



Hacettepe University Graduate School of Social Sciences

Department of Translation and Interpretation

**METHODS USED IN THE TURKISH TRANSLATION OF LEGAL
TERMINOLOGY IN THE JUDGMENTS OF THE EUROPEAN
COURT OF HUMAN RIGHTS**

Ebru ALTUN ORHAN

Master's Thesis

Ankara, 2017

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THE JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS

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KABUL VE ONAY

Ebru Altun Orhan tarafından hazırlanan "Methods Used in the Turkish Translation of Legal Terminology in the Judgments of the European Court of Human Rights" başlıklı bu çalışma, 18.09.2017 tarihinde yapılan savunma sınavı sonucunda başarılı bulunarak jürimiz tarafından Yüksek Lisans Tezi olarak kabul edilmiştir.

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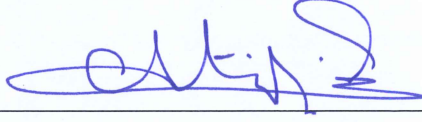
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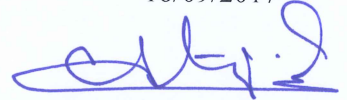
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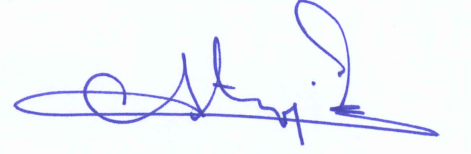
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Ebru ALTUN ORHAN

ETİK BEYAN

Bu çalışmadaki bütün bilgi ve belgeleri akademik kurallar çerçevesinde elde ettiğimi, görsel, işitsel ve yazılı tüm bilgi ve sonuçları bilimsel ahlak kurallarına uygun olarak sunduğumu, kullandığım verilerde herhangi bir tahrifat yapmadığımı, yararlandığım kaynaklara bilimsel normlara uygun olarak atıfta bulunduğumu, tezimin kaynak gösterilen durumlar dışında özgün olduğunu, Prof. Dr. Ayfer ALTAY danışmanlığında tarafımdan üretildiğini ve Hacettepe Üniversitesi Sosyal Bilimler Enstitüsü Tez Yazım Yönergesine göre yazıldığını beyan ederim.



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DEDICATION



*to Halil
whose existence is a true gift to me*

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ÖZET

ALTUN ORHAN, Ebru. *Avrupa İnsan Hakları Mahkemesi Kararlarında Yer Alan Hukuk Terminolojisinin Çevirisinde Kullanılan Yöntemler*, Yüksek Lisans Tezi, Ankara, 2017.

Bu çalışmanın amacı Avrupa İnsan Hakları Mahkemesi (AİHM) kararlarında yer alan hukuk terimlerinin çevirisinde kullanılan çeviri yöntemlerini belirlemeye ilişkin karşılaştırmalı bir analiz yapmaktır. Avrupa çeşitliliği ve ortaklığı üzerine kurulu olan Mahkeme, insan haklarının ve 47 ülkeyi bir araya getiren bir vizyonun ortak anlayışının sembolüdür. AİHM kararlarının uluslararası hukukta bağlayıcı ve nihai olması göz önünde bulundurulduğunda, bu kararların kendi içinde değer taşıması ve otoriteye sahip olması önem arz etmektedir ve çeviriler özgün metin kadar açık ve net olmalıdır. Bu bağlamda, çalışmanın kapsamı AİHM'in Türkiye'ye ilişkin geçtiğimiz son beş yıla ait (2012-2017) kararları ile sınırlandırılmıştır. Bu çalışmada analiz edilen kararlar, Mahkeme'nin içtihat ve kararlarına erişim sağlayan AİHM'in içtihat veritabanı HUDOC'tan seçilmiştir. Çalışmanın amacı, AİHM kararlarında yer alan hukuk terimlerinin Türkçe çevirilerinde Jean Paul Vinay ve Jean Darbelnet'in (1995) hangi çeviri stratejilerinin uygulandığını incelemektir. Ardından, analizin sonuçları doğrultusunda, kararların ne derecede Gideon Toury'nin (1995) yeterlik ve kabul edilebilirlik yaklaşımına göre çevrildiği sorgulanmıştır.

Anahtar Sözcükler

Avrupa İnsan Hakları Mahkemesi, karar çevirisi, hukuk çevirisi, hukuk terminolojisi, çeviri yöntemleri, yeterlik ve kabul edilebilirlik

ABSTRACT

ALTUN ORHAN, Ebru. *Methods Used in the Turkish Translation of Legal Terminology in the Judgments of the European Court of Human Rights*, Master's Thesis, Ankara, 2017.

This study aims to conduct a comparative analysis to determine which translation methods are adopted in translating the legal terminology of the judgments of the European Court of Human Rights (ECtHR). The Court, which is based upon the European diversity and its commonalities, is the symbol of common spirit of human rights and a vision bringing together currently 47 countries. Considering that the judgments of the ECtHR are binding and final in international law, it is significant that those judgments must carry value and have authority in themselves and translations must be as accurate as the originals. In this respect, the scope of the study is limited to the judgments of the ECtHR related to Turkey released in the last five years, namely between 2012 and 2017. The judgments analysed in this study are selected from the Human Rights Documentation (HUDOC) database, which provides access to the case-law and the judgments of the Court. The purpose of this study is to examine which translation methods of Jean Paul Vinay and Jean Darbelnet (1995) are used in the Turkish translations of the legal terminology of the judgments of the ECtHR. Pursuant to this, in accordance with the findings of the analysis it is identified to what extent the judgments are translated in an adequate or acceptable way in the light of this approach of Gideon Toury (1995).

Key Words

European Court of Human Rights, judgment translation, legal translation, legal terminology, translation methods, adequacy and acceptability

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LIST OF ABBREVIATIONS

ECtHR	European Court of Human Rights
ECHR	European Convention on Human Rights
HUDOC	Human Rights Documentation
EU	European Union
COE	Council of Europe
ECJ	European Court of Justice
ICJ	International Court of Justice
DTS	Descriptive Translation Studies
SL	Source Language
TL	Target Language
ST	Source Text
TT	Target Text
ST1	Case of İlbeyi Kemaloğlu and Meriye Kemaloğlu v. Turkey (<i>Application no. 19986/06</i>)
ST2	Case of Sabri Güneş v. Turkey (<i>Application no. 27396/06</i>)
ST3	Case of X v. Turkey (<i>Application no. 24626/09</i>)
ST4	Case of Sace Elektrik Ticaret ve Sanayi A.Ş. v. Turkey (<i>Application no. 20577/05</i>)
ST5	Case of Fazlı Aslaner v. Turkey (<i>Application no. 36073/04</i>)
TT1	İlbeyi Kemaloğlu ve Meriye Kemaloğlu / Türkiye Davası (<i>Başvuru no. 19986/06</i>)
TT2	Sabri Güneş / Türkiye Davası (<i>Başvuru No. 27396/06</i>)
TT3	X / Türkiye Davası (<i>Başvuru no. 24626/09</i>)

- TT4** Sace Elektrik Ticaret ve Sanayi A.Ş. / Türkiye Davası
(Başvuru no. 20577/05)
- TT5** Fazlı Aslaner / Türkiye Davası
(Başvuru No. 36073/04)



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CHAPTER 1

INTRODUCTION

1.1. GENERAL REMARKS

Legal language differs from the ordinary language. Šarčević defines legal language as a special-purposed communication among the specialists that restricts the definition to several text-types such as judgments, contracts or correspondence between the legal authorities where one can easily comprehend that legal documents have its sub-categories as well (1997, p. 9). And as for the legal translation, there is a wide range of definitions of legal translation one of which is proposed by Garzone (2000, p. 126) as a category in its own right, and by Harvey (2002, p. 177) as a translation combining the creative feature of literary translation with the terminological accuracy of technical translation.

In a world order where states make strides towards transferring some of their powers to international organizations which they found for deeper cooperation, geographical enlargement and security for the sake of the peace of the peoples of the world, it is an undeniable fact that the governmental bodies of the countries seek setting a common order in legal, economic, and political fields.

With a view to interiorizing the national procedures with the international ones, translation of the documents of the latter has utmost importance in respect to adopting rules, regulations and case-laws into the national law. Hence, the importance of the translation activities and specializing in that field becomes crucial, where certain problems arise in respect to the features of legal language, legal terminology, and translation equivalence in lexical and semantic level in the translation of legal texts. The legal language is better translated by the legal translators as long as it is taken into consideration that it is not just a literal translation.

Owing to the fact that the judgment translation has utmost importance in the domestic legal system for the members of the Council of Europe (COE), translation of the

judgments of the European Court of Human Rights (ECtHR) as a legal document is taken as basis in this study.

1.2. PURPOSE OF THE STUDY

The purpose of this thesis is to conduct a comparative analysis in order to find out which translation methods of Jean Paul Vinay and Jean Darbelnet are used in translating the legal terminology of the judgments of the ECtHR from the Source Language (SL) English into the Target Language (TL) Turkish. After evaluating the findings of the analysis of ST and TT, it is questioned to what extent the legal terminology in the judgments of the ECtHR are translated in an adequate or acceptable way according to the approach of Gideon Toury (1995, p. 56).

1.3. RESEARCH QUESTIONS

In the light of these purposes, answers to the following questions are sought:

- (1) Which translation methods of Jean-Paul Vinay and Jean Darbelnet are used in the translation of the judgments of the ECtHR?
- (2) Are the judgments of the ECtHR translated in an adequate or acceptable way? And to what extent this approach of Gideon Toury is applied to?

1.4. THEORETICAL AND METHODOLOGICAL FRAMEWORK

The theoretical and methodological framework of this study is composed of two parts. In the first part, which focuses on the micro strategies and the methodology of this study, translation methods of Jean-Paul Vinay and Jean Darbelnet are explained. The samples taken from the judgments and their translations are analysed in accordance with Jean Paul Vinay and Jean Darbelnet's seven methods of translation. These methods are borrowing, calque, literal translation, modulation, transposition, equivalence and adaptation (Vinay & Darbelnet, 1995, pp. 30-42). After presenting the methodology of Vinay and Darbelnet, which is applied for the English-French language pair and inspires the other language pairs in the world in translation studies, translation of the aforementioned texts of

judgments is analysed in English-Turkish language pair. The methodology of Vinay and Darbelnet is chosen for the analysis part, because these methods are the ones that are straightforward and observable in the translation of the samples of the legal texts. The second part, which focuses on the macro strategies, includes the approaches of Gideon Toury, which are used in the findings of the analysis part trying to answer the question of whether the translation of the legal terminology of the judgments of the ECtHR is made in an adequate or acceptable way.

Vinay and Darbelnet's taxonomy is concrete and practically applicable for the analysis of the translations of the judgments due to the fact that the just the seven methods of these two scholars can be identified in all the available terms found in the judgments analysed. They state that initially different procedures or methods seem to be countless, but they can be condensed to just seven, each one conforming to an advanced degree of complexity. They practically might be used either on their own or combined with one or more of the others. Another reason for choosing these two scholar's methodology of micro strategies is that they divide the translation methods into two categories as "direct translation" and "oblique translation" which position the translation of the judgments into the "adequate translation" or "acceptable translation" according to the approach of Toury.

Fifty samples including 94 legal terms from the texts of the judgments are analysed and commented on how the legal terminology of the ECtHR judgments related to Turkey are translated that are released between 2012 and 2017. The data acquired from this analysis is given statistically in order to put forward concretely the occurrence of frequency of each method.

1.5. LIMITATIONS

In this study, a comparative analysis is carried out by analysing the legal terminology of the judgments of the ECtHR related to Turkey released in the last five years - between 2012 and 2017 - and their translations.

The main reason to select the judgments of the ECtHR to analyse is that Turkey has the highest number of judgments in the total number of violations of human rights according

to the annual activity reports of the ECtHR. The cases filed to the ECtHR in the last ten years – between 2007 and 2017 - are published on the website of Human Rights Documentation (HUDOC). HUDOC is the online website of the ECtHR where the cases filed to the Court are published in English and French, which are the official languages of the Court.

The judgments are selected by using the filter system of the Court. Mainly, filters can be used in selecting a number of choices such as the language, importance, state, and the date of the cases. The judgments analysed in this study are selected by applying these filters on the official website of the ECtHR. In selecting the judgments, the language of the judgments is filtered as Turkish and English, and the state is filtered as Turkey. According to the filter system of HUDOC, there are 3163 judgments in English related to Turkey, and 2321 of them are translated into Turkish.

Another filter is “the importance of the cases” which points to three levels indicating the importance level of the judgments as “high importance, medium importance and low importance.” In the importance filter, the high importance is selected, since this level indicates that these judgments make a significant contribution to the development, clarification or modification of the case-law of the ECtHR, either generally or in relation to a particular member state. The other importance levels are explained in detail in Chapter 5 under the titles of “Presentation of the Corpus” and “Selection Method.”

The next important filter is the date. The date of the judgments can be selected as “last week, last month, last 6 months, last year, last 5 years and last 10 years.” In order to carry out a comparative analysis the “last 5 years” is chosen. Selecting the choice of the “last 10 years” would be too extensive to carry out as it comprises a great number of judgments falling in this category. Hence, the next most extensive filter “last 5 years” is opted for.

When it is filtered to the last five years, the number of the cases counts 899 for Turkey. According to the importance level refiner on the filtering system, the number 3 refers to the “low importance” which counts to 535 judgments of Turkey, the number 2 refers to “medium importance” which counts to 313 judgments of Turkey, and the number 1 refers

to “high importance” which counts to 26 judgments of Turkey both in English and Turkish.

As the filtering system is explained above by giving details about how the “importance level refiner” works, the corpus of this study is limited to the judgments which fall into the category of level 1 that refers to “high importance.” In this level 1, there are 26 judgments of Turkey written in the official language of English and the translated language of Turkish. Those unofficial translations are made by the Ministry of Justice of The Republic of Turkey, Directorate General for International Law and Foreign Relations, Department of Human Rights. The translated versions of the judgments do not bind the Court. However, those translations are significant for Turkey in order to be informed about the content of the cases and to take the necessary measures in accordance with the judgments concluded by the ECtHR.

There are 10 judgments related to Turkey written in English and translated in Turkish between the years of 2012 and 2017, which are classified under the level 1 “high importance.” As analysing all of them would be too extensive, 5 of those judgments which are related with personal affairs written in the official language of the Court and 5 of their translations in the unofficial language Turkish which are provided by the Turkish Ministry of Justice are selected to be analysed. The judgments are analysed at the lexical level.

1.6. OUTLINE OF THE STUDY

There are six chapters in this thesis. The first chapter is the introduction of the study presenting the purpose, research questions, theoretical and methodological framework and the limitations of this study.

The second chapter gives information mainly about the ECtHR. An insight about the historical background of the ECtHR, the organizational chart of the Court, and the relation between the Court and Turkey is given. Then the European Convention on Human Rights (ECHR) by which the Court is bound is explained. The impacts of the judgments of the Court on national legal systems, statistics related to the Court from its creation to the

recent years are explained. What is more, individual application to the Constitutional Court of the Republic of Turkey is explained briefly.

In the third chapter, the characteristics of the legal language, legal writing, legal texts and legal translation are given. Additionally, translation facilities at international courts, translation and interpreting activities at the ECtHR are explained. This chapter ends with giving insight about the characteristics of judgments as a legal text and how the judgments are translated at the ECtHR.

The fourth chapter gives information about the theoretical framework and methodology. It focuses on the micro strategies, which constitutes the methodology of this study, by explaining the translation methods of Jean-Paul Vinay and Jean Darbelnet. These seven methods are “borrowing, calque, literal translation, modulation, transposition, equivalence and adaptation” (Vinay & Darbelnet, 1995, pp. 30-42). This chapter ends with the macro strategies of translation, and the approaches of Gideon Toury related to adequacy and acceptability.

The fifth chapter analyses the the judgments of the ECtHR related to Turkey released in the last five years. How the judgments are selected is explained in the limitations part above in detail and in Chapter 5 more comprehensively. Fifty samples which constitute all the available terms in the texts of judgments are analysed.

In the sixth chapter, the thesis is concluded by presenting the data acquired from the analysis, discussing the findings and answering the research questions directed at the very beginning of this study.

CHAPTER 2

EUROPEAN COURT OF HUMAN RIGHTS

This chapter presents information mainly about the ECtHR. An insight about the historical background of the ECtHR, the organizational chart of the Court, and the relation between the Court and Turkey is given. Then it informs about the ECHR by which the Court is bound. The impacts of the judgments of the Court on national legal systems, statistics related to the Court from its creation to the recent years are explained. Then, individual application to the Constitutional Court of the Republic of Turkey is explained briefly which is introduced into the legal system of Turkey with the 2010 constitutional amendments in order to decrease the number of applications made by Turkey to the ECtHR.

2.1. BRIEF HISTORY OF THE ECtHR

In “*The Conscience of Europe: 50 years of the European Court of Human Rights*,” which was published to mark the 50th anniversary of the ECtHR - the international court playing a key role in ensuring the observance of the obligations deriving from the Convention for the High Contracting Parties - the significance of the ECtHR is underlined in interpreting and applying the ECHR.

The Court is based upon the European diversity and its commonalities, which is about a common spirit of human rights and a vision bringing together currently 47 countries, with vast distinctions in legal notion. It was founded on 21 January 1959 in accordance with the Article 19 of the ECHR when its first members were elected by the Consultative Assembly of the Council of Europe.¹ The ECHR gives the Court the right to observe what is carried out by the contracting states pertaining to the Convention and its protocols, explicitly safeguarding the implementation of the Convention in the member states of the COE.

¹ The court in brief. Retrieved 10 January 2015 from, <https://edoc.coe.int/en/european-court-of-human-rights/5630-the-court-in-brief.html>

After the fall of the Berlin Wall in 1989, the accession of states to the ECtHR paved the way for an abrupt increase in the applications filed to the Court. The efficiency of the Court was put at risk seriously by the large number of pending applications, which accumulated increasingly (Arold, 2007, p. 3). With the purpose of dealing with the backlog of the pending cases, Protocol 11 was introduced into the Convention by simplifying the procedure, reducing the length of the proceedings and forming the Court and its judges as a full-time institution. Nevertheless, since the workload of the Court continued to increase, it was agreed by the contracting states that further reforms were required to be implemented and the Committee of Ministers of the COE adopted the Protocol 14 to the ECHR in May 2004.

There are other international courts, such as the International Court of Justice (ICJ) and the European Court of Justice (ECJ). Even though the ICJ is composed of more countries and thereby more different legal traditions, it is restricted to the complaints by states or advisory opinions. However, at the ECtHR any individual is entitled to bring a complaint before the Court about any member state. Thus, the scope and reach of the ECtHR is much wider than that of the ICJ, while the ECJ obviously has a stronger influence in the legal systems of the nations than the ECtHR (Llesdal, 2013, p. 301). Nonetheless, the jurisdiction of the ECJ embraces 28 member states, fewer than that of ECtHR. Considering that, the ECtHR has both scope and impact since it is described in literature as the most effective supervisory machine for human rights in Europe (Arold, 2007, p. 6).

All the 47 countries are represented by the judges in the Court, where human rights are important in themselves, mainly sensitive to the traditional and cultural characteristics. The majority of these judges come directly from their individual national legal systems to sit in the Court in Strasbourg, where they carry with them different experiences and traditions. The Court is an appealing vehicle for the purpose of dealing with the impact of different legal backgrounds and the legal convergence.

2.1.1. From Creation of the Court to Its Enlargement

The enlargement of the Court and its legal force in national systems, varying from individual remedies to the legislative changes is given in this part. The Court is a regional

supervisory body for protecting the rights stated in the ECHR. The story of the Court is the one intertwined with the events in the modern history of Europe: from the terrors of the Holocaust to the Cold War, to the EU, and to the fall of the Berlin Wall whose jurisdiction covers the European continent at present.

The legal text and the institutions for monitoring human rights in Europe were created by the COE. The legal basis for the protection of the European human rights is the Convention. A Supervisory machinery was built on the foundation of the Convention, which is the Court today. The Court is entrenched in the institutional configuration of the COE. The function of the Court is to observe the implementation of the Convention at the domestic level.

The Convention is an international treaty signed by all the 47 members of the COE. The countries become members of the Court with the ratification of the Convention. It is the task of the Court to make a decision on human rights issues concerning all the European countries, regardless of their legal, cultural, and ideological differences. The Court is obliged to set up common human rights standards, and to preserve the national particularities at the same time as well.

2.1.2. Current Organization of the Court and Procedures

The number of the judges of the Court equals to the number of the member countries of the COE. Parliamentary Assembly of the COE elects the judges of the Court, after voting on a shortlist of three candidates proposed by the member states. The term of office of the judges is non-renewable nine years. Their term of office ends when they turn 70, but they hold office until replaced by a new one. Judges do not represent any state, and they have seat in the Court in their individual capacity. Besides, they cannot engage in any activity inappropriate with their impartiality or independence.

