

## DEALING WITH NON-EQUIVALENCE OF LEGAL TERMINOLOGY – A COMPARATIVE CASE STUDY OF LITHUANIAN AND ENGLISH LEGAL TERMS

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### ABSTRACT

The aims of the article are: 1) to define the principles of comparative legal terminology analysis used for the case study presented in the article; 2) to analyse a group of Lithuanian legal terms defining a generic concept of a criminal wrong and its types according to the degree of seriousness (*nusikalstama veika*, *nusikalstimas* and *baudžiamasis nusizengimas*), and to conduct a comparative analysis of the Lithuanian terms and their closest equivalents in the English-Welsh and the US legal systems; 3) to analyse how the relevant concepts are named in the English versions of the EU legal documents; 4) to discuss and evaluate the translation of the analysed Lithuanian terms in the English version of the Criminal Code of the Republic of Lithuania. The research reveals semantic and functional differences of the analysed Lithuanian terms and their closest English equivalents as well as the differences between the Lithuanian, the English-Welsh, and the US legal systems. The analysis of the EU documents shows what criminal law terms, referring to the relevant concepts, are used internationally. The findings allow the evaluation of the English translation of the Lithuanian terms in the Criminal Code of the Republic of Lithuania from the perspective of the functional (in)congruity of the terms and the communicative purpose of the target text. Hopefully, the findings of the research will give ideas to both the translators of legal texts dealing with non-equivalence problems and the teachers of legal English searching for effective terminology teaching strategies as well as willing to use comparative law and translation methodology in the ESP teaching process.

### KEYWORDS

Legal concepts, legal terminology, culture-bound terms, legal translation, comparative analysis, translation techniques.

### 1. Introduction

**The topicality of the article.** In the contemporary international communication, legal language plays a vital role. The legal norms of the different legal systems directly affect international communication as they constitute “the rules of the game” which are to be followed by the communication parties. Therefore, the legal language and its translation become an important instrument which enables the participants of the communication to understand each other.

Legal terminology is the core of legal language as it defines the system of legal concepts of a given legal system. Therefore; legal terminology skills and precision of its use is of vital importance in the communication process.

Legal terminology differs from terminology of other sciences in several aspects. Firstly, it defines only abstract concepts which are created by generalizing the main features of similar phenomena. Secondly, legal terminology is “system-bound, tied to the legal system rather than to language” (Pommer, 2008: 18). Absolute equivalence between legal terms from

different legal systems is not possible as legal terms define concepts which may only be similar in their functions, but not completely identical (Sandrini, 1999, p. 102-103).

These peculiarities of legal terminology make it especially difficult to translate legal terms from one language to another. Translation of legal terms requires thorough understanding of their functions and semantics which is impossible without the awareness of source and target legal systems, as well as legal settings in which the terms to be translated are used. Inaccurate use of legal terminology may lead to unexpected consequences – incorrect interpretation of primary information and mistaken assumptions. Therefore, legal translators have to be particularly accurate and possess special knowledge in law. Actually, they have “to practice comparative law” (De Groot, Laer, 2007: 173). However, since this is a time-consuming task, translators “should be assisted by a group or department of terminologists, preferably lawyer linguists who are able to conduct comparative law studies (Šarčević, 1997: 237).

This article is an attempt to conduct a comparative analysis of three basic criminal law terms used in the Lithuanian legal system, two English speaking legal systems, and the EU legal documents; and to evaluate the translation of the terms in the English version of the Lithuanian Criminal Code.

**The aims of the article.** The aims of the article are: 1) to define the principles of comparative legal terminology analysis used for the case study presented in the article; 2) to analyse a group of Lithuanian legal terms defining a generic concept of a criminal wrong and types of criminal wrongs according to the degree of seriousness (*nusikalstama veika*, *nusikaltimas* and *baudžiamasis nusižengimas*), and to conduct a comparative analysis of the Lithuanian terms and their closest equivalents in the English-Welsh and the US legal systems; 3) to analyse how the relevant concepts are named in the English versions of the EU documents; 4) to discuss and evaluate the translation of the analysed Lithuanian terms in the English version of the Criminal Code of the Republic of Lithuania.

**The object of the research.** The research deals with legal terms used in three different legal systems: the Lithuanian legal system and two legal systems of English-speaking countries which make the biggest influence on the development of the modern legal English: the English-Welsh legal system and the US legal system.

