia, Giudice Marina Tommolini, Giudice Cecelia Laura Cristina Bellucci) in relazione al ricorso della Madre contro la condanna a un anno di reclusione per la sottrazione della minore e il suo trasferimento nel Nord Italia. La Corte si rifà alla sentenza in relazione al ricorso della Madre e alle conclusioni a cui si è giunti rispetto alla condotta della Madre all'interno di tale sentenza. In particolare, la Corte ha riscontrato quanto segue:

La Madre aveva agito in modo premeditato e unilaterale in modo da separare il Padre da sua figlia, al fine di perseguire una relazione romantica.

I verbali rilasciati dalla Madre alla polizia sono poco dettagliati, generici e artificiosi al fine di sostenere la sua decisione di sottrarre unilateralmente la minore dalla sua abitazione.

La Corte ha respinto la richiesta della Madre, avendo constatato che la minore aveva un forte legame con il Padre e con il resto della famiglia.

Inoltre, la Corte ha constatato che la Madre ha rimosso la minore per un periodo prolungato e che: "ha creato una situazione in cui poteva tenere la minore sotto il suo esclusivo controllo con lo scopo di escludere il signor P da ogni decisione e contatto, e ha messo fine a

only when forced to do so by the judicial orders."

The Court of Appeal also took a very dim view of the Mother's conduct, playing by her own rules in order to satisfy her own wishes.

4. The impact of this custodial sentence has been the focus of submissions, during the course of this hearing and I will return to it below. It is also necessary to record that on the 24th July 2014 the Court of Ascoli Piceno granted joint custody of GP to M and F. That Order, which has been filed in these proceedings, provided that GP shall live each year in the care of M from 11th September until 9th June and in the care of F from 10th June to 10th September. In addition, there was provision for alternate weekend contact and midweekly contact, F was ordered to pay child support of 300 Euros per/month. I note that the maintenance order was also subject of an appeal, dismissed by the Court of Appeal in Ancona on the 11th August 2015.

5. It is M's own case that she complied with the contact and care arrangements. GP's school report for this period reveals her to be making good progress in the classroom, an intuitive learner and able to *'gather, analyse and re-use information'*. She is described as *'well integrated into the classroom'*.

questa condotta solo quando obbligata attraverso provvedimenti giudiziari."

La Corte d'Appello ha espresso un parere negativo anche nei confronti della condotta della Madre, che ha giocato secondo le sue regole per poter soddisfare i suoi desideri.

4. L'impatto di questa pena detentiva è stato il punto centrale di altre precisazioni, durante il corso di questa udienza, e vi ritornerò in seguito. È anche necessario ricordare che il 24 luglio 2014 il Tribunale di Ascoli Piceno ha concesso l'affidamento condiviso di GP a M e P. Tale Provvedimento, che è stato archiviato in questi atti, prevede che GP viva ogni anno sotto la custodia di M dall'11 settembre al 9 giugno e sotto la custodia di P dal 10 giugno al 10 settembre. Inoltre, è stato disposto che vi siano comunicazioni a fine settimana alterni e a metà settimana e che P paghi l'assegno di mantenimento che corrisponde a 300 euro al mese. Sottolineo che il provvedimento che fissa il contributo al mantenimento è stato anche oggetto di ricorso, respinto dalla Corte d'Appello di Ancona l'11 agosto 2015.

5. M ha rispettato le disposizioni sulle comunicazioni e sulla custodia. La pagella di GP relativa a questo periodo mostra che sta compiendo grandi progressi nella sua classe, è un'allieva intuitiva e capace di *'raccogliere, analizzare e riutilizzare le informazioni'*. Viene descritta come *'ben integrata nella classe'*.

6. There has been no dispute that at the time of her removal GP was habitually resident in Italy. M's defence is set out within her statement of defence. She relies upon Article 13 of the 1980 Hague Convention, namely that:

i) There is a grave risk that GP's return would expose her to physical or psychological harm or otherwise place her in an intolerable situation; and/or

ii) GP objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of her views.

M accepts that in removing GP to the UK she acted in breach of the Father's rights of custody.

7. Proceedings in this jurisdiction were instituted on the 25th January 2017 when Parker J issued a Location Order. On the 26th January the Tipstaff Order was executed on the maternal uncle who disclosed that M was living in Shrewsbury with a man called Steve. The uncle asserted that he did not know M's address in Shrewsbury, confirmed that GP was attending school but was unable to give the name of it. On the 30th January the case was restored before Moor J who made orders intended to facilitate locating the child. Those orders were unproductive.

6. Non è stato contestato il fatto che GP fosse residente abituale in Italia al momento della sua sottrazione. La difesa di M è definita all'interno della sua comparsa di risposta. Si basa sull'Articolo 13 della Convenzione dell'Aja del 1980, precisamente laddove si afferma che:

i) Vi è un rischio grave che il ritorno di GP la esponga a un danno fisico o psicologico o che la ponga altresì in una situazione intollerabile; e/o

ii) GP si oppone al suo rientro e ha raggiunto l'età e un livello di maturità per i quali è giusto tenere in considerazione le sue opinioni.

M accetta di aver agito in violazione del diritto di custodia del Padre avendo sottratto GP portandola nel Regno Unito.

7. Il procedimento è stato avviato in questa giurisdizione il 25 gennaio 2017 quando il Giudice Parker ha emesso un Provvedimento di Localizzazione. Il 26 gennaio il Provvedimento del pubblico ufficiale è stato notificato allo zio materno che aveva rivelato che M viveva a Shrewsbury con un uomo di nome Steve. Lo zio ha affermato di non conoscere l'indirizzo di M a Shewsbury e confermato che GP frequentava la scuola ma non sapeva quale. Il 30 gennaio il caso è stato riaperto davanti al Giudice Moor che ha preso dei provvedimenti per facilitare la localizzazione della minore. Questi provvedimenti non sono stati efficaci.

8. In pursuance of the whereabouts of M, Peter Jackson J made further orders on the 28th February, including an order compelling the attendance of the maternal uncle *'to give evidence before a Judge and to answer questions on oath concerning what he knows about the whereabouts of the said child, where they are and where they might be found'*. On the 28th February, F's solicitors made contact with the maternal uncle who asserted that M was living with him. Accordingly, repeated attempts were made by the Tipstaff to serve M at the uncle's address. It is not necessary for me to set out those efforts, I merely observe that M was eventually served on the 1st March 2017. Whilst M denies any knowledge of the proceedings until early March, I find that wholly unconvincing. It is inconsistent with her case that she spends every weekend with her brother. This was a determined and cynical evasion of service.

8. Per poter localizzare M, il Giudice Peter Jackson ha emanato ulteriori provvedimenti il 28 febbraio, incluso un provvedimento che obbligava lo zio materno a *'testimoniare davanti a un Giudice e a rispondere ad alcune domande sotto giuramento a proposito delle notizie in suo possesso sul domicilio della suddetta minore, su dove si trovino madre e figlia e dove si possano trovare'*. Il 28 febbraio, gli avvocati di P si sono messi in contatto con lo zio materno che ha affermato che M viveva con lui. Di conseguenza, molteplici tentativi sono stati fatti da parte del pubblico ufficiale per consegnare i provvedimenti a M presso l'indirizzo dello zio. Non è necessario che vi illustri tutti gli sforzi. Mi limito ad osservare che M ha finalmente ricevuto i provvedimenti il 1 marzo 2017. Per quanto M neghi di essere venuta a conoscenza dei provvedimenti prima degli inizi di marzo, lo trovo altamente improbabile. La probabilità che passi ogni fine settimana da suo fratello è incompatibile con il suo caso. Si tratta di un cinico e deliberato tentativo di eludere l'atto di notifica.

Article 13(b) – grave risk of harm

19. The court is not obliged to order the return of the child if *'the person, institution or body which opposes its return establishes that…there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation'*.

20. The Supreme Court clarified the principles to be applied in **Re E**

Articolo 13(b) – rischio grave di danni

19. La corte non è obbligata a disporre il rientro della minore se *'la persona, istituto o ente che si oppone al suo rientro stabilisce che… vi è un rischio grave che il suo rientro lo/la esponga a un danno fisico o psicologico o altrimenti che lo/la ponga in una situazione intollerabile'*.

20. La Corte Suprema ha chiarito i principi da applicare in **Re E (Children)**

(Children) (Abduction: Custody Appeal) [2011] UKSC 27:

"[31] ……. there is no need for the article to be narrowly construed. By its very terms, it is of restricted application. The words of article 13 are quite plain and need no further elaboration or gloss."

[33] Firstly, it is clear that the burden of proof lies with the person institution or other body which opposes the child's return. It is for them to produce evidence to substantiate one of the exceptions. There is nothing to indicate that the standard of proof is other than the ordinary balance of probabilities. But in evaluating the evidence the court will, of course, be mindful of the limitations involved in the summary nature of the Hague Convention process. It will rarely be appropriate to hear oral evidence of the allegations made under article 13(b) and so neither those allegations nor their rebuttal are usually tested in cross-examination.

9. The following passage also requires to be set out and, in my view, emphasised:

[33] Second, the risk to the child must be grave. It is not enough as it is in other contexts such as asylum, that the risk be real it must have reached such a level of seriousness has to be characterized as grave. Although grave characterizes the risk rather than the harm there is in ordinary language a link between the two. Thus a relatively low risk of death or really serious injury might properly be qualified as grave while a higher level of risk might be required for other less serious forms of harm.

[34] ... the words "physical or psychological harm" are not qualified.

(Abduction: Custody Appeal) [2011] UKSC 27:

"[31]……. non è necessario interpretare letteralmente l'articolo. Proprio per le sue condizioni, la sua applicazione è limitata. Le parole contenute nell'articolo 13 sono piuttosto chiare e non necessitano di ulteriori elaborazioni o glosse."

[33] Innanzitutto, è chiaro che l'onere della prova ricade sulla persona, istituto o ente che si oppone al rientro del minore. Spetta a loro fornire le prove per dimostrare la sussistenza di una delle eccezioni. Niente indica che lo standard di prova sia diverso dall'ordinario bilanciamento delle probabilità. Ma nel valutare le prove la corte dovrà ovviamente tenere in considerazione le limitazioni incluse nella natura sommaria del procedimento della Convenzione dell'Aja. Raramente risulterà opportuno ascoltare testimonianze orali delle accuse mosse ai sensi dell'articolo 13(b), pertanto né le accuse né le relative confutazioni sono generalmente discusse durante il controinterrogatorio.

9. Anche il seguente passaggio va illustrato e, a mio parere, enfatizzato:

[33] In secondo luogo, il rischio per il minore deve essere grave. A differenza di altri contesti come l'asilo dove è sufficiente che il rischio sia reale, qui è necessario che il rischio raggiunga un livello tale da poter essere caratterizzato come grave. Sebbene la gravità caratterizzi il rischio piuttosto che il danno, vi è nella lingua comune un legame tra i due. Pertanto, un rischio relativamente basso di morte o delle lesioni molto gravi potrebbero essere qualificati a tutti gli effetti come gravi mentre un livello più elevato di rischio potrebbe essere richiesto per altre forme meno gravi di danno.

[34] ... le parole "danno fisico o psicologico" non sono qualificate.

However, they do gain colour from the alternative "or otherwise" placed "in an intolerable situation" (emphasis supplied). As was said in In re D [2007] 1 AC 619, para 52, "'Intolerable' is a strong word, but when applied to a child must mean 'a situation which this particular child in these particular circumstances should not be expected to tolerate'". Those words were carefully considered and can be applied just as sensibly to physical or psychological harm as to any other situation. Every child has to put up with a certain amount of rough and tumble, discomfort and distress. It is part of growing up. But there are some things which it is not reasonable to expect a child to tolerate. Among these, of course, are physical or psychological abuse or neglect of the child herself. Among these also, we now understand, can be exposure to the harmful effects of seeing and hearing the physical or psychological abuse of her own parent. Mr Turner accepts that, if there is such a risk, the source of it is irrelevant: eg, where a mother's subjective perception of events leads to a mental illness which could have intolerable consequences for the child.

Tuttavia, acquistano sfumature attraverso l'alternativa "o altrimenti" posto "in una situazione intollerabile" (enfasi aggiunta). Come affermato in In re D [2007] 1 AC 619, par. 52, "'Intollerabile' è una parola forte, ma quando applicata a un minore deve indicare 'una situazione che questo minore in particolare in queste circostanze particolari non è tenuto a tollerare'". Queste parole sono state prese in considerazione attentamente e possono essere applicate ragionevolmente sia nel caso di danno fisico o morale che in ogni altra situazione. Ogni bambino deve sopportare difficoltà, ostacoli, dolori e sofferenze. Fa parte della crescita. Ma ci sono alcuni atti che un bambino non è tenuto a tollerare. Tra questi vi è ovviamente la violenza fisica o psicologica o la situazione in cui la minore viene trascurata. Tra questi vi è anche, come ora possiamo ben intuire, l'esposizione agli effetti dannosi che derivano dal vedere o sentire episodi di violenza fisica o psicologica a danno del genitore. Il giudice Turner ritiene che, nel caso in cui tale rischio sussista, la sua fonte è irrilevante: ad es., il caso in cui la percezione soggettiva degli eventi da parte della madre produca una malattia mentale che potrebbe avere conseguenze intollerabili per il minore.

10. The predictive nature of Article 13b is underscored:

10. La natura predittiva dell'Articolo 13b è messa in evidenza:

[35] Fourth, article 13(b) is looking to the future: the situation as it would be if the child were to be returned forthwith to her home country. As has often been pointed out, this is not necessarily the same as being returned to the person, institution or other body who has requested her return, although of course it may be so if that person has the right so to demand. More importantly, the situation which the child will face on return depends crucially on the protective measures which can be put in place to secure that the child will not be called upon to face an intolerable situation when she gets home. Mr Turner accepts that if the risk is serious enough to fall within article 13(b) the court is not only concerned with the

[35] Quarto punto: l'articolo 13(b) è proiettato sul futuro, sulla situazione che si creerebbe se la minore rientrasse immediatamente nel suo paese d'origine. Come sottolineato più volte, non corrisponde necessariamente al rientro presso la persona, istituto o ente che ne ha richiesto il rientro, sebbene questo possa essere ovviamente possibile laddove tale persona ne abbia il diritto. Il fattore più importante è però la situazione che la minore dovrà affrontare al suo rientro, che dipende in modo cruciale dalle misure protettive messe in atto per assicurare che la minore non debba affrontare una situazione intollerabile al suo rientro a casa. Il giudice Turner accetta che se il rischio dovesse essere abbastanza grave da essere ricompreso

child's immediate future, because the need for effective protection may persist.

nell'articolo 13(b), l'interesse della corte non riguarderebbe solo il futuro immediato della minore, dal momento che la necessità di una tutela efficace potrebbe persistere.

11. Addressing the challenge facing the Judge in the face of factual dispute, Baroness Hale observed:

"[36] There is obviously a tension between the inability of the court to resolve factual disputes between the parties and the risks that the child will face if the allegations are in fact true.... Where allegations of domestic abuse are made, the court should first ask whether, if they are true, there would be a grave risk that the child would be exposed to physical or psychological harm or otherwise placed in an intolerable situation. If so, the court must then ask how the child can be protected against the risk. The appropriate protective measures and their efficacy will obviously vary from case to case and from country to country. This is where arrangements for international co-operation between liaison judges are so helpful. Without such protective measures, the court may have no option but to do the best it can to resolve the disputed issues."

11. A proposito della sfida che il Giudice dovrebbe affrontare nel caso di una contestazione fattuale, la Baronessa Hale osserva:

"[36] Ovviamente, vi è un contrasto tra l'inabilità della corte di dirimere le controversie sui fatti tra le parti e i rischi che la minore affronterebbe se le accuse fossero vere… Nel caso di accuse di violenza domestica, la corte dovrebbe innanzitutto chiedere se, nel caso in cui risultassero vere, sussista un rischio grave che la minore venga esposta a un danno fisico o psicologico o che si trovi altresì in una situazione intollerabile. In tal caso, la corte deve quindi chiedere come la minore possa essere tutelata. Le misure protettive appropriate e la loro efficacia varieranno ovviamente da caso a caso e da nazione a nazione. In questi casi risultano molto utili gli accordi per la cooperazione internazionale tra giudici di collegamento. In assenza di tali misure protettive, la corte potrebbe non avere altre opzioni se non fare tutto il possibile per dirimere le questioni oggetto di contestazione."

12. As to the application of the guidance, the Supreme Court endorsed the approach of Charles J in its judgment in **Re S (Abduction: Article 13(b) Defence) [2012] 2 FLR 442**:

[29] In his substantive judgment dated 30 August 2011 Charles J sought faithfully to follow the guidance given by this court at para [36] of its judgment in Re E (Children) (Abduction: Custody Appeal), set out in para [20] above. Thus:

12. Per quanto riguarda l'applicazione della guida, la Corte Suprema ha appoggiato l'approccio del Giudice Charles nella sentenza in **Re S (Abduction: Article 13(b) Defence) [2012] 2 FLR 442**:

[29] Nella sua importante sentenza datata 30 agosto 2011, il Giudice Charles ha cercato di seguire fedelmente la guida proposta dalla corte al par. [36] della sua sentenza in Re E (Children) (Abduction: Custody Appeal), illustrato al par. [20] di cui sopra. Pertanto:

(a) He began by assuming that the mother's allegations against the father were true.

(b) He concluded that, on that assumption, and in the light of the fragility of the mother's psychological health, the protective measures offered by the father would not obviate the grave risk that, if returned to Australia, W would be placed in an intolerable situation.

(c) He proceeded to consider, as best he could in the light of the absence of oral evidence and the summary character of the inquiry, whether the mother's allegations were indeed true.

(d) Following a careful appraisal of the documentary evidence, including the mass of emails between the parents, he concluded that, as counsel for the father had been constrained to acknowledge, the mother had 'made out a good prima facie case that she was the victim of significant abuse at the hands of the father' (italics supplied).

13. I think that it is helpful to condense the principles that required to be applied. Thus:

(i) There must be a grave risk of the harm alleged to the child;

(ii) Intolerable harm means a situation which the particular child should not be expected to tolerate in the circumstances. Harm includes both physical and psychological harm. This encompasses exposure to the physical and psychological harm done to a parent;

(a) Egli è partito dalla supposizione che le accuse della madre contro il padre fossero vere.

(b) A partire da questa supposizione e alla luce della fragilità della salute psicologica delle madre, egli ha concluso che le misure protettive offerte dal padre non ovvierebbero al rischio grave che, in caso di rientro in Australia, W si trovi in una situazione intollerabile.

(c) Egli ha proseguito con la valutazione della veridicità delle accuse della madre nel modo migliore possibile vista l'assenza di testimonianze orali e considerato il carattere sommario dell'indagine.

(d) A seguito di un'attenta valutazione delle prove documentali, inclusa una serie di scambi via email tra i genitori, egli ha concluso che, come l'avvocato del padre aveva dovuto ammettere, la madre aveva 'presentato in modo apparentemente fondato il fatto di essere vittima di considerevole violenza da parte del padre' (corsivo aggiunto).