The plenary court, which comprises all the members, elects the president and the two vice-presidents who chair a section. The presidents, the registrars and the deputy registrars of the three other sections are elected by the plenary court as well. The plenary court adopts and amends the rules of the Court. The Court consists of five sections, a

judge is assigned to each of it, and the composition of the sections of the Court changes every three years. The plenary court sets the composition of the sections, which is geographically and gender balanced and takes into account different legal systems of the contracting states. The Court may sit in four distinct formations: single judge, committee, Chamber or Grand Chamber.

Any contracting state or individual that claim to be a victim of a breach of the Convention may directly lodge with the Court in Strasbourg an application alleging a violation by a contracting state. The procedure before the Court is confrontational and public which is mainly a written procedure. Hearings, which are held in only a small number of cases, are public, unless the Chamber and the Grand Chamber decides otherwise because of the extraordinary circumstances. And other documents filed to the registry of the Court by the parties are technically accessible to the public. Individual applicants might present their own cases; however, they must be legally represented once the application is transferred to the respondent State. And the COE has a legal aid scheme for the applicants who cannot afford legal representation in court.

In suitable circumstances the Court is entitled to determine interim measures to be taken by the respondent state pending the determination of the case. The Court may, within the interests of the appropriate administration of justice, invite any contracting state that is not a party to the proceedings, or any person affiliated who is not the applicant, to present written comments and, in extraordinary circumstances, to be represented at the hearings. A contracting state whose citizen is an applicant in the case held by the ECtHR is permitted to intervene as per the right conferred by the Convention. Throughout the process, negotiations for securing a friendly settlement between the parties might be made through the registrar of the Court.

Applications to the Court might be submitted in one of the official languages of the member states. Once the application is formally communicated to the respondent State, one of the Court's official languages must be used, if the president of the Chamber or the Grand Chamber does not authorize the continual use of the language of the application.

2.2. EUROPEAN CONVENTION ON HUMAN RIGHTS

The Convention states the commitment of the signatory states to deter any resurgence of totalitarian regimes, and to ensure the safeguarding of individuals. The Convention was primarily a Western European formation for and by “European countries, which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law.”²

Initially three institutions were entitled to assume the liability of overseeing the implementation and interpretation of the Convention. These are as follows: the European Commission of Human Rights (founded in 1954), the ECtHR (founded in 1959) and the Committee of Ministers of the COE (founded in 1949). Many changes were introduced to the system of the Court in 1990s. Political changes in the Eastern Europe paved the way for an enlargement of the COE. The Court and the Commission were transformed to meet the new challenges. What lies behind the basic idea of the Convention is to protect fundamental rights in the member states of the COE.

2.2.1. Two-Tier System of the Convention

As stated out in the book edited by the COE, initially the Court and the Commission were non-permanent organizations and held weeklong meetings at Strasbourg (1995, p. 9). The Commission was primarily a filtering institution for the Court and individuals could only bring their claims before the Commission. The Commission decided whether individual claims were admissible or not. If the Commission could not attain a friendly agreement, the case was referred to the ECtHR for final decision. The Court then coped with the cases, and when it delivered a judgment, it became binding on the related member state.

In the early phases, the Court or the Commission ruled on whether the legislation of the member states had violated the Convention, and whether precautions to implement the Convention in domestic law had been effectively made. Enforcement was then in the accountability of the COE as an executive body that might make economic sanctions to

² Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocols No. 11 and No. 14. Retrieved 18 January 2015 from, <http://conventions.coe.int/treaty/en/treaties/html/005.htm>

keep the states abide by the decisions. The Court, Commission and the Council endeavoured to attain a high standard of safeguard of human rights. Through the interpretation of Court and the Commission, the level of the protection of human rights has increased.

2.2.2. Changes in 1990s

Many changes were introduced to the system of the Court in 1990s. Political changes in the Eastern Europe paved the way for an enlargement of the COE. The Court and the Commission were transformed to meet the new challenges. International law and human rights are not stagnant notions, which are at all times in transition. Thus, protection of the European human rights is part of a dynamic process as a component of international law (Flogaitis and Zwart, 2013, p. 21). Thus, the Court changed over the years.

The reform in 1998 pursuant to the Protocol 11 was related to the individual and interstate complaints, and to the organisation and system of the Court. Prior to the reform, as stated before individuals seeking access to the Court had to be heard by the Commission first which would make a decision on whether it should proceed further by bringing the case to the Court. However, at present, individuals have much more straightforward access to the Court. After exhausting the domestic legal remedies, private citizens can bring their applications directly to the Court. The key role of the Committee of Ministers changed to the supervision of the implementation of the Court's judgments, which is an indicator of strengthening the right of an individual on the ongoing process in international law.

Nevertheless, given that the individuals might now lodge cases to the Court directly, the number of cases has increasingly grown. Another factor causing the explosion of cases was the merging of the Commission and Court into the one Court. In spite of the fact that this is a sign of a better individual awareness and acceptance of the Court, it generates more obstacles to the work of the Court (Tulkens and Kovler, 2008, p. 37).

2.3. POWER AND REACH OF THE COURT

The power of the ECtHR which is headquartered in Strasbourg seems much less compared to the ECJ in Luxembourg, given that its tools in support of ensuring execution are much weaker compared to those at the ECJ (Tulkens and Kovler, 2008, p. 8). At the ECJ most of the rulings have “direct effect,” which means that under specific conditions the judgment becomes enforceable law in each member state. In addition, ECJ can apply financial sanctions on member states to punish for non-implementation of the decisions.

As per the Article 46 of the Convention, the rulings of the ECHR have binding force, which constitutes the legal basis for the implementation of the judgments. Whereas the member states are to abide by the judgments in accordance with the Article 46, the Court has in theory no effective way of punishing states for not sticking to its rulings. Committee of Ministers at the COE is liable for the supervision of the implementation of the judgments. Theoretically, states may ignore the judgments of the Court, and the rulings cannot be enforced, nonetheless, such behaviour could lead to the expulsion of the member state from the COE.

In spite of the fact that it seems like there is little likelihood for effective supervision of rights, based on the implementation, the Court is considerably influential in practice. In fact, states always end up pursuing the rulings effectively, and the Court launches substantial changes in national legal systems. The rulings of the Court have impact in two ways. The more striking impact happens when a ruling of the Court causes an amendment of national law, which usually requires a few years and a series of repetitive rulings on one precise issue. A more instant impact is the on individual appellants as ordered by the Court.

2.4. IMPACT OF THE JUDGMENTS OF THE COURT ON NATIONAL LEGAL SYSTEMS

As stated previously, it remains within the state’s self-government and its constitutional law to settle on how to conform to the duty of implementation within domestic law as per the Article 46 of the Convention. The beneficiary of the judgments is each state body,

which has to esteem and implement the judgment. However, there are differences among the member states in implementing the Convention, relying on their domestic legal system.

Implementation of the Convention differs from one member state to the other. In fact, the rate of compliance by the member states with the Court's rulings is very high whose judgments are as equally effective as those of any national court. The Court smashes century old traditions in domestic legal systems and changes them with its own interpretation of the law of the Convention. It might also be indicated that the rulings of the Court express a supranational culture somewhat strange to those at the national level (Arold, 2007, p. 34).

2.5. INDIVIDUAL REMEDIES

Further reactions of the member states occur about the individual remedies. It should be expressed here the Court has constitutional supervision over the member states, and when the Court finds a breach of the Convention, the member state is supposed to remedy the situation. Because of the lack of the "biting teeth," it sometimes might take a while for a state to remedy a situation for not obeying the rulings of the Court due to lack of sanctions and punishment (Arold, 2007, p. 35). The Committee of Ministers monitors the execution of the judgment. However, in the absence of general implementation guidelines, the ways and means of implementation are largely left to the member states.

Ministers are also entitled to give commands to governments, and the Court sets a time schedule, generally three months, within which a certain amount of damage must be paid to the individual in cases entailing monetary awards. Should the member state in concern fails to apply a judgment of the Court within the allocated time period, the Committee of Ministers might make decision on measures to be taken by a two-thirds majority of vote. Such sort of measures may result in the publishing of a Commission report on the case; or in the most severe situation, the member state can be suspended or expelled from the COE on the grounds of disrespect of the state for human rights in accordance with the Article 3 of the Statute of the COE. The Committee of Ministers is empowered to take such kind of measures in line with the Article 8 of the Statute of the COE. In addition, if

a state fails to act in accordance with its financial obligation, the Committee of Ministers might exclude the state from the COE until the payment is made pursuant to the Article 9 of the Statute of the COE.

The duty of the state bound by the Convention is to put the claimant in a condition as if the breach never happened which may mean a new trial, or an acquittal in the case. Financial damages under Article 41 are another remedy. Furthermore, the state is obliged to end the violation of the Convention in accordance with Article 46(1). In some cases the member state has to change the national law so as to comply with the standards set by the Court.

2.6. STATISTICS FROM 1959 TO 2015

Statistics of the Court is given here from 1959 to 2015 as this is the last version of the document titled “Overview of the Court,” which presents statistical data about the judgments delivered by the Court for the members states. The Court has delivered approximately 18,500 judgments since it was established in 1959. Nearly half of the judgments concerned 5 member States: Turkey (3,182), Italy (2,336), the Russian Federation (1,720), Romania (1,197) and Poland (1,099) (see Figure 1)³. The Court has found at least one violation of the ECHR by the respondent State in 84% of cases of the total number of judgments it has delivered since 1959.⁴

In recent years, the Court has focused on reviewing complex cases and has decided to join certain applications which bring up similar legal questions so that it can consider them jointly. Hence, the Court has examined more applications, even though the number of judgments rendered each year is not increasing as rapidly as in the past.⁵ Since the establishment, the Court has decided on the examination of about 674.000 applications.

³ Overview 1959-2015. Retrieved 17 June 2016 from, http://www.echr.coe.int/Documents/Overview_19592015_ENG.pdf. p. 3

⁴ Overview 1959-2015. Retrieved 17 June 2016 from, http://www.echr.coe.int/Documents/Overview_19592015_ENG.pdf. p. 4

⁵ Overview 1959-2015. Retrieved 20 June 2016 from, http://www.echr.coe.int/Documents/Overview_19592015_ENG.pdf. p. 6

More than 41% of the violations found by the ECtHR concerns the Article 6 of the ECHR, whether through the “fairness” (17.63%) or “the length of the proceedings” (22.13%). The second violation most frequently found by the Court concerns “the right to liberty and security” as set out in Article 5. Finally, the Court has found a serious violation of the Convention in 14.72% of cases which concerns “the right to life or the prohibition of torture and inhuman or degrading treatment” (Articles 2 and 3).⁶

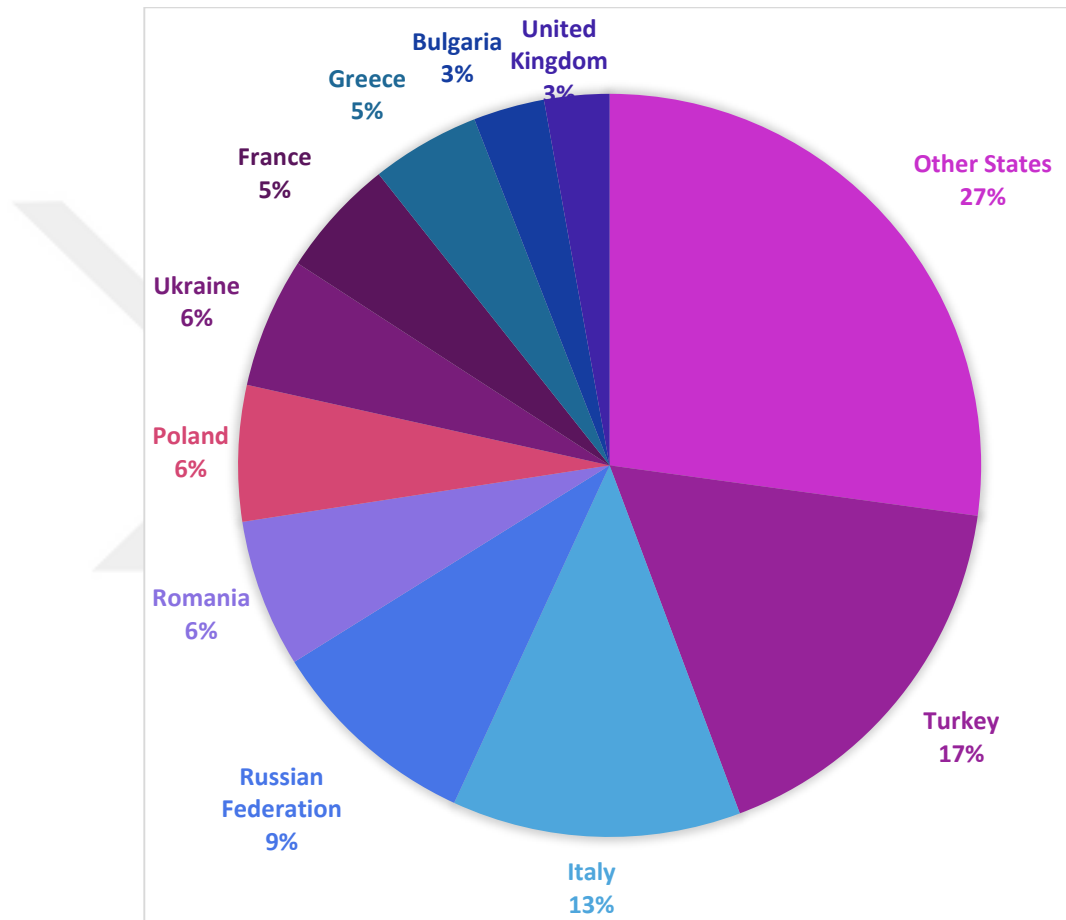


Figure 2.1: Judgments Delivered by the ECtHR

According to the throughput of applications made to the ECtHR between the years of 1959 and 2015 by the 47 member states of the COE, the Court found no violation in only 64 cases between these years related to Turkey. In 204 judgments, friendly settlement stroke out among the parties of the trials. And in the other judgments amounting to 94,

⁶ Overview 1959-2015: Violations by Article and by State 1959-2015. Retrieved 22 June 2016 from, http://www.echr.coe.int/Documents/Overview_19592015_ENG.pdf

the Court rendered “just satisfaction, revision, preliminary objections and lack of jurisdiction.”⁷

2.7. INDIVIDUAL APPLICATION TO THE CONSTITUTIONAL COURT OF THE REPUBLIC OF TURKEY

Individual application was introduced into the legal system of the Republic of Turkey through the 2010 constitutional amendments.⁸ The reason behind this initiative is to decrease the number of applications by Turkey to the ECtHR and exhaust domestic remedies prior to applying to the ECtHR. 23 September 2012 was set as the first day for receiving applications.

Admissibility review of the individual applications is made before accepting the applications. The Constitutional Court might make a decision on the grounds that an application is inadmissible in the event that it is manifestly ill-founded or it does not have any importance for the interpretation or application of the Constitution in the determining the scope and the limits of the fundamental rights.⁹ The underlying principle for setting inadmissibility criteria is to protect the Court from too much workload and to offer more time to cope with the critical cases concerning the fundamental rights stipulated in the ECHR since the main reason is to impede the excessive applications to the ECtHR.

In this chapter, the historical background of the ECtHR, the Convention by which it is bound, the impact of the judgments of the Court on the national legal systems, statistics related to the Court and individual application to the Constitutional Court of the Republic of Turkey is explained. The next chapter gives insight about the features of legal language, legal translation, judgment translation and translation activities at the ECtHR.

⁷ Overview 1959-2015: Violations by Article and by State 1959-2015. Retrieved 22 June 2016 from, http://www.echr.coe.int/Documents/Overview_19592015_ENG.pdf

⁸ Constitutional Court. (2015). Individual Application. Retrieved 1 March 2015 from, <http://www.anayasa.gov.tr/en/IndividualApplication/>

⁹ Constitutional Court. (2015). Individual Application. Retrieved 1 March 2015 from, <http://www.anayasa.gov.tr/en/IndividualApplication/>

CHAPTER 3

LEGAL LANGUAGE AND JUDGMENT TRANSLATION

In this chapter an introduction to the legal language and legal translation is presented. More specifically, it includes several descriptions of legal language and what makes legal translation so unique and a brief account of the legal discourse. It gives information about translation in international courts, translating at the ECtHR, and judgment translation as a separate genre at the supreme courts.

3.1. CHARACTERISTICS OF LEGAL LANGUAGE

Šarčević defines legal language “as special purpose communication between specialists, thereby excluding communication between lawyers and non-lawyers” (1997, p. 9). Harvey suggests that this restriction excludes several text types which constitute a great part of the workload of the translator: judgements, contracts, correspondence with the legal authorities and lawyers, etc (2002, p. 178). In fact, one of the characteristics of the legal discourse is that it is not constrained to specialists, but it is at least, theoretically, meant for the lay citizen. Mellinkoff divides the legal language into two: “language that is intended to speak to lawyers and laymen” and “a professional language” (1963, p. 18).

It is actually obvious that people regard legal documents difficult to understand when compared with the other professional writings. It is known that law, as a set of rules regulating the conduct of people, describing the established social norms and human behaviour, is directly bound to the language that it uses and is restrained by language. Owing to the function and nature and of law, the legal language has developed specific linguistic characteristics, lexical, syntactical and pragmatic, to meet the demands of the law and “accommodate the idiosyncrasies of law” and its applications (Cao, 2007, p. 20). Such linguistic characteristics of the language of law have great implications for the legal translation. If all the aspects of the legal language is examined, common and singular linguistic characteristics could be identified across diverse legal languages. They are manifested with regard to lexicon, syntax, pragmatics, and style.

3.1.1. Lexicon

Pertaining to legal lexicon, a unique characteristic of language of law is the complex and distinctive legal vocabulary encountered in diverse legal languages. It is a universal aspect of legal language; however, different legal languages have their own legal vocabulary. This is the most evident and outstanding linguistic aspect of the legal language as a technical language since the legal texts are a kind of technical texts. The legal terminology in each language is frequently wide-ranging. It is a sign of the law of the specific legal system concerned. In translation, because of the differences in legal systems, a great number of the legal terms in one language do not correspond to terms in another, which is an indication of the problem of non-equivalence, a substantial source of difficulty in translation (Cao, 2007, pp. 20-21).

3.1.2. Syntax

The general characteristic of the syntax of the language of law is the impersonal and written style together with substantial complexity and length. In most cases, sentences in legal texts are longer than in other text types and they might have diverse functions (Cao, 2007, pp. 20-21). In most of the legal languages, long and complex sentences are required owing to the complexity of the cases and the nature of law. As Bhatia points out the peculiar linguistic characteristics usually create difficulties for the ordinary reader including the translator in understanding the legal texts effectively (1997, p. 208).

Apart from “long and complex sentence structures” encountered in most legal languages, there are syntactical peculiarities as well. In legal language of English, “complex structures, passive voice, multiple negations, and prepositional phrases” are widely used (Cao, 2007, p. 21). Altay draws attention to the general features of legal language in her article titled “Difficulties Encountered in the Translation of Legal Texts: The Case of Turkey” that apply to both Turkish and English as follows¹⁰:

¹⁰ Altay, A. (2002). Difficulties Encountered in the Translation of Legal Texts: The Case of Turkey. *Translation Journal*, 6 (4). Retrieved 25 October 2016 from, <http://translationjournal.net/journal//22legal.htm>

- extraordinary language with respect to vocabulary and style;
- long sentences;
- combining the words or phrases with the conjunctions “and, or” in English and “ve, veya” in Turkish;
- use of unusual sentence structures;
- flexible or ambiguous language;
- technical vocabulary and archaic terminology;
- use of words that have a legal meaning different from their ordinary meanings;
- use of synonyms which do not even suggest a meaning to an ordinary person and is a complete mystery to non-lawyers;
- use of modal verb “shall” that expresses an obligation in English legal language, and simple present tense as a way of expressing legal obligation in Turkish legal language (2002).

3.1.3. Pragmatics

Law depends on the performative nature of language. Legal remarks perform acts, making up facts, rights and institutions. Characteristically, legislation is a primary example of “saying as doing,” and a statute is a “master speech act with each provision constituting individual speech acts” (Cao, 2007, p. 21). Wills and contracts are other examples of legal speech acts. As for these speech acts, a major linguistic feature is the common usage of performative markers. For example, in English legal documents, “may” and “shall” are used to a great extent. Performative verbs such as “announce,” “declare,” “confer,” “promise,” “undertake,” “amend,” and “enact” are frequently used as well.

3.1.4. Style

Legal style refers to the linguistic features of the written legal language and also the method in which legal problems are handled and solved. In general, style of legal language is embodied by an impersonal style and broad use of declarative sentences. Different legal languages have their unique styles that are peculiar in different legal languages.

To put it briefly, the abovementioned characterisation of legal language is a general description of the linguistic markers considered to be widespread in most of the legal languages in varying extents. But, it is essential to keep in mind that big differences exist in diverse legal languages as well and such differences create a source of difficulty in legal translation (Cao, 2007, pp. 22-23).