The research focuses on 3 terms of the Lithuanian legal system which define the generic concept of a criminal act/omission (*nusikalstama veika*) and types of criminal offences according to the degree of seriousness (*nusikaltimas* ir *baudžiamasis nusižengimas*). The closest English equivalents of the given terms have been searched in the English-Welsh and the US legal systems. The comparative analysis of the terms allows conclusions to be drawn about their equivalence as well as evaluations to be made of the English translation of the terms in the Criminal Code of the Republic of Lithuania.

The main sources of the research include criminal statutes of Lithuania, the UK, and the US, criminal law textbooks and law dictionaries, as well as the legal documents of the EU (q.v. Section 2 of the article and the list of the sources at the end of the article).

## 2. Principles of comparative analysis of legal terminology

Incongruity of different legal systems is one of the main issues in legal translation research: “One of the decisive factors affecting research into legal translation is the fact that it is an operation not only between two or more languages but, above all, between distinct legal

systems and legal cultures” (Biel, Engberg, 2013: 3). Legal systems evolved during the history of each nation and reflect the worldview and moral values of a particular society in a particular period of time. Each legal system develops its own system of legal concepts which result from long discussions among politicians, lawyers, and the general public, and show how various situations of real life are conceived and controlled in different societies. Therefore, legal concepts and legal terms which define them are closely related to a particular legal system (Sandrini, 1999, p. 103-105). As S. Šarčević states, “legal translation is essentially a process of translating legal systems” (Šarčević, 1997: 229).

Translators and researchers search for various translation techniques to deal with terminological non-equivalence, but there is a common agreement that, whatever technique is used, a translator (or a terminologist assisting a translator) first of all is obliged to gain knowledge in comparative law and apply its principles in comparative analysis of legal terms. This interdisciplinary approach is vital in producing effective translations (Šarčević, 1997: 237; Galdia, 2003; De Groot, Laer, 2007: 173; Engberg, 2013).

Comparative law is based on functionality – on the principle that legal concepts are comparable only when they fulfil the same function (Šarčević, 1997: 235; Pommer, 2008: 19; Simonnæs, 2013: 147-148). In a comparative terminology analysis, the main task of a translator or terminologist is also to identify functional equivalents in different legal systems and to establish the degree of their equivalence / their conceptual relations (Šarčević, 1997: 235-239; Sandrini, 1996, 1999).

In order to identify functional equivalents, functions of each legal concept within a legal setting controlling a certain aspect of real life have to be analysed including its definition (why was it created) and its position in relation to other concepts in the same setting. When the functional analysis of the legal concepts in the Legal System A is complete, their possible equivalents in the Legal System B are identified and their functions are described. Finally, the relations between the concepts of the Legal system A and the Legal system B are established (Sandrini, 1999: 105-110).

Globalisation adds one more dimension to comparative analysis. The translator/terminologist also has to consider the international legal framework in which the terms defining the analysed concepts are used (Sandrini, 2006: 117-118; 2009: 44-46). As law is being more and more globalised, the terminology used in international legal documents inevitably influences the development of the domestic terminology and its translation.

The analysis presented in this article follows the aforementioned principles and is performed in three stages.

In the first stage, the legal concepts of the Legal system A (the legal system of Lithuania) are analysed. The first stage of the analysis addresses the following questions:

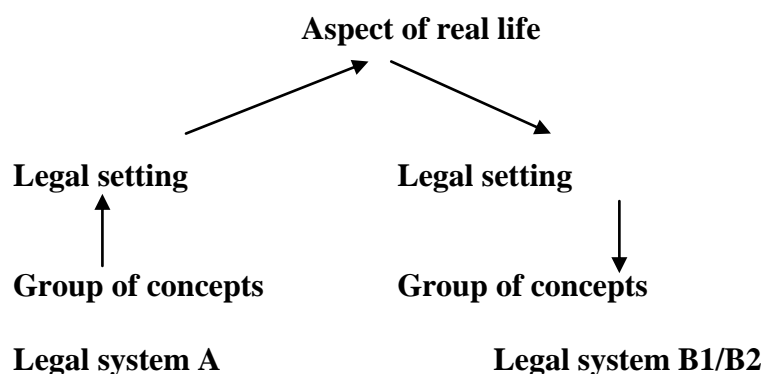
- 1) In what legal setting are the analysed concepts applied and what aspect of real life does this legal setting regulate?
- 2) What do the analysed legal concepts define (what is the exact reason they were created)?
- 3) What is the relation between the analysed legal concepts, i.e. their positions in relation to each other?
- 4) What are the main principles of regulation of the analysed aspect of real life?