13. Ritengo utile condensare i principi che devono essere applicati. Pertanto:

(i) Vi deve essere un rischio grave del presunto danno al minore;

(ii) Danno intollerabile significa una situazione che quel minore in particolare non è tenuto a tollerare date le circostanze. Il danno può avere sia natura fisica che psicologica. Questo comprende l'esposizione a un danno fisico e psicologico nei confronti di uno dei genitori;

(iii) The source of the risk of harm is irrelevant such that it may stem from the subjective perception of a parent which could have intolerable consequences for the child;

(iv) If the risk is serious enough the court is not only concerned with the child's immediate future as the need for protection may persist.

14. From the case law, referred to above, Ms Chaudhry on behalf of F, distils the following principles. I agree with her that these can be helpfully summarised:

i) The burden of proof lies with the person who opposes the child's return. The standard of proof is the balance of probabilities;

ii) Article 13(b) is not to be constructed narrowly; by its very terms, it is of restricted application. The words of the Article were plain and needed no further elaboration or gloss;

iii) It is rarely appropriate to hear oral evidence of the allegations made under article 13(b);

iv) The risk of the harm must be "grave"; it was not enough for the risk to be "real". It must have reached such a level of seriousness as to be characterised as "grave." A relatively low risk of death or really serious injury might properly be qualified as "grave" while a higher level

(iii) La fonte del rischio di danno è irrilevante e potrebbe derivare dalla percezione soggettiva del genitore che può provocare conseguenze intollerabili per il minore;

(iv) Se il rischio dovesse essere abbastanza grave l'interesse della corte non riguarderebbe solo il futuro immediato della minore, dal momento che la necessità di una tutela potrebbe persistere.

14. A partire dal precedente di cui sopra, l'avvocato Chaudhry riassume i seguenti principi per conto di P. Concordo con lei che questi possono essere opportunamente riassunti:

i) L'onere della prova ricade sulla persona che si oppone al rientro del minore. Lo standard di prova è il bilanciamento delle probabilità;

ii) L'articolo 13(b) non va inteso in senso letterale; proprio per le sue condizioni, la sua applicazione è limitata. Le parole contenute nell'Articolo erano chiare e non necessitavano di ulteriori elaborazioni o glosse;

iii) Raramente risulterà opportuno ascoltare testimonianze orali delle accuse mosse ai sensi dell'articolo 13(b);

iv) Il rischio di danno deve essere "grave"; non era sufficiente che il rischio fosse "reale". Deve aver raggiunto un livello tale da essere caratterizzato come "grave." Un rischio relativamente basso di morte o lesioni molto gravi potrebbero essere qualificati a tutti gli effetti come "gravi" mentre un livello più elevato di

of risk might be required for other less serious forms of harm;

v) Intolerability denotes a situation that the particular child in the particular circumstances of the case should not be expected to tolerate;

vi) The source of the risk is irrelevant: e.g. where a mother's subjective perception of events leads to a mental illness which could have intolerable consequences for the child;

vii) When assessing the risk that a child faces on return the court will have regard to protective measures;

viii) Critically, pursuant to Article 11(4) of *Brussels II Revised* a court cannot refuse to order a child to return when Article 13(b) is raised when it is "established that adequate arrangements can be made to secure the protection of the child after return";

ix) Where there are disputed allegations which can neither be tried nor objectively verified, the focus of the inquiry is bound to be on the sufficiency of any protective measures which can be put in place to reduce the risk. The clearer the need for protection, the more effective the measures will have to be;

x) Inherent in the Convention is the assumption that the best interests of children as a primary consideration are met by a return to the country of their habitual residence following a wrongful

rischio potrebbe essere richiesto per altre forme meno gravi di danni;

v) Intollerabilità denota una situazione che questo minore in particolare non è tenuto a tollerare nelle circostanze particolari del caso;

vi) La fonte del rischio è irrilevante: ad es., il caso in cui la percezione soggettiva degli eventi da parte della madre produca una malattia mentale che potrebbe avere conseguenze intollerabili per la minore;

vii) Durante la valutazione del rischio della minore nel caso di rientro la corte dovrà tenere in considerazione le misure protettive;

viii) Soprattutto, ai sensi dell'Articolo 11(4) del *Regolamento Bruxelles II bis*, una corte non può rifiutarsi di ordinare il rientro di un minore quando viene citato l'Articolo 13(b) laddove venga "stabilito che si possano prendere accordi adeguati al fine di assicurare la protezione del minore dopo il suo rientro";

ix) Nel caso di accuse contestate che non possono essere né provate né verificate oggettivamente, l'indagine dovrà focalizzarsi sulla presenza di misure protettive sufficienti che possono essere messe in atto per ridurre il rischio. Più è chiaro il bisogno di protezione, più dovranno essere efficaci le misure;

x) Insita nella Convenzione è la supposizione che l'interesse superiore dei minori quale considerazione preminente venga soddisfatto dal loro rientro nella nazione di residenza abituale a seguito di

removal. That assumption is capable of being rebutted only in circumstances where an exception is made out.

15. Neither Mr Hepher nor Ms Chaudhry has asked me to evaluate the allegations of domestic violence. They are correct in this approach. The Italian courts are seized of these issues and the Court of Appeal in Ancona has, in an admirably succinct judgment, made its findings on these issues. The basis upon which it is contended that GP's return puts her in an 'intolerable' situation is essentially: F is only able to make limited financial provision (300 Euros per/month); no accommodation has been provided for M or GP; M is unlikely to find satisfactory employment; M faces a custodial sentence on her return.

16. I do not doubt that M is likely to find it difficult to manage her finances in Italy. Indeed, I have no difficulty in accepting that her unlawful removal of her daughter to the UK was motivated by a determination to provide a better quality of life for her. That said, the Italian Court made orders in relation to maintenance and rejected F's appeal and has plainly been vigilant to see that GP receives provision. Moreover, whilst M may not find the volume of work available to her that has been possible in UK she has, historically, been able to find work as a translator in Italy.

una sottrazione illecita. Questa supposizione può essere confutata solo in circostanze in cui venga indicata un'eccezione.

15. Né l'avvocato Hepher né l'avvocato Chaudhry mi hanno chiesto di valutare le accuse di violenza domestica. Il loro approccio è corretto. I tribunali italiani si riservano il diritto di rivalutare dette questioni e la Corte d'Appello di Ancona ha riassunto in modo ammirevole in una sentenza le sue conclusioni a proposito. La base su cui si ritiene che il ritorno di GP la ponga in una situazione 'intollerabile' è essenziale: P può fornire una copertura finanziaria limitata (300 euro al mese); non è stata fornita nessuna sistemazione per M o per GP; è improbabile che M trovi un lavoro soddisfacente; M rischia una pena detentiva al suo rientro.

16. Non dubito che M possa trovare difficile gestire le sue finanze in Italia. Al contrario, non ho problemi nel credere che la sua sottrazione illecita della figlia con successivo trasferimento nel Regno Unito fosse motivata dal desiderio di fornirle una qualità di vita migliore. Detto ciò, la Corte italiana ha preso provvedimenti in relazione al contributo al mantenimento respingendo il ricorso di P ed ha vigilato affinché GP ricevesse il denaro. Inoltre, mentre M potrà ritenere che la mole di lavoro disponibile per lei non sia paragonabile a quella del Regno Unito, in passato è riuscita a trovare lavoro come traduttore in Italia.

17. The parties have both drawn my attention to the advice received in relation to the legal framework applicable to M's circumstances in Italy. These are to be found in the **Rules on the Penitentiary Order and the Implementation of the Privileges and Limitations of Freedom** (16th April 2015, No. 47; G. U. 23.04.2015, n 94 at Chapter vi: Alternative Measures to Determining and Dismissing the Debt, Article 47). This provides:

    i. *"If the imprisonment sentence imposed does not exceed 3 years, the convicted person may be entrusted to the social service outside the institution for a period equal to the penalty payable"*

    ii. *The measure is adopted on the basis of results of personality observation, carried out collegially for at least one month in the institution, in cases where it can be considered that the measure itself, also through the prescriptions referred to in paragraph 5, contribute to the re-education of the offender and ensure the prevention of the danger that he commits other offences."*

18. Ms Gerardina Orlandella, the Italian lawyer advising the parties, asserts that this should be interpreted as follows: *'I confirm you that is possible to convert her sentence to imprisonment to community service'*. This is the extent of the advice on the point, provided by email to Ms Ramus of Dawson Cornwell, Solicitors. The advice is less than pellucid in clarity but it is apparent that a 12 month custodial

17. Entrambe le parti hanno attirato la mia attenzione sulla consulenza ricevuta in relazione al quadro normativo applicabile alle circostanze di M in Italia. È possibile trovarle nelle **Norme sull'ordinamento penitenziario e sulla esecuzione delle misure privative e limitative della libertà** (16 aprile 2015, N. 47; G. U. 23.04.2015, n. 94 al Capitolo vi: Misure alternative alla detenzione e remissione del debito, articolo 47). Stabilisce che:

    i. *"Se la sentenza di condanna alla pena detentiva non supera i 3 anni, la persona condannata potrebbe essere affidata ai servizi sociali al di fuori dell'istituto per un periodo di tempo uguale alla penale applicabile"*

    ii. *La misura è adottata sulla base dei risultati dell'osservazione della personalità, condotta collegialmente per almeno un mese all'interno dell'istituto, nei casi in cui si può ritenere che la misura stessa, anche attraverso le prescrizioni menzionate nel paragrafo 5, contribuisca alla rieducazione del condannato e assicuri la prevenzione del pericolo che commetta altri reati."*

18. L'avvocato italiano Gerardina Orlandella che si è occupata della consulenza delle parti afferma che questo va interpretato come segue: *'Confermo che è possibile trasformare la sua condanna a una pena detentiva in servizi socialmente utili'*. Questa è la portata della consulenza in questione, fornita via email all'avvocato Ramus dello studio legale Dawson Cornwell. La consulenza è tutt'altro che

sentence is far from inevitable. That said, the wrongful removal of GP to the UK has, so far, not been the subject of a prosecution. Whether it will be is entirely a matter for the Italian authorities. The seriousness of these offences is underscored in our own courts, see: **Regina v H (R) and another [2016] EWCA Crim 1754**.

19. Whilst I do not discount the possibility that M may serve a period in custody and that this, if it happens, will be traumatic to GP, it does not seem to me, on a proper construction, to amount to intolerability even in a subjective sense, by which I mean: *'a situation which this particular child in these particular circumstances should not be expected to tolerate'*. Moreover, to conclude otherwise would be, it seems to me, to undermine the central principle of comity which underpins these proceedings. Every child who is returned to a country from which he has been wrongfully removed must, logically, face the prospect that the abducting parent may be incarcerated. All children bear a burden when a parent serves a custodial sentence. These are part of the inevitable repercussions from which children can not always be protected. Indeed, the realisation that actions have consequences and that breaches of the law may attract punishment, may be harsh lessons for a child but ones which carry at least some longer term benefits. GP, as is clear from the CAFCASS report, is a resilient young

chiara ma è evidente che una pena detentiva di 12 mesi è inevitabile. Detto ciò, la sottrazione illecita di GP con successivo trasferimento nel Regno Unito non è stata finora oggetto di un'azione penale. Che lo diventi o meno dipende unicamente dalle autorità italiane. La gravità di questi reati è sottolineata nelle nostre corti, per cui si veda: **Regina v H (R) e [2016] EWCA Crim 1754**.

19. Sebbene non escluda la possibilità che M trascorra un periodo di detenzione e che questo, se dovesse succedere, sarebbe traumatico per GP, non mi sembra che raggiunga livelli di intollerabilità nemmeno in senso soggettivo, inteso come *'una situazione che questo minore in particolare in queste circostanze particolari non è tenuto a tollerare'*. Inoltre, una diversa conclusione andrebbe, a mio parere, a minare il principio centrale di reciprocità che è alla base di questi procedimenti. Ogni minore che rientra nella nazione dal quale è stato sottratto in maniera illecita deve, logicamente, affrontare la prospettiva che il genitore responsabile della sottrazione venga incarcerato. Tutti i minori portano un peso quando un genitore sconta una pena detentiva: fanno parte delle ripercussioni inevitabili da cui i minori non sempre possono essere protetti. Al contrario, comprendere che le azioni hanno conseguenze e che infrangere la legge può portare a sanzioni può costituire una dura lezione per un minore ma ha dei risultati positivi a lungo termine. GP, com'è evidente dal rapporto

girl who has had to adapt to much change. She is, sadly in many ways, better equipped to face disruption than some children of her age might be.

20. F has offered some financial support, albeit limited, to provide for assistance with accommodation if M and GP return to Italy. It is by no means sufficient. All are agreed that F has very limited resources. The transition will inevitably be uncomfortable and M will have to bear some of the costs. There are extant proceedings before the Italian Courts with a forthcoming hearing on 30th June. Those Courts are well placed to survey and protect the full gamut of GP's welfare needs and I am satisfied that adequate arrangements are available to secure the protection of the child on her return, as required by **Article 11 (4) Brussells II R; X v Latvia [2014] 1 FLR 1135**.

Article 13. The Child's Objections

21. Mr Hepher draws my attention to **Re M (Republic of Ireland) (Child's Objections) (Joinder of Children as parties to appeal) [2015] EWCA Civ 26**, which he submits and I agree, sets out the approach to be taken when considering this defence. The observations of Black LJ require to be set out:

"[69] In the light of all of this, the position should now be, in my view, that the gateway stage is confined to a

CAFCASS, è una ragazzina forte che ha dovuto adattarsi a molti cambiamenti. Purtroppo, sotto molti punti di vista, è più preparata ad affrontare degli sconvolgimenti rispetto ad altri bambini della sua età.

20. P ha offerto un contributo finanziario, seppur limitato, per fornire un aiuto con la sistemazione se M e GP tornassero in Italia, che però non è assolutamente sufficiente. Tutti concordano che le risorse di P sono limitate. La transizione sarà inevitabilmente scomoda e M dovrà sostenere parte delle spese. Ci sono dei procedimenti in essere di fronte alle Corti italiane con un'udienza imminente prevista per il 30 giugno. Queste Corti sono nelle condizioni di misurare e tutelare tutti i bisogni legati al benessere di GP e ritengo che vi siano disposizioni adeguate per assicurare la tutela della minore al suo rientro, come previsto **dall'Articolo 11 (4) del Regolamento Bruxelles II bis; X v Latvia [2014] 1 FLR 1135.**

Articolo 13. Le obiezioni della minore

21. L'avvocato Hepher attira la mia attenzione su **Re M (Republic of Ireland) (Child's Objections) (Joinder of Children as parties to appeal) [2015] EWCA Civ 26**, da lui presentato. Convengo che espone l'approccio da adottare in questa difesa. Le osservazioni del Giudice Black L vanno illustrate:

"[69] Alla luce di tutto questo, la posizione attuale dovrebbe prevedere, a mio parere, che la fase di passaggio si

straightforward and fairly robust examination of whether the simple terms of the Convention are satisfied in that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of his or her views. Sub-tests and technicality of all sorts should be avoided. In particular, the Re T approach to the gateway stage should be abandoned.

I see this as being in line with what Baroness Hale said in Re M at §46. She treated as relevant the sort of factors that featured in Re T but, as she described the process, they came into the equation at the discretion stage. It also fits in with Wilson LJ's view in Re W that the gateway stage represents a fairly low threshold.

I do not see it as altering the outcome of most cases although it may sometimes make the route to the determination rather less convoluted. In particular, it would not lead to considerations which are undoubtedly relevant being lost, as they will be given full consideration as part of the discretionary stage. It would be unwise of me to attempt to expand or improve upon the list in §46 of Re M of the sort of factors that are relevant at that stage, although I would emphasize that I would not view that list as exhaustive because it is difficult to predict what will weigh in the balance in a particular case. The factors do not revolve only around the child's objections, as is apparent. The court has to have regard to other welfare considerations, in so far as it is possible to take a view about them on the limited evidence that will be available as part of the summary proceedings. And importantly, it must give weight to the Hague Convention considerations. It must at all times be borne in mind that the Hague Convention only works if, in general, children who have been wrongfully retained or removed from their country of habitual residence are returned and returned promptly. To reiterate what Baroness Hale said at §42 of Re M, "[t]he message must go out to

limiti a valutare, in modo chiaro e piuttosto solido, se i termini semplici della Convenzione siano soddisfatti nel momento in cui il minore si oppone al rientro e ha raggiunto l'età e un livello di maturità per i quali è giusto tenere in considerazione le sue opinioni. Altri test e tecnicismi di ogni tipo devono essere evitati. In modo particolare, l'approccio in Re T per la fase di passaggio deve essere abbandonato.

Ritengo che questo sia in linea con le affermazioni della Baronessa Hale in Re M al §46. Ha considerato rilevanti i fattori presenti in Re T ma, come descrive nel corso del processo, sono stati presi in considerazione nella fase di giudizio. Questo è in linea anche con il Giudice Wilson L in Re W, secondo cui la fase di passaggio rappresenta una soglia piuttosto bassa.

Non credo che questo possa alterare i risultati della maggior parte dei casi, sebbene a volte possa rendere la strada verso la sentenza molto meno tortuosa. In particolare, non condurrebbe a considerazioni indubbiamente rilevanti vista la situazione di smarrimento, dal momento che verrebbero prese in considerazione durante la fase di giudizio. Non sarebbe saggio da parte mia cercare di espandere o migliorare quanto detto nell'elenco al §46 di Re M sui tipi di fattori rilevanti in questa fase, sebbene ci tenga ad enfatizzare che non ritengo questa lista esaustiva perché è difficile prevedere cosa peserà maggiormente nel bilanciamento di un caso particolare. I fattori non ruotano solo attorno alle obiezioni del minore, com'è ovvio. La corte deve anche considerare altri fattori legati al benessere, per quanto sia possibile analizzarli sulla base delle prove limitate disponibili come parti del processo sommario senza giuria. Soprattutto, deve dare la giusta importanza alle considerazioni della Convenzione dell'Aja. Occorre sempre ricordare che la Convenzione dell'Aja ha efficacia solo se, in generale, i minori che sono stati trattenuti o sottratti illegalmente dalla loro nazione o dalla loro residenza abituale vengono fatti rientrare e rientrano immediatamente. Per ripetere

potential abductors that there are no safe havens among contracting states".

22. It is now well established that there are two limbs to the child objections defence. It is necessary for the respondent firstly to show that: (a) the child objects to being returned; and (b) the child has attained an age and degree of maturity at which it is appropriate to take account of his or her views. If each of those first two "gateway" limbs is established the court then has discretion about whether or not to order a summary return.

23. In **Re M (supra)**, the Court of Appeal reviewed the authorities on this point. Black LJ sets out the following as "tolerably well" established principles at §34 onwards:

"What can be treated as established in relation to the gateway stage of the child's objections exception?"

34. Where does the law stand in relation to the gateway requirements? Certain features can perhaps be treated as tolerably well established.

(1) Factual matters

35. It is established that whether a child objects to being returned is a matter of fact, as is his or her age, see for example Re S [1993] at 782 and Re T at 202. It seems to me that the degree of maturity that the child has is also a question of fact.