3.2. LEGAL TEXTS

Altay points out to the aspects of legal texts in her article titled “Difficulties Encountered in the Translation of Legal Texts: The Case of Turkey.”¹¹ She categorises “the problems and difficulties encountered in translating legal texts between English and Turkish” under six titles as follows:

- differences in legal systems;
- difference in the language systems, syntactic arrangements, and word orders of the Turkish and English languages;
- lack of an established terminology in Turkey in the field of law;
- unusual sentence structures in the English legal language;
- old language usage in the legal system of Turkey;
- use of common terms with uncommon meanings (Altay, 2002).

Altay (2002) underlines the fact that “while lawyers cannot expect translators to produce parallel texts that are identical in meaning, they do expect them to produce parallel texts that are identical in their legal effect.”

¹¹ Altay, A. (2002). Difficulties Encountered in the Translation of Legal Texts: The Case of Turkey. *Translation Journal*, 6 (4). Retrieved 25 October 2016 from, <http://translationjournal.net/journal//22legal.htm>

3.3. LEGAL TRANSLATION

3.3.1. Definition of Legal Translation

Deborah Cao questions whether translation is an art or science. She asserts that this question has been asked for years and there is still no ultimate answer to it; however, that hardly has a bearing as translators around the world have translated in a scientific and artful way over the centuries. She states that translation is both art and science possibly defying a strict explanation given that translation activity has various facets, and both artistic and scientific endeavours. Cao believes that translating law is the most challenging and intriguing task of the translation work (2007, p. 2).

Harvey describes legal translation as a type “in its own right,” and as “the ultimate linguistic challenge” (2002, p. 177). Harvey questions whether the legal translation is just an excuse or exaggeration which is seen as being special, and more complicated, necessitating more time and skills than the other categories of translation and so the legal translators should be better paid off (2002, p. 177).

3.3.2. Sources of Difficulty in Legal Translation

There are a great number of reasons behind the fact that the legal translation is difficult and complex. Fundamentally, “the nature of law and legal language” leads to the “complexity and difficulty of legal translation” (Cao, 2007, p. 23). This is combined by additional complications deriving from working with “two languages and legal systems in translation” (Cao, 2007, p. 23). Cao asserts that the sources of difficulty in legal translation comprise “different legal systems and laws, linguistic differences and cultural differences,” and they are all closely interrelated (2007, p. 23).

3.3.2.1. Different Legal Systems and Laws

Law as an abstract notion is universal, since it is revealed in customary norms of conduct and the written laws in different countries. Nevertheless, legal systems are particular to the societies where they originate. Each society has diverse cultural, social and linguistic

forms, which develop individually. Legal norms, legal concepts and application of them differ in each separate society, which reflect the differences in that society. Legal translation comprises translation from one legal system into another.

Each legal family or system has its own features; a vocabulary is used to convey concepts, its rules are arranged into groupings, it has techniques for specifying rules and interpreting them, which is related to a view of the social order itself which establishes the way where the law is implemented and shapes the role of law in that society. Šarčević states that owing to the differences in cultural and historical development, the basics of the source legal system could not be plainly transferred into the target legal system (1997, p. 13). Accordingly, the major challenge before the legal translator is the “incongruency of legal systems in the SL and TL” (Cao, 2007, pp. 23-28).

3.3.2.2. Linguistic Differences

Linguistic difficulties in translation generally stem from the dissimilarities found in the different legal systems and legal traditions. For example, the Common Law and Civil Law have their own unique legal cultures, histories, and systems. Legal language has improved its features to meet the requirements of the legal system in which it is articulated. Each legal language is the outcome of a particular culture and history.

A fundamental linguistic difficulty in translation of law is that there is no equivalent terminology among different languages. David and Brierley argue that this situation entails continuous comparison between the legal systems of the SL and TL (1985, p. 16). Smith suggests that the written legal language reflects the crucial basics of a legal culture and challenges the legal translator with its multi-dimensional implications (1995, pp. 190-191). Tetley points out in respect to the style of the legislative drafting, “Civil Law codes and statutes are concise (*le style français*), while Common Law statutes are precise (*le style anglais*)” (2000, p. 703). The gap between the legal systems of different nations gives rise to linguistic differences. In general, “the wider the system gap, the wider the legal language gap” (Weisflog, 1987, p. 203). The differences in diverse legal systems and the legal language of the source and target systems have impacts on legal translation.

3.3.2.3. Cultural Differences

The other source of difficulty in legal translation that confronts legal translator is the cultural differences. Language and culture are integrated closely and interdependent on each other. As Šarčević points out, “each country has its own legal language representing the social reality of its specific legal order” (1985, p. 127). A legal translator has to overcome cultural barriers between societies of the SL and TL while reproducing a TL text in law that is originally written for SL reader. The most significant general feature of any legal translation is that a great part of the text is culture-specific (Weston, 1983, p. 207). The reality of the fact of different legal cultures and legal traditions is the main reason why legal languages differ from each other.

3.4. TRANSLATION AT INTERNATIONAL COURTS

Legal translation plays a significant role in a number of different aspects of international arbitration, which includes numerous documents such as the legal documents for the proceedings, the translation of national arbitration laws into world languages, the translation of standard arbitral clauses and institutional procedural rules, and the production of multilingual instruments of international arbitration law and others (Sanders, 1999, p. 143). Despite the growing use of English, translation continues to make a significant contribution not only to the globalization but also to the harmonization of international arbitration. Arbitration experts assert that this is a significant point as the future of international arbitration lies in its harmonization with the other legal systems. Translation makes contribution to the globalization of arbitration by eliminating cultural and linguistic barriers, providing organizations from all nations with resolution of international disputes through arbitration (Šarčević, 2008, p. 291).

As a rule, the proceedings might be carried out in any language or languages preferred by the parties. The arbitration institutions generally have one, two or three official languages, though the parties often choose a neutral language, particularly English. As translations of legal documents must precisely reproduce the original ones, it is commonly agreed that the quality of a translation could be no better than the original (Šarčević, 2008, pp. 292-293). Harvey states that the translators must abstain from clarifying any ambiguities and

making any corrections, albeit they believe that they know the intended meaning (2002, p. 181).

3.5. THE LANGUAGE DIMENSION OF THE ECtHR

The Court as an international court has to cope with the translation activities across frontiers. Unlike a number of other international organizations, the COE and hence the ECtHR has the benefit of having only two official languages: English and French. The jurisdiction of the Court is based on the Convention which is drawn up in English and French, and both texts are authoritative. The judgments of the Court are written both in English and French. In this sense, the Court is not a multilingual institution. However, since there are 47 member states of the COE, it is undoubtedly multinational. And the Court employs at least two members of staff from most of those countries, so a large number of languages can be heard in its corridors (Sharpe, 2010, p. 77). In addition, applicants may apply to the Court in the official language of any member state, and so the majority uses a language other than English or French in the first instance. However, if the applicant writes his/her application in English or French, the judicial process can progress more rapidly.

Since translation ensures access to all court services and offers significant standard of language access to a fair trial in the court, the role of translation increases in the development of international right system. In recent years a great attention has been attached to the court judgments, their translation and dissemination. The current projects of the Court are to translate the judgments and the other documents of the Court in order to further the development of human rights legislation and protection.¹²

With a view to ensuring efficiency in legal proceedings and in the international courts, language access in court is regarded a crucial element of the justice system. The ECtHR attributes great significance to their translation systems and encounter a lot of problems; however, there are some specific elements arising from legislations they cope with, languages and legal cultures of the countries under their competence. The principles of the Convention

¹² Translation in the European Court of Human Rights and the Inter-American Court of Human Rights: A Comparative Analysis. European Studies Conference. Retrieved 20 November 2016 from, <http://docplayer.net/25098241-Translation-in-the-european-court-of-human-rights-and-the-inter-american-court-of-human-rights-a-comparative-analysis.html>

often entail broad interpretation by the courts to infer meaning in specific circumstances. This situation requires linguistic awareness, and even much more awareness is required when translation is included. Translation is an essential part of the legal process in court. Article 6 of the Convention prescribes “the right to a fair trial,” stating the following rights: “a) to be informed promptly, in a language which he understands” and “e) to have the free assistance of an interpreter, if he cannot understand or speak the language used in the court.”¹³

In the Court, initial documents are submitted by the lawyers who speak the language of the member state in matter and have a good command of English or French. There are numerous translation problems varying from technical to specific ones. These linguistic problems are evaluated by the judges taking into consideration their experience as lawyers within the legal systems of member states. The judges have to consider the main differences in legal systems and legal terminology (Wolfrum, 2009, p. 55).

For the purpose of raising awareness in translating judgments several projects have been launched. The European Commission has initiated the “JURISTRAS” project with the purpose of exploring the human rights litigation processes in the ECtHR and the effects of the court’s judgments on national law. Within the scope of this project, several recommendations have been proposed as follows: the need of translating and disseminating the judgments of the ECtHR at the COE level. Translation of ECtHR’s judgments has been regarded as one of the key measures to further the role of the ECtHR.

Another project titled “Bringing Convention Standards Closer to Home: translation and dissemination of key ECHR case-law in target languages” was launched by the ECtHR in 2012. It was declared that the project’s aim is to translate the Court’s key judgments and decisions in order to further disseminate its case-law via the Court’s database HUDOC (Wolfrum, 2009, p. 55). Under this project, the translation of decisions and judgments of the relevant cases into the official languages of some member states has been commissioned, moreover non-official translations could be submitted in non-official languages through the

¹³ Article 6 of Convention for the Protection of Human Rights and Fundamental Freedoms. Retrieved 22 November 2016 from, http://www.echr.coe.int/Documents/Convention_ENG.pdf

internet sites. It can be suggested that the translation of the ECtHR's key judgments is a new approach to strengthen the role of the Court for safeguarding human rights.

The translation of the ECtHR could be divided into two subgroups: translating documents and interpreting at the court proceedings, and translation for communication and research with the European and world communities. Law professionals, educators and researchers attach importance to the translation activities in these fields. Right to free translation is regarded as one of the significant human rights in the globalizing world and an indispensable instrument in advancing the legislation and furthering the role of the Court in the safeguard of people's rights.

3.6. JUDGMENT TRANSLATION AT THE ECtHR

At first hand, one is required to have a basic knowledge of how a lawsuit progresses typically with the purpose of fully understanding the judgment, which is the written document that concludes the lawsuit. Besides, it is noteworthy to comprehend how the judgment comes into being. And understanding the communicative situation of the judgment might help the recipient get a deeper understanding of this genre.

As mentioned before, the judgments of the ECtHR are published only in English and French just as the other official documents of the COE are. The English and French versions of the texts are both equally authoritative, just as the English and French versions of the Convention itself are. Furthermore, even though the judgments are binding and final in international law, the Court has no power to enforce its own judgments on the national courts to implement them; however, it is in particular significant that those judgments must carry value and have authority in themselves, and equally in the two languages; in other saying, the translations must be as accurate as the originals (Weston, 1995, p. 121).

The COE can employ up to sixty translators where generally native speakers of English and French equal the numbers approximately. Although operating in only two languages might be an economic advantage for the Council there are concurrent disadvantages. The fewer the official languages are at the Council, the greater is the number of staff who have

to draft in a language that is foreign to them. This situation unavoidably affects the standard of drafting the text. This in turn has an effect on the standard of drafting, unless the texts are revised by a native speaker. Furthermore, staff at the Council drafting the documents -including the judgments- has to take into consideration that the drafted text must be readily comprehensible and intelligible for both the native speakers of the drafting language and the readers with a much less extensive knowledge (Weston, 1995, p. 121).

Šarčević sets forth that it is very significant to identify the authoritative and non-authoritative characteristics of legal instruments in different languages and use them properly taking into consideration that the expression of “translation” makes it obvious that the target text is non-authoritative and hence non-binding, in other words, not having the force of law (2008, p. 295). The fact that the translated text is non-authoritative does not mean that the translator is bound by less strict restrictions. In spite of their non-authoritative status, these translations must be reliable and precise. Translators are generally encouraged to preserve the textual symmetry as far as possible; nevertheless, it is not the literal translations which builds the user confidence, but the translations made in “natural” target language (Joseph, 1995, p. 34).

In this chapter, information about the specific features of legal language, legal translation, translation at international courts, translating at the ECtHR, and the judgment translation are given. The next chapter focuses on the theoretical and methodological framework of the study, which includes the translation methods of Jean-Paul Vinay and Jean Darbelnet and the approaches of Gideon Toury related to adequacy and acceptability.

CHAPTER 4

THEORETICAL AND METHODOLOGICAL FRAMEWORK

After giving information about the characteristics of legal language, legal translation, translation in international courts, translating at the ECtHR, and judgment translation as a separate genre at the supreme courts, what follows is an attempt to present the theoretical background of legal translation and methodology of the analysis part. The theoretical framework of this study is composed of two parts. The first section begins with the methodology of this study, and translation methods of Jean-Paul Vinay and Jean Darbelnet are explained. These are “borrowing, calque, literal translation, modulation, transposition, equivalence and adaptation” (Vinay & Darbelnet, 1995, pp. 30-42). The second section of this chapter includes the macro strategies of translation studies and the approaches of Gideon Toury which are used in the findings of the analysis part trying to answer the question of whether the legal terminology of the judgments of the ECtHR is translated in adequate or acceptable way.

4.1. MICRO STRATEGY: VINAY AND DARBELNET'S TRANSLATION METHODOLOGY

The translation methodology of Vinay and Darbelnet is applied in the following chapter in analysing and finding out which methods are used in the translation of the legal terminology of the judgments of the ECtHR. Vinay and Darbelnet conducted a comparative analysis between the language pair of French and English, reviewed texts in both languages, recorded differences between that language pair and determined various translation methods. Even though their study was merely based on French and English, it inspired other works extensively in translation studies in different language pairs. These two scholars suggest that different methods seem to be countless, but they could be condensed to just seven. Each of these methods equates to a higher level of complexity and they describe the translation process in detail. In practice, these methods can be used either individually or combined with the others (Vinay & Darbelnet, 1995, p. 31).

Vinay and Darbelnet propose two general translation methods, identified as direct translation and oblique translation, which date back to the “literal vs. free” division. In fact, “literal” is agreed as synonym for direct translation. Translators can choose from these two translation methods in some translation tasks where it can be achieved to transpose the SL message element by element into TL, given that it is based on either (i) parallel categories, in which case it can be mentioned of structural parallelism, or (ii) on parallel concepts, which are the results of metalinguistic parallelisms. However, translators might notice gaps as well or “lacunae” in TL which can be filled by equivalent elements, so that the overall impact can be created in the same way for the two messages (Vinay & Darbelnet, 1995, p. 31). On the other hand, due to the metalinguistic or structural differences, it can also occur that particular stylistic impressions cannot be transferred into the TL without disturbing the syntactic order. In this circumstance, it is figured out that more complex strategies or methods have to be utilized, which seems strange initially but nonetheless can allow translators a stringent rule over the reliability of their translation: these methods are called oblique translation methods. The two methods identified as direct translation and oblique translation comprise seven procedures: the first three are direct and the other four are oblique (Vinay & Darbelnet, 1995, p. 31).

4.1.1. Direct Translation Methods

4.1.1.1. Borrowing

In this method, the SL expression is directly transferred to the TL. To overcome a lacuna (gap), frequently a metalinguistic one (e.g. an unknown concept or a new technical process), borrowing can be chosen by a translator as the simplest of all translation methods (Vinay & Darbelnet, 1995, p. 31). Borrowings are occasionally employed by a translator to add local colour to the TL (Munday, 2001, p. 56).

Some of the well-established, generally older borrowings are so commonly used that they become a component of the relevant TL lexicon. Some examples of English words such as “menu,” “hangar,” “carburettor,” “chic” and expressions like “déjà vu,” and “rendez-vous” are no longer considered to be borrowings (Vinay & Darbelnet, 1995, p. 32).

Translators are mainly concerned with the newer borrowings, and it must be taken into consideration that most of the borrowings enter a language via translation. The decision of borrowing a SL word or expression for the purpose of introducing a component of local colour is a matter of style as a result of the message tried to be given.

In Turkish there are a lot of borrowed words and expressions some of which are domesticated, while some preserve their original spelling and pronunciation. Examples to the domesticated terms are tabildot (from French), alafranga (from Italian), abaküs (from French), deklarasyon (from French), dekode (from English) (Kök, 2011, p. 34). Examples to the latter category are brunch (from English), fair play (from English), software (from English), CD (from English), gala (from Italian).

4.1.1.2. Calque

A calque is “a special kind of borrowing” whereby each of the elements of the SL word or expression is translated literally (Vinay & Darbelnet, 1995, p. 32). According to Vinay and Darbelnet both borrowings and calques frequently integrate completely into the TL, even though sometimes this happens with some semantic change, which could “turn them into false friends” (Munday, 2001, p. 57). There are two types of calque:

- (1) lexical calque : a calque which respects the syntactic structure of the TL, but “introduces a new mode of expression.”
- (2) structural calque : a calque which “introduces a new construction into TL.”

There is a great number of fixed calques like borrowings which become an integral part of the language after being used frequently in the TL. These usages too, as with borrowings, can undergo a semantic change. Translators get more interested in new calques to fill a lacuna, without using an actual borrowing (Vinay & Darbelnet, 1995, p. 33).

To give examples of lexical calque in Turkish, honeymoon (balayı), weekend (haftasonu), science-fiction (bilim-kurgu), skyscraper (gökdelen); and for the structural calque transatlantic (atlantikaşırı) can be given as an example.

4.1.1.3. Literal Translation

This is a “word-for-word” translation, which is the direct transfer of a SL expression into an idiomatically and grammatically appropriate TL text, where the task of the translator is restricted to examine the “adherence to the linguistic servitudes of the TL” (Vinay & Darbelnet, 1995, pp. 33-34). Technically, a literal translation is reversible and complete in itself, which makes this method a unique solution. It is used generally in translating between two different languages of the same family such as English and French, and the same culture. Literal translation is the prescription of the author for good translation, and literalness must merely be sacrificed as a result of the structural and metalinguistic necessities and only after confirming that the meaning is entirely preserved (Vinay & Darbelnet, 1995, pp. 33-34). And computer (bilgisayar) can be given as an example of literal translation from English into Turkish.

4.1.2. Oblique Translation Methods

Vinay and Darbelnet suggest that if after trying the first three methods, translators consider the translated text as unacceptable, the oblique translation methods must be used. They mean by unacceptable that when translated literally, the message:

- (1) gives a different meaning,
- (2) has no meaning at all,
- (3) is not structurally possible,
- (4) does not include a corresponding expression within “the metalinguistic experience of the TL,”
- (5) has a corresponding expression, “but not within the same register” (Vinay & Darbelnet, 1995, pp. 34-35).

These ideas can be clarified by giving the examples as follows (Kök, 2011, p. 36).

He looked at the map: Haritaya baktı.

He looked the picture of health: Turp gibiydi.

While the first sentence can be translated literally, this is not possible for the second example, if it is not preferred by the translator for an expressive reason. If a translator gives something like the second example, it can be asserted that this is an indication of the purpose of an equivalence of the two messages.

In such circumstances where literal translation is not likely, Vinay and Darbelnet suggest that the method of oblique translation must be used.

Oblique translation includes four methods:

4.1.2.1. Transposition

The method named transposition is the change of one word class for another with no change of the sense of the message TL (Vinay & Darbelnet, 1995, p. 36). Besides being a special kind of translation method, transposition can be applied within a language as well. Two types of transposition are suggested by these two scholars:

- (1) obligatory transposition: when the SL allows no other choice between the two forms, and the base form is the only one doable. In return, nevertheless, when translating back into the SL, translator has the choice between using a calque or a transposition, if the SL allows.
- (2) optional transposition: when the SL allows two or more other choices among the forms.

Transposition is seen as “probably the most common structural change undertaken by translators.” The authors list different categories of transposition such as between the language pair of English and French: the meaning of an adverb is given by a verb, verb by a noun, noun by a past participle, verb by a preposition, adverb by a noun, past participle by a noun, adjective by a noun, prepositional expression by an adjective or an adverb, adjective by a verb (Vinay & Darbelnet, 1995, pp. 94-99).

It is important to have a high command of grammar rules, because the translator can express the message of the SL by applying distinct parts of speech or grammar structures.

For the obligatory transposition, the translation of “turn yellow” as “sararmak” can be given as an example. “Yellow” is an adjective, but there is no other choice than using a single verb “sararmak” to give the sense of the expression of “turn yellow” which includes a verb and an adjective. For the optional transposition, the translation of “before her death” as “o ölmeden önce” can be given as an example. While “death” is a noun, “ölmeden” is a kind of gerund (verbal-noun) originating from “ölmek.” It can be said that the message is the same while the parts of speech are different.

4.1.2.2. Modulation

Modulation changes the semantics and “the point of view of the SL.” It is a various form of the message, achieved via a change in the point of view. When the translation -literal or even transposed- ends up in a grammatically accurate remark, but it is regarded as incompatible, unidiomatic or odd in TL, modulation can be justified (Vinay & Darbelnet, 1995, pp. 36-37).