In the second stage, the relevant legal concepts in Legal system B1 (the English-Welsh legal system) and in Legal system B2 (the US legal system) are analysed. The second stage of the analysis tackles the following questions:

- 1) How is the same aspect of real life regulated in Legal system B1 and in legal system B2, i.e. what legal settings are used in Legal system B1 and in legal system B2 to regulate the same aspect of real life?

- 2) What concepts constitute these legal settings and what do they define?
- 3) What is the relation between the analysed legal concepts, i.e. their positions in relation to each other?
- 4) Are there any concepts which have similar functions to those of the concepts in Legal system A?

The aspect of real life serves as a bridge between different legal systems as it is the only common factor in the analysis of the concepts. It connects different legal systems and defines the boundaries of the analysis. The course of the analysis is presented in the scheme below:



(cf. P. Sandrini, 1999: 106)

In the third stage, semantic comparison of the legal concepts of Legal system A and Legal systems B1 and B2 is conducted. The comprehensive answers to the questions of the functional analysis enable comparison of the legal concepts and definition of their relations.

Having completed the functional analysis of the concepts in the source and target legal systems, the international dimension is applied. The terms defining the analysed concepts are compared with the relevant criminal law terms in the EU legal documents.

The main aim of the conducted analysis is to provide the user (terminographer, translator, legal language learner or other user), with comprehensive information about the legal terms which define the concepts of the same aspect of real life that are applied in different legal systems and different legal settings. The results of the analysis allow the user to comprehend the systematic similarities and differences of the legal systems and, if needed, to choose the most appropriate translation techniques.

### 3. Comparative semantic analysis of the terminology

#### 3.1. Analysis of the Lithuanian legal terms *nusikalstama veika*, *baudžiamasis nusižengimas* and *nusikaltimas*

The analysis is based on the following legal sources: the Criminal Code of the Republic of Lithuania adopted in 2003 (Lietuvos Respublikos baudžiamasis kodeksas, 2005), the Criminal Code Commentary (Lietuvos Respublikos baudžiamojo kodekso komentaras, 2004) and the Criminal law textbook by Vytautas Piesliakas (Piesliakas, 2006).

On the basis of the provisions in the Criminal Code and the explanations in the Criminal Code Commentary, the concept *nusikalstama veika* may be characterised as an act or omission which is:

- 1) dangerous for the society (public wrong)
  - 2) against the criminal law of the Republic of Lithuania, prosecuted and punished by the state (legal wrong)
- (Lietuvos Respublikos baudžiamojo kodekso komentaras, 2004: 86-99; Piesliakas, 2006: 114-116)

*Nusikalstama veika* is further subdivided into two types according to the degree of its seriousness – *nusikaltimas* and *baudžiamasis nusižengimas*. In the Criminal Code, these types are described by the following definitions:

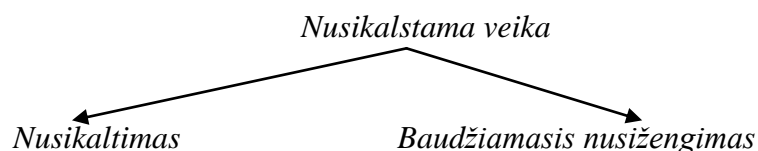
*Nusikaltimas* – an act or omission forbidden under the Code and punishable by a custodial sentence.

*Baudžiamasis nusižengimas* – an act or omission forbidden under the Code and punishable by a non-custodial sentence, with the exception of arrest.

(Lietuvos Respublikos baudžiamasis kodeksas, III skyrius, 11-12 straipsniai / Chapter 3, Articles 11-12).

Therefore, the legal term which defines the concept *nusikalstama veika* is a generic term for two type-specific terms which define the concepts *nusikaltimas* and *baudžiamasis nusižengimas*. The relations among these concepts are illustrated in Scheme 1:

Scheme 1. Relations among the Lithuanian legal concepts



The analysis reveals that the basis for the subdivision of criminal acts and omissions into types of different degrees of seriousness is the sanction provided by the law. The sanction is directly related to the seriousness of the act or omission: more serious acts and omissions (*nusikaltimas*) are punished by imprisonment whereas less serious acts and omissions (*baudžiamasis nusižengimas*) are punished by other penalties.

### 3.2. Analysis of the relevant legal terms in the English-Welsh legal system

The English-Welsh criminal law is not codified. Principles of criminal law are formulated/stated both in the statutory law and in the common law of England and Wales. An attempt to codify the criminal law of England and Wales was made in 1989 when the Law Commission drafted a criminal code for England and Wales, but the bill failed to pass the Parliament.