36. The authorities reveal a mild debate over whether, once the child's age and degree

quanto affermato dalla Baronessa Hale al §42 di Re M, "il messaggio che deve arrivare ai potenziali sequestratori è che non ci sono porti sicuri tra gli stati contraenti".

22. Ora è chiaro che vi sono due estremi nella difesa della minore. È necessario che il convenuto mostri innanzitutto che: (a) la minore si oppone al rientro; e (b) la minore ha raggiunto l'età e un livello di maturità per i quali è giusto tenere in considerazione le sue opinioni. Se viene accertato ciascuno di questi primi due estremi "di passaggio", la corte può decidere se ordinare o meno il rientro immediato della minore.

23. In **Re M (supra)**, la Corte d'Appello ha corretto le autorità su questo punto. Il Giudice Black L illustra dal §34 in poi quei principi che si sono consolidati "discretamente bene":

"Cosa si può definire consolidato in relazione alle deroghe oggetto di obiezione nella fase di passaggio del minore?"

34. Dove si pone la legge in relazione ai requisiti di passaggio? Forse alcuni aspetti possono essere definiti discretamente ben consolidati.

(1) Circostanze di fatto

35. È stabilito che se il minore si oppone al rientro, questo deve essere ritenuto un dato di fatto, così come lo è la sua età, si veda per esempio Re S [1993] al 782 e Re T al 202. Ritengo che il livello di maturità del minore sia anche una questione di fatto.

36. Dopo aver stabilito l'età e il livello di maturità del minore, la corte si interroga

of maturity have been established and the court moves to the question of whether it is appropriate to take account of his views, it is making a finding of fact or exercising judgment. I am not sure that it would be of great assistance to get involved in this debate over how to categorise the process. What matters is how to go about it in practice and I will undoubtedly have to address that later.

(2) No chronological threshold

37. *A second established feature is that there is no fixed age below which a child's objections will not be taken into account. However, the younger the child is, the less likely it is that he or she will have the maturity which makes it appropriate for the court to take his or her objections into account, Re R (Child Abduction: Acquiescence) [1995] 1 FLR 716 at 729/730.*

(3) Objections and not anything less

38. *A further feature about which I think there is, in fact, no real difficulty is that the child's views have to amount to objections before they can give rise to an Article 13 exception. This is what the plain words of the Convention say. Anything less than an objection will therefore not do. This idea has sometimes been expressed by contrasting "objections" with "preferences".*

se sia appropriato prendere in considerazione le sue opinioni. Su questo punto, le autorità si chiedono se si tratti di un verdetto o dell'espressione di un giudizio. Non ritengo che possa essere di grande aiuto da parte mia entrare nel dibattito sul modo in cui classificare questo processo. Ciò che conta è come affrontarlo nella pratica e ne parlerò sicuramente in seguito.

(2) Nessun limite di età

37. *Un secondo aspetto consolidato è che non esiste un'età fissa al di sotto della quale le obiezioni di un minore non vengono prese in considerazione. Tuttavia, più il minore è piccolo, minori sono le probabilità che abbia una maturità tale da far sì che la corte prenda in considerazione le sue obiezioni, Re R (Child Abduction: Acquiescence) [1995] 1 FLR 716 al 729/730.*

(3) Obiezioni e nulla di meno

38. *Un altro aspetto sul quale non ritengo che vi sia una reale difficoltà è il fatto che le opinioni del minore debbano essere considerate vere obiezioni prima di dare luogo a una delle eccezioni presenti nell'Articolo 13. Questo emerge chiaramente dal linguaggio semplice della Convenzione. Ne consegue che qualsiasi opinione che sia meno di un'obiezione non andrà bene. Questa idea è stata espressa a volte attraverso il contrasto tra "obiezioni" e "preferenze".*

Discretion

24. Upon satisfaction of the 'gateway stage', the exercise of the Court's discretion is then engaged. In **Re M (Republic of Ireland) (above)**:

    "[32] Paragraph [46] of Re M (Children) (Abduction: Rights of Custody) is important and I will quote it in full:"

    'In child's objections cases, the range of considerations may be even wider than those in the other exceptions. The

Discrezionalità

24. Una volta conclusa la 'fase di passaggio', la Corte esercita la propria discrezionalità. In **Re M (Republic of Ireland) (di cui sopra)**:

    "[32] Il paragrafo [46] di Re M (Children) (Abduction: Rights of Custody) è fondamentale e lo citerò integralmente:"

    'In casi di obiezioni di un minore, la gamma delle considerazioni può essere

exception itself is brought into play when only two conditions are met: first, that the child herself objects to being returned and second, that she has attained an age and degree of maturity at which it is appropriate to take account of her views. These days, and especially in the light of article 12 of the United Nations Convention on the Rights of the Child, courts increasingly consider it appropriate to take account of a child's views. Taking account does not mean that those views are always determinative or even presumptively so. Once the discretion comes into play, the court may have to consider the nature and strength of the child's objections, the extent to which they are "authentically her own" or the product of the influence of the abducting parent, the extent to which they coincide or are at odds with other considerations which are relevant to her welfare, as well as the general Convention considerations referred to earlier. The older the child, the greater the weight that her objections are likely to carry. But that is far from saying that the child's objections should only prevail in the most exceptional circumstances.

addirittura più ampia rispetto a quella delle altre eccezioni. L'eccezione stessa viene messa in gioco quando si soddisfano solo due condizioni: primo, che la minore stessa si opponga al rientro e secondo, che abbia raggiunto l'età e un livello di maturità per i quali è giusto tenere in considerazione le sue opinioni. Oggigiorno, soprattutto alla luce dell'articolo 12 della Convenzione ONU sui diritti dell'infanzia e dell'adolescenza, le corti ritengono sempre più appropriato prendere in considerazione le opinioni del minore. Prendere in considerazione non significa che queste opinioni siano sempre determinanti o anche solo che si possano presumere tali. Quando entra in gioco la discrezionalità, la corte dovrà valutare la natura e la forza delle obiezioni della minore, la misura in cui sono "autenticamente sue" o il prodotto dell'influenza del genitore che l'ha sottratta, la misura in cui coincidono o sono in disaccordo con altre considerazioni che sono rilevanti per il suo benessere, così come le considerazioni generali della Convenzione menzionata precedentemente. Più grande è il minore, maggiore sarà il peso delle sue obiezioni. Ma questo non significa che le obiezioni del minore prevarranno solo in circostanze eccezionali.

25. Ms Teresa Julian, the CAFCASS Officer, assessed GP's maturity *'to be broadly commensurate with her chronological age'*. GP was very distressed when she met Ms Julian. I was told by Ms Julian in evidence that GP started to cry, quite suddenly and continued to do so throughout her interview. The crying stopped as abruptly as it began. Ms Julian plainly felt that there was a degree of artifice involved. She is also clear that GP had a strong allegiance to her mother and reflected some of her mother's negative views about F and the paternal family.
26. GP has made allegations in relation to domestic violence. Ms Julian's concerns

25. La Dott. Teresa Julian, funzionaria del CAFCASS, ha definito la maturità di GP *'pienamente in linea con la sua età anagrafica'*. GP era molto turbata quando ha incontrato la Dott. Julian. Quest'ultima ha testimoniato che GP ha iniziato a piangere quasi immediatamente e ha continuato per tutto il colloquio. Il pianto è cessato improvvisamente così com'era iniziato. La Dott. Julian ha percepito un certo grado di artificio. È convinta che GP fosse molto fedele alla madre e rispecchiasse alcune sue opinioni negative su P e sulla famiglia paterna.
26. GP ha mosso delle accuse in relazione alla violenza domestica. Le

about the reliability of the allegations are strikingly consonant with the findings of the Italian Courts and, she considers, are unlikely to reflect GP's own memories. The CAFCASS report notes: *'it is most unlikely that [GP] would have a conscious memory of an incident at 2 years old and would therefore need to have had it reported to her. That she is able to repeat it to me as a memory of her own is extremely worrying indeed'*. It is also notable that GP has thrived in her English school and is obviously happy which does not support the level of distress that she asserts in her interview: *'I would rather kill myself than go to Italy'*. Ms Julian notes that after the interview GP was not at all upset and relishing the attractions of sight seeing in London.

preoccupazioni della Dott. Julian sull'affidabilità delle accuse sono fortemente in armonia con le conclusioni delle Corti italiane e, secondo lei, non rispecchiano i ricordi di GP. Il rapporto del CAFCASS evidenzia che: *'è altamente improbabile che [GP] abbia memoria di un incidente verificatosi all'età di 2 anni e quindi deve esserle stato necessariamente riferito. Al contrario, è estremamente preoccupante che sia capace di raccontarmelo come se fosse un suo ricordo'*. È anche degno di nota che GP abbia avuto ottimi risultati frequentando una scuola inglese ed è ovviamente felice, il che non spiega il livello di turbamento mostrato nel colloquio: *'Preferisco uccidermi che tornare in Italia'*. La Dott. Julian sottolinea che, a seguito del colloquio, GP non era affatto turbata ed entusiasta delle attrazioni turistiche di Londra.

27. In her interview GP said that she would like to meet the Judge. Ms Julian wrote the following letter which I repeat in full:

27. Nel suo colloquio, GP ha espresso la volontà di incontrare il Giudice. La Dott. Julian ha scritto la seguente lettera che riporto integralmente:

Dear Ms Ramus,

[GP] told me that she would like to meet the Judge. If that remains her wish and the Judge is agreeable then I see no reason why she shouldn't meet him. I would be happy to be present during the meeting. The mother will of course need someone at court who could sit with [GP] whilst the mother is in court.

Gentile Avvocato Ramus,

[GP] ha espresso la volontà di incontrare il Giudice. Se tale resta la sua volontà e il Giudice acconsente non vedo il motivo per cui non possa incontrarlo. Sarei lieta di partecipare all'incontro. Ovviamente è necessario che in tribunale vi sia qualcuno disposto ad accompagnare [GP] mentre la madre è in tribunale.

28. I agreed to meet with GP. Before I did so, there was discussion as to what the scope and ambit of the meeting should be. All sensibly agreed that I should not talk to

28. Ho accettato di incontrare GP. Prima di farlo, vi è stata una discussione su quali dovessero essere lo scopo e l'ambito dell'incontro. Tutti hanno

GP about the case. Ms Chaudhry submitted that I should speak to GP only after I had arrived at my decision. GP was already present at court, I did not want to send her away and I was not sure whether a decision would be available that day. More importantly however, it strikes me as disempowering for a child to be spoken to by the judge conducting the hearing only after the case has been determined. It seems to me to undermine the whole purpose of seeing the child and trying to help her to feel included within a decision making process which has such an impact on her life.

29. I was referred to the *Guidelines for Judges Meeting Children who are subject to Family Proceedings* April 2010 and the Court of Appeal guidance In **re KP (A Child) (Abduction: Rights of Custody) [2014] 1 WLR 4326**. Moore Bick LJ observed as follows:

With those caveats in mind, it is possible to draw together a number of themes which are common to each of the authorities to which we have made reference:

a) *There is a presumption that a child will be heard during Hague Convention proceedings, unless this appears inappropriate (Re D);*

b) *In this context, 'hearing' the child involves listening to the child's point of view and hearing what they have to say*

ragionevolmente suggerito di non parlare a GP del caso. L'avvocato Chaudhry ha affermato che non avrei dovuto parlare con la minore prima di aver preso una decisione. GP era già presente in tribunale, non volevo mandarla via e non sapevo se avrei preso una decisione quel giorno. Ma, il che è più importante, ritengo che la minore possa sentirsi impotente se dovesse parlare con il giudice che presiede l'udienza dopo che ha già preso una decisione sul caso. Mi sembra che danneggi il senso stesso dell'incontro con la minore nel tentativo di aiutarla a sentirsi inclusa nel processo di formulazione di una sentenza che ha un impatto così grande sulla sua vita.

29. Ho preso come riferimento le *Guidelines for Judges Meeting Children who are subject to Family Proceedings* (Linee Guida per i Giudici che incontrano i Minori sottoposti a Procedimenti Familiari) dell'aprile 2010 e la guida della Corte d'Appello In **re KP (A Child) (Abduction: Rights of Custody) [2014] 1 WLR 4326**. Il Giudice Moore Bick L ha osservato quanto segue:

Tenendo a mente queste precauzioni, è possibile ravvisare una serie di temi comuni a ciascuna delle autorità a cui abbiamo fatto riferimento:

a) *Vi è l'ipotesi che un minore venga ascoltato durante il procedimento della Convenzione dell'Aja, a meno che non risulti inappropriato (Re D);*

b) *In questo contesto, 'ascoltare' il minore significa ascoltare il suo punto di vista e quello che ha da dire (Re D, par. 57; JPC v SLW and SMW, par. 47);*

(Re D, para 57; JPC v SLW and SMW, para 47);

c) *The means of conveying a child's views to the court must be independent of the abducting parent (Re D, para 59);*

d) *There are three possible channels through which a child may be heard (Re D, para 60):*

i) *Report by a CAFCASS officer or other professional;*

ii) *Face to face interview with the judge;*

iii) *Child being afforded full party status with legal representation;*

e) *In most cases an interview with the child by a specialist CAFCASS officer will suffice, but in other cases, especially where the child has asked to see the judge, it may also be necessary for the judge to meet the child. In only a few cases will legal representation be necessary (Re D, para 60);*

f) *Where a meeting takes place it is an opportunity (JPC v SLW, para 47; De L v H, para 45; Re J [2011], paras 31 to 40):*

i) *for the judge to hear what the child may wish to say; and*

ii) *for the child to hear the judge explain the nature of the process and, in particular, why, despite hearing what the child may say, the court's order may direct a different outcome;*

g) *a meeting between judge and child may be appropriate when the child is asking to meet the judge, but there will also be cases where the judge of his or her own*

c) *I mezzi di trasmissione delle opinioni del minore alla corte devono essere indipendenti dal genitore che l'ha sottratto (Re D, par. 59);*

d) *Tre sono i canali possibili attraverso i quali un minore può essere ascoltato (Re D, par. 60):*

i) *Relazione redatta da un funzionario del CAFCASS o da un altro professionista;*

ii) *Intervista faccia a faccia col giudice;*

iii) *Concessione al minore dello stato di parte del procedimento con rappresentanza legale;*

e) *Nella maggior parte dei casi sarà sufficiente un colloquio con uno specialista del CAFCASS, ma in altri casi, soprattutto quelli in cui il minore ha espresso la volontà di incontrare il giudice, potrebbe essere necessario per il giudice incontrare il minore. Solo in alcuni casi sarà necessaria la rappresentanza legale (Re D, par. 60);*

f) *Laddove si verifichi un incontro, questo rappresenta un'opportunità (JPC v SLW, par. 47; De L v H, par. 45; Re J [2011], parr. 31 to 40):*

i) *per il giudice che può ascoltare quello che il minore desidera dire; e*

ii) *per il minore che può ascoltare la spiegazione del giudice circa la natura del processo e, soprattutto, il motivo per cui, nonostante sia stato ascoltato il minore, il provvedimento della corte potrebbe avere un esito differente;*

g) *Un incontro tra giudice e minore può essere appropriato quando il minore chiede di incontrare il giudice, ma ci possono anche essere casi in cui il*

motion should attempt to engage the child in the process (Re J [2011], paras 31).

56. Despite having great respect for this judge, who is highly experienced in the conduct of proceedings where the voice of the child needs to be heard, our conclusion is that on this occasion the conduct of the judicial interview did indeed fall on the wrong side of the line. Having summarised the submissions of Mr Turner and Mr Gupta, with which we agree, we can set out the reasons supporting this conclusion in short terms as follows:

i) During that part of any meeting between a young person and a judge in which the judge is listening to the child's point of view and hearing what they have to say, the judge's role should be largely that of a passive recipient of whatever communication the young person wishes to transmit.

ii) The purpose of the meeting is not to obtain evidence and the judge should not, therefore, probe or seek to test whatever it is that the child wishes to say. The meeting is primarily for the benefit of the child, rather than for the benefit of the forensic process by providing additional evidence to the judge. As the Guidelines state, the task of gathering evidence is for the specialist CAFCASS officers who have, as Mr Gupta submits, developed an expertise in this field.

iii) A meeting, such as in the present case, taking place prior to the judge deciding upon the central issues should be for the dual purposes of allowing the judge to hear what the young person may wish to volunteer and for the young person to hear the judge explain the nature of the court process. Whilst not wishing to be prescriptive, and whilst acknowledging that the encounter will proceed at the pace of the child, which will vary from

giudice cerchi egli/ella stesso/stessa di rendere il/la minore partecipe (Re J [2011], parr. 31).

56. Nonostante il grande rispetto nei confronti del giudice, altamente qualificato nello svolgimento di procedimenti dove la voce del minore deve essere ascoltata, siamo giunti alla conclusione che in questa occasione lo svolgimento dell'audizione del minore da parte del giudice aveva effettivamente preso la direzione sbagliata. Dopo aver riassunto le osservazioni dei giudici Turner e Gupta, con i quali ci troviamo d'accordo, possiamo esporre in breve le ragioni a sostegno della nostra conclusione come segue:

i) Durante questa parte di ogni incontro tra un minore e un giudice che sta ascoltando il suo punto di vista e quello che ha da dire, il ruolo del giudice dovrebbe essere quello di un destinatario passivo di qualsiasi tipo di comunicazione che il minore desidera trasmettere.

ii) Lo scopo dell'incontro non è quello di raccogliere prove e il giudice non dovrebbe, quindi, interrogare o mettere alla prova quello che il minore desidera dire. Lo scopo principale dell'incontro è a beneficio del minore, anziché a beneficio del processo forense attraverso la raccolta di ulteriori prove da parte del giudice. Come indicato nelle Guidelines, il compito di raccogliere le prove spetta ai funzionari specializzati del CAFCASS che, come afferma il giudice Gupta, hanno maturato un'esperienza nel settore.

iii) Un incontro, come quello del caso attuale, avvenuto prima che il giudice prendesse una decisione sulle questioni centrali dovrebbe avere il duplice obiettivo di permettere al giudice di ascoltare quello che il minore desidera dire e per quest'ultimo, di ascoltare la spiegazione del giudice circa la natura del processo. Pur non avendo funzione normativa, e pur riconoscendo che l'incontro procederà secondo il ritmo

case to case, it is difficult to envisage circumstances in which such a meeting would last for more than 20 minutes or so.

dettato dal minore, che varierà da caso a caso, è difficile immaginare delle circostanze in cui un tale incontro possa durare più di 20 minuti circa.

iv) If the child volunteers evidence that would or might be relevant to the outcome of the proceedings, the judge should report back to the parties and determine whether, and if so how, that evidence should be adduced.

iv) Se il minore offre volontariamente delle prove che potrebbero essere o saranno rilevanti per l'esito del procedimento, il giudice dovrà riferirlo alle parti e determinare se, e nel caso in qual modo, questa prova dovrà essere addotta.

v) The process adopted by the judge in the present case, in which she sought to 'probe' K's wishes and feelings, and did so over the course of more than an hour by asking some 87 questions went well beyond the passive role that we have described and, despite the judge's careful self-direction, strayed significantly over the line and into the process of gathering evidence (upon which the judge then relied in coming to her decision).

v) Il procedimento adottato dal giudice nel caso attuale, in cui ha cercato di 'sondare' i desideri e le emozioni di K, e lo ha fatto nel corso di più di un'ora ponendo circa 87 domande, è andato ben oltre il ruolo passivo descritto e, nonostante l'attenta autodeterminazione del giudice, ha oltrepassato di gran lunga il limite raccogliendo prove (su cui poi il giudice ha basato la sua sentenza).

vi) In the same manner, the judge was in error in regarding the meeting as being an opportunity for K to make representations or submissions to the judge. The purpose of any judicial meeting is not for the young person to argue their case; it is simply, but importantly, to provide an opportunity for the young person to state whatever it is that they wish to state directly to the judge who is going to decide an important issue in their lives.

vi) Allo stesso modo, il giudice ha sbagliato nel considerare l'incontro come un'opportunità per K di presentare rimostranze o osservazioni al giudice. Lo scopo di qualsiasi incontro giudiziale non è quello di permettere al minore di sostenere la sua tesi; è semplicemente un'importante opportunità per il minore di dire quello che desidera dire direttamente al giudice che emetterà una sentenza su una questione importante della sua vita.