Modulation can be:

- (1) fixed or obligatory modulation: e.g. “the time when” translated as “le moment où” [lit. “the moment where”];
- (2) free or optional modulation: though linked to preferred structures of the two languages: e.g. the reversal of the point of view in “it is not difficult to show” translated as “il est facile de démontrer” [lit. ‘it is easy to show’]” (Vinay & Darbelnet, 1995, pp. 36-37).

The difference between fixed (obligatory) and free (optional) modulation is one of degree. In fixed (obligatory) modulation, translators who have a high command of both the SL and the TL use this method without restraint, since they have the knowledge of frequency of use, the general acceptance, and the confirmation made by a dictionary or grammatical use of the chosen terms or phrases.

As for free (optional) modulation, it is a procedure performed anew each time, which are unique examples not yet fixed and authorized by usage. This, but, is not what makes it as

optional; when done as it ought to be, the final translation must match perfectly with the situation revealed by the SL. To point up this argument, it can be alleged that the consequence of a free modulation should make possible a solution that engenders a feeling for the reader exclaim, “Yes, that’s exactly what you would say,” (Vinay & Darbelnet, 1995, pp. 36-37). Hence, free modulation inclines to a distinctive solution which depends on a habitual chain of thought and which is essential rather than being optional.

For that reason it is clear that there is a difference of degree between fixed (obligatory) and free (optional) modulation, and that when a free modulation is used frequently enough, or is thought to enable the only solution, it can become fixed. On the other hand, a free modulation does not in reality turn out to be fixed until it is referred to the dictionaries and grammar rules and is often taught. A paragraph not applying such a modulation would be then regarded as imprecise and would be rejected. (Vinay & Darbelnet, 1995, pp. 36-37).

Vinay and Darbelnet attach great importance to modulation as the standard of a qualified translator, while transposition merely points to a very good command of the TL. At the level of message, modulation is subdivided as follows:

- (1) abstract for concrete
- (2) cause–effect
- (3) part–whole
- (4) part–another part
- (5) reversal of terms
- (6) negation of opposite
- (7) active to passive (and vice versa)
- (8) space for time
- (9) rethinking of intervals and limits (in space and time)
- (10) change of symbol (including fixed and new metaphors) (Vinay & Darbelnet, 1995, pp. 246-255).

As can be seen above, this category includes a wide range of use of modulation. There is regularly a practice of originally free modulations turning out to be fixed expressions as well. One example given by Vinay and Darbelnet is “Vous l’avez échappé belle” [lit. “You have escaped beautifully”] → “You’ve had a narrow escape.” (1995, p. 254).

As proposed by Vinay and Darbelnet, there are also fixed expressions that represent modulations. If it exists at the message level, then it is called equivalence (1995, p. 254).

4.1.2.3. Equivalence

Vinay and Darbelnet use the term of equivalence to refer to the circumstances where languages illustrate the same case by two texts using totally different structural and stylistic methods (1995, pp. 38-39). Equivalence is mainly practical in the translation of idioms and proverbs. For example, the sense not the image of “It’s raining cats and dogs,” can be translated as “Bardaktan boşalırcasına yağmur yağıyor.”

These plain examples demonstrate a precise feature of equivalences, and for that reason the majority of the equivalences are fixed which belong to a repertoire of idioms, proverbs, clichés, nominal or adjectival phrases, etc. (Vinay & Darbelnet, 1995, pp. 38-39). The method of making up equivalences is commonly applied to idioms as well. For instance, “As like as two peas” and “to talk through one’s hat” cannot be translated by the method of calque. Nevertheless, this is precisely what occurs among the members of the so-called bilingual societies, who have lasting communication with two languages, however, never become entirely familiar with either (Vinay & Darbelnet, 1995, pp. 38-39). For instance, the English idiom “to talk through one’s hat” has acquired the equivalent of “olur olmaz konuşmak” in Turkish. In order to transmit the message, not the exact words but the context is translated from the SL to the TL.

4.1.2.4. Adaptation

This seventh method is “the extreme limit of translation.” It is the methodology that is used when the situation refers to that the SL message is unfamiliar in the culture of the TL. This includes changing the cultural reference of a message “when a situation in the

source culture does not exist in the target culture” (Munday, 2001, p. 58). In such cases translators need to materialize a new situation that can be regarded as being equivalent. Adaptation can, thus, be illustrated as a special sort of equivalence, which is “a situational equivalence” (Vinay & Darbelnet, 1995, pp. 39-40). The rejection to make an adaptation is consistently identified within a translation since it has an effect not only on the syntactic structure, but also on the enhancement of ideas and how they are characterized within the text. Adaptations are preferred especially in the translation of the titles of books and movies, as the title of the English movie “The Revolutionary Road” is translated into Turkish as “Hayallerin Peşinde.”

4.1.3. Application of the Seven Methods at Three Planes of Expression

Vinay and Darbelnet state that these seven methods are described as operating on three levels; these are the level of “(1) the lexicon, (2) syntactic structures and (3) the message.” To give an example, “bulldozer” is an example for borrowing at the lexical level. Borrowing also takes place at the message level such as “O.K.” As for the level of syntactic structure, “five o’clock tea” and “à la mode” can be given as an example (Vinay & Darbelnet, 1995, pp. 40-42).

It is clear that several of these methods can be used in the same sentence. Besides, some translations require a whole complex of methods; therefore, it is not easy to separate them from each other. For instance, the translation of “paper weight” as “presse-papiers” is both a fixed modulation and a fixed transposition. In the same way, the translation of “Private” which is written on a door as “Défense d’Entrer” is a transposition, a modulation, and an equivalence as well. It is a transposition for the reason that the “private” which is an adjective, is transformed into a nominal expression; and a modulation since a statement is converted into a warning. In the end, it is an equivalence because it is the situation that is translated, rather than the real grammatical structure (Vinay & Darbelnet, 1995, pp. 40-42).

Summary of the seven translation methods at three planes of expression is as follows:

Table 4.1: Summary of the Seven Translation Procedures

SEVEN METHODS	LEXIS	STRUCTURES	MESSAGE
1. Borrowing	Brunch: Brunch	A la mode: A la mode	Merci: Mersi
2. Calque	Honeymoon: Balayı	Transatlantic: Atlantikaşırı	Five o' clock tea: Beş çayı
3. Literal Translation	Computer: Bilgisayar	The notebook is on the table: Defter masanın üzerinde.	I like listening to music: Müzik dinlemeyi seviyorum.
4. Transposition	A world of: Çok	Get pale: Solmak	No smoking: Sigara içilmez
5. Modulation	Not cheap: Pahalı	Give a sigh of relief: Oh demek	It is difficult to understand: Anlamak kolay değil.
6. Equivalence	Court of Audit: Sayıştay	Be in red: Boğazına kadar borca batmak	Keep a thing seven years and you'll always find a use for it: Sakla samanı gelir zamanı.
7. Adaptation	Coffee: çay	Before you could say jack robinson: Kaşla göz arasında	Yours: Saygılarımla

4.2. MACRO STRATEGY

When a translation task is given to a translator, s/he has to decide on an overall strategy for performing it, also referred to as macro strategy. Such decisions can be taken as a matter of routine or intuitively by the translator (Schjoldager, 2008, p. 67).

4.2.1. Dichotomies of Translation

The translator's macro-level decisions are defined by many scholars of translation studies. These common approaches are the dichotomies with source-text focus at one end of the spectrum, and target-text inclination at the other (Vestergaard, pp. 120-121).

Some scholars of translation studies favour one macro strategy over another. For example, Venuti (2008, p. 16), Vinay and Darbelnet (1995, p. 130) and Newmark (1989, pp. 118-119) favour a ST-oriented macro strategy, while Nida (2004, p. 156) prefers a TT-oriented strategy at macro level. It should still be pointed out that a preferred macro strategy is not inevitably either ST-oriented or TT-oriented. In fact, the macro strategy of a translation characteristically contains a mix of ST and TT-orientation, despite a prevalence of the one over the other (Vestergaard, pp. 120-121). In this thesis, the translator's strategies at macro level will be referred to as either a "adequate translation" based on the ST-oriented macro strategy (focus on the form and content of the source text) or an "acceptable translation" based on the TT-oriented macro strategy (focus on the effect of the target text) (Toury, 1995, pp. 53-70).

4.2.2. Adequacy and Acceptability

Gideon Toury (1995), who is one of the most renowned theorists of contemporary translation studies, proposes a methodology for descriptive translation studies (DTS). The perspective of Toury perspective, which influences translation as extralinguistic factors, is put into practice in the analysis chapter of this thesis trying to answer the question of whether the legal terminology of the judgments of the ECtHR are translated in an adequate or acceptable way. According to Toury, translations in the first place have a

position in the literary and social systems of the target culture, which designates the translation methods that are applied (1995, p. 13). Toury (1995) introduces the following three-stage methodology for systematic DTS, including an account of the product and the extensive role of the sociocultural system:

- (1) Position the text within the target culture system, examining its acceptability or significance.
- (2) Compare the ST and the TT for shifts, classifying relationships between coupled pairs of ST and TT segments.
- (3) Attempt generalizations, rebuilding the process of translation for this ST–TT pair (pp. 36-39).

The purpose of Toury's case studies is to differentiate trends of translation approach, in order to make generalizations concerning the decision-making process of the translator. Toury proposes that "If it the source culture prevail towards the ST, then the TT will be **adequate**; or if the target culture prevail, then the TT will be **acceptable**. The poles of adequacy and acceptability are on a continuum as no translation is totally adequate or totally acceptable" (Toury, 1995, p. 57).

In this chapter, first the methodology proposed by Vinay and Darbelnet is detailed to be applied in the analysis of the translations. Then, the approach of Toury related to adequacy and acceptability are given to be used in the findings of the analysis. The next chapter analyses the legal terminology of the judgments of the ECtHR released about Turkey between 2012 and 2017 having the level of high importance, which contribute to the case-law of the Court.

CHAPTER 5

ANALYSIS OF THE METHODS USED IN TRANSLATING LEGAL TERMINOLOGY IN THE ECtHR JUDGMENTS

In this chapter, a brief information about the corpus, which constitutes the scope and the limitations of this study is given and then it is explained in detail how the judgments of the ECtHR related to Turkey are selected from the HUDOC database. Following this, analysis of the samples taken from the ECtHR judgments is made by applying the methodology of Jean Paul Vinay and Jean Darbelnet, which includes seven methods of translation. The legal terminology of the judgments is analysed within the scope of these seven methods, which are borrowing, calque, literal translation, modulation, transposition, equivalence and adaptation. Then, this analysis sheds light on how the approach of Gideon Toury in terms of adequacy and acceptability are reached in the translation process.

5.1. PRESENTATION OF THE LIMITATIONS

The official website of the HUDOC, presents the cases filed to the ECtHR in the last ten years, namely from 2007 to 2017. The President of the ECtHR, Dean Spielmann, launched the HUDOC case-law database in Turkish on 14 November 2013 which was partly funded by a voluntary contribution from the Turkish Government.¹⁴ The launch was organised pursuant to the visit to the Court by the Turkish Minister of Justice. And the President of the ECtHR stated that “The Court is impressed by the level of support which the Turkish Ministry of Justice is showing for our case-law dissemination activities, including the translation of many of our judgments and publications. All this makes a major contribution to better implementation of the ECHR at national level and may serve as a model for other States.”¹⁵ The HUDOC database was restored in 2012 and progressively “serves as a one-stop-shop for the translations of the Court’s case-law in languages other than its official ones (English and French).”¹⁶ Thanks to the contributions

¹⁴ Press Release 335. Retrieved 20 January 2017 from, <http://hudoc.echr.coe.int>

¹⁵ HUDOC. Retrieved 20 January from, <http://hudoc.echr.coe.int>

¹⁶ HUDOC. Retrieved 20 January from, <http://hudoc.echr.coe.int>

from Turkey and the Human Rights Trust Fund, HUDOC contains approximately 16,000 translations into 33 languages, and approximately 3200 of them are in Turkish (including all of the Court's judgments related to Turkey).

A language-specific filter allows for rapid searching in HUDOC. The Turkish Ministry of Justice also translates and disseminates the Court's factsheets and case-law information notes. The Human Rights Trust Fund supports a three-year project aimed at increasing the number and availability of key case-law translations in Turkey and ten other States in South-Eastern Europe and the Caucasus. The translations are disseminated both through HUDOC and with the help of partners in these countries.¹⁷ The Court commissioned an important number of translations into Bulgarian, Greek, Hungarian, Russian and Spanish as well. A Russian HUDOC interface was completed and launched after Turkish interface as well.

HUDOC filter system includes 53.611 judgments together with their translations of the member countries in its database as of 17 March 2017.¹⁸ There are 32.618 judgments which belong to last ten years, namely between 2007 and 2017. And 12.295 of them belong to the last five years, namely between 2012 and 2017. As for Turkey, 9335 judgments can be accessed via the online database of the Court with their various translations in total. There are 3163 judgments in English related to Turkey, and 2321 of them are in Turkish. When it is filtered for the last five years, the number is 899 for Turkey. According to the importance level refiner on the filtering system, number 3 refers to the "low importance" which counts to 535 judgments of Turkey, number 2 refers to "medium importance" which counts to 313 judgments of Turkey, and number 1 refers to "high importance" which counts to 26 judgments of Turkey in both English and Turkish. The importance level refiner of the filtering system is explained as follows:

Importance Level: This can be used to carry out searches of judgments, decisions and/or advisory opinions classified by level of importance. Cases are divided into four categories, the highest level of importance being Case Reports, followed by levels 1, 2 and 3. The classification by levels 1, 2 and 3 remains provisional until the Bureau has

¹⁷ Press Release 288. Retrieved 22 January 2017 from, <http://hudoc.echr.coe.int>

¹⁸ Document Collections. Retrieved 14 March 2017 from, <http://hudoc.echr.coe.int>

decided whether a case should appear in the Court's official reports series. The list of the cases selected by the Bureau can be found on the Court's website under case-law. For example, a case that was provisionally classified as level 1 but ultimately selected for the official reports changes category. Case reports, judgments, decisions and advisory opinions have been delivered since the inception of the new Court in 1998 which have been published or selected for publication in the Court's official Reports of Judgments and Decisions. The selection from 2007 onwards has been made by the Bureau of the Court following a proposal by the Jurisconsult. Judgments of the former Court (published in Series A and Reports of Judgments and Decisions) and cases published in the former Commission's series Decisions and Reports have not been included in the Case Reports category and are therefore classified by levels 1, 2 and 3 only.

(1) High importance: All judgments, decisions and advisory opinions not included in the Case Reports which make a significant contribution to the development, clarification or modification of its case-law, either generally or in relation to a particular State.

(2) Medium importance: Other judgments, decisions and advisory opinions which, while not making a significant contribution to the case-law, nevertheless go beyond merely applying existing case-law.

(3) Low importance: Judgments, decisions and advisory opinions of little legal interest, namely judgments and decisions that simply apply existing case-law, friendly settlements and strike outs (unless raising a particular point of interest).¹⁹

As the filtering system is explained above by detailing how the importance level refiner works, the scope of this study is limited to the judgments which fall into the category of level 1 that refers to "high importance." In this level, there are 26 judgments related to Turkey written in the official language of English and the translated language of Turkish. Those unofficial translations are made by the Ministry of Justice of The Republic of Turkey, Directorate General for International Law and Foreign Relations, Department of

¹⁹ Explanation of Importance Level & Case Reports. Retrieved 17 March 2017 from, http://www.echr.coe.int/Documents/Explanation_Importance_Level_ENG.pdf

Human Rights, and do not bind the Court. However, those translations are significant for Turkey so as to be informed about the content of the cases and to take the necessary measures in accordance with the judgments concluded by the ECtHR.

There are 10 judgments related to Turkey written in English and translated in Turkish between the years of 2012 and 2017, which are classified under the level 1 “high importance.” Level 1 indicates that the cases which “make an important contribution to the development, clarification or modification of the case-law of the ECtHR, either generally or in relation to respective state.” 5 of those judgments written in the official language of the Court and 5 of their translations made by the Turkish Ministry of Justice in the unofficial language Turkish, which are related with personal affairs are selected to be analysed.

How the judgments of the ECtHR are selected by using the filter system of the ECtHR is given in figures below:

hudoc.echr.coe.int

FILTERS

LANGUAGE

English (3163) X

Turkish (2321) X

French (3165)

Spanish (87)

More... Clear

IMPORTANCE

3 (4063)

2 (1069)

Case Reports (180)

1 (172)

More...

STATE

Turkey (5484) X

Switzerland (2)

Denmark (1)

More... Clear

ARTICLE

6 (2781)

41 (2460)

6-1 (2153)

3 (1002)

More...

NON-VIOLATION

3 (275)

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Figure 5.1: HUDOC Document Collection Filter 1

hudoc.echr.coe.int

FILTERS

LANGUAGE

Turkish (14) X

English (12) X

More... Clear

IMPORTANCE

1 (26) X

3 (535)

2 (313)

Case Reports (25)

More... Clear

STATE

Turkey (26) X

Clear

ARTICLE

35 (21)

41 (21)

3 (10)

2 (9)

More...

NON-VIOLATION

3 (4)

2 (3)

2-1 (3)

7 (2)

More...

 Back to top

Figure 5.2: HUDOC Document Collection Filter 2

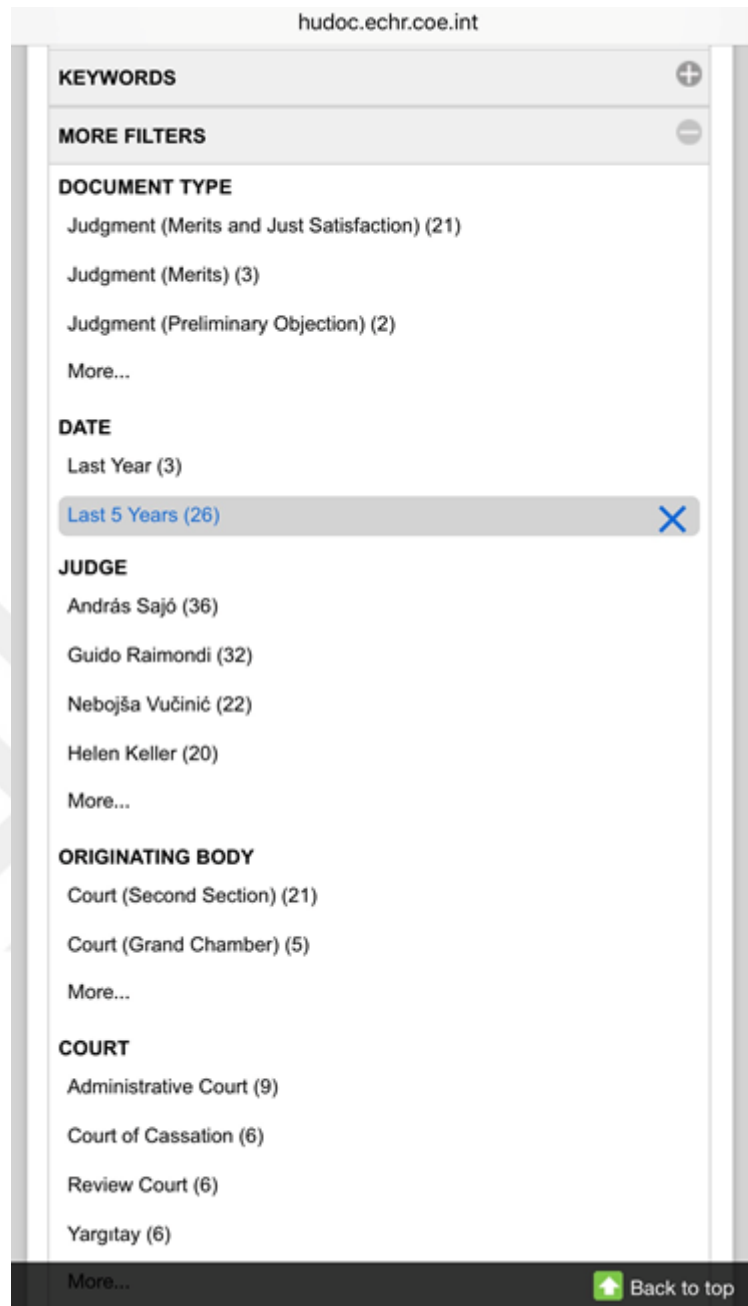


Figure 5.3: HUDOC Document Collection Filter 3

The unofficial status of the judgments written other than the official languages of the Court, which are French and English, results from the fact that those translated versions of the cases do not bind the ECtHR. Despite this fact, all the translations of the Court are made by the Ministry of Justice of The Republic of Turkey, Directorate General for International Law and Foreign Relations, Department of Human Rights. The Turkish

Ministry of Justice has the copyright for the translations of the judgments, which can be cited for non-commercial purposes. The cases to be analysed are as follows:

Table 5.1: Judgments concluded between 2012 and 2017 related to Turkey

CASES	APPLICATION NUMBERS
1. CASE OF İLBEYİ KEMALOĞLU AND MERİYE KEMALOĞLU v. TURKEY	<i>Application no. 19986/06</i>
2. CASE OF SABRİ GÜNEŞ v. TURKEY	<i>Application no. 27396/06</i>
3. CASE OF X v. TURKEY	<i>Application no. 24626/09</i>
4. CASE OF SACE ELEKTRİK TİCARET VE SANAYİ A.Ş. v. TURKEY	<i>Application no. 20577/05</i>
5. CASE OF FAZLI ASLANER v. TURKEY	<i>Application no. 36073/04</i>

50 samples which constitute all the available terms in the texts of the five judgments are analysed, and the translation methods are identified in translation of these terms. At the end of the analysis, the most frequently used categories are determined and a ratio is given. According to the results, the answer to the question of whether the legal terminology of the judgments is translated in an adequate or acceptable way is answered.