The main sources of the given analysis are:

- 1) the UK statutes on criminal law (Criminal Law Act 1967, Criminal Law Act 1977, Magistrates' Court Act 1980, Criminal Justice Act 2003, Serious Organised Crime and

- Police Act 2005), and Draft Criminal Code for England and Wales (A Criminal Code for England and Wales 1989),
- 2) the criminal law textbooks (Smith & Hogan, 1978; Williams, 1978; Pradel, 2001; Jefferson, 2003; Heaton, 2004; Martin, Storey, 2007),
  - 3) the dictionaries of law (A Dictionary of Law, 2006; The Longman Dictionary of Law, 2007).

In the English-Welsh legal system, a criminal act or omission is denominated by the terms *crime* or *offence* which are legal synonyms. However, in the modern English-Welsh law the term *crime* is dropping out of use and is replaced by the term *offence* which now dominates in legal documents. The term *crime* is most commonly understood by the general public as a term of a serious criminal act and omission and is not used by the general public for less serious criminal acts or omissions (e.g. parking violations). Therefore, it was replaced by the more neutral term *offence* (Williams, 1978: 8-9; A Dictionary of Law, 2002: 340).

Analysis of the definitions of the concept *crime / offence* in the criminal law textbooks and the law dictionaries allows us to give the following characteristics of the legal concept *crime / offence*:

A *crime / an offence* is an act or omission which is:

- 1) dangerous for the society (public wrong)
- 2) against the criminal law of England and Wales, prosecuted and punished by the state (legal wrong)

(Smith & Hogan, 1978: 18-25; Williams, 1978: 14-17; Jefferson, 2003:11-14; Heaton, 2004: 2; Martin, Storey, 2007: 10-11; A Dictionary of Law, 2006: 140, 366; The Longman Dictionary of Law, 2007: 154, 410)

In the common law system, offences originally were classified into three types according to the degree of their seriousness: treasons, felonies, and misdemeanours. However, this classification was abolished in the United Kingdom in 1967 and two new classifications based on the power to arrest and the mode of trial were introduced. After the reform in 2006, when the Serious Organised Crime and Police Act 2005 entered into effect, only the latter classification (based on the mode of trial) is in force. Thus, the basis for the classification of offences according to the degree of seriousness in England and Wales is not the punishment (as in Lithuania), but the mode of trial. Offences are grouped into three types: (1) *summary offences*, (2) *indictable offences*, (3) *either way offences*:

*Summary offences* are the offences that can only be tried summarily, i.e. by magistrates (justices of the peace) in the Magistrates' Court. They are minor (least serious) offences.

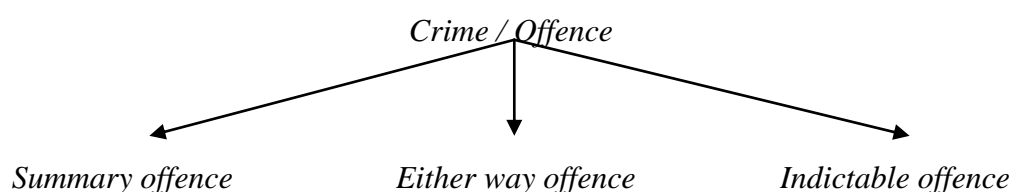
*Indictable offences* are tried on indictment, i.e. by a jury in the Crown Court. They are most serious offences.

*Either way offences (offences triable either way)* may be tried either summarily or on indictment. The accused has the right to choose the mode of trial. They are offences of medium gravity, especially those the gravity of which varies greatly depending on the facts of the particular case (e.g. the seriousness of theft depends on the value of the stolen property).

(Pradel, 2001: 221; Jefferson, 2003: 23-26; Heaton, 2004: 3-4; Martin, Storey, 2007: 12-14; A Dictionary of Law, 2006: 271; 367; 521; The Longman Dictionary of Law, 2007: 299, 410, 562).

Therefore, the legal term which defines the concept *crime / offence* is a generic term for three type-specific terms which define the concepts *summary offence*, *indictable offence*, and *either way offence*. The relations among the concepts are shown in Scheme 2:

Scheme 2. Relations among the English-Welsh legal concepts



The results of the analysis show that the main characteristic features of the Lithuanian legal term *nusikalstama veika* and the legal term of the English-Welsh legal system *crime / offence* are the same. These terms define the concepts which have the same functions and the same position in the respective legal settings. Therefore, they could be considered close equivalents and used interchangeably in translations.