My meeting with GP

30. I found GP to be a striking and delightful young girl. I told her from the beginning that I knew exactly what her wishes were and so it wasn't necessary for us to talk about it. She agreed to this with complete equanimity and seemed entirely reassured. She told me that I wasn't what she was expecting. By this she explained she had anticipated a man in a long Judge's wig. I told her that I wore one very rarely and brought it out of the

Il mio incontro con GP

30. GP è una ragazza straordinaria e deliziosa. Sin dall'inizio, le ho detto che conoscevo esattamente i suoi desideri, quindi non era necessario parlarne. Ha concordato con assoluta compostezza e sembrava totalmente rassicurata. Mi ha detto che non ero come si aspettava. Con questo, intendeva che si aspettava un uomo con una lunga parrucca. Le ho detto che la indosso molto raramente e l'ho tirata fuori dall'armadietto per fargliela

cupboard for her to inspect. She was intrigued that it was horse hair and thought it rather scratchy and uncomfortable. I asked her what her favourite food was. She responded immediately by asking if she could select a 'dessert'. I agreed and she told me with great enthusiasm that it was 'panna cotta'. It had to be home made and by her mother. She has lived in England for barely more than a year, her English was faultless. It was also spoken without any trace of an accent. She volunteered that she found school in England to be much easier than in Italy. At 11 years old she is fluent in Italian, English and Latvian. Finally, she told me something of her plans for the day whilst we were in Court. She was smiling and poised throughout our meeting. As she left I said a few words of (tourist) Italian to her. She seemed delighted. She told me that Italy was a good place to go for a holiday but not to live. I told her that I would do my best to get the right decision for her but I was very clear that the decision was **entirely** mine.

31. I am entirely satisfied that GP is sincere in her expression of her resistance to returning to Italy. I am also clear that these views are coloured and influenced by her mother's own wishes. The objections are therefore not wholly authentic. It is apparent that GP has been made aware of the issues at this hearing e.g. she stated in interview *'if she (M) went back I think she would be in danger of going to prison'*. The allegations made

esaminare. Era affascinata dal fatto che si trattasse di crine di cavallo e l'ha trovata piuttosto ruvida e scomoda. Le ho chiesto quale fosse il suo cibo preferito. Ha risposto immediatamente chiedendomi se poteva scegliere un 'dessert'. Ho risposto di sì e mi ha detto con grande entusiasmo che era la 'panna cotta'. Doveva essere artigianale e preparata dalla madre. Vive in Inghilterra da poco più di un anno, ma il suo inglese era perfetto. E lo parlava anche senza alcun accento. Mi ha detto che la scuola in Inghilterra era più facile di quella in Italia. A 11 anni, parla correttamente italiano, inglese e lettone. Infine, mi ha detto qualcosa sui suoi programmi per la giornata mentre eravamo in tribunale. Era sorridente e composta durante tutto l'incontro. Mentre andava via, le ho detto alcune parole in un italiano da turista. Sembrava contenta. Mi ha detto che l'Italia è un bel posto per passarci le vacanze ma non per vivere. Le ho detto che avrei fatto il possibile per prendere la decisione migliore per lei ma ho affermato chiaramente che la decisione era **interamente** mia.

31. Sono pienamente convinto che GP sia sincera quando esprime la sua riluttanza a rientrare in Italia. Sono anche consapevole del fatto che queste opinioni sono influenzate dai desideri della madre. Perciò le obiezioni non sono completamente autentiche. È chiaro che GP è venuta a conoscenza delle questioni durante questa udienza, ad es. ha affermato durante l'incontro *'se lei (M) tornasse penso che correrebbe il rischio*

by GP against F are also conspicuously lacking in detail. I note that the Italian Court of Appeal made the same observations about M's allegations. Though my meeting with GP was focused on respecting her wish to have some involvement in the process I observe that her remarks about Italy were not characterised by hostility. In this I see a reflection of GP's comments to the CAFCASS officer:

"'No. I don't like Italy' I commented that she had just told me how she liked Venice to which GP replied, 'yes, I liked Venice' and then she began to cry".

32. Earlier GP had described Venice as *'our favourite place'* by which she explained the 'our' to be *'me and my mum'*. This said, GP's life has to date been characterised by upheaval and relocation. I have no doubt at all that her affection for England is both sincere and strong. She is obviously settled and happy. In addition GP is, to some extent, free from parental conflict in England. She is also, of course, deprived of her right to a relationship with F and the paternal family which the Italian courts have concluded was rooted in a 'strong bond'. The information before this Court seems to me also to reinforce the Italian courts' conclusion that M *'created a situation where by she could keep the child under her exclusive control with the purpose of excluding [F] from any decision and contact'*. More

di finire in prigione'. È anche palese che le accuse mosse da GP a P sono poco circostanziate. Sottolineo che la Corte d'Appello italiana ha fatto le stesse osservazioni a proposito delle accuse di M. Sebbene il mio incontro con GP si focalizzasse sul rispetto del suo desiderio di essere coinvolta in qualche modo nel processo, constato che i suoi commenti relativi all'Italia non contenevano tracce di ostilità. In questo noto che riflettono i commenti fatti da GP alla funzionaria del CAFCASS:

"'No. Non mi piace l'Italia', ho commentato dicendole che mi aveva appena detto quanto le era piaciuta Venezia e GP ha risposto: 'sì, mi è piaciuta Venezia', e poi ha iniziato a piangere".

32. Precedentemente, GP aveva descritto Venezia come *'il nostro posto preferito'* e mi ha spiegato che con 'nostro' intendeva *'suo e della mamma'*. Detto ciò, la vita di GP è stata caratterizzata fino ad ora da sconvolgimenti e traslochi. Non ho nessun dubbio che il suo affetto per l'Inghilterra sia sincero e forte. Si è evidentemente sistemata ed è felice. Inoltre, GP è, per certi versi, libera da conflitti familiari in Inghilterra. Certo, è anche privata del suo diritto ad una relazione con P e con la famiglia paterna che secondo le corti italiane si basava su un 'forte legame'. Le informazioni presentate alla Corte rafforzano a mio parere la conclusione delle corti italiane secondo cui M *'ha creato una situazione in cui può avere il controllo esclusivo della minore con lo scopo di escludere*

importantly, it is manifest that the Italian Courts, who have considered GP's circumstance so carefully, are best placed properly to identify her welfare interests.

33. For completeness and in addition to my reasoning above I add the obvious. For The Hague Convention to have both legitimacy and efficacy, the principle of international comity, whilst not unassailable, must always be central to these applications. For the Convention to work, children who have been **abducted** by a parent (it is important to use that term) from their country of habitual residence must expect to be returned. A parent's efforts to defeat that process require to be evaluated with healthy scepticism. As Black LJ says *'there are no safe havens among contracting states'*.

34. Accordingly, I reject Mr Hepher's submission that there is a grave risk of harm to GP in an order to return made by this Court. For the reasons I have set out above I do not consider M's risk of imprisonment, however that risk be calibrated, to carry the weight it is asserted on M's behalf should be given to it. Whilst F's undertakings, constrained by his financial circumstances do not ensure that GP's 'landing' is as 'soft' as M would wish it to be, I am satisfied that it offers sufficient reassurance. I am encouraged that M agrees to accompany GP, and express the hope that she will, despite the history of her behaviour, use

[P] da ogni decisione e contatto'. Soprattutto, è chiaro che le Corti italiane, che hanno valutato attentamente le circostanze di GP, sono nella condizione migliore per tutelare i suoi interessi.

33. Per completezza e in aggiunta al mio ragionamento di cui sopra, aggiungo un'informazione ovvia. Affinché la Convenzione dell'Aja sia legittima ed efficace, il principio di reciprocità internazionale, benché contestabile, deve essere cruciale in queste richieste. Affinché la Convenzione venga applicata, i minori che sono stati **sottratti** da un genitore (è importante usare questo termine) dalla loro nazione o dalla loro residenza abituale devono essere riportati a casa. Gli sforzi di un genitore di opporsi a tale processo devono essere valutati con sano scetticismo. Come afferma il Giudice Black *'non ci sono porti sicuri tra gli stati contraenti'*.

34. Di conseguenza, rigetto la richiesta dell'avvocato Hepher secondo cui vi è un rischio grave di danno per GP derivante da una sentenza di rientro emessa da questa Corte. Per le ragioni esposte di cui sopra, non ritengo che il rischio di detenzione di M, sebbene sia da considerare, abbia un peso così rilevante come invece viene affermato per conto di M. Anche se l'attività di P, limitato dalle sua situazione finanziaria, non assicura un 'atterraggio' così 'morbido' come desidera M, sono convinta che offra le giuste rassicurazioni. Trovo incoraggiante che M desideri accompagnare GP ed esprimo l'augurio

her best endeavours to minimise the upset to GP that my decision will undoubtedly cause.

35. At the end of the school term GP, because of her age, would be required to transfer to senior school. This natural hiatus provides a useful opportunity to ameliorate the impact of the return to Italy. I propose that this order should not be given effect until the end of GP's school year. I have been told that there is a hearing in the Italian Courts listed on 30th June 2017. I request that F's lawyers provide that Court with a copy of this judgment by 20th June 2017. To facilitate this I invite Ms Chaudhry to redraft her order to give it effect in the way I intend.

che possa, nonostante il suo comportamento passato, adoperarsi al massimo per ridurre al minimo il turbamento che questa decisione provocherà indubbiamente su GP.

35. Alla fine del semestre scolastico GP, vista la sua età, sarà trasferita presso una scuola superiore. Questo iato naturale rappresenta un'opportunità utile per migliorare l'impatto del suo rientro in Italia. Propongo che questa sentenza non venga resa effettiva prima della fine dell'anno scolastico di GP. Mi è stato riferito che vi sarà un'udienza presso le Corti italiane prevista in data 30 giugno 2017. Chiedo che gli avvocati di P forniscano alla Corte una copia di questa sentenza entro il 20 giugno 2017. Per facilitare questa procedura, invito l'avvocato Chaudhry a rivedere il suo provvedimento per applicarlo nel modo da me previsto.

EXPERT REPORT

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G P (A CHILD)
PROCEEDINGS UNDER THE CHILD ABDUCTION AND CUSTODY ACT 1985

RELAZIONE DEGLI ESPERTI

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G P (UNA MINORE)
PROCEDIMENTO AI SENSI DEL CHILD ABDUCTION AND CUSTODY ACT DEL

SINGLE JOINT EXPERT REPORT OF ROBERTA CESCHINI

1985 (LEGGE SULLA CUSTODIA E SULLA SOTTRAZIONE DI MINORE)

RELAZIONE DEGLI ESPERTI DI ROBERTA CESCHINI

1. <u>QUALIFICATIONS</u>

1.1. I am the Family Law Partner of Ceschini & Restignoli, a law firm with offices in Rome, Italy. As an attorney who specialises in international matrimonial law and child abduction, I am fully familiar with Italian family law, as provided in the Civil Code and in the applicable International Conventions and EC Regulations.

1.2. I am a member of the International Academy of Family Lawyers, Italian Association of Family Lawyers, frequent speaker at international conferences dealing with family law, author of various articles on the same matter published in various jurisdictions, and international correspondent for the magazine "International Family Law" published in the United Kingdom. Attached as Exhibit 1 is my Curriculum Vitae.

1.3. I write this report upon joint instructions of the parties hereto (represented by Dawson Cornwell and PCB Law), as a single joint expert in the above proceedings.

1.4. I understand that my duty is to help the Court on matters within my own expertise. I understand that such duty is paramount and overrides any obligation to those instructing

1. <u>QUALIFICHE</u>

1.1. Sono un avvocato dello studio legale Ceschini & Restignoli, che si occupa di diritto di famiglia e che ha sede a Roma, in Italia. In qualità di avvocato specializzato nella legge applicabile ai matrimoni internazionali e in sottrazione di minore, sono perfettamente a conoscenza del diritto di famiglia italiano, come previsto nel Codice Civile e nelle Convenzioni Internazionali vigenti e nel Regolamento CE.

1.2. Sono un membro dell'Associazione IAFL "International Academy of Family Lawyers" e dell'Associazione Italiana degli Avvocati per la Famiglia. Sono spesso invitata come relatrice alle conferenze internazionali in materia di diritto di famiglia. Sono autrice di molteplici articoli nello stesso ambito, pubblicati in varie giurisdizioni e sono corrispondente internazionale per la rivista "International Family Law" pubblicata nel Regno Unito. È riportato in allegato il mio Curriculum Vitae come Reperto n. 1.

1.3. Redigo questa relazione a seguito di indicazioni comuni da parte delle due parti nominate nella presente (rappresentate dall'avvocato Dawson Cornwell e PCB Law), in qualità di esperta nel procedimento di cui sopra.

1.4. Comprendo che è mio dovere aiutare la Corte per questioni che rientrano nel mio settore di competenza. Comprendo che tale dovere è di primaria importanza e prevale su qualsiasi obbligo nei confronti di coloro che mi hanno

me or by whom I am paid. I confirm that I will comply with that duty.

1.5. I confirm that I have no conflict of interest.

2. INSTRUCTIONS, BACKGROUND INFORMATION AND DOCUMENTS

2.1. The instructions I received are contained in the letter of instructions dated 8 November 2017 attached as Exhibit 2.

2.2. I received the following documents to be reviewed:

a. The judgement given by the Court of Ascoli Piceno made in November 2014

b. The judgement given by the Court of Appeals in Ancona dated 12 January 2017

2.3. In the following paragraphs, I will answer each of the questions posed in the letter of instructions attached as Exhibit 2.

3. ANSWERS TO QUESTIONS POSED

a) What is the current status of mother's criminal conviction in Italy? Is the conviction currently enforceable? Were the mother to return to Italy following the conclusion of these English proceedings, would she be arrested and/or incarcerated upon her return? Would there be further Court proceedings in Italy to determine whether the mother should be incarcerated.

3.1. The mother has been charged with one year imprisonment for the crime of child abduction by the Ascoli Piceno Court in November 2014.

The judgement has been confirmed by the Ancona Court of Appeal in January 2017.

istruita o dai quali ricevo un compenso. Confermo che rispetterò tale dovere.

1.5. Confermo di non avere nessun conflitto di interessi.

2. ISTRUZIONI, INFORMAZIONI GENERALI E DOCUMENTI

2.1. Le istruzioni che ho ricevuto sono contenute nella lettera di istruzioni datata 8 novembre 2017 e allegata come Reperto n. 2.

2.2. Ho ricevuto i seguenti documenti da esaminare:

a. La sentenza della Corte di Ascoli Piceno pronunciata nel novembre 2014

b. La sentenza della Corte d'Appello di Ancona datata 12 gennaio 2017

2.3. Nei paragrafi successivi risponderò ad ognuna delle domande poste nella lettera di istruzioni allegata come Reperto n. 2.

3. RISPOSTE ALLE DOMANDE

a) Qual è lo stato attuale della condanna penale nei confronti della madre in Italia? La condanna è attualmente esecutiva? Se la madre tornasse in Italia dopo la conclusione del procedimento inglese sarebbe arrestata e/o incarcerata all'atto del rientro? Ci potrebbero essere altri procedimenti del tribunale in Italia per determinare se la madre dovrà essere incarcerata?

3.1. La madre è stata condannata a un anno di reclusione per il reato di sottrazione di minore dalla Corte di Ascoli Piceno nel novembre del 2014.

La sentenza è stata confermata dalla Corte d'Appello di Ancona nel gennaio 2017.

The mother was entitled to further appeal the conviction at the Supreme Court by March 2017. I have no information whether an appeal at the Supreme Court was filed and can therefore envisage the following scenarios:

- The judgement of the Court of Appeal has been further appealed at the Supreme Court. The relevant proceeding will last one year approximately, however since the statute of limitation for this crime will expire in October 2018, the charge is very likely to be cancelled during the Supreme Court proceedings. The judgment of the Court of Appeals is not enforceable pending the proceedings before the Supreme Court.
- The judgement of the Court of Appeals has not been further appealed and is therefore now final and enforceable. Note however that judgements providing imprisonment for less than two years are stayed and not enforceable if the mother has clean criminal records.

3.2. In both cases therefore there is no risk of arrest and/or imprisonment if mother returns to Italy.

b) In a case like that of the mother is it possible to have the custodial sentence commuted to be a community sentence, rather than one year of imprisonment? In particular, is it possible where the original conviction was for child abduction within Italy, given the current circumstances of a further international child abduction?

3.3. It is possible to ask that the custodial sentence be commuted to home arrest or social work.

La madre aveva il diritto di presentare ricorso contro la sentenza di condanna presso la Corte Suprema entro marzo 2017. Non ho informazioni a riguardo, quindi posso immaginare i seguenti scenari:

- È stato presentato ricorso contro la sentenza della Corte d'Appello presso la Corte Suprema. Il procedimento rilevante durerà circa un anno. Ciononostante, dal momento che il reato cadrà in prescrizione nell'ottobre 2018, l'accusa verrà molto probabilmente annullata durante il processo della Corte Suprema. La sentenza della Corte d'Appello non è applicabile in attesa del processo davanti alla Corte Suprema.
- Non è stato presentato ricorso contro la sentenza della Corte d'Appello che è perciò definitivo e applicabile. Tuttavia, si noti che le sentenze che prevedono la reclusione per un periodo inferiore a due anni sono sospese e non sono applicabili se la madre ha la fedina penale pulita.

3.2. Di conseguenza, in entrambi i casi non vi è rischio di arresto e/o di imprigionamento nel caso in cui la madre tornasse in Italia.

b) In un caso come quello della madre è possibile commutare la pena detentiva in lavori socialmente utili, piuttosto che un anno di reclusione? In particolare, è possibile viste le circostanze attuali di un'ulteriore sottrazione internazionale di minore, mentre la condanna originale era per sottrazione di minore nel territorio italiano?