In the analysis of the samples and their translations below, judgments are referred according to the numbers given in the table above in the analysis part. A sample from the ST, and its translation from the TT is given. The legal terms analysed are highlighted, and a table is given for each sample that displays directly the terms that are analysed, their translations and the translation method applied which follow comments. The methods applied are given in a separate table which is dominantly used in the translation process. However, in the commentaries all the methods used are mentioned.

5.2. ANALYSIS OF THE SAMPLES AND THEIR TRANSLATIONS

5.2.1. Analysis of the ST1 and TT1²⁰

The following ten samples are taken from the “Case of İlbeyi Kemaloğlu and Meriye Kemaloğlu v. Turkey (*Application no. 19986/06*).”

Sample 1:

The following sample is given in the very beginning of the ST1.

ST:

In the case of İlbeyi Kemaloğlu and Meriye Kemaloğlu v. Turkey,
 The **European Court of Human Rights (Second Section)**, sitting as a
Chamber composed of:
 Françoise Tulkens, *President*,
 Danutė Jočienė,
 Dragoljub Popović,
 Isabelle Berro-Lefèvre,
 András Sajó,
 Işıl Karakaş,
 Guido Raimondi, *judges*,
 and Stanley Naismith, *Section Registrar*,
 Having deliberated in private on 20 March 2012,
 Delivers the following judgment, which was adopted on that date.

TT:

İlbeyi Kemaloğlu ve Meriye Kemaloğlu v. Türkiye davasında,
Avrupa İnsan Hakları Mahkemesi (İkinci Daire)
 Françoise Tulkens, Başkan
 Danutė Jočienė,
 Dragoljub Popović,
 Isabelle Berro-Lefèvre,
 András Sajó,
 Işıl Karakaş,
 Guido Raimondi, **Yargıçlar**

²⁰ Case of İlbeyi Kemaloğlu and Meriye Kemaloğlu v. Turkey (*Application no. 19986/06*)

ve **Daire Yazı İşleri Müdürü** Stanley Naismith'ten oluşan **heyet** 20 Mart 2012 tarihinde kapalı oturumda müzakerede bulunarak, aynı tarihte kabul edilen aşağıdaki kararı vermiştir.

ST	TT	Translation Method
European Court of Human Rights	Avrupa İnsan Hakları Mahkemesi	Literal Translation
Second Section	İkinci Daire	Equivalence
Chamber	Heyet	Equivalence
Judge	Yargıç	Literal Translation
Section Registrar	Daire Yazı İşleri Müdürü	Equivalence

The European Court of Human Rights – Avrupa İnsan Hakları Mahkemesi is translated literally. However, the term *European – Avrupa* is translated by using the method of transposition as well. The ST expression of *European* is adjective while the TT expression of *Avrupa* is turned to be a noun in the TT. Both *Second Section – İkinci Daire* and *Chamber – Heyet* is translated by applying the method of equivalence. Section is an administrative unit, and a Chamber is a judicial entity of the Court in a Section. The Court has five Sections, and Chambers are formed in those Sections. Each Section has a President, a Vice-President and a number of other judges.²¹ In Turkish legal system, Section is used as “Daire” within the courts. While the term *Judge – Yargıç* is translated literally, it is a well-known fact that the term “Hakim” is used more frequently than the term of “Yargıç” in Turkey. However, when it comes to the cases of the ECtHR the term of “Yargıç” is preferred in the translations of the judgments of the Court. *Section Registrar – Daire Yazı İşleri Müdürü* is translated by the method of equivalence as well. This term is commonly used in the TL.

Sample 2:

The following sample is given in the second part of the judgment in which the “Procedure” is explained in ST1.

²¹ Composition of the Court. Retrieved 20 March 2017 from, http://www.echr.coe.int/Pages/home.aspx?p=court/judges#newComponent_1346152041442_pointer

ST:

The case originated in an application (no. 19986/06) against the Republic of Turkey lodged with the Court under Article 34 of the **Convention for the Protection of Human Rights and Fundamental Freedoms** (“the Convention”) by two Turkish nationals, Mr İlbeyi Kemaloğlu and Mrs Meriye Kemaloğlu (“the applicants”), on 19 April 2006.

TT:

Bu dava, Türk vatandaşları İlbeyi Kemaloğlu ve Meriye Kemaloğlu (“başvuranlar”) tarafından, **İnsan Hakları ve Temel Özgürlüklerin Korunması Hakkındaki Sözleşme**’nin (“Sözleşme”) 34. maddesine dayanarak, 19 Nisan 2006 tarihinde Türkiye Cumhuriyeti aleyhine Mahkeme’ye yapılan başvurudan (no. 19986/06) ibarettir.

ST	TT	Translation Method
Convention for the Protection of Human Rights and Fundamental Freedoms	İnsan Hakları ve Temel Özgürlüklerin Korunması Hakkındaki Sözleşme	Literal Translation

Convention for the Protection of Human Rights and Fundamental Freedoms - İnsan Hakları ve Temel Özgürlüklerin Korunması Hakkındaki Sözleşme is translated literally. This Convention is the first instrument to give effect to certain rights stated in the “Universal Declaration of Human Rights” and make them binding. Since its adoption in 1950, the Convention has been amended for many times and supplemented with a number of rights in addition to those set forth in the original text.²²

Sample 3:

The following sample is given in the part of the judgment in which the “The Facts” – “The Circumstances of the Case” is explained in ST1.

²² European Convention on Human Rights. Retrieved 20 March 2017 from, <http://www.echr.coe.int/pages/home.aspx?p=basictexts>

ST:

In the meantime, on 27 February 2004 the applicants **filed a criminal complaint** with the Ümraniye Public Prosecutor against the school headmaster, the deputy headmaster and Atalay Kemalolu's class teacher.

TT:

Bu süre içinde, 27 Şubat 2004 tarihinde, başvurular Ümraniye Cumhuriyet Savcısına okul müdürü, okul müdür yardımcısı ve Atalay Kemalolu'nun sınıf öğretmeni hakkında **suç duyurusunda bulunmuştur**.

ST	TT	Translation Method
File a criminal complaint	Suç duyurusunda bulunmak	Transposition

File a criminal complaint - suç duyurusunda bulunmak is translated by applying the method of transposition. *Criminal complaint* (adjective+noun compound) is translated as *suç duyurusu* (noun+noun compound). Like a civil complaint, this is a written document filed by a state or prosecutor that alleges a person committed a crime, and sets out the basic facts and charges.²³

Sample 4:

The following sample is taken from the part of the case in which the “The Facts” – “The Circumstances of the Case” is explained in ST1 as this part holds an extensive space in the judgment.

ST:

On 11 November 2010 the Court of Cassation **quashed the judgment** of the Ümraniye Criminal Court, **without examining the merits of the case**, for procedural reasons, namely due to the absence of the signature of the court's clerk on the minutes of a hearing which had been held on 2 February 2005.

²³ Definition of criminal complaint.
<https://dictionary.thelaw.com/criminal-complaint/>

TT:

11 Kasım 2010 tarihinde Yargıtay, **davayı esas yönünden incelemeden**, 2 Şubat 2005 tarihinde yapılan duruşma tutanağında mahkeme kâtibinin imzası eksik olmasından ötürü usuli gerekçelerle Ümraniye Ceza Mahkemesi'nin **kararını bozmuştur**.

ST	TT	Translation Method
Quash the judgment	Kararı bozmak	Literal Translation
Without examining the merits of the case	Davayı esas yönünden incelemeden	Equivalence

Quash the judgment – *kararı bozmak* is translated literally. *Without examining the merits of the case* - *davayı esas yönünden incelemeden* is translated by using the method of equivalence, which is commonly used in the TL.

Sample 5:

The following sample is taken from “The Law” part of the case where the “Alleged Violation of Article 2 of the Convention” – is referred in ST1.

ST:

Article 2 of the Convention reads:

“1. **Everyone’s right to life** shall be protected by law. No one shall be deprived of his life intentionally **save in the execution of a sentence of a court** following his conviction of a crime for which this penalty is provided by law.

2. **Deprivation of life** shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order **to effect a lawful arrest** or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

TT:

Sözleşme'nin 2. maddesi şu şekildedir:

“1. **Herkesin yaşam hakkı** yasayla korunur. Yasanın ölüm cezası ile cezalandırdığı bir suçtan dolayı hakkında **mahkemece hükmedilen bu cezanın infaz edilmesi dışında**, hiç kimsenin yaşamına kasten son verilemez.

2. **Ölüm**, aşağıdaki durumlardan birinde mutlak zorunlu olanı asmayacak bir güç kullanımı sonucunda meydana gelmişse, bu maddenin ihlaline neden olmuş sayılmaz:

- a) Bir kimsenin yasa dışı şiddete karşı korunmasının sağlanması;
- b) Bir kimsenin **usulüne uygun olarak yakalanmasını gerçekleştirme** veya usulüne uygun olarak tutulu bulunan bir kişinin kaçmasını önleme;
- c) Bir ayaklanma veya isyanın yasaya uygun olarak bastırılması”

ST	TT	Translation Method
Everyone's right to life	Herkesin yaşam hakkı	Literal Translation
Save in the execution of a sentence of a court	Mahkemece hükmedilen bu cezanın infaz edilmesi dışında	Equivalence
Deprivation of life	Ölüm	Modulation
To effect a lawful arrest	Usulüne uygun olarak yakalanmasını gerçekleştirme	Transposition

Everyone's right to life - herkesin yaşam hakkı is translated literally. *Save in the execution of a sentence of a court - mahkemece hükmedilen bu cezanın infaz edilmesi dışında* is translated by applying the method of equivalence as the situation is explained by using different words in the TL. *Deprivation of life – ölüm* is translated with the method of modulation by applying the “negation of the opposite” (Vinay & Darbelnet, 1995, pp. 246-255). It is not translated word-for-word, but instead the exact meaning is given to sound more natural in the TL. *To effect a lawful arrest - usulüne uygun olarak yakalanmasını gerçekleştirme* is translated with the method of transposition and equivalence. *Lawful* (adjective) is translated as *usulüne uygun olarak*

(noun+adjective+adverb compound), and *to effect* (verb) is translated as *gerçekleştirme* (verbal). *Lawful* which means literally “yasal” in TL is explained for the TL readers as *usulüne uygun olarak*. However, it is seen that the method of transposition is applied more predominantly than equivalence; hence in the table the method of transposition is opted.

Sample 6:

The following sample is taken from the “Admissibility” part of the case in ST1.

ST:

The Court further notes that this complaint is not **manifestly ill-founded** within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared **admissible**.

TT:

Mahkeme ayrıca bu şikâyetin Sözleşme’nin 35 § 3 (a) maddesi çerçevesinde **açıkça dayanaktan yoksun** olmadığını belirtmektedir. Ayrıca, kabul edilemezliğe ilişkin herhangi başka bir gerekçede bulamamıştır. Bu açıdan, **kabul edilebilir** olduğu beyan edilmelidir.

ST	TT	Translation Method
Manifestly ill-founded	Açıkça dayanaktan yoksun	Equivalence
Admissible	Kabul edilebilir	Literal Translation

Manifestly ill-founded - *açıkça dayanaktan yoksun* is translated by applying the method of equivalence with a fixed expression at the message level. Here not the exact words but the context is translated, which has an equivalent in the TL. *Admissible* – *kabul edilebilir* is translated literally.

Sample 7:

The following sample is taken from the “Merits” part of the case in ST1, where the submission of the parties –the applicants and the Government- and the Court’s assessment is provided in the judgment.

ST:

The Court recalls in this connection that the choice of means for ensuring the **positive obligations** under Article 2 is in principle a matter that falls within the Contracting State's margin of appreciation. There are different avenues to ensure Convention rights, and even if the State has failed to apply one particular measure provided by **domestic law**, it may still fulfil its positive duty by other means.

TT:

Mahkeme, bu bağlamda 2. madde çerçevesindeki **pozitif yükümlülüklerin** sağlanması için gerekli araç tercihinin, ilke olarak, Sözleşmecî Devlet'in takdir yetkisi dâhiline giren bir konu olduğunu hatırlatmaktadır. Sözleşme'mdeki hakların korunmasını sağlayan farklı yollar bulunmaktadır ve Devlet bu korumayı sağlamak için **iç hukukun** öngördüğü belirli bir önlemi uygulayamadığı durumlarda, diğer yollarla pozitif yükümlülüğünü yerine getirebilir.

ST	TT	Translation Method
Positive obligations	Pozitif yükümlülükler	Literal Translation
Domestic law	İç hukuk	Literal Translation

Both *positive obligations* – *pozitif yükümlülükler* and *domestic law* – *iç hukuk* are translated literally. For the term *positive* – *pozitif* the method of borrowing is applied by domesticating the pronunciation of the word in comply with the TL.

Sample 8:

The following sample is taken from the “Merits” of the case in ST1, where the general principles are provided in the Court's assessment part in the judgment.

ST:

Accordingly, the Court dismisses the Government's **preliminary objection** regarding the **exhaustion of domestic remedies** and holds that there has been a violation of Article 2 of the Convention.

TT:

Dolayısıyla, Mahkeme, Hükümet'in **iç hukuk yollarının tükenmesine** ilişkin **ilk itirazını** reddeder ve Sözleşme'nin 2. maddesinin ihlal edildiğine karar verir.

ST	TT	Translation Method
Preliminary objection	İlk itiraz	Literal Translation
Exhaustion of domestic remedies	İç hukuk yollarının tükenmesi	Equivalence

Preliminary objection – *ilk itiraz* is translated literally by applying the method literal translation which is the direct transfer of a SL expression into “a grammatically and appropriate TL expression.” *Exhaustion of domestic remedies* - *iç hukuk yollarının tükenmesi* is translated by using the method of equivalence. In this case the SL and the TL expressions refer to the cases where languages illustrate “the same situation by two texts using completely different stylistic and structural methods” (Vinay and Darbelnet 1995, pp. 38-39). The applications can be submitted to the ECtHR after exhausting domestic remedies in the member state in matter.

Sample 9:

The following sample is taken from the part where the application of the related Article of the Convention is referred, and the damage, cost and expenses, default interest is given respectively in ST1.

ST:

According to the Court’s case-law, an applicant is entitled to **reimbursement of costs and expenses** only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, the Court notes that the claim submitted by the applicants’ representative is not excessive bearing in mind the eight year long **domestic court proceedings** as well as the proceedings before the Court in Strasbourg.

TT:

Mahkeme’nin içtihadına göre, başvuran, **masraf ve harcamaları**, sadece fiilen ve zorunlu olarak ortaya çıktığının gösterildiği ve miktar olarak makul olduğu kadarıyla **tazmin etme** hakkına sahiptir. Mevcut davada, Mahkeme, başvuranların temsilcisi tarafından talep edilen miktarın, sekiz yıl süren **yerel mahkeme işlemleri** ve Strazburg’da AIHM önündeki işlemler dikkate alındığında aşırı olmadığını ifade eder.

ST	TT	Translation Method
Reimbursement of costs and expenses	Masraf ve harcamaları tazmin etme	Literal Translation
Domestic court proceedings	Yerel mahkeme işlemleri	Literal Translation

Reimbursement of costs and expenses - masraf ve harcamaları tazmin etme is translated literally. Compensation for costs and expenses is addressed in the practice direction issued by the President of the Court. If the Court decides to grant compensation in respect of costs and expenses, it is calculated and granted in Euros. It may include the cost of legal assistance, as well as legal costs such as court registration fees. The Court may order the reimbursement of costs and expenses incurred by an applicant in trying to prevent a violation or to obtain redress both in national proceedings and in proceedings before the ECtHR.²⁴ *Domestic court proceedings - yerel mahkeme işlemleri* is translated literally as well. However, it can be asserted that while the part of the expression *domestic court* is translated literally in the translation of the expression of the *domestic court proceedings*, the term *proceedings* is translated by applying the method of equivalence. *Proceeding* is “the regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the judgment.”²⁵ As the overall method is literal translation for this expression, it is opted in the table above.

Sample 10:

The following sample is taken from the very last part of the judgments. Here the Court concludes the case with the final decision in ST1.

²⁴ Questions and Answers for Lawyers: Can costs and expenses be reimbursed? Retrieved 20 March 2017 from, http://www.echr.coe.int/Documents/Guide_ECHR_lawyers_ENG.pdf

²⁵ Definition of “proceeding.” Retrieved 21 March 2017 from, <http://www.fedcourt.gov.au/digital-law-library/glossary-of-legal-terms>

ST:

FOR THESE REASONS, THE COURT **UNANIMOUSLY**

1. **Joins** to the merits the Government's preliminary objection concerning the exhaustion of domestic remedies **and dismisses** it;
2. **Declares** the application admissible;
3. **Holds** that there has been a violation of Article 2 of the Convention;
4. **Holds** that there has been a violation of Article 6 § 1 of the Convention;
5. **Holds**
 - (a) that the **respondent State** is to pay the applicants jointly, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the convention, the following amounts, to be converted into Turkish liras at the rate applicable at the date of settlement:
 - (i) EUR 50,000 (fifty thousand euros), plus any tax that may be chargeable, in respect of **non-pecuniary damage**;
 - (ii) EUR 4,500 (four thousand five hundred euros) plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
 - (c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.
6. **Dismisses** the remainder of the applicants' claim for just satisfaction.

TT:

İŞBU NEDENLERLE, MAHKEME **OYBİRLİĞİYLE**

1. Hükümet'in iç hukuk yollarının tüketilmesine ilişkin ilk itirazını esasa ilişkin incelemeye **birleştirip reddeder**;
2. Başvurunun kabul edilebilir olduğunu **beyan eder**;
3. Sözleşme'nin 2. maddesinin ihlal edildiğine **karar verir**;
4. Sözleşme'nin 6 § 1 maddesinin ihlal edildiğine **karar verir**;
5. (a) **Davalı Hükümet** tarafından başvuranlara müştereken, Sözleşme'nin 44 § 2 maddesi doğrultusunda, üç ay içerisinde, ödeme tarihinde geçerli olan döviz kuru üzerinden TL'ye çevrilmek üzere:
 - (i) **manevi tazminata** ilişkin olarak 50,000 (elli bin) Euro'nun miktara yansıtılabilecek vergilerle birlikte ödenmesine;
 - (ii) masraf ve harcamalara ilişkin olarak 4,500 (dört bin beş yüz) Euro'nun miktara yansıtılabilecek vergilerle birlikte ödenmesine;
- (b) Yukarıda bahsedilen üç aylık sürenin bittiği tarihten itibaren ödemenin yapılmasına kadar, yukarıda bahsedilen miktara, Avrupa Merkez Bankası'nın kısa vadeli kredilere uyguladığı marjinal faiz oranına üç puan eklemek suretiyle elde edilecek oranda, basit faizin uygulanacağına **karar verir**;

6. Başvuranların adil tazmin taleplerinin geri kalanını **reddeder**.

ST	TT	Translation Method
Unanimously	Oybirliğiyle	Literal Translation
Joins and dismisses	Birleştirip reddeder	Literal Translation
Declares	Beyan eder	Literal Translation
Holds	Karar verir	Equivalence
Respondent State	Davalı Hükümet	Equivalence
Non-pecuniary damage	Manevi tazminat	Modulation

Unanimously – *oybirliğiyle* is translated literally. *Joins and dismisses* – *birleştirip reddeder* is translated by applying both literal translation and transposition as the conjunction *and* in ST is deducted in TT by combining the two verbs with a verbal adverb. *Declares* – *beyan eder* is translated literally which is used at the end of the case in order to pronounce the judgment. *Holds* – *karar verir* and *respondent State* – *davalı Hükümet* are both translated by using the method of equivalence. Non-pecuniary damage – *manevi tazminat* is translated by applying the method of modulation. *Pecuniary*, which corresponds to *maddi* in Turkish, has a prefix of *non-* which denotes negation in English and gives the meaning of the opposite of *pecuniary* which corresponds to *manevi* in Turkish. As the negation of the opposite is one of the strategies used in the translation method of modulation, it is seen that modulation is applied in the translation of *non-pecuniary damage*.

5.2.2. Analysis of the ST2 and TT2²⁶

The following ten samples are taken from the “Case of Sabri Güneş v. Turkey (*Application no. 27396/06*).”

²⁶ Case of Sabri Güneş v. Turkey (*Application no. 27396/06*)

Sample 11:

The following sample is given in “The Facts” of the judgment in which “The Circumstances of the Case” is explained in ST2.