The terms which define the types of criminal acts/omissions according to the degree of their seriousness have, however, different characteristics in the English-Welsh and the Lithuanian legal systems. The Lithuanian law distinguishes between two types of criminal acts/omissions of different degree of seriousness (*baudžiamasis nusizengimas* and *nusikaltimas*), while in the English-Welsh law there are three types of such criminal acts/omissions (*summary offence*, *indictable offence* and *either way offence*). The basis of classification of these types is also different in the Lithuanian and in the English-Welsh legal systems: in the Lithuanian law it is the punishment provided by the law while in the English-Welsh legal system it is the mode of trial. Therefore, although the Lithuanian legal terms *baudžiamasis nusizengimas* and *nusikaltimas* and the English-Welsh legal terms *summary offence*, *indictable offence* and *either way offence* share some similar features (they are type-specific terms which define criminal acts/omissions of different degree of seriousness), they may not be considered neither full nor partial equivalents and may not be used interchangeably in translations.

### 3.3. Analysis of the relevant legal terms in the US legal system

The US criminal law is mostly codified though some states still use some common law sources for recognition of crimes. At the federal level, all criminal law principles are codified and set forth in the US Code (US Code, 2000).

The main source of the given analysis are the US Code (US Code, 2000), the comparative criminal law textbook (Pradel, 2001) and Black's Law Dictionary (Black's Law Dictionary, 2009).

In the US legal system, as in the English-Welsh legal system, criminal acts and omissions are named by the synonymous terms *crime* and *offense*. The concept which is defined by these terms has the same semantic characteristics in the US legal system as in the English-Welsh legal system (Black's Law Dictionary, 2009: 427, 1186).

The US legal system distinguishes three types of criminal acts and omissions according to the degree of their seriousness: (1) *felonies*, (2) *misdemeanors*, (3) *infractions*. The basis of their classification is the sanction provided by the law as in the Lithuanian legal system:

*Felonies* are offenses which are punishable by a death penalty or imprisonment of more than 1 year.

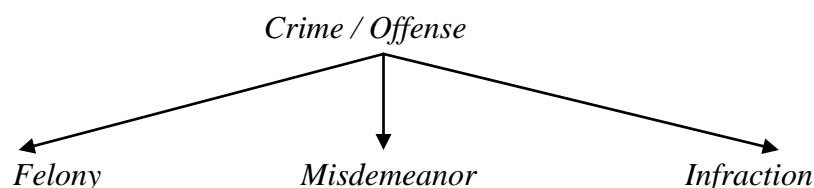
*Misdemeanors* are offenses which are punishable by imprisonment of one year or less, but more than 5 days.

*Infractions* are offences which are punishable by imprisonment of 5 days or less or by a non-custodial sentence.

(US Code, 2000, Title 18, Chapter 227, § 3559; Pradel, 2001: 220)

The US legal term which defines the concept *crime / offense* is a generic term for three type-specific terms which define the concepts *felony*, *misdemeanor* and *infraction*. The relations among the concepts are shown in Scheme 3:

Scheme 3. Relations among the US legal concepts



The analysis shows that both the English-Welsh and the US legal terms *crime/offense* may be considered close equivalents of the Lithuanian term *nusikalstama veika* and may be used interchangeably in translations.

The terms which define the types of criminal acts/omissions according to the degree of their seriousness in the US and in the Lithuanian legal systems have some overlapping semantic features, though there are many semantic differences between them as well. The concepts from both systems are classified on the basis of the sanction provided by the law. However, the number of types of criminal acts/omissions is different in the US and in the Lithuanian legal systems. The US legal system distinguishes between three types of criminal acts and omissions of different degree of seriousness (*felony*, *misdemeanor*, *infraction*) while the Lithuanian legal system distinguishes only between two types (*nusikaltimas*, *baudžiamasis nusižengimas*). The sanctions provided for the offences are also different in the two systems. In the US legal system, all three types of criminal acts/omissions may be punished by imprisonment, while in the Lithuanian legal system, the law provides a custodial sentence only for a criminal act/omission named *nusikaltimas*. Therefore, the US terms may not be considered exact equivalents of the Lithuanian terms though the terms from both systems share some semantic similarities: 1) the Lithuanian term *nusikaltimas* and the US term *felony* define criminal acts and omissions which are most serious and are punishable by imprisonment; 2) the Lithuanian term *baudžiamasis nusižengimas* and the US term *infraction*