3.3. È possibile chiedere di commutare la pena detentiva in arresti domiciliari o lavori socialmente utili. Il fatto che vi sia

The fact that there is a further international child abduction will not interfere.

c) What is the process for doing that? How likely is that the mother would be successful in such an application? What would the alternative sentence be likely to be in the case of the mother? Would there be any period in which the mother would be imprisoned, if she were successful in seeking to have a community sentence imposed instead of imprisonment?

3.4. When the Public Prosecutor starts the enforcement of the custodial sentence, the mother can file an application to have the sentence commuted. The decision will be taken in approximately 15-30 days and there will be no arrest or imprisonment in the meantime.

3.5. The mother is very likely to succeed in obtaining home arrest or social work.

3.6. Note however that in the present case then Public Prosecutor will not even start the enforcement, as the custodial sentence is stayed (see paragraph 3.1)

d) Is the mother liable to further criminal charges given her removal of the child to England? If yes, what is the likely punishment and what effect or impact (if any) would such a conviction have in relation to above?

3.7. The mother may be liable to further criminal charges for international child abduction, given her removal of the child to England, if the father filed a criminal complaint or in any

un'ulteriore sottrazione internazionale di minore non interferirà.

c) Qual è il procedimento per farlo? Quante sono le probabilità di successo se la madre presentasse la richiesta? Quale sarebbe la condanna alternativa per la madre? Ci potrebbe essere un periodo di reclusione se dovesse ottenere la commutazione della pena detentiva in lavori socialmente utili?

3.4. Quando il Pubblico Ministero procederà con l'esecuzione della pena detentiva, la madre potrà presentare la richiesta di commutazione. La decisione verrà presa in 15-30 giorni circa e non ci sarà nessun arresto né imprigionamento nel frattempo.

3.5. La madre ha alte probabilità di ottenere la commutazione in arresti domiciliari o lavori socialmente utili.

3.6. Tuttavia, si noti come nel caso presente il Pubblico Ministero non procederà nemmeno con l'esecuzione, dal momento che la pena detentiva è sospesa (cfr. paragrafo 3.1).

d) La madre potrebbe essere soggetta ad ulteriori accuse penali vista la rimozione della minore con conseguente trasferimento in Inghilterra? Se sì, quale pena potrebbe subire e quale effetto o impatto (se presenti) potrebbe avere tale condanna in relazione a quanto detto prima?

3.7. La madre potrebbe essere soggetta ad ulteriori accuse penali per sottrazione internazionale di minore, vista la rimozione della minore con conseguente trasferimento in Inghilterra, se il

event the proceedings has been started by the Public Prosecutor. The mother can be charged between 1 and 4 years of imprisonment for the crime of international child abduction. The charge will be added to the previous charge for child abduction, unless such charge has been cancelled by the Supreme Court or for the expiration of the statute of limitation (see paragraph 3.1.).

3.8. Note that even if the mother will be charged with more than 2 years imprisonment (as a result of the second judgement or of the two judgements adding up) it is very unlikely that she will be incarcerated and it is very likely that she will obtain that the sentence be commuted with home arrest or social work.

e) Does the mother have the option to appeal the Italian Court of Appeals judgement of January 2017 dismissing her appeal against the one year custodial sentence for domestic child abduction. What steps should she take to appeal such a sentence?

3.9. See paragraph 3.1. above.

f) If the father has made a criminal complaint in relation to international child abduction, can the father withdraw it? If he seeks to withdraw it, what is likely to be the response of the prosecuting authority?

3.10. If the father has made a criminal complaint in relation to international child abduction, he can withdraw it. However the Public Prosecutor is likely to go ahead with the proceedings, as the father's criminal complaint is not a condition to it.

padre dovesse sporgere denuncia o comunque se il Pubblico Ministero dovesse avviare il procedimento. La madre potrebbe essere condannata a un periodo di reclusione da 1 a 4 anni per il reato di sottrazione internazionale di minore. L'accusa verrà aggiunta a quella precedente di sottrazione di minore, a meno che tale accusa non venga cancellata dalla Corte Suprema o il reato cada in prescrizione (cfr. paragrafo 3.1).

3.8. Si noti che, anche qualora la madre venisse condannata a più di 2 anni di reclusione (a seguito della seconda condanna o della somma delle due condanne), è altamente improbabile che venga incarcerata ed è molto probabile che ottenga la commutazione della condanna in arresti domiciliari o lavori socialmente utili.

e) La madre può presentare ricorso contro la sentenza della Corte d'Appello italiana del gennaio 2017, abbandonando l'appello contro la pena detentiva di un anno per sottrazione di minore? Quali passi dovrebbe compiere per presentare ricorso contro tale sentenza?

3.9. Vedere il paragrafo 3.1. in alto.

f) Se il padre ha sporto denuncia in relazione alla sottrazione internazionale di minore, può ritirarla? Se cerca di ritirarla, quale potrebbe essere la risposta del Pubblico Ministero?

3.10. Se il padre ha sporto denuncia in relazione alla sottrazione internazionale di minore, può ritirarla. Ciononostante, il Pubblico Ministero potrebbe proseguire con il procedimento dal momento che la denuncia del padre non rappresenta una condizione per il processo.

4. CONCLUSIONS

4.1. As a result of the above, my conclusions are that there is not an immediate danger of arrest and/or imprisonment for the mother. However there could be such a danger in case there is a proceeding pending for international child abduction, although home arrest could be easily obtained if requested. In order to have a clearer picture of the situation, it would be essential to know whether:

- The judgement of the Court of Appeals of Ancona has been further appealed at the Supreme Court
- A proceeding for international child abduction is currently pending.

4.2. I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

Rome, 12 November 2017
Avv. Roberta Ceschini
Ceschini & Restignoli Law Office
Signature

ORDER

FD17P00037

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Before His Honour Judge David TURNER QC sitting as a Deputy High Court Judge at the Royal Courts of Justice, Strand, London WC2A 2LL

4. CONCLUSIONI

4.1. A seguito di quanto affermato, concludo che non vi è un rischio immediato di arresto e/o incarcerazione per la madre. Tuttavia, ci potrebbe essere tale rischio in caso di procedimento in corso per sottrazione internazionale di minore, anche se si potrebbero ottenere facilmente gli arresti domiciliari se richiesti. Per poter avere un'immagine più chiara della situazione, sarebbe essenziale sapere se:

- È stato presentato ricorso contro la sentenza della Corte d'Appello di Ancona presso la Corte Suprema
- Un procedimento per sottrazione internazionale di minore è attualmente in corso.

4.2. Ribadisco di aver dichiarato esplicitamente quali fatti e questioni menzionati nella relazione rientrano nel mio ambito di competenza e quali no. Confermo essere veri quelli che vi rientrano. Le opinioni da me espresse costituiscono il mio parere professionale vero e completo sulle questioni alle quali si riferiscono.

Roma, 12 novembre 2017
Avv. Roberta Ceschini
Ceschini & Restignoli Studio Legale
Firma leggibile

SENTENZA

FD17P00037

NELL'ALTA CORTE DI GIUSTIZIA
SEZIONE DEL DIRITTO DI FAMIGLIA

Presiede il Giudice David TURNER QC in qualità di Deputy High Court Judge (Giudice Delegato

dell'Alta Corte) presso le Royal Courts of Justice, Strand, Londra WC2A 2LL

IN THE MATTER OF THE CHILD ADUCTION AND CUSTODY ACT 1985

IN MERITO AL CHILD ADUCTION AND CUSTODY ACT DEL 1985 (LEGGE SULLA CUSTODIA E SULLA SOTTRAZIONE DI MINORE)

AND IN THE MATTER OF THE COUNCIL REGULATION (EC) NO 2201/2003

E IN MERITO AL REGOLAMENTO (CE) N. 2201/2003

AND IN THE MATTER OF THE SENIOR COURTS ACT 1981

E IN MERITO AL SENIOR COURTS ACT DEL 1981 (LEGGE DEI TRIBUNALI DELL'INGHILTERRA E DEL GALLES)

AND IN THE MATTER OF G P (D.O.B. 31.12.2005)

E IN MERITO A G P (D.D.N. 31.12.2005)

BETWEEN:

O. P. Applicant

-AND-

V. P 1st Respondent

-AND-

G P (THROUGH HER GUARDIAN TERESA JULIAN) 2nd Respondent

TRA:

O. P. Ricorrente

-E-

V. P. 1° Convenuto

-E-

G P (ATTRAVERSO IL SUO TUTORE TERESA JULIAN) 2° Convenuta

UPON hearing counsel for the applicant, Mr. Edward Bennett, leading and junior counsel for the respondent, Mr. Damian Garrido Q.C. and Dr. Rob George, and the solicitor advocate for the child, Mr. Jeremy Ford

PRESO ATTO delle affermazioni dell'avvocato della ricorrente, Edward Bennett, dell'avvocato del convenuto e del suo assistente, Damian Garrido Q.C. e Rob George, e dell'avvocato della minore Jeremy Ford

AND UPON the mother and the guardian being present in court

E PRESO ATTO della presenza della madre e del tutore in tribunale

AND UPON reading the bundle and documents filed for this hearing

E PRESO ATTO dei documenti redatti per questa udienza

AND UPON the father, having reflected upon his position and not wanting to place the child in a situation where she and he are arguing against each other, seeking the court's permission to withdraw his application for the child's summary return to Italy

E PRESO ATTO che il padre, a seguito di una riflessione sulla sua posizione e non volendo mettere la minore in una situazione di costante discussione con lui, ha richiesto alla corte il permesso di ritirare la sua domanda per il ritorno immediato della minore in Italia

AND UPON the father undertaking to the court to withdraw all existing private law applications in relation to the child in the Italian courts

E PRESO ATTO dell'impegno del padre di ritirare tutte le domande di diritto privato relative alla minore presso i tribunali italiani

AND UPON both parents agreeing that:

a. the English courts shall have exclusive jurisdiction in all matters relating to the child's welfare; and
b. the child shall remain lining in England, subject to any future proceedings in the English courts (see below).

E PRESO ATTO della decisione di entrambi i genitori di:

a. attribuire ai tribunali inglesi giurisdizione esclusiva nelle questioni relative al benessere della minore; e
b. lasciare la minore in Inghilterra, sottoponendola a qualsiasi decisione futura dei tribunali inglesi (vedi sotto).

AND UPON the court noting the guardian's particular concerns in relation to the child's polarised views regarding her father

E PRESO ATTO che la corte ha tenuto in considerazione le preoccupazioni particolari del tutore in relazione alle opinioni contrastanti della minore sul padre

AND UPON the court noting, for legal aid purposes, that the Children Act 1989 proceedings flowing from the withdrawal of the father's 1980 Hague Convention, constitute an application by the father for contact pursuant to Article 21 of the 1980 Hague Child Abduction Convention.

E PRESO ATTO della constatazione della corte secondo cui, per motivi di assistenza legale, i procedimenti legati al Children Act del 1989 (Legge per la tutela dei minori) derivanti dal ritiro dalla Convenzione dell'Aja del 1980 da parte del padre costituiscono una richiesta di contatto ai sensi dell'Articolo 21 della Convenzione dell'Aja sulla Sottrazione Internazionale di Minore del 1980.

AND UPON the parents acknowledging the need for both of them to support the child to re-establish her relationship with her father at a pace commensurate with her welfare and wishes.

E PRESO ATTO del riconoscimento da parte dei genitori della necessità per entrambi di aiutare la minore a ricostruire un rapporto con il padre ad un ritmo adeguato al suo benessere e ai suoi desideri.

AND UPON the parties agreeing that, with the assistance of Ms. Julian, the father may write and send a letter to the child, setting out, in a child focused way, his reasons for not seeking the child's return to Italy in these proceedings, and his hopes for his future relationship with his daughter.

E PRESO ATTO dell'accordo tra le parti per cui, con l'assistenza della Dott. Julian, il padre potrà scrivere e inviare una lettera alla minore spiegando, in un modo che metta al centro la minore, il motivo per il quale non chiede il rientro della minore in Italia in questo procedimento, e le sue speranze di ristabilire una relazione in futuro con sua figlia.

AND UPON CAFCASS proposing to make a referral to the Child Contact Intervention **('CCI')** programme. The purpose of the referral is to enable the CCI to undertake preparatory work with the

E PRESO ATTO della proposta del CAFCASS di chiedere un rinvio al programma di Child Contact Intervention ('CCI') (Intervento per un Contatto con il Minore). Lo scopo del rinvio è quello di

child and with the mother and father prior to and with a view to supervised contact commencing as part of the CCI programme.

IT IS DECLARED THAT

1. As at the date of this order, the child is habitually resident in the jurisdiction of England & Wales.

IT IS ORDERED THAT:

2. Permission is given to the father to withdraw his applications for the summary return of the child to the jurisdiction of Italy, pursuant to the 1980 Hague Child Abduction Convention and the inherent jurisdiction of the High Court.
3. Any port alert, location order or any other injunctive order taken by way of protective measures in these proceedings in relation to the child and mother is discharged.
4. The father's solicitors shall forthwith release the mother and child's passports to the mother.
5. For the avoidance of doubt, the 1st and 2nd respondents are released from their undertakings annexed to the Order of Mr Justice HAYDEN dated 20 June 2017.
6. The father is deemed to make an application for contact pursuant to Article 21 of the 1980 Hague Child Abduction Convention, which is considered through the framework of the Children Act 1989.

consentire al CCI di effettuare un lavoro preliminare con la minore e con la madre e il padre prima e in vista del contatto supervisionato facente parte del programma CCI.

VIENE DICHIARATO CHE

1. Alla data del presente provvedimento, la minore risiede abitualmente nella giurisdizione dell'Inghilterra e del Galles.

VIENE STABILITO CHE:

2. Viene concesso al padre il permesso di ritirare le sue domande per il rientro immediato della minore nella giurisdizione italiana, ai sensi della Convenzione dell'Aja per la Sottrazione Internazionale di Minore del 1980 e della giurisdizione inerente dell'Alta Corte.
3. Viene annullata qualsiasi allerta portuale, provvedimento di localizzazione e ogni altro provvedimento ingiuntivo preso come misura protettiva in questo procedimento in relazione alla minore e alla madre.
4. Gli avvocati del padre devono rilasciare immediatamente i passaporti della minore e della madre a quest'ultima.
5. A scanso di equivoci, il primo e il secondo convenuto sono esonerati dalle loro promesse allegate alla Sentenza del Giudice HAYDEN in data 20 giugno 2017.
6. Il padre è tenuto a presentare istanza di contatto ai sensi dell'Articolo 21 della Convenzione dell'Aja per la Sottrazione Internazionale di Minore del 1980, ricompresa nel quadro del Children Act del 1989.

7. The following directions apply to the Children Act 1989 proceedings referred to at Paragraph 6 of this Order (above):

a. the proceedings are allocated to a judge of High Court level (not to include Mr Justice HAYDEN) sitting in the Family Court at the Royal Courts of Justice, the matter being certified as suitable to be heard by a Deputy High Court Judge subject to listing by the Clerk of the Rules;

b. the child is joined as a party to the Children Act proceedings. Ms. Teresa Julian is appointed her Guardian. For the avoidance of doubt, safeguarding checks have been completed;

c. the court makes a Contact Activity Direction so as to enable CAFCASS to make the CCI Referral referred to in the recitals above and referred to at sub-section (d) (below);

d. By 4pm on 19 January 2018, the Guardian is to make a CCI Referral;

e. **The matter is listed for a directions hearing with a time estimate of 1 hour before a judge of High Court level sitting in the Family Court at the Royal Courts of Justice at 10:30am on the first available date after 26 April 2018 (upon application to the Clerk of the Rules).** At that hearing, the court will consider the appropriateness of continued allocation to a puisne or section 9 judge in the Family Court. The case is certified

7. Le seguenti disposizioni riguardano il Children Act del 1989 menzionato nel Paragrafo 6 di questa Sentenza (di cui sopra):

a. gli atti sono assegnati ad un giudice dell'Alta Corte (escluso il Giudice HAYDEN) che presiede nel Tribunale di famiglia presso le Royal Courts of Justice, dopo aver giudicato la questione adatta ad essere discussa davanti a un Deputy High Court Judge subordinato alla registrazione da parte del Clerk of the Rules (cancelliere);

b. la minore viene inserita tra le parti del processo del Children Act. La Dott. Teresa Julian è nominata suo Tutore. A scanso di equivoci, sono state effettuate delle verifiche per garantire la sua tutela;

c. la corte emette un Contact Activity Direction (Indicazione per l'Attività di Contatto) in modo da consentire al CAFCASS di effettuare il Rinvio presso il CCI come indicato nelle premesse di cui sopra viene fatto riferimento nella sottosezione (d) (vedi sotto);

d. Entro le 16 del 19 gennaio 2018, il Tutore dovrà chiedere un Rinvio al CCI;

e. **È stata fissata un'udienza per discutere la questione con una durata stimata di 1 ora davanti a un giudice dell'Alta Corte che presiede nei Tribunali di Famiglia presso le Royal Courts of Justice alle ore 10:30 nella prima data disponibile dopo il 26 aprile 2018 (dietro richiesta al Clerk of the Rules)**. Al momento dell'udienza, la corte giudicherà l'appropriatezza di continue assegnazioni a un 'puisne judge' o a un

as suitable to be heard by a section 9 judge;	giudice della sezione 9 nel Tribunale di famiglia. Il caso viene ritenuto idoneo ad un'udienza con un giudice della sezione 9;
f. By 4pm no later than 7 days before the hearing listed in accordance with Paragraph 7(e) of this Order, the Guardian is to file and serve her report; and	f. Entro le ore 16, non oltre 7 giorni prima dell'udienza fissata ai sensi del Paragrafo 7(e) di questa Sentenza, il Tutore deve compilare e fornire la sua relazione; e
g. Liberty to each party to apply for directions on 48 hours written notice to all other parties.	g. Le parti sono libere di presentare domanda per ottenere delle disposizioni con un preavviso scritto di 48 ore a tutte le parti.
8. Permission is given to the parties to disclose this order to the Italian Central Authority, for the purposes of informing them as to the outcome of these proceedings, and in respect of the father's application under Article 21 of the 1980 Hague Child Abduction Convention.	8. Le parti possono divulgare il contenuto di tale sentenza presso l'Autorità Centrale Italiana, con lo scopo di informarla circa le conclusioni di questo procedimento, e nel rispetto della domanda del padre ai sensi dell'Articolo 21 della Convenzione dell'Aja per la Sottrazione internazionale di Minore del 1980.
9. No order as to costs save for detailed assessment of the publically funded costs of the parties.	9. Non è stato preso nessun provvedimento riguardante le spese, ad eccezione di una valutazione dettagliata della spesa pubblica delle parti.
DATED 13 DECEMBER 2017	DATA: 13 DICEMBRE 2017

3.2. TRANSLATION PROCEDURES

This section deals with the main translation techniques and procedures employed during the translation process. First, translators may choose between two methods of translation: direct and oblique translation (Vinay & Darbelnet 1995: 31). Direct translation consists in a literal translation. There are cases where the source message can simply be transposed into the target language. However, translators may also need to fill some gaps in the target language. This can be done through borrowings, calques or literal translations (Vinay & Darbelnet 1995: 31). On the contrary, oblique translation is used when two texts present structural or metalinguistic differences, thus making it difficult to transpose the same stylistic effect without upsetting the order of the syntax. In this case, more complex

methods need to be used and they are known as oblique translation methods (Vinay & Darbelnet 1995: 31).