ST:

Following **tacit dismissal of the claim** by the administrative authorities, the applicant **brought an action for damages** in the Supreme Military Administrative Court on 12 August 2003 in respect of the disability suffered during his military service. He claimed 15,000 Turkish liras (TRY – approximately 9,400 euros (EUR)¹) in respect of **pecuniary damage** and the same sum in respect of non-pecuniary damage.

TT:

İdari yetkililer tarafından bu **talebin zımni olarak reddedilmesinin** ardından başvuran, askerlik hizmeti sırasında gerçekleşen sakatlığı ile ilgili olarak, 12 Ağustos 2003 tarihinde Askeri Yüksek İdare Mahkemesinde **tazminat istemiyle dava açmıştır. Maddi tazminat** olarak 15,000 Türk Lirası (TRY- yaklaşık 9,400 Euro (EUR)¹) ve manevi tazminat olarak yine aynı tutarı talep etmiştir.

ST	TT	Translation Method
Tacit dismissal of the claim	Talebin zımni olarak reddedilmesi	Literal Translation
Bring an action for damages	Tazminat istemiyle dava açmak	Equivalence
Pecuniary damage	Maddi tazminat	Literal Translation

Tacit dismissal of the claim - talebin zımni olarak reddedilmesi is translated literally and it is seen that the method of transposition is used as well, since the word *tacit* which is an adjective is expressed as an adverb in TT. *Bring an action for damages - tazminat istemiyle dava açmak* is translated by applying the method of equivalence and *pecuniary damage - maddi tazminat* is translated literally.

Sample 12:

The following sample is taken from “Relevant Domestic Law and Practice and International Texts” in ST2.

ST:

Article 31 § 1 of the Vienna Convention, entitled “General Rule of Interpretation,” states that a treaty shall be interpreted “in **good faith** in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.”

TT:

Viyana Sözleşmesi’nin “Genel Yorum Kuralı” başlıklı 31. maddesinin 1. paragrafında bir antlaşma, “hükümlerine, antlaşmanın bütünü içinde ve konu ve amacının ışığında verilecek olağan anlama uygun şekilde, **iyi niyetle** yorumlanır” ifadesi yer alır.

ST	TT	Translation Method
Good faith	İyi niyet	Literal Translation

Good faith – *iyi niyet* is translated literally. This phrase originally comes from Latin - *bona fide* - which means genuine and sincere. As a legal concept *bona fide* is especially important in matters of equity. In law, *bona fide* symbolises the mental and moral states of honesty and conviction regarding the truth. It is an honest intent to act without taking an unfair advantage over another person or to fulfil a promise to act, even when some legal technicality is not fulfilled.²⁷ The term is applied to all kinds of transactions and the expression of *bona fide* is proclaimed in the Magna Carta.

Sample 13:

The following sample is also taken in “Relevant Domestic Law and Practice and International Texts” in ST2.

ST:

The **European Convention on the Calculation of Time-Limits**, opened for signature on 16 May 1972 in Basle, came into force on 28 April 1983. It was

²⁷ Good faith - Bona fide. Retrieved 22 March 2017 from, <http://dictionary.law.com/Default.aspx?selected=819>

drawn up with a view to establishing uniform European rules for calculating time-limits on the basis of responses obtained from governments.

TT:

16 Mayıs 1972 tarihinde Basel’de imzaya açılan **Sürelerin Hesaplanmasına İlişkin Avrupa Sözleşmesi**, 28 Nisan 1983 tarihinde yürürlüğe girmiştir. Bu Sözleşme, hükümetlerden alınan yanıtlar esasında, sürelerin hesaplanmasına dair yeknesak Avrupa kurallarının belirlenmesi görüşünden hareketle düzenlenmiştir.

ST	TT	Translation Method
European Convention on the Calculation of Time-Limits	Sürelerin Hesaplanmasına İlişkin Avrupa Sözleşmesi	Literal Translation

European Convention on the Calculation of Time-Limits - Sürelerin Hesaplanmasına İlişkin Avrupa Sözleşmesi is translated literally in general. The part of the phrase *European Convention on the Calculation* is translated literally, while the phrase of *Time-Limits* is translated by using the modulation method in which the expression is denoted by applying “part–another part” of modulation.

Sample 14:

The following sample is taken from “The Law” part of the case where “The Government’s Preliminary Objection” is referred in ST2.

ST:

The Court has already considered that the six-month rule is a public policy rule and that, consequently, it has **jurisdiction** to apply of its own motion (see *Assanidze v. Georgia* [GC], no. 71503/01, § 160, ECHR 2004-II), even if the Government have not raised that objection (see *Walker v. the United Kingdom* (dec.), no. 34979/97, ECHR 2000-I). Furthermore, in each case brought before it, the Court must ensure that the application has been lodged in compliance with the six-month time-limit, which the Chamber did **in the instant case**.

TT:

AİHM, altı ay kuralının bir kamu politikası kuralı olduğunu ve dolayısıyla, Hükümet’ten bu yönde bir itiraz gelmemiş olmasına rağmen (bkz., örneğin, *Walker v. Birlesik Krallık* (dec.), no. 34979/97, AĐHM 2000-I), bu hükmü resen

uygulama **yetkisi** olduğunu düşünmektedir (bkz., örneğin, *Assanidze v. Gürcistan* [GC], no. 71503/01, § 160, AĐHM 2004-II).

Ayrıca AİHM, önüne gelen davaların her birinde, **somut davada** Daire'nin yaptığı gibi, başvurunun altı ay kuralına uygunluk içinde yapılmış olduğunu temin etmelidir.

ST	TT	Translation Method
Jurisdiction	Yetki	Equivalence
In the instant case	Somut davada	Modulation

Jurisdiction - *yetki*, which means the power or authority of a court to hear and try a case, is translated by applying the method of equivalence. Literally, *jurisdiction* does not equal to *yetki* in Turkish, but it means “kaza yetkisi” in the TL. *In the instant case* – *somut davada* is translated by applying the method of modulation denoting abstract for concrete. *Instant* which is an abstract term in the ST is translated as *somut* both literally and figuratively.

Sample 15:

The following sample is taken from “The Chamber Judgment” in ST2.

ST:

The Chamber examined the issue of **compliance** with the six-month rule of **its own motion** and concluded that the time-limit provided for by Article 35 § 1 of the Convention had been complied with. In so doing, it first of all pointed out that as regards the determination of the ***dies a quo*** – the day on which the six-month time-limit starts to run – the Court had always taken account of domestic law and practice. It then decided to apply the principles governing the determination of the ***dies a quo*** to the determination of the ***dies ad quem***.

TT:

Daire altı ay kuralına **uygunluk** hususunu **resen** incelemiş ve AİHS'nin 35. maddesinin birinci paragrafında belirtilen süreye uyulduğuna karar vermiştir. Öncelikle altı aylık sürenin başladığı günün belirlenmesi hakkında AİHM'nin her zaman iç hukuk ve teamüllerini dikkate aldığını işaret etmiştir. Ardından başlangıç tarihine - ***dies a quo*** - uygulanan kuralların bitim tarihine – ***dies ad quem*** - de uygulanması gerektiğine karar vermiştir.

ST	TT	Translation Method
Compliance	Uygunluk	Literal Translation
Its own motion	Resen	Equivalence
<i>Dies a quo</i>	<i>Dies a quo</i>	Borrowing
<i>Dies ad quem</i>	<i>Dies ad quem</i>	Borrowing

Compliance is defined as “the state or act of conforming with or agreeing to do something” in the *Encarta Concise English Dictionary*. *Compliance* – *uygunluk* is translated literally.²⁸ *Its own motion* which derives from Latin as *ex officio* is defined as “by virtue of one's office or status” in the *InterActive Terminology for Europe*.²⁹ *Its own motion* – *resen* is translated by using the equivalence method, which has a direct equivalence in the Turkish legal system. The terms *dies a quo* which means “day on which the period begins”³⁰ and *dies ad quem* which means “day on which the period expires”³¹ are directly borrowed from the SL.

Sample 16:

The following sample is taken from “The parties’ submissions to the Grand Chamber” in ST2.

ST:

The Government further challenged the connection made by the Chamber between the interpretation of the six-month rule and the **principle of subsidiarity**. They argued that taking account of domestic custom and practice when calculating that time-limit did not satisfy the requirements of legal certainty and protection which were vital in that area.

²⁸ Definition of compliance. Retrieved 21 March 2017 from, <http://iate.europa.eu/FindTermsByLilId.do?lilId=2249097&langId=en>

²⁹ Definition of its own motion. Retrieved 21 March 2017 from, <http://iate.europa.eu/FindTermsByLilId.do?lilId=2249097&langId=en>

³⁰ Definition of dies a quo. Retrieved 21 March 2017 from, <http://iate.europa.eu/FindTermsByLilId.do?lilId=1393643&langId=en>

³¹ Definition of dies ad quem. Retrieved 21 March 2017 from, <http://iate.europa.eu/FindTermsByLilId.do?lilId=1393645&langId=en>

TT:

Hükümet ayrıca Daire'nin altı ay kuralının yorumlanması ile **yerindelik ilkesi** arasında kurduğu bağlantıya da itiraz etmiştir. Hükümet sürenin hesaplanmasında iç hukuk ve teamüllerinin dikkate alınmasının, aslında hayati önem arz eden yasal belirlilik ve koruma gerekliliklerinin yerine getirilmemesi ile sonuçlanacağını iddia etmiştir.

ST	TT	Translation Method
Principle of subsidiarity	Yerindelik ilkesi	Calque

Principle of subsidiarity is originally an EU term in the legal system whereby the Union does not take action (except in the areas which fall within its exclusive competence), unless it is more effective than action taken at national, regional or local level.³² Each elements of the SL phrase *principle of subsidiarity - yerindelik ilkesi* is translated literally and the method of calque is applied. And this is a structural calque.

Sample 17:

The following sample is taken from “The Grand Chamber’s assessment” where the “Relevant general principles” are stated in ST2.

ST:

The six-month time-limit provided for by Article 35 § 1 has a number of aims. Its primary purpose is to maintain **legal certainty** by ensuring that cases raising issues under the Convention are examined **within a reasonable time**, and to prevent the authorities and other persons concerned from being kept in a state of uncertainty for a long period of time. It also affords the prospective applicant time to consider whether to **lodge an application** and, if so, to decide on the specific complaints and arguments to be raised.

TT:

AİHS'nin 35. maddesinin birinci paragrafında yer alan altı aylık sürenin belirtilmesinin bazı amaçları bulunmaktadır. Öncelikli amaç, AİHS kapsamında

³² Definition of principle of subsidiarity. Retrieved 21 March 2017 from, <http://iate.europa.eu/SearchByQuery.do?method=searchDetail&liId=787433&langId=&query=principle%20of%20subsidiarity&sourceLanguage=en&domain=0&matching=&start=0&next=1&targetLanguages=en>

itirazlar içeren davaların **makul bir süre içerisinde** incelenerek **yasal belirliliklerinin** sağlanması ve ilgili makamların ve kişilerin uzun süre belirsizlik içerisinde bırakılmamasının sağlanmasıdır. Diğer bir amacı da başvuruda bulunması olası kişiye, başvuruda bulunup bulunmama karar vermesi ve **başvuruda bulunacak** ise ileri süreceği şikâyet ve savlar üzerinde düşünmesi için zaman tanımaktır.

ST	TT	Translation Method
Legal certainty	Yasal belirlilikler	Literal Translation
Within a reasonable time	Makul bir süre içerisinde	Literal Translation
Lodge an application	Başvuruda bulunmak	Literal Translation

Legal certainty – *yasal belirlilikler*, *within a reasonable time* – *makul bir süre içerisinde* and *lodge an application* – *başvuruda bulunmak* are all translated literally. As for the expression of *legal certainty*, which is in the singular form in the ST, it is seen in the plural form in the TT. Hence, the technique of modulation is applied which denotes part-whole at the message level. In legal discourse, *legal certainty* involves two issues: how far the law should be, and how far the law is certain. *Certainty* means the possibility of accurate prediction of the legal results and implications of a particular course of action.³³ *Reasonable time* is the amount of time, which is fairly necessary and conveniently to do whatever is required to be done, as soon as the circumstances permit.

Sample 18:

The following sample is taken from “The Grand Chamber’s assessment” where the “Relevant general principles” are stated in ST2 as well.

ST:

That rule marks out the temporal limit of the supervision exercised by the Court and signals, both to individuals and State authorities, the period beyond which such supervision is no longer possible. The existence of such a time-limit is justified by the wish of the **High Contracting Parties** to prevent past judgments

³³ Definition of legal certainty. Retrieved 21 March 2017 from, <http://iate.europa.eu/FindTermsByLilId.do?lilId=823532&langId=en>

being constantly called into question and constitutes a legitimate concern for order, stability and peace.

TT:

Söz konusu kural, AİHM tarafından gerçekleştirilen denetim için zaman sınırı getirmekte ve hem bireyleri hem de devlet makamlarını bu sürenin sona ermesinin ardından AİHM tarafından böyle bir denetimin yapılamayacağı konusunda uyarmaktadır. Bu tür bir sürenin varlığı eski tarihli kararların tekrar tekrar sorgulanmasını önlemek amacıyla **Yüksek Akit Tarafların** isteğiyle getirilmiştir ve düzen, istikrar ve huzur açısından meşru bir teşebbüstür.

ST	TT	Translation Method
High Contracting Parties	Yüksek Akit Taraflar	Literal Translation

According to Oxford Dictionary of Law, *High Contracting Parties* means “the representatives of states who have signed or ratified a treaty.” From the standpoint of the international law it is immaterial where the treaty-making power resides (e.g. in a head of state, a senate, or a representative body). This is a matter determinable by the constitutional law of the particular contracting state concerned. The signatories, as well as the parties, can be considered to be high contracting parties.³⁴ *High Contracting Parties* – *Yüksek Akit Taraflar* is translated by using the method of literal translation. In this expression the word *Contracting* is translated by applying the technique of transposition. *Contracting* (present participle) in ST deriving from the verb *to contract* is translated as *Akit* (noun) in TT. By this way the meaning of a verbal adjective in ST is given by a noun in TT.

Sample 19:

The following sample is taken from “The Grand Chamber’s assessment” where the “Determination of the *dies ad quem*” is stated in ST2.

³⁴ Definition of High Contracting Parties. Retrieved 22 March 2017 from, <http://www.oxfordreference.com/view/10.1093/oi/authority.20110803095935812>

ST:

The reason for the variable approach described above lies in the principle that the six-month rule is autonomous and must be construed and applied according to the facts of each individual case, so as to ensure the effective exercise of **the right to individual petition**.

TT:

Yukarıda açıklanan farklı yaklaşımın sebebi, altı ay kuralının otonom bir kural olmasından ve bu kuralın **dilekçe hakkının** etkili bir şekilde uygulanabilmesini sağlamak üzere her bir davanın unsurları çerçevesinde ele alınıp uygulanması gerektiğinden kaynaklanmaktadır.

ST	TT	Translation Method
The right to individual petition	Dilekçe hakkı	Literal translation

The right to individual petition – dilekçe hakkı is translated by applying the literal translation and modulation. The word *individual* in the ST is omitted in the TT. The part-whole relation is used in this translation while applying the method of modulation. But, the overall strategy is literal translation for this expression. *The right to individual petition* is rightly considered “as the hallmark and greatest achievement” of the ECHR. Individuals, who consider that their human rights are violated, are entitled to lodge a complaint before the ECtHR.³⁵

Sample 20:

The following sample is also taken from “The Grand Chamber’s assessment” where the “Determination of the *dies ad quem*” is stated in ST2.

ST:

Furthermore, having regard to the numerous means of communication now available to potential applicants (post, fax, electronic communication, internet

³⁵ Practical Guide on Admissibility Criteria: Right to Individual Petition. Retrieved 22 March 2017 from, http://www.echr.coe.int/Documents/Admissibility_guide_ENG.pdf

etc.), the Court considers that the six-month time-limit is, now more than ever, sufficient to enable them to consider whether to lodge an application and, if so, to decide on the content thereof, in accordance with Rule 47 of the **Rules of Court**.

TT:

Buna ek olarak AİHM, günümüzde başvurular için çok çeşitli iletişim yöntemlerinin (posta, faks, e-posta, internet, vb.) mevcut olduğun dikkate alarak; altı aylık sürenin, başvuruda bulunup bulunulmayacağı hususun ve başvuruda bulunulacak ise de **AİHM İçtüzüğü** 47. maddesi uyarınca başvurunun içeriğine karar vermek için artık her zamankinden çok daha yeterli olduğunu öngörmektedir.

ST	TT	Translation Method
Rules of Court	AİHM İçtüzüğü	Adaptation

Rules of Court, has recently been amended and the new edition of it entered into force on 14 November 2016. It refers to the organization and working of the Court, procedure, transitional rules, final clauses, and annex to the rules.³⁶ *Rules of Court – AİHM İçtüzüğü* is translated by using the translation method of adaptation. The expression of *the Court* refers to *ECtHR* in the relevant documents of the *ECHR* in the SL, however in order to clarify to which the Court refers, the expression of *AİHM* is added to the TT. *Rules* is used as an equivalent to case-law, hence it is translated as *ıçtüzük* in TT. Adaptation is the methodology that is used in such cases where “the situation referred to by the SL message” is unfamiliar in the culture of the TL (Vinay & Darbelnet, 1995, pp. 39-40).

5.2.3. Analysis of the ST3 and TT3³⁷

The following ten samples are taken from the “Case of X v. Turkey (*Application no. 24626/09*).”

³⁶ Rules of Court. Retrieved 20 March 2017 from http://www.echr.coe.int/Documents/Rules_Court_ENG.pdf

³⁷ Case of X v. Turkey (*Application no. 24626/09*). Retrieved 18 March 2017 from, <http://hudoc.echr.coe.int>

Sample 21:

The following sample is taken from the “Procedure” part of the ST3.

ST:

The applicant complained, in particular, about the conditions of **solitary confinement** that he had suffered in Buca Prison in İzmir. He also alleged that he had no domestic remedy by which to request an end to his solitary confinement and a return to the ordinary prison regime. **TT:**

Başvuran, özellikle İzmir-Buca cezaevinde maruz kaldığı **tecrit** koşullarından şikâyet etmektedir. Ayrıca, maruz kaldığı tecrit durumunun sona ermesini sağlayacak iç hukuk yollarının olmadığını iddia etmektedir.

ST	TT	Translation Method
Solitary confinement	Tecrit	Modulation

In the InterActive Terminology for Europe, *solitary confinement* is defined as “the practice of isolating people in closed cells for 22-24 hours a day, virtually free of human contact.”³⁸ In the translation of *solitary confinement* – *tecrit*, modulation method is applied with cause-effect technique at the message level. The term *solitary* is deducted and just the *confinement* is translated in TL.

Sample 22:

The following sample is given in the part of the judgment in which the “The Facts” – “The Circumstances of the Case” is explained in ST3.

ST:

In 2009 a number of sets of **criminal proceedings were instituted** against the applicant for, *inter alia*, forgery of documents, deception, credit-card fraud and **misrepresentation on official documents**. On 2 June 2009 the Karşıyaka Assize Court sentenced him to one year and eight months’ imprisonment at his first trial. The applicant appealed to the **Court of Cassation**.

³⁸ Definition of High Contracting Parties. Retrieved 22 March 2017 from, <http://iate.europa.eu/FindTermsByLilId.do?lilId=3568746&langId=en>

TT:

Başvuran hakkında, 2009 yılında, resmi evrakta sahtecilik, dolandırıcılık, kredi kartı suiistimali ve **resmi evrak tanziminde yanlış bildirimde bulunmak** gibi değişik **suçlamalardan kamu davaları açılmıştır**. Karşıyaka Ağır Ceza Mahkemesi, 2 Haziran 2009 tarihinde, başvuranı hakkında yürütülen ilk dava çerçevesinde bir yıl sekiz ay hapis cezasına çarptırmıştır. Başvuran karara itiraz etmiştir. **Yargıtay** önünde, dava halen derdesttir.

ST	TT	Translation Method
Criminal proceedings were instituted	Suçlamalardan kamu davaları açılmıştır	Adaptation
Misrepresentation on official documents	Resmi evrak tanziminde yanlış bildirimde bulunmak	Transposition
Court of Cassation	Yargıtay	Equivalence

The phrase of *criminal proceedings were instituted* - *suçlamalardan kamu davaları açılmıştır* is translated by applying the adaptation method. While translating the expression of *misrepresentation on official documents* - *resmi evrak tanziminde yanlış bildirimde bulunmak* three methods are applied: transposition, modulation and adaptation. Among these three methods, transposition prevails since there are structural changes in the TT. *Court of Cassation* in SL is equivalent to *Yargıtay* in TL, therefore, the method of equivalence is used in here.

Sample 23:

The following sample is also given in the part of the judgment in which the “The Facts” – “The Circumstances of the Case” is explained in ST3.