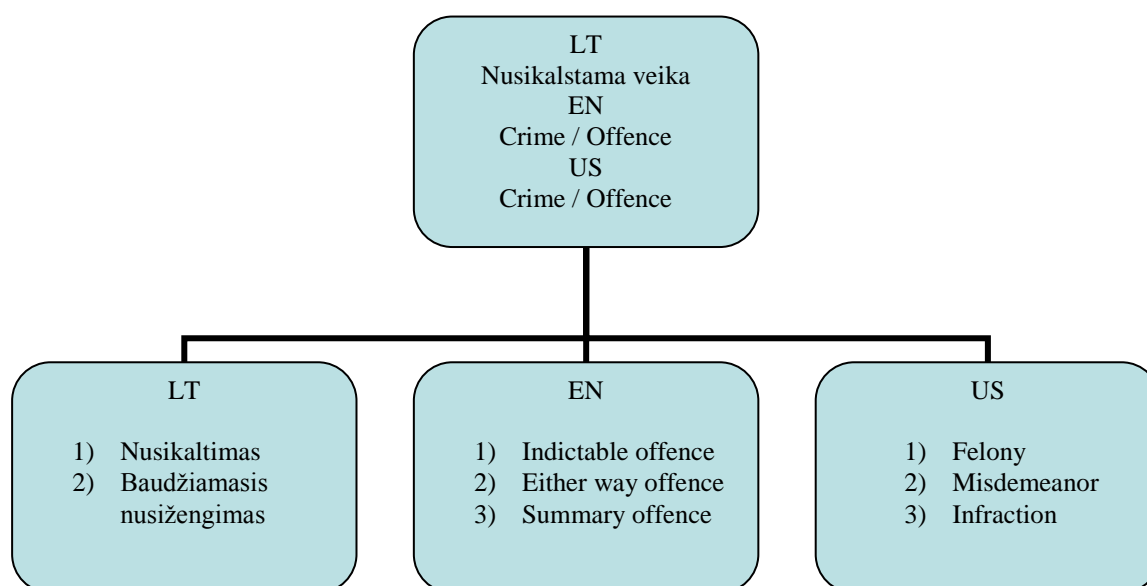


define criminal acts/omissions which are least serious and for which the law provides the lightest penalties. These terms may be considered partial equivalents with similar (but not equivalent) semantic and functional characteristics.

### 3.4. Summary of the results of the comparative analysis

Scheme 4 presents the results of the comparative analysis.

Scheme 4. Comparison of the Lithuanian, English-Welsh and US legal concepts



The Lithuanian term *nusikalstama veika* and the English-Welsh and the US term *crime / offence* have the same functions in the respective legal settings, they may be considered close equivalents and used interchangeably in translations.

However, the Lithuanian terms which define criminal acts and omissions of different degree of seriousness have no exact equivalents in the English-Welsh and the US legal systems. The English-Welsh and the US legal systems also divide criminal acts and omissions into types according the degree of their seriousness, but the principles of the division are different from those in the Lithuanian legal system. The Lithuanian legal system distinguishes between two types of criminal acts/omissions of different degree of seriousness and the basis of their classification is the sanction provided by the law. England and Wales use a completely different system for classification of such criminal acts/omissions: the basis of the English-Welsh classification is the mode of trial of criminal acts/omissions (trial by magistrates or trial by jury) which is directly related to the degree of their seriousness. The US uses the system that is much closer to the Lithuanian one: the basis of the US classification is the sanction provided by the law, but the number of types of criminal acts/omissions and the severity of sanctions provided for each type are different in the two legal systems. Thus, none of the English-Welsh or the US terms may be considered exact equivalent of the Lithuanian terms *nusikaltimas* and *baudžiamasis nusižengimas*. Therefore,

the translation techniques of culture-bound terms are to be applied to translate them – the translator has to look for partial equivalents, create neologisms, or use other translation techniques.

### 3.5. The relevant legal terms in the EU legal documents

In order to compare the analysed terms with the terms used internationally, the following EU documents were analysed:

- 1) Consolidated versions 2012 of the Treaty on European Union and the Treaty on the Functioning of the European Union.
- 2) Council Framework Decision 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking.
- 3) Council Framework Decision 2008 on the fight against organised crime.
- 4) Directive 2011 on combating the sexual abuse and sexual exploitation of children and child pornography.
- 5) Directive 2011 on preventing and combating trafficking in human beings and protecting its victims.

The treaties of the EU provide the main principles for cooperation in various fields, including criminal matters. Two terms are used to refer to relevant criminal law concepts – *criminal offence* and (*serious*) *crime*. The term *criminal offence* refers to the generic concept ‘a criminal act/omission’ while the term (*serious*) *crime* refers to the type specific concept ‘a serious criminal act/omission’. However, in some cases, the term *crime* might be understood as a term defining the generic concept ‘a criminal act/omission’ (“the rights of victims of crime”, Article 82).