In the previous chapter, borrowings have already been mentioned and described in detail (see Section 2.4). Nevertheless, it is important to make a distinction between borrowings, calques and literal translation since it will be helpful for the analysis of the documents. Borrowings occur when a word or expression is taken from the source text and used in the target text in a naturalised form. This means that a foreign word enters the target text. Perhaps, the most interesting aspect of borrowings is that they introduce a specific flavour related to a foreign culture into a translation (Vinay & Darbelnet 1995: 31-32). As regards calques, they are a special kind of borrowing "whereby a language borrows an expression form of another, but then translates literally each of its elements" (Vinay & Darbelnet 1995: 32). The result can be a lexical or a structural calque. The former occurs when the calque follows the same syntactic structure as the TL whilst introducing a new mode of expression. The latter turns into a new construction in the TL (Vinay & Darbelnet 1995: 32). Lastly, literal or word-for-word translation is

> the direct transfer of a SL text into a grammatically and idiomatically appropriate TL text in which the translators' task is limited to observing the adherence to the linguistic servitudes of the TL (Vinay & Darbelnet 1995: 33-34).

This means that a literal translation is based on a simple transfer from one language into another but it is important to respect the linguistic rules of the target language.

Oblique translation procedures are used when the elements of the source text cannot be translated without altering the meaning or upsetting the order of the elements in the target language. These techniques are: transposition, modulation, equivalence and adaptation (Vinay & Darbelnet 1995). According to Alcaraz and Hughes (2002: 181), transposition is "the substitution of one grammatical category for another" on the grounds that both "possess the same semantic weight or equivalent semic density". It can be applied to different grammatical categories, thus leading to many different types of transposition (Alcaraz & Hughes 2002: 181). For instance, a noun in the source text can become an adjective or a verb; a verb becomes a noun; an adjective becomes a verb or a noun. Modulation is defined by Vinay & Darbelnet (1958 quoted in Newmark 1988: 88-89) as a variation through a change of viewpoint. An example is the double negative and the change from active to passive and vice versa. According to Vinay & Darbelnet (1995:

38), equivalence is used to render the same situation with different stylistic and structural methods. Adaptation "is used in those cases where the type of situation being referred to by the SL message is unknown in the TL culture" (Vinay & Darbelnet 1995: 39). Therefore, translators have to create a new equivalent, which can be called situational equivalent.

Over and above the translation procedures given by Vinay and Darbelnet, there are other procedures and strategies which need to be taken into account. For instance, simplification and explicitation. The former involves making things easier for the reader. Although easy does not mean explicit, simplification does tend to select a more explicit interpretation in order to make the text less ambiguous (Baker 1996: 182). The latter consists in spelling implicit things out. The evidence for this tendency can be found in text length and in the increase in the number of words in translations when compared to the source text (Baker 1996: 180). The concept of explicitation seems to have been first introduced by Vinay and Darbelnet, who defined it as a "procédé qui consiste à introduire dans LA des précisions qui restent implicites dans LD, mais qui se dégagent du contexte ou de la situation" (1958: 9 quoted in Murtisari 2016: 67), "a procedure that consists in introducing in the target language details that remain implicit in the source language, but become clear through the relevant context or situation" (Murtisari 2016: 67). Nida introduced the term 'addition' to refer to those elements that "may legitimately be incorporated into a translation" (1964: 227). The most common types of addition are (Nida 1964: 227-230): a) adjusting elliptical expression; b) obligatory specification to avoid ambiguity or misleading reference; c) lexical additions resulting from grammatical restructuring of the source language; d) amplification from implicit to explicit status; e) answers to rhetorical questions; f) classifiers to build meaningful redundancy; g) connectives to precise the relationship between different events; h) categories of the target language that do not exist in the source language; i) doublets, "i.e. two semantically supplementary expressions in place of one", like 'answering, said' or 'asked and said' (Nida 1964: 230). The purpose of additions is to improve readability and to make the text less ambiguous (Murtisari 2016: 68).

Another strategy is compensation. Harvey (1998: 37) defines it as

> a technique which involves making up for the loss of a source text effect by recreating a similar effect in the target text through means that are specific to the target language and/or text.

With regard to the documents considered in this dissertation, repetitions will also be taken into account. The source text will be analysed in order to decide whether to keep them or to use a synonym, a single term or a pronoun in the target text. The last aspect which is going to be dealt with is punctuation.

3.3. TEXT ANALYSIS AND TRANSLATION CRITICISM

First, it is essential to identify some general features of the source texts: in Text 1, the majority of the sentences begin with the first-person pronoun since it is an affidavit. However, some passive verb forms are also used. In Text 2, verbs tend to be in the passive form or in the first person when they refer to a concept expressed by the judge. Moreover, there are also some impersonal verbs. Some examples of the use of the first-person pronoun are: "I will return to it below", "I note that", "I merely observe that", "I think that" and so on. Lastly, it is important to cite some examples of impersonal verbs, such as "it is important to", "it is plain that", "it is also necessary to record that", etc. In Text 3, verbs are mostly in the first person since the report contains statements and observations made by an expert, but there are also some passive forms, such as "The instructions I received are contained", "The judgement given by", etc. In Text 4, passive verbs are quite frequent; there are also some formulas such as "it is declared/ordered that", which will be translated as "viene dichiarato/stabilito che", or "in the matter of" and "upon", rendered respectively as "in merito a" and "preso atto di/che". Moreover, there is a tendency to repeat nouns instead of using synonyms or pronouns. With regard to punctuation and the use of capital letters, no major changes have been made. As a general rule, terms and phrases referring to acts, orders, conventions and institutions begin with a capital letter in both the Italian and the English text, especially when they are followed by an acronym such as "Aboriginal Family Violence Prevention & Legal Service Victoria (FVPLS)", rendered as "Ufficio di Prevenzione della Violenza Domestica nelle Comunità Indigene e di Patrocinio Gratuito di Victoria (FVPLS)" (Text 1).

One of the main problems with these texts is the presence of names of specific acts, corporations, communities and programmes which do not have an equivalent in the Italian system. For instance, "Equal Opportunity Act 1995 (Vic)" in Text 1 has been rendered as "Equal Opportunity Act del 1995 (Victoria) (Legge sulle pari opportunità)". The strategy adopted was to leave the original name in the target text and to write a word-

for-word translation in parentheses. This strategy has been adopted not only in this text but also in the other three texts, for all documents, acts, institutions which do not have an established equivalent in the Italian legal system. In Texts 2, 3 and 4, the "Child Abduction and Custody Act 1985" has no established equivalent, due to the fact that its purpose is to give effect to the Hague and European Conventions in the English legal system (Department of Justice 2020). Thus, it will be borrowed from the source text and followed by a parenthesis containing a word-for-word translation: "Child Abduction and Custody Act del 1985 (Legge sulla Custodia e sulla Sottrazione di Minore)". The same strategy applies to the "Guidelines for Judges Meeting Children who are subject to Family Proceedings" (Text 2), translated as "Guidelines for Judges Meeting Children who are subject to Family Proceedings (Linee Guida per i Giudici che incontrano i Minori sottoposti a Procedimenti Familiari)". With regard to Text 4, it is possible to cite the following examples:

- "Deputy High Court Judge" has no established translation in Italian. Indeed, an official EU website describes this role using the English title (E-justice 2020a). In the target text, the English title will be followed by an Italian literal translation between parentheses, in order to give a brief description of the role of this particular judge: "Deputy High Court Judge (Giudice Delegato dell'Alta Corte)". This parenthesis is necessary only the first time the title appears.
- "Senior Courts Act 1981" has been rendered as "Senior Courts Act del 1981 (Legge dei tribunali dell'Inghilterra e del Galles)". A search on the web has led to an order (SENTENZA DEL 13. 2. 2014), containing the aforementioned Senior Courts Act and the name has been left in English. Thus, it seems appropriate to leave it in English and to write a word-for-word translation in parentheses, with the addition of "dell'Inghilterra e del Galles".
- "Children Act 1989" has been translated as "Children Act del 1989 (Legge per la tutela dei minori)". Since it is an Act of the United Kingdom to reform the law relating to children, there is no official equivalent in Italian. Therefore, the English term will be borrowed and it will be followed by a possible literal translation in Italian. This parenthesis is necessary only the first time the term appears.

- "Child Contact Intervention ('CCI')" has been rendered as "Child Contact Intervention ('CCI') (Intervento per un Contatto con il Minore)".
- The same applies to "Contact Activity Direction". Urso (2012: 207) leaves the name of this direction in English and writes it in italics. As a result, in the target text it will be translated as "Contact Activity Direction (Indicazione per l'Attività di Contatto)".

There are also cases where the original name is not followed by a possible word-for-word translation but it is only borrowed from the source text. For instance, "Magistrates' Court" in Text 1 has not been translated, as it is possible to observe in this sentence: "Ero responsabile del progetto di sostegno sancito dal tribunale per l'intervento contro la violenza domestica presso la Magistrates' Court di Mildura". A search has been conducted to prove the use of this expression and an official EU website (E-justice 2020b) shows that it is better to leave it in English. Another example is the "Mildura Aboriginal Corporation" which has been left in English in the target text. In Texts 2 and 4, the "Royal Courts of Justice" remain the same in the target texts. On the contrary, the "High Court of Justice" has been translated as "Alta Corte di Giustizia (Inghilterra e Galles)" (InfoCuria Giurisprudenza 2020). The explicitation seems necessary since England and Wales have their own judicial system and the expression "Alta Corte di Giustizia" does not indicate an alleged High Court of Justice of the United Kingdom. In Text 4, "CAFCASS" remains the same (E-justice 2020b) since there is no equivalent in civil law. "Puisne judge" has been quite difficult to deal with. It refers to "the title by which the justices and barons of the several common law courts at Westminster are distinguished from the chief justice and chief baron" (The Law Dictionary 2020b). Since there is no equivalent in civil law, puisne judge has been borrowed and written in quotation marks. This choice is supported by De Luca (2017: 14), who mentions the High Court judge, also known as puisne judge.

According to Visconti (2017: 81), "il fenomeno degli anglismi pare riflettere l'evoluzione di una realtà giuridica sempre più complessa". Indeed, it is not the language that changes but the law (Cortelazzo 2012: 179, quoted in Visconti 2017: 81). In addition, studying the language of the law means exploring the concept expressed through these words and the relation between concepts and words (Visconti 2017: 81).

There are also cases where the names of conventions, acts, rules and associations have an equivalent and they all have been translated. For instance, the "Brussels II Revised" has been rendered as "Regolamento Bruxelles II bis" because it is the official translation (Text 2) and the "Hague Convention" has been translated as "Convenzione dell'Aja" or "Convenzione dell'Aja per la Sottrazione Internazionale di Minore del 1980" (Texts 2-4). Moreover, the official translation for the "United Nations Convention on the Rights of the Child" is "Convenzione ONU sui diritti dell'infanzia e dell'adolescenza" (Text 2). In Text 3, the "Italian Association of Family Lawyers" has been translated as "Associazione Italiana degli Avvocati per la Famiglia". On the contrary, the "International Academy of Family Lawyers" has been translated as "Associazione IAFL 'International Academy of Family Lawyers'", due to the fact that it is a worldwide association and it does not have an Italian equivalent.

With regard to terminology, it is crucial to list those terms which required a more thorough research and which are essential for the comprehension of the last three texts (Text 2):

- "joint custody" has been translated as "affidamento condiviso". The equivalent has been chosen among other options offered by IATE (2020). However, preference was given to this solution because after the reform of 2006, "affidamento condiviso" is used instead of "affidamento congiunto e alternato" (La legge per tutti 2020a). Proof of this can also be found in some legal texts and other documents, like the book "L'affidamento condiviso" (Maglietta 2006).
- "Statement of defence" has been rendered as "comparsa di risposta". This proposal has been verified by comparing the two definitions. The statement of defence is defined as "a defendant's written answer responding to a plaintiff's Statement of Claim where the defendant addresses each issue and either admits or denies each claim" (The Law Dictionary 2020c). It matches the Italian definition: "nella comparsa di risposta il convenuto deve proporre tutte le sue difese prendendo posizione sui fatti posti dall'attore a fondamento della domanda" (c.p.c, Article 167).
- "Tipstaff" has posed quite a complex problem. A "tipstaff" represents "the enforcement officer for all orders made in the High Court" (Family Law Week

2020). There is no equivalent in the Italian legal system but "ufficiale giudiziario" seems to share some features with a tipstaff: they both are a "pubblico ufficiale" and they act on behalf of the court (La legge per tutti 2020b). However, "pubblico ufficiale" has been chosen as the equivalent of tipstaff in order to use a more inclusive and general term and avoid any misinterpretation.

- The most suitable equivalent for "cross-examination" is "controinterrogatorio". The English definition is the following: "the opportunity at trial to question a witness, including your adversary, who testifies against you during direct examination" (The Law Dictionary 2020d). It matches the Italian definition: "interrogatorio di un teste o di un imputato, svolto dalla difesa o dall'accusa dopo quello della parte avversa" (Internazionale 2020).
- "Prima facie case" is an example of Latinism which posed some problems since it does not seem to be used in the Italian legal system. The expression "prima facie" is an adjective meaning "sufficient to establish a fact or raise a presumption unless disproved or rebutted" (Cornell Law School 2020c). In Italian, it seems appropriate to rephrase the entire sentence: "the mother had 'made out a good prima facie case that she was the victim of significant abuse at the hands of the father'" has been translated as "la madre aveva 'presentato in modo apparentemente fondato il fatto di essere vittima di considerevole violenza da parte del padre'".
- The term "custodial sentence" (Texts 2-3) was rendered as "pena detentiva" (IATE 2020). The choice was between "pena detentiva" and "pena privativa". However, the former occurs more frequently and it is used to refer to a "pena che consiste nella privazione della libertà personale del condannato" (Diritto 2020).
- The last term which needs to be discussed is "comity", translated as "reciprocità". Comity refers to "courtesy agreements between nations where each nation will recognize the laws of the other country" (The Law Dictionary 2020e). The Italian equivalent is "reciprocità", whose definition is the following: "principio a cui, nel diritto internazionale, si ispirano gli Stati nei

> loro accordi quando si scambiano concessioni su determinate materie e su determinati trattamenti". Moreover, "la reciprocità risponde alle esigenze di uguaglianza e uniformità di comportamento […] o per esigenze di adattamento a convenzioni internazionali" (Enciclopedia Sapere.it 2020).

With regard to translation choices, it is crucial to mention some examples of explicitation and simplification. For instance, in Text 1, the sentence "In this position I was responsible for the legal practice which included compliance with all professional requirements of the legal practice" has been rendered as "In tale posizione, ero responsabile degli affari legali in cui rientrava l'incarico di soddisfare tutti i requisiti che sono insiti nella professione legale". "Compliance with all professional requirements" has become "l'incarico di soddisfare tutti i requisiti che sono insiti nella professione legale". Another example of explicitation is the word "Aboriginal" which has been translated as "comunità indigene". The following sentence requires an addition too:

> During the last five years all of my work has been for ATSI people, including Barkindji, Latje Latje, Mutti Muni Yorta Yorta, Pakanji, Nyimpa, and Nurninjeri people from regions of Victoria, New South Wales and South Australia.
>
> Negli ultimi cinque anni ho interamente dedicato il mio lavoro agli ATSI, comprese le comunità indigene dei Barkindji, Latje Latje, Mutti Mutti Yorta Yorta, Pakanji, Nyimpa e Nurninjeri, provenienti dallo Stato di Victoria, Nuovo Galles del Sud (NSW) e Australia Meridionale.

"Le comunità indigene" has been added before the list of all ATSI people. Moreover, the parenthesis "(NSW)" was considered to be necessary because the acronym appears later in the source text. Another example of explicitation is the sentence "One of the roles of the FVPLS is to intervene with support and advice", translated as "Una delle funzioni del FVPLS è quella di intervenire attraverso sistemi di sostegno e di consulenza": "support and advice" has become "sistemi di sostegno e di consulenza". As for simplification, an example in Text 1 can be the following: "Make affirmation and say", translated as "Affermo che". As regards Text 2, the following example can be quoted:

> On 17 January 2017 the Court of Appeal of Ancona delivered judgment (Justice Giuliana Basillia, Justice Marina Tommolini, Justice Cecelia Laura Cristina Bellucci) in relation to the Mother's appeal of the one-year sentence for removing the child to Northern Italy.
>
> Il 17 gennaio 2017 la Corte d'Appello di Ancona ha pronunciato la sentenza (Giudice Giuliana Basillia, Giudice Marina Tommolini, Giudice Cecelia Laura Cristina Bellucci) in relazione al ricorso della Madre contro la condanna a un anno di reclusione per la sottrazione della minore e il suo trasferimento nel Nord Italia.

"Il suo trasferimento" has been added to make the sentence easier to understand. Another example of explicitation is the following: "Dawson Cornwell, Solicitors", translated as "studio legale Dawson Cornwell". As for simplification, the following sentence can be mentioned as an example:

> The authorities reveal a mild debate over whether, once the child's age and degree of maturity have been established and the court moves to the question of whether it is appropriate to take account of his views, it is making a finding of fact or exercising judgment.
>
> Dopo aver stabilito l'età e il livello di maturità del minore, la corte si interroga se sia appropriato prendere in considerazione le sue opinioni. Su questo punto, le autorità si chiedono se si tratti di un verdetto o dell'espressione di un giudizio.

This sentence also shows a change in punctuation from the source to the target text. If in the source text only one sentence is used to express an idea, the target concept has been divided into two sentences, thus making it simpler for the reader to comprehend.

As regards Text 3, it is possible to show the following examples: "I am the Family Law Partner of Ceschini & Restignoli, a law firm with offices in Rome, Italy". The Italian translation is the following: "Sono un avvocato dello studio legale Ceschini & Restignoli, che si occupa di diritto di famiglia e che ha sede a Roma, in Italia". "Family Law" has been clarified and has become "che si occupa di diritto di famiglia". Another example, which is quite similar to the previous case in Text 2 is: "removal of the child to England". In Italian, it is necessary to add the idea of transfer of the child, otherwise it would not make much sense. Consequently, my translation is: "rimozione della minore con conseguente trasferimento in Inghilterra". As regards simplification, it is possible to cite this sentence as an example: "Does the mother have the option to appeal […]?" This question has been rendered as "La madre può presentare ricorso […]?" instead of "La madre ha la possibilità di presentare ricorso?" which would be unnecessarily longer. Another example can be:

> The mother was entitled to further appeal the conviction at the Supreme Court by March 2017. I have no information whether an appeal at the Supreme Court was filed and can therefore envisage the following scenarios.
>
> La madre aveva il diritto di presentare ricorso contro la sentenza di condanna presso la Corte Suprema entro marzo 2017. Non ho informazioni a riguardo, quindi posso immaginare i seguenti scenari.