ST:

On 25 May 2009 the **Post-Sentencing Judge** decided, after merely examining the file, that it was not necessary to decide the applicant’s claim on the merits. In doing so, he observed in particular that the applicant was not a “**convicted prisoner**” but was merely **in pre-trial detention** and that the practice of the prison authorities was in conformity with the law both **in form and substance**.

TT:

İnfaz hâkimi, 25 Mayıs 2009 tarihinde, sadece dosya üzerinden değerlendirme yaparak ilgilinin talebinin esası hakkında karar verilmesine gerek olmadığına hüküm vermiştir. İnfaz hâkimi, bu kararına gerekçe olarak, başvuranın “**hükümlü**” değil tutuklu olduğunu ve cezaevi yönetiminin uygulamasının **hem şeklen hem de içerik olarak** yasaya uygun olduğunu belirtmiştir.

ST	TT	Translation Method
Post-Sentencing judge	İnfaz hâkimi	Equivalence
Convicted prisoner	Hükümlü	Modulation
In pre-trial detention	Tutuklu	Adaptation
In form and substance	Hem şeklen hem de içerik olarak	Literal Translation

Post-Sentencing Judge in SL equals to *İnfaz hakimi* in TL, hence the method of equivalence is applied here. *Convicted prisoner* – *hükümlü* is translated by applying the method of modulation with cause-effect relation at the message level. In *pre-trial detention* – *tutuklu* is translated with the adaptation method. *In form and substance* – *hem şeklen hem de içerik olarak* is translated literally.

Sample 24:

The following sample is also given in the part of the judgment in which the “The Facts” – “The Circumstances of the Case” is explained in ST3.

ST:

On 29 May 2009 the applicant challenged that decision before the İzmir Assize Court. He stated in his pleadings that he had been placed in solitary confinement twenty-four hours per day in Buca Prison **on no legal basis** and that he had been deprived of any contact with other inmates or outdoor exercise... He again requested **equal treatment** to other inmates and to be allowed outdoor exercise and social activities with other inmates, by means of measures capable of securing his physical integrity.

TT:

Başvuran, 29 Mayıs 2009 tarihinde, bu karara İzmir Ağır Ceza Mahkemesi'nde itiraz etmiştir. Başvuran, dilekçesinde, Buca cezaevinde **yasal gerekçe gösterilmeksizin** günün 24 saati tecritte tutulduğunu ve diğer tutuklular ile her

türlü ilişkiden ve açık havaya çıkmaktan mahrum edildiğini belirtmiştir... Başvuran bunun yanı sıra, vücut bütünlüğünü korumaya yönelik alınabilecek başka tedbirler aracılığıyla, açık havaya çıkma ve diğer tutuklularla sosyal aktivitelere katılma imkânından yararlanma ve dolayısıyla diğer tutuklularla **eşit muamele**ye tabi tutulmak istediğini yinelemiştir.

ST	TT	Translation Method
On no legal basis	Yasal gerekçe gösterilmeksizin	Transposition
Equal treatment	Eşit muamele	Literal Translation

On no legal basis – *yasal gerekçe gösterilmeksizin* is translated by using the transposition method as *no* (determiner) is translated as *gösterilmeksizin* (participle). *Equal treatment* – *eşit muamele* is translated literally.

Sample 25:

The following sample is also given in the part of the judgment in which the “The Facts” – “The Circumstances of the Case” is explained in ST3.

ST:

On 4 June 2009 the **Assize Court** dismissed the challenge, after receiving the prosecutor’s opinion concerning the applicant’s request, **without holding a hearing** and without first communicating the prosecutor’s opinion to the applicant.

TT:

Ağır Ceza Mahkemesi, 4 Haziran 2009 tarihinde, savcıdan başvuranın talebi konusunda görüş aldıktan sonra, **duruşma yapmadan** ve savcının görüşünü başvurana tebliğ etmeden bu talebi reddetmiştir.

ST	TT	Translation Method
Assize Court	Ağır Ceza Mahkemesi	Equivalence
Without holding a hearing	Duruşma yapmadan	Literal Translation

Assize Court in SL equals to *Ağır Ceza Mahkemesi* in TL, so the method of equivalence is applied. *Without holding a hearing – duruşma yapmadan* is translated literally.

Sample 26:

The following sample is taken from the “Relevant Domestic Law and Practice” part of the case in ST3.

ST:

The Execution of Sentences and Security Measures Act (Law no. 5275), passed on 13 December 2004, contains no specific provisions regarding placing **remand prisoners** in prisons. The situation is different for convicted prisoners.

TT:

5275 sayılı ve 13 Aralık 2004 tarihli Ceza ve Güvenlik Tedbirlerinin İnfazı Hakkında Kanun'da, cezaevlerinde **tutukluların** ne şekilde yerleştirilecekleri konusunda isteklerinin göz önünde tutulacağına dair spesifik kurallar öngörülmemektedir. Hükümlüler için durum farklıdır.

ST	TT	Translation Method
<i>Remand prisoner</i>	Tutuklu	Modulation

Remand prisoner is a prisoner who is sent back into custody (or sometimes admitted to bail) to await trial or continuation of their trial.³⁹ *Remand prisoner – tutuklu* is translated by applying the method of modulation with cause-effect relation at the message level. *Remand* means “custody” literally.

Sample 27:

The following sample is taken from the “Relevant Domestic Law and Practice” part of the case in ST3.

³⁹ Definition of remand prisoner. Retrieved 23 March 2017 from, <https://www.collinsdictionary.com/dictionary/english/remand-prisoner>

ST:

Under section 25, prisoners sentenced to **whole-life imprisonment** may take daily exercise in an inner courtyard adjoining their cell and, according to the circumstances, may be permitted to have limited contact with inmates from the same unit.

TT:

5275 sayılı Kanunun 25. maddesi gereğince, **ağırlaştırılmış müebbet hapis cezasına** çarptırılan kişiler odalarına bağlı dar bir iç avluda günde bir saat açık havaya çıkabilirler ve koşullara bağlı olarak, aynı bölümde bulunan mahkûmlarla sınırlı temasta bulunmalarına izin verilebilir.

ST	TT	Translation Method
Whole-life imprisonment	Ağırlaştırılmış müebbet hapis cezası	Equivalence

Whole-life imprisonment – *ağırlaştırılmış müebbet hapis cezası* is translated by applying the method of equivalence since the term of equivalence refers to cases where languages “illustrate the same situation by two texts using completely different stylistic and structural methods” (Vinay and Darbelnet 1995, pp. 38-39), just it occurs in this translated expression as well.

Sample 28:

The following sample is taken from the “Merits” of the case in ST3, where “The parties” submissions’ and “The Court’s assessment” is given in the judgment.

ST:

In the Court’s view, the **blanket prohibition** on open-air exercise – which remained in force throughout the applicant’s detention in the individual cell – combined with his inability to have any contact with the other inmates, illustrates the exceptional nature of the applicant’s conditions of detention.

TT:

AİHM’ye göre, başvuranın açık havaya çıkmasının ve **diğer tutuklularla temasının tamamen yasaklanması** (ki bu yasak başvuranın tek kişilik hücrede

tutulduğu süre boyunca devam etmiştir), tutukluluk koşullarının olağanüstü bir nitelik arz ettiğini göstermektedir.

ST	TT	Translation Method
Blanket prohibition	Diğer tutuklularla temasının tamamen yasaklanması	Adaptation

Blanket prohibition – diğer tutuklularla temasının tamamen yasaklanması is translated by applying the method of adaptation. Word-for-word translation of the expression of blanket prohibition would not sound natural in the TL, so it is seen here the translator prefers to explain the phrase by using totally different words.

Sample 29:

The following sample is taken from the “Merits” of the case in ST3 as well, where “The parties’ submissions” and “The Court’s assessment” is given in the judgment.

ST:

The Court also notes that the applicant’s attempts to have the measure in question reviewed by a post-sentencing judge and by the Assize Court did not yield any concrete result as his appeals were all dismissed **without being examined on the merits**. The judge merely pointed out that the prison authorities had a **discretionary power** in such matters, without even examining whether the measure placing the applicant in an individual cell was appropriate to the actual situation complained of by the applicant and without ruling on his requests for alleviation of the effects of his solitary confinement.

TT:

Diğer taraftan AİHM, başvuranın söz konusu tedbirin, infaz hâkimi ve ağır ceza mahkemesi tarafından denetlenmesine yönelik girişimlerinin, başvuruları **esastan incelenmeden reddedildiğinden** dolayı, hiçbir kayda değer sonuç vermediğini saptamaktadır. İnfaz Hâkimi, başvuranın şikâyetçi olduğu somut tecrit tedbirinin uygunluğunu dahi incelemeyen ve tecrit koşullarını hafifletmeye yönelik talepleri konusunda karar vermeksizin, cezaevi yönetiminin bu konuda **takdir hakkına** sahip olduğunu belirtmekle yetinmiştir.

ST	TT	Translation Method
Without being examined on the merits	Esastan incelenmeden reddedildiğinden	Equivalence
Discretionary power	Takdir hakkı	Literal Translation

Without being examined on the merits – *esastan incelenmeden reddedildiğinden* is translated by applying the method of equivalence. *Discretionary power* – *takdir hakkı* is translated literally. The word discretionary is transposed as well; while it is adjective in the SL, it is in the form of noun in the TL. *Discretionary power* refers to a court's power to take some step, grant a remedy or admit evidence or not, the term is “judicial discretion.”⁴⁰

Sample 30:

The following sample is taken from the very last part of the judgments. Here the Court concludes the case with the final decision in ST3.

ST:

Where a difference of treatment is based on sex or sexual orientation, the margin of appreciation afforded to the State is narrow, and in such situations the **principle of proportionality** does not only require that the measure chosen be generally adapted to the objective pursued; it must also be shown that it was necessary in the circumstances.

TT:

Ayrımcı davranış cinsiyet veya cinsel yönelim ile ilgili ise, Devlete bırakılan takdir hakkı kısıtlıdır. Dolayısıyla, bu tarz durumlarda **orantılılık ilkesi** gereğince, hem seçilen tedbir güdülen amaca genel olarak uygun olmalıdır, hem bu tedbirin koşullara bağlı olmadan gerekli olduğunun da ispatlanması gerekmektedir.

⁴⁰ Definition of discretionary power. Retrieved 23 March 2017 from, <http://iate.europa.eu/SearchByQuery.do?method=searchDetail&lilId=793789&langId=&query=discretionary%20power%20&sourceLanguage=en&domain=0&matching=&start=0&next=1&targetLanguages=en>

ST	TT	Translation Method
Principle of proportionality	Orantılılık ilkesi	Literal Translation

Principle of proportionality – orantılılık ilkesi is translated literally. The *principle of proportionality* is at the heart of the ECtHR’s investigation into the rationality of the restriction. Even though the Court provides a margin of appreciation to the Member States and its institutions, the Court’s principal role is to safeguard that the rights prescribed in the ECHR. The principle of proportionality requires that a reasonable relation must exist between a precise objective to be achieved and the means to achieve that objective (Clayton, Tomlinson, 2000, p. 278).

5.2.4. Analysis of the ST4 and TT4⁴¹

The following ten samples are taken from the “Case of Sace Elektrik Ticaret ve Sanayi A.Ş. v. Turkey (*Application No. 20577/05*).”

Sample 31:

The following sample is taken from the “Procedure” part of the ST4.

ST:

On 5 March 2008 notice of the application was given to the Government. It was also decided to rule on the **admissibility** and **merits of the application** at the same time (Article 29 § 1).

TT:

Başvuru 5 Mart 2008 tarihinde, Hükümet’e iletilmiştir. Ayrıca, **başvurunun kabul edilebilirlik** ve **esasına ilişkin** kararın aynı zamanda verileceği belirtilmiştir (Madde 29 § 1).

ST	TT	Translation Method
Admissibility	Kabul edilebilirlik	Literal Translation

⁴¹ Case of Sace Elektrik Ticaret ve Sanayi A.Ş. v. Turkey (*Application No. 20577/05*). Retrieved 22 March 2017 from, <http://hudoc.echr.coe.int>

Merits of the application	Başvurunun esasına ilişkin	Equivalence
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Admissibility – kabul edilebilirlik is translated literally. There are significant admissibility requirements prescribed in the Convention that must be fulfilled before a case is examined. For instance, applicants must exhaust domestic remedies and must bring their complaints before the Court within a period of six months as from the date of the final national decision. The Court prepared a guide on admissibility criteria that plainly sets out the case-law and rules concerning admissibility.⁴² Next expression chosen in this sample is the *merits of the application – başvurunun esasına ilişkin* which is translated by applying the technique of equivalence having a direct equivalent in TL.

Sample 32:

The following sample is given in the part of the judgment in which the “The Facts” – “The Circumstances of the Case” is explained in ST4.

ST:

At the end of the **enforcement proceedings**, the **Enforcement Court** decided that the land in question would be sold at public auction. Before the auction, the Kartal Enforcement Office ordered an **expert’s report**, and the market value of the land was established at 6,555,945,000,000 Turkish liras (TRL).

TT:

İcra takibi işlemlerinin sonunda, **İcra Mahkemesi**, söz konusu arazinin açık artırma yoluyla ihaleyle satılmasına hükmetmiştir. Açık artırma yoluyla ihaleden önce, Kartal İcra Müdürlüğü, **bilirkişi raporunun** hazırlanmasını talep etmiştir ve arazinin piyasa değeri, 6.555.945.000.000 Türk lirası (TRL) olduğu belirlenmiştir.

ST	TT	Translation Method
Enforcement proceedings	İcra takibi işlemleri	Equivalence

⁴² Practical Guide on Admissibility Criteria: Right to Individual Petition. Retrieved 25 March 2017 from, http://www.echr.coe.int/Documents/Admissibility_guide_ENG.pdf

Enforcement Court	İcra Mahkemesi	Literal Translation
Expert's report	Bilirkişi raporu	Literal Translation

Enforcement proceedings – icra takibi işlemleri is translated by applying the translation method of equivalence. *Enforcement Court – İcra Mahkemesi* is translated literally, and besides it can be stated that this institution name is translated by using the technique of equivalence as well since the ST expression equals to the TT expression in the TL. *Expert's report – bilirkişi raporu* is translated literally in general. Besides, while *expert* has the direct equivalence as “uzman” in the TL, it is used as *bilirkişi* in the cases of the courts.

Sample 33:

The following sample is given in the part of the judgment in which the “The Facts” – “The Circumstances of the Case” is explained in ST4.

ST:

On 3 February 2003 the Court of Cassation held that the **first instance court's** reasoning in annulling the auction had not been in line with **domestic law**. In this connection, it maintained that the typing error regarding the plot number of the land was minor and that in the notice the location of the land had been described in detail, thus avoiding any confusion.

TT:

Yargıtay, 3 Şubat 2003 tarihinde, **ilk derece mahkemesinin** ihaleyi feshederken dayandığı nedenlerin **iç hukuka** uygun olmadığına karar vermiştir. Bu bağlamda, arazi numarasının yanlış yazılmasının küçük bir hata olduğunu ve ilanda arazinin yerinin detaylı bir şekilde belirtildiği ve böylece herhangi bir karışıklığın önlendiğini ileri sürmüştür.

ST	TT	Translation Method
First instance court	İlk derece mahkemesi	Literal Translation
Domestic law	İç hukuk	Literal Translation

First instance court – ilk derece mahkemesi is translated literally, and since each elements of the expression is translated word-for-word and the SL expression structure is directly

transferred into the TL, it is translated by applying the method of calque as well. And *domestic law – iç hukuk* is translated literally.

Sample 34:

The following sample is given in the part of the judgment in which the “The Facts” – “The Circumstances of the Case” is explained in ST4.

ST:

On 11 March 2003 the **defendant** declared in writing that it waived any claim in respect of the costs and expenses incurred for the sale of the land. Relying on this declaration, on 14 March 2003 it requested the **rectification of the decision** of 3 February 2003.

TT:

Davalı taraf, 11 Mart 2003 tarihinde, arazinin satışı için yapılan masraf ve harcamalardan feragat ettiğini yazılı olarak beyan etmiştir. Bu beyana dayanarak, 14 Mart 2003 tarihinde, 3 Şubat 2003 tarihli **kararın düzeltilmesini** talep etmiştir.

ST	TT	Translation Method
Defendant	Davalı taraf	Transposition
Rectification of the decision	Kararın düzeltilmesi	Literal Translation

Defendant – davalı taraf is transposed and translated literally as well. As the word *taraf* is added to *davalı*, it is an optional transposition. In other words, just the use of *davalı* would be appropriate, but the expression as *davalı taraf* is opted by the translator in order to be more accurate and clear. In concise, the ST *defendant* is changed for another *davalı* (*taraf*) with no change of the sense of the message. There are two choices for the translation of the ST expression *defendant* as *davalı* or *davalı taraf*, therefore it is optional transposition. *Rectification of the decision – kararın düzeltilmesi* is translated literally.

Sample 35:

The following sample is taken from “The Law” part of the case where the “Alleged Violation of Article 6 of the Convention” – is referred in ST4.

ST:

The applicant company alleged that the fine imposed on it pursuant to section 134 of Law no. 2004 had constituted a breach of its **right of access to a court**, since it should be construed as a penalty for having exercised its right to bring a case before the domestic courts. It relied on Article 6 § 1 and Article 13 of the Convention.

TT:

Başvuran Şirket, 2004 sayılı Kanun’un 134. maddesi uyarınca çarptırıldığı para cezasının, yerel mahkemeler önünde dava açma hakkını kullandığı için verilen bir ceza olarak yorumlanması gerektiğinden dolayı, **mahkemeye erişim hakkını** ihlal ettiğini iddia etmiştir. Başvuran Şirket, Sözleşme’nin 6 § 1 ve 13. maddelerine dayanmıştır.

ST	TT	Translation Method
Right of access to a court	Mahkemeye erişim hakkı	Literal Translation

Right of access to a court – mahkemeye erişim hakkı is translated literally. The Court holds that this provision of the ECHR secures to everyone “the right to have any claim relating to his/her civil rights and obligations brought before a court or tribunal.”⁴³

Sample 36:

The following sample is taken from the “Merits” part of the case in ST4.

ST:

Guaranteeing to litigants an effective right of access to a court for the determination of their “civil rights and obligations,” Article 6 § 1 leaves the State a free choice of the means to be used towards this end but, while the Contracting

⁴³ A guide to the implementation of Article 6 of the European Convention on Human Rights: Right of Access to a Court. Retrieved 25 March 2017 from, [http://www.echr.coe.int/LibraryDocs/DG2/HRHAND/DG2-EN-HRHAND-03\(2006\).pdf](http://www.echr.coe.int/LibraryDocs/DG2/HRHAND/DG2-EN-HRHAND-03(2006).pdf)

States enjoy a certain **margin of appreciation** in that respect, the ultimate decision as to the observance of the Convention's requirements rests with the Court.

TT:

Sözleşme'nin 6 § 1 maddesi davacıların “medeni hak ve yükümlülüklerine” ilişkin kararlar hakkında mahkemeye erişim hakkını etkin bir biçimde güvence altına almakta ise de bu hususta kullanılacak araçların seçimini devlete bırakır. Ancak, Sözleşmeye taraf olan devletler, bu konuda belli bir **takdir payına** sahip olsalar da Sözleşme'nin gereklerine riayet edilip edilmediğine dair son karar Mahkeme'ye aittir.

ST	TT	Translation Method
Margin of appreciation	Takdir payı	Literal Translation

Margin of appreciation – takdir payı is translated literally. It means “the room for manoeuvre the Strasbourg institutions are prepared to accord national authorities in fulfilling their obligations under the ECHR.”⁴⁴

Sample 37:

The following sample is taken from the “Merits” part of the case in ST4.

ST:

Unlike other cases concerning excessive **court fees**, where individuals concerned, being unable to pay, did not have “access” to a court or to a particular stage of the proceedings, in the instant case the merits of the applicant company's case was indeed examined at three **levels of jurisdiction**.

TT:

Mahkemeye veya yargılama işlemlerinin belirli bir aşamasına “erişim”leri olmayan ilgili kişilerin ödeyemediği aşırı **mahkeme ücretlerine** ilişkin diğer davaların aksine, mevcut davada, başvuran şirketin davasının esasları, gerçekte, üç **yargı düzeyinde** incelenmiştir. Bu nedenle, başvuran şirket, yargılama işlemlerinin bütün aşamalarına “erişim”e sahipti.

⁴⁴ Margin of Appreciation: Interpretation and Discretion under the European Convention on Human Rights. Retrieved 26 March 2017 from, [http://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-17\(2000\).pdf](http://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-17(2000).pdf)

ST	TT	Translation Method
Court fees	Mahkeme ücretleri	Literal Translation
Level of jurisdiction	Yargı düzeyi	Literal Translation

Court fees – mahkeme ücretleri and *level of jurisdiction – yargı düzeyi* are both translated literally. Cases may only be brought to the ECtHR after the individuals who complain of violations of their rights must first take their case to their domestic courts, up to the highest *level of jurisdiction*.⁴⁵

Sample 38:

The following sample is taken from the “Merits” part of the case in ST4.

ST:

The **imposition of the fine** is mandatory and not left to the discretion of the domestic courts. In the present case, the financial burden imposed on the applicant company was particularly significant, namely EUR 140,000, and there was no room for judicial discretion.