The analysed directives and decisions apply to specific criminal acts/omissions all of which are of serious degree. Therefore, these documents contain only the terms referring to the type-specific concept ‘a serious criminal act/omission’. Such concepts are mostly defined as (*serious*) *crimes*. Sometimes they are called *criminal acts/activities* but only when they refer to offences constituting only acts (and never omissions).

The terms referring to the type specific concept ‘a minor criminal act/omission’ were not found in the analysed documents.

### 4. Equivalents of the analysed terms in the English translation of the Criminal Code of the Republic of Lithuania

One of the key factors determining the choice of equivalents in translation is the purpose of the target text and the needs of its receivers. Though legal texts are first of all subject to legal rules, their translation, as other areas of translation, “is (or ought or be) receiver oriented” (Šarčević, 2000: 1). The degree of equivalence to be achieved in legal translation “depends first and foremost on the TT intended function as well as on the nature of the ST” (Garzone, 2000: 9).

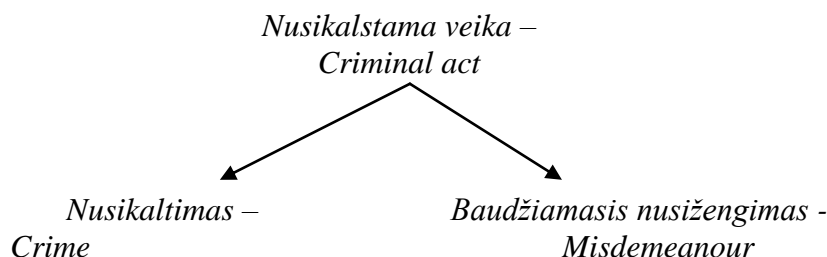
The purpose of translations of domestic legislation is different in multilingual and monolingual jurisdictions. In multilingual jurisdictions, translations of legislation are equally authentic, i.e. they are as binding as the source text. Therefore, their purpose is normative (Cao, 2007: 10). Meanwhile, translations of domestic legislation in monolingual jurisdictions are not legally binding documents. They are done for informative purposes (Cao, 2007: 11).

The translation of the Criminal Code of the Republic of Lithuania belongs to the second category of translations. Its receivers are foreigners who commit criminal offences in Lithuania, foreign lawyers who represent their clients in the Lithuanian courts, as well as the institutions of the foreign states which need information about the legal system of Lithuania for various purposes (Ministries of Justice, Offices of the Public Prosecutors) and the international institutions (such as European Court of Human Rights). The main purpose of the translation of the Criminal Code of Lithuania is to inform its receivers on how criminal law functions in Lithuania.

Though the translation cannot be used in a court as an applicable law, it has to inform the target readers as accurately as possible on the laws and legal concepts which are unknown to them. The receivers should be capable of relating the terms in the translation with the terminology used in legal English worldwide. The translator may choose translation techniques ranging from target language oriented/domesticating techniques (functional equivalence) to source language oriented/foreignizing techniques (borrowing) or those which are in the middle of the continuum (literal/formal equivalence, description) (Harvey, 2000: 2-6; Biel, 2009: 7-9).

In the English translation of the Criminal Code of the Republic of Lithuania, the following equivalents of the analysed terms are used (Criminal Code of the Republic of Lithuania, Chapter 3, Articles 10-12):

Scheme 5. The Lithuanian terms and their English equivalents in the Criminal Code of the Republic of Lithuania



The translators of the Criminal Code of the Republic of Lithuania, used three different translation techniques – a literal equivalent, an equivalent with modified functions, and a functional equivalent.

We will now discuss each of them:

1) Literal (but not exact) equivalent (*nusikalstama veika – criminal act*)

This equivalent is a verbatim translation (though not an exact one) of the Lithuanian term. The equivalent is a neologism in the target legal languages as it is not used as a term in the English-Welsh and the US legal systems.

The Lithuanian noun *veika* means ‘act or omission’, thus, in the Code, the English noun *act* gains an unusual meaning – alongside the usual meaning ‘doing something’, it acquires the meaning ‘not doing something’. The reader of the English text is not informed about such change of meaning. Therefore, the equivalent *criminal act* may be (and, actually, is) misleading to the reader who is likely to understand the English phrase *criminal act* as denoting criminal activity and might suppose that criminal inactivity is defined by another Lithuanian term.