The second sentence has been changed and simplified in the target text since the idea of the appeal to the Supreme Court has already been mentioned in the previous sentence: "I

have no information whether an appeal at the Supreme Court was filed" has become "Non ho informazioni a riguardo".

There are also some examples of transposition and modulation. In Text 1, the sentence "Wherever I depose to matters based on information provided to me by others I believe that information to be true and correct" has been translated as "Quanto riportato sulla base di informazioni fornite da terzi è da me ritenuto vero e corretto". The subject is no longer "I" but "Quanto riportato". Thus, there is a change of viewpoint. In Text 2, a modulation has been used:

> This is an application pursuant to the Child Abduction and Custody Act 1985 seeking the return of GP who, it is agreed, was wrongfully removed from Italy on the 10th February 2016 by her mother (M).
>
> Questa è una richiesta formulata ai sensi del Child Abduction and Custody Act del 1985 (Legge sulla Custodia e sulla Sottrazione di Minore) in cui si chiede il ritorno di GP che si è convenuto sia stata sottratta illegalmente dall'Italia dalla madre (M) il giorno 10 febbraio 2016.

Indeed, "was wrongfully removed" has become "si è convenuto sia stata sottratta illegalmente", which implies the introduction of subordination in Italian.

In Text 3, in the sentence "As an attorney who specialises in international matrimonial law and child abduction", the verb "specialises" becomes a past participle in the target text: "In qualità di avvocato specializzato nella legge applicabile ai matrimoni internazionali e in sottrazione di minore". Another example can be: "the mother can file an application to have the sentence commuted", rendered as "la madre potrà presentare la richiesta di commutazione". "Commuted" has become a noun. Lastly, there are also some examples of transposition in Text 4. Many sentences starting with "and upon" and followed by a verb in the -ing form had to be adjusted in the target text, thus changing the verb into a noun. An example is the sentence "AND UPON the father undertaking to the court to withdraw all existing private law applications in relation to the child in the Italian courts", translated as "E PRESO ATTO dell'impegno del padre di ritirare tutte le domande di diritto privato relative alla minore presso i tribunali italiani", where the verb "undertaking" has become a noun. An example of both a transposition and a modulation is the following:

> Permission is given to the parties to disclose this order to the Italian Central Authority, for the purposes of informing them as to the outcome of these proceedings, and in respect of the father's application under Article 21 of the 1980 Hague Child Abduction Convention.

> Le parti possono divulgare il contenuto di tale sentenza presso l'Autorità Centrale Italiana, con lo scopo di informarla circa le conclusioni di questo procedimento, e nel rispetto della domanda del padre ai sensi dell'Articolo 21 della Convenzione dell'Aja per la Sottrazione internazionale di Minore del 1980.

The subject in the target text is no longer "permission" but "le parti", thus changing the passive verb into an active one, and the plural noun "purposes" has become "lo scopo".

Furthermore, some sentences needed to be rephrased in order to make them easier or less redundant. "This requires FVPLS lawyers to assist with a number of the legal issues detailed at paragraph 8" in Text 1 has been rephrased as "Di conseguenza, gli avvocati FVPLS sono tenuti a fornire assistenza in numerose questioni legali delineate nel paragrafo 8". An example of redundancy is the following:

> FVPLS assists **children** who are victims/survivors of family violence and sexual assault. The **children** may be secondary victims of violence having witnessed assaults upon their parent (generally the mother) and have suffered trauma as a result. The **children** may also be primary victims of family violence or sexual assault and require referral to specialist **children's** counselling and support services. I have observed that ATSI **children** feel more comfortable with a ATSI worker.

In the target text, the word "minori" has been replaced once by the pronoun "essi" and it does not appear next to "servizi specializzati di consulenza e di sostegno":

> Il FVPLS fornisce assistenza ai **minori** che sono vittime di violenza domestica e sessuale. **Essi** potrebbero essere vittime indirette quando assistono a violenze perpetrate su uno dei genitori (in genere la madre), subendo così un trauma. I **minori** potrebbero anche essere le vittime principali di violenza domestica o sessuale e richiedere un rinvio presso i servizi specializzati di consulenza e di sostegno. Ho potuto osservare che i **minori** ATSI si sentono più a loro agio con un assistente ATSI.

This sentence is also an example of simplification: "victims/survivors of family violence and sexual assault" has been rendered as "vittime di violenza domestica e sessuale". The word "vittime" includes the meaning of both victims and survivors and "violenza" can be used to indicate both violence and assault.

An example from Text 2 is the following:

> The court is not obliged to order the return of the **child** if 'the person, institution or body which opposes its return establishes that…there is a grave risk that his or her return would expose the **child** to physical or psychological harm or otherwise place the **child** in an intolerable situation'.

> La corte non è obbligata a disporre il rientro della **minore** se 'la persona, istituto o ente che si oppone al suo rientro stabilisce che… vi è un rischio grave che il suo rientro **lo/la** esponga a un danno fisico o psicologico o altrimenti che **lo/la** ponga in una situazione intollerabile'.

While the source text repeats the noun child, in the target text the noun "minore" was replaced by the pronouns "lo/la" in order to avoid repetition. Another example is the sentence "The father's solicitors shall forthwith release the mother and child's passports to the mother" in Text 4, translated as "Gli avvocati del padre devono rilasciare immediatamente i passaporti della minore e della madre a quest'ultima". Instead of repeating "the mother", the word order has been changed and "la madre" has been replaced by "quest'ultima".

The last aspect which needs to be taken into account is the use of punctuation. Overall, punctuation has not changed a lot but there are cases where it had to be adjusted according to Italian rules. For instance, in Text 1

> The majority of the clients of FVPLS Victoria are women and children and the majority of perpetrators are male as is consistent with statistics relating to family violence in the broader community.

has been translated as

> La maggior parte dei clienti del FVPLS di Victoria è composta da donne e minori e i principali autori di reati sono uomini. Questo è in linea con le statistiche relative alla violenza domestica nella comunità in senso ampio.

In English the concept has been expressed in one sentence, while in Italian it has been divided into two sentences. Punctuation also changes in dialogues. For instance, in Text 2: "'No. I don't like Italy' I commented that she had just told me how she liked Venice to which GP replied, 'yes, I liked Venice' and then she began to cry". In Italian, the translation would be: "'No. Non mi piace l'Italia', ho commentato dicendole che mi aveva appena detto quanto le era piaciuta Venezia e GP ha risposto: 'sì, mi è piaciuta Venezia', e poi ha iniziato a piangere". When there is no punctuation before the quotation marks, a comma has to be added before continuing the sentence. Moreover, the verb introducing the statement has to be followed by a colon (Treccani 2020c). In Text 3, the sentence

> The judgement of the Court of Appeal has been further appealed at the Supreme Court. The relevant proceeding will last one year approximately, however since the statute of limitation for this crime will expire in October 2018, the charge is very likely to be cancelled during the Supreme Court proceedings.

has been translated as

> È stato presentato ricorso contro la sentenza della Corte d'Appello presso la Corte Suprema. Il procedimento rilevante durerà circa un anno. Ciononostante, dal momento che il reato cadrà in

> prescrizione nell'ottobre 2018, l'accusa verrà molto probabilmente annullata durante il processo della Corte Suprema.

In the target text, the comma before "however" has been replaced by a full stop in order to make the sentence easier to read. The same rule applies in the following example:

> I am a member of the International Academy of Family Lawyers, Italian Association of Family Lawyers, frequent speaker at international conferences dealing with family law, author of various articles on the same matter published in various jurisdictions, and international correspondent for the magazine "International Family Law" published in the United Kingdom.
>
> Sono un membro dell'Associazione IAFL "International Academy of Family Lawyers" e dell'Associazione Italiana degli Avvocati per la Famiglia. Sono spesso invitata come relatrice alle conferenze internazionali in materia di diritto di famiglia. Sono autrice di molteplici articoli nello stesso ambito, pubblicati in varie giurisdizioni e sono corrispondente internazionale per la rivista "International Family Law" pubblicata nel Regno Unito.

Furthermore, the source text (Text 3) presents some mistakes concerning punctuation. In the question "Would there be further Court proceedings in Italy to determine whether the mother should be incarcerated." there is a full stop instead of a question mark, and the same occurs in another question: "Does the mother have the option to appeal the Italian Court of Appeals judgement of January 2017 dismissing her appeal against the one year custodial sentence for domestic child abduction." Thus, in the target text, these mistakes have been corrected.

It should be noted that this analysis is neither complete nor exhaustive because it only takes some examples into consideration. The purpose of this work is to underline the main aspects of legal texts and of legal translation in particular. Moreover, considerable experience in the legal sector and in legal translation is needed in order to conduct a more thorough research. Nevertheless, every effort has been made to perform a comprehensive and in-depth analysis, which could be a starting point for a more detailed and precise research on legal translation.

CONCLUSIONS

This dissertation has mainly focused on legal translation and translation strategies. The texts examined deal with common law and international law. A brief overview of the legal systems concerned and of general legal texts' features has been provided, even though the main subject is legal translation and the choices adopted in the translation process.

This process has led to four legal translations, accessible to an Italian reader and quite clear. One of the main issues concerns culture-bound terms and the need to create a balance between them and a text which has to be readable and easy to understand. Culture-bound terms are quite difficult to deal with because they are linked to a specific national legal system with its own culture. They first have to be understood by the translator. Then, they need to be verified in order to see whether there is an equivalent in the target legal system or if a translation strategy is required to solve the problem and fill the gap. Indeed, some institutions, conventions, acts or even concepts of the source texts are not part of the Italian legal system, thus making the translation fairly complex. Translators shall find a way to create a balance in the target text between terms bound to the source legal system and the need to produce a coherent and readable target text. In the case of international-law texts, another central issue is to find the right equivalents for names of conventions, acts and regulations and see how international laws have been incorporated by the different legal systems examined. When there is no established equivalent, translation strategies are quite helpful and sometimes essential.

As already mentioned and demonstrated in this dissertation, research plays a key and essential role, especially when a translator does not have a legal training. Indeed, he or she first has to comprehend what the text is about and the meaning of some terms and expressions. Then, he or she has to know the typical structure of a target legal text and try to compensate for the concepts which do not exist in the target legal system. Examples of the translation strategies that can be adopted in these cases are illustrated in the third and last chapter.

Furthermore, this dissertation also shows the importance of legal knowledge and training, in addition to translation and language training. A translator should not only have extensive knowledge of both the source and the target language and have experience as a translator, but he or she should also have a sound specialised knowledge. Indeed, knowledge of a specific domain is fundamental for every translator working in a

specialised field. It helps reducing time and creating better translations. However, experience should also be taken into account. As regards legal translations, the more you translate legal texts, the easier it will be to deal with legal terms and expressions and to know which strategy to adopt. Translation will become faster and their quality will be better.

In conclusion, it seems relevant to underline that this work has offered only some examples of translation strategies. Moreover, the choices made can vary from context to context and from one translator to another. Many factors can influence a translator's choice. A more detailed analysis could be useful to understand which strategies are more likely to be adopted in legal texts and which strategy proves to be more convenient.

In addition, a more thorough and in-depth analysis could be performed to show the importance of legal training when dealing with legal translation. This is especially true nowadays, with more and more international cases concerning different legal systems and cultures. Further research could also be conducted on codes of conduct and ethics. Indeed, there is not much about translation ethical norms, in particular when it comes to legal translation. This could be a quite significant and interesting area of research.

Lastly, this dissertation has also tried to offer a general overview of the basic rules that apply to Italian court experts and legal translators and interpreters. A more extensive research could be conducted on the English legal system in order to highlight the main differences and similarities between Italy and the United Kingdom, with reference to experts' and translators' appointment, work, requirements and sanctions. Aspects related to their criminal liability have only been mentioned though it would be fascinating to explore them too.

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RIASSUNTO

Questo lavoro è incentrato sulla traduzione di quattro documenti relativi al sistema giuridico inglese. Nello specifico, si tratta di un affidavit e di tre documenti collegati tra loro in quanto trattano la sottrazione internazionale di minore e fanno parte dello stesso procedimento. I documenti sono stati scelti per i seguenti motivi: il primo poiché rappresenta un testo tipico e specifico del common law; gli altri tre per il loro indirizzo internazionale oltre che britannico. Il primo obiettivo, infatti, è quello di presentare i due ordinamenti giuridici in analisi, appartenenti alla famiglia romano-germanica o di civil law e a quella dei sistemi di matrice anglosassone o di common law. Un'attenzione particolare è rivolta poi alle convenzioni riguardanti la sottrazione internazionale di minore e alla loro applicazione in Italia e nel Regno Unito. Il secondo obiettivo è quello di esaminare le principali teorie legate alla traduzione giuridica e alcune caratteristiche generali e comuni dei testi legali. Viene analizzato anche il ruolo della ricerca terminologica e delle risorse online e offline, con un'attenzione particolare alla terminologia. Il terzo obiettivo è quello di approfondire alcuni aspetti più complessi e problematici della traduzione giuridica e le strategie da adottare durante le varie fasi del processo traduttivo. Degli esempi concreti vengono menzionati per rendere le strategie più chiare e per verificare il raggiungimento degli obiettivi prefissati, ossia la realizzazione di un testo il più possibile chiaro e comprensibile per un pubblico italiano ma allo stesso tempo che mantenga gli elementi tipici della cultura di partenza.

La tesi inizia con un'introduzione generale in cui vengono delineati gli obiettivi e le tematiche che verranno affrontate nel lavoro. Viene fornita una presentazione sintetica degli argomenti trattati nei tre diversi capitoli, con una spiegazione relativa alle diverse sezioni. Il primo capitolo fornisce una panoramica generale delle tre famiglie giuridiche (David & Brierley 1985), ossia quella romano-germanica, di common law e socialista. Le prime due verranno approfondite poiché gli ordinamenti analizzati in questo lavoro sono quello italiano e quello britannico, legati rispettivamente alla famiglia romano-germanica o di civil law e a quella di common law. Vengono illustrate le caratteristiche fondamentali delle due famiglie giuridiche e vengono messe in evidenza le principali differenze e le relative conseguenze nella pratica. Nonostante le differenze, si può parlare di una grande famiglia giuridica occidentale dal momento che le due sembrano essersi avvicinate nel corso dei secoli. La sezione successiva si occupa della sottrazione internazionale di

minore, sempre più in crescita a causa dei matrimoni misti in aumento e della globalizzazione. Questo paragrafo si sofferma in modo particolare su due convenzioni che hanno segnato una svolta importante, ossia la Convenzione dell'Aja e la Convenzione ONU sui diritti dell'infanzia e dell'adolescenza. La prima risale al 1980 ed è un accordo multilaterale che ha lo scopo di tutelare e proteggere il minore contro gli effetti di un suo trasferimento illecito, con delle procedure che ne assicurino il rientro immediato nello Stato di residenza abituale. La nozione di residenza abituale viene chiarita, così come il concetto di trasferimento o mancato ritorno illecito e vengono presentati gli obiettivi della Convenzione. La seconda, invece, è stata adottata nel 1989 dall'Assemblea generale delle Nazioni Unite e riconosce i minori come soggetti titolari di diritti inalienabili. È il trattato sui diritti umani più ratificato nella storia: 196 paesi l'hanno adottato, ad eccezione degli Stati Uniti. Questo capitolo riporta anche alcuni punti chiave del Regolamento Bruxelles II bis, un regolamento direttamente applicabile in tutti gli Stati membri dell'Unione Europea, ad eccezione della Danimarca. Il regolamento prevale sulla legge nazionale e anche su altri accordi multilaterali tra cui la Convenzione dell'Aja del 1980. Il Regno Unito, però, non è più vincolato dal Regolamento Bruxelles II bis a seguito della sua decisione di lasciare l'Unione Europea.

La seconda parte di questo primo capitolo affronta l'adozione della Convenzione dell'Aja e della Convenzione ONU. Innanzitutto, è fondamentale spiegare la relazione tra diritto nazionale e diritto internazionale e la distinzione tra dottrina monista e dualista e tra quella dell'"incorporation" e della "transformation". Seconda la dottrina monista, il diritto nazionale e quello internazionale costituiscono un ordinamento giuridico unitario e quello internazionale prevale. Al contrario, secondo la dottrina dualista il diritto nazionale e quello internazionale sono tra di loro autonomi e indipendenti. Per quanto riguarda la seconda distinzione, invece, la teoria della "transformation" implica una trasformazione, ossia une rielaborazione della norma internazionale attraverso una norma interna, in modo che venga immessa nell'ordinamento. La teoria dell'"incorporation", invece, non prevede nessuna fonte interna ma l'ordinamento nazionale recepisce in maniera diretta la norma internazionale senza modificarla. Successivamente, l'analisi si concentra sulla struttura del tribunale inglese in materia di minori o di diritto di famiglia. Il principale strumento adottato in situazioni che riguardano i minori è il Children Act del 1989 (Legge per la tutela dei minori). Viene anche introdotto il ruolo del CAFCASS

(Children and Family Court Advisory and Support Service), il cui scopo è quello di proteggere il benessere dei minori in materia di diritto di famiglia rappresentando i loro interessi, e degli ADR, ossia i metodi alternativi di risoluzione delle controversie, fuori dal tribunale con l'aiuto di un organo imparziale. Le forme più comuni sono: mediazione, arbitrato e conciliazione. In materia di minori, l'Inghilterra e il Galles erano vincolati dal Regolamento Bruxelles II bis e dal Family Law Act del 1986 (Legge sul diritto di famiglia). Se da un lato il Family Law Act continua a regolamentare gli aspetti che riguardano il diritto di famiglia e i minori all'interno delle giurisdizioni del Regno Unito, dall'altro il Regolamento Bruxelles II bis ha ormai smesso di rappresentare una fonte di riferimento per il Regno Unito, che ha lasciato definitivamente l'Unione Europea il 31 gennaio 2020 e che sta attualmente attraversando un periodo di transizione che dovrebbe terminare il 31 dicembre 2020. Il Regno Unito sarà regolamentato quindi dalla Convenzione dell'Aja del 1980 per gli aspetti che riguardano la sottrazione internazionale di minore e dalla Convenzione dell'Aja del 1996 per gli aspetti che riguardano la responsabilità genitoriale. In breve, questa sezione cerca di spiegare quali sono i punti più critici legati alla non applicazione del Regolamento Bruxelles II bis nel Regno Unito. Per quanto riguarda il Child Abduction and Custody Act del 1985 (Legge sulla Custodia e sulla Sottrazione di Minore), esso recepisce la Convenzione dell'Aja del 1980. Brevemente, questa sezione cerca di spiegare i vari passaggi che avvengono nel momento in cui uno dei genitori presenta la domanda per ottenere il rientro del minore. L'autorità centrale incaricata di adempiere agli obblighi imposti dalla Convenzione è l'International Child Abduction and Contact Unit. Per quanto riguarda l'Italia, invece, è importante iniziare con una riflessione sul ruolo del precedente giurisprudenziale. Esso, infatti, non ha potere vincolante in Italia a differenza del Regno Unito, dove legge e precedente giurisprudenziale convivono e sono entrambi vincolanti. In materia di sottrazione internazionale di minore, l'Italia è regolamentata dalla Convenzione dell'Aja del 1980, entrata in vigore nel 1995. Per quanto riguarda la Convenzione ONU, questa è stata implementata nel 1991. L'autorità centrale italiana è istituita presso il Dipartimento per la giustizia minorile e di comunità, che si occupa di attivare la procedura per chiedere ed ottenere il rientro del minore sottratto in maniera illecita. Viene perciò chiarito il concetto di responsabilità genitoriale e vengono citati alcuni articoli del codice penale che

puniscono i reati commessi contro i minori, come ad esempio la sottrazione o il sequestro di persona.

Il secondo capitolo sottolinea l'importanza sempre maggiore della traduzione giuridica, in un mondo globalizzato dove l'incontro tra culture e ordinamenti giuridici differenti è all'ordine del giorno. La prima parte di questo capitolo introduce alcune definizioni di traduzione giuridica, che in generale può essere definita come una traduzione tecnica da un testo di partenza a un testo di arrivo (Cao 2010). L'aggettivo "tecnica" serve ad identificare il contenuto caratteristico e specialistico di questi testi che non solo contengono termini specifici ma presentano anche caratteristiche peculiari a livello formale (Schubert 2010). La traduzione giuridica rientra infatti nelle traduzioni delle lingue speciali o languages for special or specific purposes (LSP) ma rispetto ad altri testi specialistici i testi legali presentano un maggiore legame con la cultura d'origine poiché i concetti legali derivano da uno specifico ordinamento giuridico nazionale (Šarčević 1997). In seguito, si passa ad analizzare le principali classificazioni relative alla traduzione giuridica: essa può essere classificata in base al contenuto del testo di partenza, al suo stato o alle sue funzioni oppure in base allo stato, alle funzioni o all'obiettivo del testo di arrivo. La traduzione giuridica non è solo uno scambio tra due lingue ma anche uno scambio tra due sistemi giuridici differenti.

Nella seconda parte si passa ad esaminare le principali caratteristiche dei testi giuridici: linguaggio prevalentemente formale, a volte oscuro o ambiguo, frasi lunghe e complesse con forte presenza di subordinate, stile impersonale, forme passive, nominalizzazioni, espressioni arcaiche, ripetizioni piuttosto che sinonimi o pronomi e tecnicismi. Questi ultimi possono essere collaterali o necessari (Serianni 1985) e la vera difficoltà riguarda quelli collaterali: quelli necessari sono i tecnicismi specifici che si imparano, mentre quelli collaterali potrebbero essere sostituiti da termini del linguaggio comune, restando perciò limitati a un gruppo ristretto di persone (Cortelazzo 2006). Negli ultimi anni sono stati compiuti molti sforzi per rendere il linguaggio giuridico meno astruso e più accessibile. Questi sono alcuni degli obiettivi proposti dal Plain Language Movement, un movimento nato con lo scopo di semplificare il linguaggio giuridico e di contrastare il cosiddetto "giuridichese", in modo da renderlo comprensibile anche per i non esperti. Un'altra caratteristica riguarda l'uso di latinismi sia nei testi inglesi che in

quelli italiani, l'uso di francesismi nei testi inglesi a causa della conquista normanna dell'Inghilterra e l'uso di anglicismi nei testi italiani, soprattutto negli ultimi decenni.

La terza parte del secondo capitolo si occupa delle competenze che un traduttore giuridico deve possedere per svolgere al meglio la sua professione. In passato queste competenze si acquisivano in maniera informale, mentre oggi ci sono dei programmi di formazione giuridica. Un buon traduttore giuridico non deve solo essere un buon traduttore ma deve avere delle conoscenze del settore specifico di competenza, soprattutto perché questo tipo di traduzione può avere delle conseguenze legali. Sono necessarie anche delle risorse affidabili da cui il traduttore può trarre informazioni essenziali e che gli consentiranno non solo di comprendere il testo di partenza ma anche di trovare degli equivalenti adatti per il testo di arrivo. Il traduttore giuridico dovrà quindi possedere ottime competenze linguistiche e ottime competenze giuridiche.

La quarta parte spiega il passaggio da traduzione letterale a un tipo di traduzione che lascia maggiore spazio all'interpretazione e alla creatività del traduttore. Un altro elemento fondamentale consiste nella differenza tra "foreignising" e "domestication" (Venuti 1998), ossia tra traduzione straniante e addomesticante. La prima è orientata verso il testo di partenza, la seconda verso quello di arrivo. La traduzione giuridica, così come le altre traduzioni tecniche, tende a seguire la seconda strategia. Inoltre, quando si parla di equivalenti, è necessario sottolineare che non esiste un'equivalenza assoluta (Šarčević 1997). I traduttori cercheranno di trovare un equivalente ormai consolidato nella lingua d'arrivo facendo riferimento alle loro risorse testuali o terminologiche. Le prime servono ad avere un quadro più chiaro sull'argomento trattato, mentre le seconde chiariscono dubbi relativi ai termini utilizzati. Alcuni esempi sono i dizionari, bilingui o monolingui, strumenti online, motori di ricerca, database terminologici e forum online. Le risorse online sono maggiormente utilizzate in quanto più veloci e più facilmente accessibili, anche se a volte potrebbero essere meno precise delle fonti offline. Inoltre, l'utilizzo di CAT Tool può rendere il lavoro non solo più rapido ma anche più accurato.

La quinta parte si sofferma sulla terminologia, ossia lo studio dei termini. Un testo presenta tanti più termini quanto più è specializzato e il loro compito è quello di trasferire conoscenze del settore. Per questo il termine si differenzia dalla parola, che appartiene al lessico generale a differenza del termine che si riferisce ad un settore più specifico. Quando si parla di termini, è importante citare il concetto di equivalenza che non è più

considerata come una relazione di identità ma come un rapporto di somiglianza. L'equivalenza può essere formale o dinamica (Nida 1964), detta anche funzionale. La prima si concentra sul messaggio e vi è corrispondenza tra il testo di partenza e quello di arrivo. La seconda invece si concentra maggiormente sulla cultura di partenza e sulla risposta del pubblico di arrivo. È il cosiddetto principio di effetto equivalente, dove la relazione tra messaggio e ricevente è la stessa sia nel testo di partenza che in quello di arrivo. Dopo aver trovato l'equivalente, si effettua una comparazione tra le caratteristiche dei due termini per valutare il livello di equivalenza tra il termine di partenza e quello di arrivo. Le categorie di equivalenza sono tre: equivalenza totale, parziale e assente. La prima è quella ideale ma in realtà la più frequente è quella parziale. In questo caso, è fondamentale osservare che l'accettabilità di un traducente non è sempre reciproca e il contesto potrebbe aiutare nella scelta. Nel caso di equivalenza assente, invece, si cerca di compensare con l'utilizzo di perifrasi che spieghino il concetto oppure di utilizzare dei termini neutri e non tecnici. Un'altra soluzione potrebbe essere l'utilizzo di prestiti, ossia termini stranieri che entrano nella lingua d'arrivo. Vengono esposte delle considerazioni sui prestiti e sui loro effetti. Se un traduttore preferisce non utilizzare i prestiti, l'ultima soluzione potrebbe essere la creazione di un neologismo. Infine, vengono discussi alcuni dei problemi più frequenti nella traduzione giuridica, come l'assenza di un concetto simile nella cultura di arrivo, oppure la presenza di un termine equivalente a quello di partenza ma con delle implicazioni diverse oppure due termini simili nelle due lingue ma con dei significati diversi. Ci sono poi dei termini propri della cultura di partenza che non possono essere tradotti e termini vaghi difficilmente traducibili, oppure uno stesso termine che si riferisce però a concetti diversi o uno stesso concetto espresso con termini diversi in quelle giurisdizioni che condividono la stessa lingua ufficiale.

La sesta parte riguarda i codici deontologici. Il compito dei traduttori, infatti, non è solo quello di tradurre un testo da una lingua ad un'altra. Essi hanno anche una responsabilità etica, che riguarda in generale i concetti di imparzialità, fedeltà, neutralità e accuratezza. I codici deontologici rientrano nella categoria dei principi etici professionali, che si contrappongono alle norme etiche personali (Asensio 2014). Queste ultime, infatti, sono delle decisioni individuali che non possono essere imposte agli altri. Quelle professionali, invece, si ripercuotono su tutti i membri di un'associazione professionale. La tesi si sofferma sul codice italiano e su quello anglosassone. Per quanto

riguarda quello italiano, questo si applica a tutti i traduttori e gli interpreti iscritti all'Associazione Italiana Traduttori e Interpreti (AITI). Il testo è diviso in tre parti: principi generali; rapporti con i committenti e rapporti con i colleghi. Vengono descritti nel testo i principali doveri, tra cui quello di dignità, lealtà e correttezza, diligenza, segretezza, indipendenza, competenza, aggiornamento professionale ed evitare incompatibilità. Un altro punto importante riguarda la pubblicità e l'autopromozione e viene sancito il divieto di pratiche commerciali ingannevoli. Per quanto riguarda il rapporto tra traduttore o interprete e committente, questo si deve basare sulla fiducia. AITI delinea anche alcune buone prassi per traduttori e interpreti in ambito giudiziario, il cui ruolo richiede ottime competenze professionali e grande responsabilità. Nella prima sezione del codice si delineano i due profili professionali dell'interprete e del traduttore giudiziario, con i relativi requisiti richiesti. La tesi si sofferma solo sul ruolo del traduttore. Tra i requisiti è possibile menzionare la conoscenza della lingua e della cultura di lavoro e la perfetta padronanza della lingua madre; conoscenza di entrambi i sistemi giudiziari; nozioni di diritto internazionale, costituzionale, penale, ecc.; conoscenza delle metodologie di traduzione giuridica; conoscenza delle terminologia giuridica; conoscenza delle convenzioni stilistiche dei testi giuridici. Infine, vengono elencate alcune regole utili per la selezione dei potenziali candidati come interpreti o traduttori giudiziari. Ad esempio, l'appartenenza a un'associazione professionale di categoria, una certificazione linguistica per la lingua straniera, nozioni di diritto, formazione specifica, conoscenza della terminologia e delle culture di lavoro e conoscenza delle modalità di traduzione. Per quanto riguarda il Regno Unito, invece, il codice di riferimento è quello ITI (Institute of Translation and Interpreting). Anche in questo caso, vengono elencati i principali valori professionali e alcuni principi da rispettare. Tra questi è possibile menzionare onestà e integrità, competenza professionale, riservatezza e fiducia, rapporto leale e rispettoso con gli altri membri dell'associazione. Ogni principio viene esaminato con maggiore attenzione.

Il settimo paragrafo fornisce una panoramica generale sul ruolo degli esperti, in modo particolare in Italia, facendo una distinzione tra consulenti tecnici d'ufficio (CTU) ed esperti in ambito civile e tra ausiliari ed esperti in ambito penale. Queste figure intervengono qualora il giudice, nell'esercizio delle sue funzioni, si trovi a dover affrontare dei settori che non sono di sua competenza, dato che il giudice dispone di

competenze legali ma non può valutare questioni mediche e tecniche. La differenza non è però codificata ma è una distinzione dottrinaria ed è la seguente: il consulente tecnico, così come l'ausiliare, accerta e valuta i fatti oggetto del quesito del giudice che l'ha nominato. L'esperto invece non accerta nulla e si limita a prestare assistenza. Il traduttore rientra in questa seconda categoria. Al primo quindi sono richiesti dei pareri e delle opinioni mentre il secondo compie attività meramente materiali e ricognitive. In questa sezione sono elencate le principali norme di riferimento per la nomina, i requisiti e le attività del consulente. Le norme che regolano le modalità di nomina, convocazione e adempimento dell'incarico da parte del consulente e dell'esperto sono indicate nel codice di procedura civile. I requisiti invece sono disciplinati dalle disposizioni di attuazione del codice di procedura civile. In ambito penale, i requisiti relativi agli ausiliari sono disciplinati dalle norme di attuazione del codice di procedura penale. Vi è anche una parte relativa all'elenco nazionale degli interpreti e dei traduttori. Quanto all'aspetto prettamente linguistico, vi sono delle norme del codice di procedura civile inserite come riferimento. In breve, il processo si svolge in lingua italiana e il giudice può nominare un interprete qualora vi fosse la necessità di sentire qualcuno che non conosce la lingua italiana. L'interprete dovrà prima prestare giuramento davanti al giudice. Il giudice potrà anche nominare un traduttore quando occorre esaminare dei documenti non scritti in lingua italiana. Tuttavia, è importante sottolineare che il tribunale non è il solo a poter ricorrere all'ausilio di un tecnico. Al contrario, il privato che è parte di un procedimento potrà ricorrere a un tecnico nel caso in cui dovesse sottoporre all'attenzione del giudice un testo in lingua straniera o citare in giudizio un soggetto residente all'estero. Di conseguenza, l'avvocato della parte chiederà l'aiuto di un traduttore che potrà fare una traduzione semplice oppure giurata o asseverata. Per fare una traduzione semplice il traduttore deve fare semplicemente una traduzione fedele ed accurata del testo. Per asseverare una traduzione, invece, è necessario che l'esperto presti giuramento davanti a un funzionario del tribunale, affermando di aver tradotto il documento con l'unico scopo di far conoscere la verità e assumendosi piena responsabilità sia civile che penale per il suo operato. Il traduttore giurato può essere punito per il reato di falsa perizia o interpretazione previsto nel codice penale.

Il terzo e ultimo capitolo è diviso in quattro sezioni. La prima ha come obiettivo quello di descrivere le tipologie di testi che sono stati tradotti e di spiegare i motivi per i

quali sono stati scelti. I testi sono: un affidavit, una sentenza, un rapporto degli esperti e un'ultima sentenza emanata a seguito del ritiro del padre della sua richiesta di rientro immediato della minore. Gli ultimi tre testi appartengono infatti a un caso di sottrazione internazionale di minore e sono collegati tra di loro. Viene analizzato il linguaggio utilizzato nei testi, sottolineando l'obiettivo finale di lasciare invariato il registro anche nel testo di arrivo. Le risorse utilizzate durante il processo traduttivo sono principalmente risorse online, tra cui IATE e altri dizionari monolingui o bilingui. Altri documenti ufficiali sono anche stati consultati per verificare il reale utilizzo di alcuni possibili traducenti.

Il secondo paragrafo presenta i testi di partenza con le relative traduzioni a fronte. Il terzo si occupa delle principali procedure e strategie traduttive adottate durante il processo traduttivo. Innanzitutto, viene fatta una distinzione tra traduzione diretta e traduzione obliqua (Vinay and Darbelnet 1995). La traduzione diretta consiste in una traduzione letterale e prevede l'utilizzo di calchi, prestiti e traduzioni letterali. I calchi consistono in una traduzione letterale di ogni elemento dell'espressione del testo di partenza; i prestiti consistono nel trasferire il termine del testo di partenza nel testo di arrivo, in una forma naturalizzata; le traduzioni letterali sono dei trasferimenti dalla lingua di partenza alla lingua di arrivo, ma rispettando le regole grammaticali e sintattiche del testo di arrivo. Al contrario, la traduzione obliqua viene attuata quando due testi presentano delle differenze strutturali rendendo perciò impossibile una semplice trasposizione che mantenga invariato l'ordine sintattico. In questo caso, i metodi utilizzati sono: trasposizione, modulazione, equivalenza e adattamento. La trasposizione consiste nel sostituire una categoria grammaticale con un'altra; la modulazione può essere definita come un cambio di prospettiva, come nel caso di una frase attiva che diventa passiva; l'equivalenza si usa per rendere la stessa situazione con metodi stilistici e strutturali diversi; l'adattamento consiste nella sostituzione di un elemento legato alla cultura di partenza con un elemento della cultura di arrivo. Oltre a questa classificazione, sono citate altre strategie che risultano molto utili e frequentemente utilizzate dai traduttori. Per esempio, la semplificazione e l'esplicitazione. La prima ha lo scopo di rendere il testo di arrivo più chiaro e semplice, mentre la seconda tende a rendere espliciti dei concetti impliciti. Un'altra strategia è la compensazione: si cerca di compensare per quegli

elementi che mancano nel testo di partenza ricreando un effetto simile con elementi tipici del testo di arrivo.

Il quarto e ultimo paragrafo analizza più nel dettaglio le quattro traduzioni. Viene offerto un quadro generale delle caratteristiche principali dei documenti di partenza e vengono esaminate alcune decisioni relative all'utilizzo delle maiuscole. Per quanto riguarda i testi di arrivo, essi hanno mantenuto la struttura, lo scopo e il linguaggio del testo di partenza. Le strategie adottate sono state utili per raggiungere l'obiettivo e alcune modifiche sono state necessarie per rendere il testo comprensibile e chiaro al pubblico italiano che non conosce alcuni concetti, istituzioni o normative britanniche e internazionali. Le strategie impiegate vengono spiegate attraverso esempi e riferimenti dei testi di partenza e di arrivo. Dal punto di vista della terminologia, essendo i testi ricchi di termini tipici della cultura e del sistema giuridico britannico, vengono esaminate alcune scelte terminologiche necessarie alla comprensione dei testi di partenza. Le risorse online si sono rivelate fondamentali sia per la comprensione dei concetti che per la ricerca di equivalenti in italiano. Ulteriori ricerche sono state condotte per valutare l'effettivo utilizzo di quegli equivalenti e in alcuni casi sono state riscontrate delle difficoltà vista l'assenza di equivalenti italiani. In questi casi, la scelta è stata di lasciare il termine originale mettendo una traduzione letterale tra parentesi o, in altri casi, di lasciare il termine nella lingua originale senza una traduzione. Oltre ai prestiti, altre strategie utilizzate sono: la semplificazione, l'esplicitazione, la trasposizione e la modulazione. A volte è stato anche necessario compensare e fare delle aggiunte o riformulare dei concetti in modo da renderli più chiari per un pubblico italiano. Nei casi di ripetizioni che causavano ridondanza, spesso sono stati utilizzati dei sinonimi o dei pronomi. Per quanto riguarda la punteggiatura, in generale non sono stati attuati dei cambiamenti significativi.

Infine, le conclusioni sottolineano come i testi di arrivo rispecchino gli obiettivi prefissati. Essi, infatti, risultano comprensibili e chiari per il pubblico italiano, nonostante la presenza di concetti e termini legati alla cultura di partenza. Come menzionato e anche dimostrato in questa tesi, il lavoro di ricerca è fondamentale per ottenere delle traduzioni di alta qualità. Ancora più importante sembra essere una formazione in ambito giuridico. Futuri approfondimenti potrebbero infatti riguardare il ruolo della ricerca e della formazione nella traduzione giuridica. Delle ricerche più approfondite potrebbero anche essere utili per capire quali strategie sono maggiormente utilizzate all'interno dei testi

giuridici. Inoltre, uno degli aspetti più interessanti riguarda i codici deontologici e il ruolo dei traduttori che lavorano come esperti per il tribunale. Per quanto riguarda i codici, infatti, si potrebbero approfondire quelle norme che riguardano in modo specifico i traduttori giuridici; per quanto riguarda i traduttori che lavorano per il tribunale, invece, si potrebbero approfondire le norme giuridiche del sistema britannico per evidenziare eventuali somiglianze e differenze con il sistema giuridico italiano.