The term *criminal act* is used in some EU legal documents, but only when it refers to a specific criminal offence constituting only an act (and never omission). This term never refers to the generic concept ‘a criminal act/omission’ in the EU legal documents.

## 2) Equivalent with modified functions (*nusikaltimas* – *crime*)

This term is used both in the UK and the US legal systems, but its functions are completely different from those of the Lithuanian term *nusikaltimas*.

The term moved from the position of the generic term to the position of the type-specific term and changed its meaning: *crime* in the UK and US legal systems – an act or omission which is a public and legal wrong; *nusikaltimas* (translated as *crime*) in the Criminal Code of Lithuania – an act or omission which is punishable by imprisonment.

The term *crime* is used often in the EU legal documents and it has the same functions as the Lithuanian term *nusikaltimas*. Important difference: this term is often used with the adjective *serious* which is skipped only when it is clear from the context that a serious criminal act/omission is meant.

## 3) Functional equivalent (*baudžiamasis nusižengimas* – *misdemeanour*)

This term is used in the US legal system, but not in the UK. The US term and the Lithuanian term *baudžiamasis nusižengimas* share some similar functions and may be considered functional equivalents. They both are type specific terms and both define criminal acts and omissions that are less dangerous. However, they have important semantic differences. *Misdemeanour* in the US legal system is an offence punishable by imprisonment of one year or less, but more than 5 days. *Baudžiamasis nusižengimas* (translated as *misdemeanour*) is an offence which is not punishable by imprisonment (with the exception of arrest). Therefore, the US term *infraction* which defines offences punishable by imprisonment of 5 days or less, would be more suitable. This term is rarely used by lawyers outside the US and this may account for the translator’s choice of another term.

The term *misdemeanour* was not found in the analysed EU documents.

To sum up, the translators of the Criminal Code of the Republic of Lithuania used the following translation techniques to translate the terms: a literal (but not exact) equivalent, an equivalent from the target legal language with modified functions, and a functional equivalent. The most successful technique is the functional equivalent, though it has certain disadvantages. Other two techniques may be confusing to the reader as they fail to reveal systemic similarities and differences of the source and target legal systems.

Our proposal, based on the findings of the comparative analysis, is the following: *nusikalstama veika* – *crime* or *criminal offence* (the terms are synonymous, but the term (*criminal*) *offence* is predominant in modern English and American legal documents; it is also common in the EU legal documents);

*nusikaltimas* – *felony*; *baudžiamasis nusižengimas* – *misdemeanour* (*infraction* is a closer equivalent, but *misdemeanour* is more familiar to the general public).

*Nusikaltimas* and *baudžiamasis nusižengimas* may also be translated as *serious crime* / *serious criminal offence* and *petty crime* / *minor criminal offence*. These equivalents are neutral terms which are not taken from any legal system and are clear to all receivers.

## 5. Conclusions:

Summing up the results of the analysis of the Lithuanian legal terms *nusikalstama veika*, *nusikaltimas* ir *baudžiamasis nusižengimas* and their possible English equivalents, the following conclusions may be drawn:

1) The Lithuanian term *nusikalstama veika* and the UK and US term *crime / offence* have the same functions in the respective legal settings, they may be considered equivalents and used interchangeably in translations. However, the Lithuanian terms *nusikaltimas* and *baudžiamasis nusižengimas* have no exact equivalents in the UK and the US legal systems. Therefore, translation techniques of culture-bound terms are to be applied to translate them.

2) In the EU documents, only the terms referring to the generic concept “a criminal act/omission” and the type-specific concept “a serious criminal act/omission” were found. The first concept is usually referred to as *criminal offence*, the second – (*serious*) *crime*.

3) The translators of the Criminal Code of the Republic of Lithuania used the following translation techniques to translate the terms: a literal (but not exact) equivalent, an equivalent from the target legal language with modified functions, and a functional equivalent. The most successful technique is the functional equivalent, though it has certain disadvantages. Other two techniques may be confusing to the reader as they fail to reveal systemic similarities and differences of the source and target legal systems and do not reflect the internationally used terminology system.

4) The findings reveal the importance of comparative analysis in dealing with non-equivalence issues in legal translation. Only a thorough comparative analysis of the terms allows the translator to find the most exact equivalents in different legal systems.

Comparative analysis and translation method might also be used in the legal English (or another foreign legal language) teaching/learning process. Search for equivalents in different legal languages, their comparison and translation help to better understand the meaning of legal terms, their functional and semantic similarities and differences and thus enables the learner to use them accurately.

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