TT:

Para cezası uygulaması zorunludur ve yerel mahkemelerin takdir yetkisine bırakılmamaktadır. Mevcut davada, başvuran şirkete maruz bırakılan finansal yük, kayda değer bir miktardadır (140.000 Avro) ve takdir yetkisine yer yoktur.

ST	TT	Translation Method
Imposition of the fine	Para cezası uygulaması	Literal Translation

Imposition of the fine – para cezası uygulaması is translated literally. Although it is not a word-for-word translation for each term, the overall m is literal translation.

⁴⁵ The ECHR in 50 Questions: Level of jurisdiction. Retrieved 27 March 2017 from, http://www.echr.coe.int/Documents/50Questions_ENG.pdf

Sample 39:

The following sample is taken from the “Other Alleged Violations of the Convention” part of the case in ST4.

ST:

Invoking Article 6 of the Convention, the applicant company alleged that its **right to a fair hearing** had been breached in that the national courts had erred in the interpretation of the domestic law. It further maintained under Article 1 of Protocol No. 1 to the Convention that as the land in question had been sold at a very low price during the second auction, its right to the **peaceful enjoyment of its possessions** had been breached.

TT:

Sözleşme’nin 6. maddesine atıfta bulunarak, başvuran şirket, ulusal mahkemelerin iç hukuku yorumlarken hata yaptıklarını ve bu nedenle **âdil yargılanma hakkının** ihlâl edildiğini iddia etmiştir. Ayrıca, Sözleşme’nin Ek 1 No’lu Protokolü’nün 1. maddesi uyarınca, söz konusu arazinin ikinci ihale sırasında oldukça düşük bir fiyata satıldığından dolayı, **mülkiyet hakkının** ihlâl edildiğini ileri sürmüştür.

ST	TT	Translation Method
Right to a fair hearing	Âdil yargılanma hakkı	Literal Translation
Peaceful enjoyment of its possessions	Mülkiyet hakkı	Adaptation

Right to a fair hearing – adil yargılanma hakkı is translated literally. The right to a fair hearing under Article 6 § 1 requires that a case be heard by an “independent and impartial tribunal.”⁴⁶ *Peaceful enjoyment of its possessions – mülkiyet hakkı* is translated by applying the method of adaptation. While *protection of property*⁴⁷ in SL directly equals to *mülkiyet hakkı* in TL, the expression above translated by explaining and adapting the expression into the TL.

⁴⁶ Article 6 § 1 of the Convention on Human Rights and Fundamental Freedoms. Retrieved 27 March 2017 from, http://www.echr.coe.int/Documents/Convention_ENG.pdf

⁴⁷ Article 1 of the Convention on Human Rights and Fundamental Freedoms. Retrieved 27 March 2017 from, http://www.echr.coe.int/Documents/Convention_ENG.pdf

Sample 40:

The following sample is taken from the “Application of Article 41 of the Convention” of ST4.

ST:

The Court considers that the finding of a violation constitutes in itself sufficient **just satisfaction** for any non-pecuniary damage sustained by the applicant company. The Court further recalls that the most appropriate **form of redress** in respect of Article 6 is to ensure that the applicant as far as possible is put in the position he would have been had the requirements of Article 6 not been disregarded.

TT:

Mahkeme, başvuran şirketin maruz kaldığı manevi zararlarla ilgili olarak ihlâl tespitinin yeterli **âdil tazmin** teşkil ettiği görüşündedir. Mahkeme, ayrıca, Sözleşme’nin 6. maddesine ilişkin olarak en uygun **tazmin şeklinin**, 6. maddenin gerektirdikleri göz ardı edilmeseydi başvuranın bulunacağı durumun, mümkün olduğu kadar kısa süre içinde başvurana sağlanması olduğunu hatırlatmaktadır.

ST	TT	Translation Method
Just satisfaction	Âdil tazmin	Literal Translation
Form of redress	Tazmin şekli	Literal Translation

Just satisfaction – *adil tazmin* and *form of redress* – *tazmin şekli* are both translated literally. The term “compensation” is used for *tazmin* in general in the TL. However, in the judgments of the ECtHR the terms *satisfaction* and *redress* is opted for “tazmin” in general.

5.2.5. Analysis of the ST5 and TT5⁴⁸

The following ten samples are taken from the “Case of Fazlı Aslaner v. Turkey” (*Application No. 36073/04*)

⁴⁸ Case of Fazlı Aslaner v. Turkey (Application No. 36073/04. Retrieved 22 March 2017 from, <http://hudoc.echr.coe.int>

Sample 41:

The following sample is given in the part of the judgment in which the “The Facts – The Circumstances of the Case” is explained in ST5.

ST:

In 1993 the applicant, who was a **court registrar** (*zabıt kâtibi*) in the registry of the Ankara Tax Court, passed a local competitive examination organised by the Ankara Judicial Committee for the **post of head registrar** (*yazı işleri müdürü*) at the Ankara State Security Court. However, since his ranking (15th place) in the competition was insufficient for him to obtain the post, he was placed on the reserve list drawn up at the close of the competition. The first successful candidate was appointed to the post in question. The second successful candidate was subsequently appointed to a position as head registrar in the second section of the Ankara State Security Court.

TT:

Ankara Bölge İdare Mahkemesinde, **zabıt kâtibi** olarak çalışan başvuran, 1993 yılında, Ankara Adli Yargı Adalet Komisyonunun açtığı Devlet Güvenlik Mahkemesi **yazı işleri müdürlüğü** yazılı sınavını 15. olarak kazanmıştır. Ancak 15. sıradan kazandığı için ataması yapılmamış ve yedek listeye alınmıştır. Yazı işleri müdürlüğü görevlerine 1. ve 2. sıradan kazanan adaylar atanmıştır.

ST	TT	Translation Method
Court registrar	Zabıt kâtibi	Equivalence
Post of head registrar	Yazı işleri müdürlüğü	Equivalence

Court registrar – zabıt katibi and *post of head registrar – yazı işleri müdürlüğü* are both translated by applying the method of equivalence. As these terms do not have the exact equivalence in the SL, their usage in the TL is given in parenthesis as well.

Sample 42:

The following sample is given in the part of the judgment in which the “The Facts – The Circumstances of the Case” is explained in ST5.

ST:

The authorities having refused his request, he **lodged an application for judicial review** with the Ankara Administrative Court (“the Administrative Court”).

TT:

Bu talebinin reddedilmesi üzerine, **red kararının iptali istemiyle** Ankara İdare Mahkemesi’nde (“İdare Mahkemesi”) **dava açmıştır.**

ST	TT	Translation Method
Lodged an application for judicial review	Red kararının iptali istemiyle... Dava açmıştır	Equivalence

Lodged an application for judicial review - red kararının iptali istemiyle... dava açmıştır is translated by using the method of equivalence.

Sample 43:

The following sample is given in the part of the judgment in which the “The Facts” – “The Circumstances of the Case” is explained in ST5.

ST:

By a judgment of 17 September 1998 the Administrative Court **upheld the applicant’s claims**. The court found that of the candidates who had passed the aforementioned competition, seven who had done better and eleven who had done less well than the applicant had been appointed head registrars in other judicial districts, and concluded that the authorities’ refusal had had no basis in law.

TT:

İdare Mahkemesi, 17 Eylül 1998 tarihli bir kararla **başvuranın taleplerini haklı bulmuştur**. İdare mahkemesi, ilgili sınava katılan adaylar arasında, başvurandan daha üst seviyede olan yedi kişi ve başvurandan daha düşük seviyede olan on bir kişinin yazı işleri müdürü olarak atandıklarını tespit etmiştir. Bu sebeple işlemi iptal etmiştir.

ST	TT	Translation Method
Uphold the applicant's claims	Başvuranın taleplerini haklı bulmak	Literal Translation

Uphold the applicant's claims – başvuranın taleplerini haklı bulmak is translated literally.

Sample 44:

The following sample is given in the part of the judgment in which the “The Facts” – “The Circumstances of the Case” is explained in ST5.

ST:

On 20 December 2000 the Fifth Administrative Proceedings Division of the Supreme Administrative Court **quashed the impugned judgment**, contrary to the submissions of the Advocate-General, Ms A.Ö. The Fifth Division pointed out that the competitive examination organised by the Ankara Judicial Committee had been intended to fill a post in the Ankara State Security Court and that registration on the reserve list had not entitled the candidate in question to a post as head registrar in a court within the jurisdiction of a different **judicial committee**.

TT:

Danıştay 5. Dairesi, 20 Aralık 2000 tarihinde Danıştay savcısı A.Ö. nün görüşleri doğrultusunda **temyiz edilen kararı bozmuştur**. Söz konusu Daire, Ankara Adli Yargı Adalet Komisyonu tarafından düzenlenen sınavın, adaylara Ankara Devlet Güvenlik Mahkemesi bünyesinde bir görev vermeyi hedeflediğini ve yedek listeye kaydolma sonucunda, başka bir **adli yargı komisyonunun** yetkisi altında bulunan bir mahkeme bünyesinde, yazı işleri müdürü olarak göreve başlama hakkı vermediğini belirtmiştir.

ST	TT	Translation Method
Quash the impugned judgment	Temyiz edilen kararı bozmak	Literal Translation
Judicial committee	Adli yargı komisyonu	Transposition

Quash the impugned judgment – temyiz edilen kararı bozmak is translated literally.

Judicial committee – adli yargı komisyonu is translated by applying the method of

transposition. *Judicial*, which is in the adjective form, is translated as *adli yargı*, which is in the adjective+noun compound; therefore this expression is transposed. The term *committee* is not translated as “komite” which is the direct translation of it; however, it is translated *komisyon* which equals to “commission” in the SL. However, the frequent usage in the courts is *komisyon* in the TL.

Sample 45:

The following sample is taken from “The Law” part of the case where the “Complaints Alleging a Lack of Impartiality on the Part of the Supreme Administrative Court” – is referred in ST5.

ST:

In the determination of his **civil rights and obligations** ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal.

TT:

Herkes davasının, **medeni hak ve yükümlülükleriyle** ilgili uyuşmazlıklar (...) konusunda karar verecek olan, (...) bağımsız ve tarafsız bir mahkeme tarafından, (...) görülmesini isteme hakkına sahiptir.

ST	TT	Translation Method
Civil rights and obligations	Medeni hak ve yükümlülükler	Literal Translation

Civil rights and obligations – *medeni hak ve yükümlülükler* is translated completely literally.

Sample 46:

The following sample is taken from the “Merits” part of the case in ST5.

ST:

The Government claimed that the first appeal on points of law had been geared to determining the **lawfulness of the Administrative Court's first judgment**, while the second had been intended to verify the lawfulness of the Administrative Court judgment overriding the judgment of the Supreme Administrative Court.

TT:

Hükümet, ilk temyiz konusunun **İdare Mahkemesinin iptal kararının hukuka uygunluğunun** incelenmesi olduğunu, ikinci temyiz konusunun ise Danıştay kararına uymayıp ısrar eden aynı mahkemenin kararının incelenmesi olduğunu belirtmiştir.

ST	TT	Translation Method
Lawfulness of the Administrative Court's first judgment	İdare Mahkemesinin iptal kararının hukuka uygunluğu	Literal Translation

Lawfulness of the Administrative Court's first judgment – İdare Mahkemesinin iptal kararının hukuka uygunluğu is translated by applying both literal translation and adaptation. *First judgment* is translated as *iptal kararı*. Here, the translator explains the situation by using completely different words for the TL reader. However, the overall and prevailing method is literal translation here.

Sample 47:

The following sample is taken from “The Court's assessment” part of the case in ST5.

ST:

In this case, therefore, in the light of all these principles, the Court must decide whether, having regard to the **nature and extent of the judicial review** required of the General Assembly, the three judges in question displayed, or could legitimately be considered to have displayed, bias with regard to the decision on the merits of the case.

TT:

Dolayısıyla, bu ilkeler göz önüne alındığında, Mahkeme, İdari Dava Daireleri Kurulu'nun görevi olan **hukuki denetimin kapsamı ile niteliğini** dikkate alınarak, somut olayda söz konusu üç üyenin davanın esası hakkında verilen

kararla ilgili olarak, taraf olup olmadıkları veya meşru olarak taraf gibi görülüp görülemeyecekleri konusunda karar vermeye davet edilmektedir.

ST	TT	Translation Method
Nature and extent of the judicial review	Hukuki denetimin kapsamı ile niteliği	Literal Translation

Nature and extent of the judicial review - hukuki denetimin kapsamı ile niteliği is translated literally. The *judicial review* is translated as *hukuki denetim*, which is not actually a literal translation, but it is an equivalence. *Judicial* equals to “adli” and *review* equals to “gözden geçirme” in Turkish. However, *hukuki* which equals to “legal” in English is used for the term *judicial*. And *denetim* which equals to “audit” in English is used in this translation. To sum, taking into consideration the whole expression, it is seen that the general method is literal translation.

Sample 48:

The following sample is taken from “The Court’s assessment” part of the case in ST5.

ST:

Furthermore, the Court reiterates that it has already found violations of the right to an impartial tribunal in a number of cases, taking into consideration both the large proportion of judges concerned and their duties as president or **rappporteur** on the bench.

TT:

Diğer taraftan Mahkeme, hem kurula katılan ilgili hâkimlerin yüksek sayıda olmasını hem de bu hâkimler tarafından icra edilen başkanlık veya **raportörlük** görevlerini dikkate alarak tarafsız bir mahkemece yargılanma hakkının ihlal edildiği sonucuna vardığını hatırlatmaktadır.

ST	TT	Translation Method
Rapporteur	Raportör	Borrowing

Rapporteur – raportör is translated by applying the method of borrowing. This term is used interchangeably for the term of “judge” in Turkish. However, “hakim” is used for

both *rapporteur* and “judge” in Turkey. There is one exception for this usage. The Constitutional Court of The Republic of Turkey uses this borrowed term just the way it is seen in the table above. The rest of the courts in Turkey other than the Constitutional Court prefers the use of the term of “hakim.”

Sample 49:

The following sample is taken from “The Court’s assessment” part of the case in ST5.

ST:

Moreover, the Court observes that Ms T.Ç., one of the three judges in question, in her capacity as Vice-President of the Supreme Administrative Court, presided over the General Assembly and that she therefore led the discussions during the proceedings, which constitutes an additional circumstance incompatible with the **appearance of impartiality**.

TT:

Ayrıca, Mahkeme bu üç üyenin arasında yer alan T.Ç.’nin Danıştay Başkan Vekili sıfatıyla, İdari Dava Daireleri Kurulu’nun Başkanlık görevini icra ettiğini ve bu bağlamda görüşmeler sırasındaki tartışmaları yönettiğini ve bu durumun **tarafsızlık görünümünü** etkileyen ek bir koşul oluşturduğunu gözlemlemektedir.

ST	TT	Translation Method
Appearance of impartiality	Tarafsızlık görünümü	Literal Translation

Appearance of impartiality - tarafsızlık görünümü is translated literally.

Sample 50:

The following sample is taken from the very last part of the judgment. Here the Court concludes the case with the “Joint Dissenting Opinion of Judges” in ST1.

ST:

**JOINT DISSENTING OPINION OF JUDGES RAIMONDI, KARAKAŞ
AND KELLER**

We disagree with the majority position to the effect that in the present case there was a violation of Article 6 § 1 of the Convention. Firstly, we take the view that the **case-law** of the Court does not provide a sufficient basis for the conclusions reached by the majority.

TT:

**YARGIÇ RAIMONDİ, YARGIÇ KARAKAŞ VE YARGIÇ KELLER’İN
MÜŞTEREK AYRIK GÖRÜŞÜ**

Somut olayda Sözleşme’nin 6. maddesinin ihlal edildiğine ilişkin çoğunluğun tutumuna katılmıyoruz. Öncelikle, Mahkeme **İçtihadı**’nın, çoğunluğun ulaştığı sonuçlar için yeterince dayanak sunmadığını değerlendirmekteyiz.

ST	TT	Translation Method
Joint dissenting opinion	Müşterek ayrik görüş	Literal Translation
Case-law	İçtihat	Equivalence

Joint dissenting opinion – müşterek ayrik görüş is translated literally. *Case-law – içtihat* is translated by using the method of equivalence, since it has a direct equivalence in the TL.

5.3. DISCUSSION

In this section of the study the discussion of the findings are provided which is acquired through analysing 50 samples from the judgments of the ECtHR related to personal affairs and having high importance level released about Turkey in last five years (2012-2017). All the available legal terms which count to 94 terms found in the ECtHR judgments are analysed comparatively. The purpose of this thesis is to conduct a comparative analysis in order to find out which translation methods of Jean Paul Vinay and Jean Darbelnet are used in translating the legal terminology of the judgments of the ECtHR from the Source Language (SL) English into the Target Language (TL) Turkish. After evaluating the findings of the analysis of ST and TT, it is questioned to what extent the legal terminology in the judgments of the ECtHR are translated in an adequate or acceptable way according to the approach of Gideon Toury (1995, p. 56). In this section, findings obtained in the

previous section is given and the frequency of usage of the translation methods employed are interpreted. Thus, the most and least used strategies can reveal the tendency of adequacy and acceptability of the translation of the legal terminology preferred by the translators during the translation process.

Table 5.2 shows the analysed terms, their translations and the translation methods employed in which 94 terms are analysed excerpted from the judgments. As can be seen, all translation strategies are used from the seven strategies of Vinay and Darbelnet.

Table 5.2: Samples from the Judgments, Their Translations and the Translation Methods Applied

ST	TT	Translation Method
European Court of Human Rights	Avrupa İnsan Hakları Mahkemesi	Literal Translation
Second Section	İkinci Daire	Equivalence
Chamber	Heyet	Equivalence
Judge	Yargıç	Literal Translation
Section Registrar	Daire Yazı İşleri Müdürü	Equivalence
Convention for the Protection of Human Rights and Fundamental Freedoms	İnsan Hakları ve Temel Özgürlüklerin Korunması Hakkındaki Sözleşme	Literal Translation
File a criminal complaint	Suç duyurusunda bulunmak	Transposition
Quash the judgment	Kararı bozmak	Literal Translation
Without examining the merits of the case	Davayı esas yönünden incelemeyen	Equivalence
Everyone's right to life	Herkesin yaşam hakkı	Literal Translation
Save in the execution of a sentence of a court	Mahkemece hükmedilen bu cezanın infaz edilmesi dışında	Equivalence
Deprivation of life	Ölüm	Modulation

To effect a lawful arrest	Usulüne uygun olarak yakalanmasını gerçekleştirme	Transposition
Manifestly ill-founded	Açıkça dayaaktan yoksun	Equivalence
Admissible	Kabul edilebilir	Literal Translation
Positive obligations	Pozitif yükümlülükler	Literal Translation
Domestic law	İç hukuk	Literal Translation
Preliminary objection	İlk itiraz	Literal Translation
Exhaustion of domestic remedies	İç hukuk yollarının tükenmesi	Equivalence
Reimbursement of costs and expenses	Masraf ve harcamaları tazmin etme	Literal Translation
Domestic court proceedings	Yerel mahkeme işlemleri	Literal Translation
Unanimously	Oybirliğiyle	Literal Translation
Joins and dismisses	Birleştirip reddeder	Literal Translation
Declares	Beyan eder	Literal Translation
Holds	Karar verir	Equivalence
Respondent State	Davalı Hükümet	Equivalence
Non-pecuniary damage	Manevi tazminat	Modulation
Tacit dismissal of the claim	Talebin zımni olarak reddedilmesi	Literal Translation
Bring an action for damages	Tazminat istemiyle dava açmak	Equivalence
Pecuniary damage	Maddi tazminat	Literal Translation
Good faith	İyi niyet	Literal translation
European Convention on the Calculation of Time-Limits	Sürelerin Hesaplanmasına İlişkin Avrupa Sözleşmesi	Literal Translation
Jurisdiction	Yetki	Equivalence
In the instant case	Somut davada	Modulation

Compliance	Uygunluk	Literal Translation
Its own motion	Resen	Equivalence
Dies a quo	Dies a quo	Borrowing
Dies ad quem	Dies ad quem	Borrowing
Principle of subsidiarity	Yerindelik ilkesi	Calque
Legal certainty	Yasal belirlilikler	Literal Translation
Within a reasonable time	Makul bir süre içerisinde	Literal Translation
Lodge an application	Başvuruda bulunmak	Literal Translation
High Contracting Parties	Yüksek Akit Taraflar	Literal Translation
The right to individual petition	Dilekçe hakkı	Literal Translation
Rules of Court	AİHM İçtüzüğü	Adaptation
Solitary confinement	Tecrit	Modulation
Criminal proceedings were instituted	Suçlamalardan kamu davaları açılmıştır	Adaptation
Misrepresentation on official documents	Resmi evrak tanziminde yanlış bildirimde bulunmak	Transposition
Court of Cassation	Yargıtay	Equivalence
Post-Sentencing Judge	İnfaz hâkimi	Equivalence
Convicted prisoner	Hükümlü	Modulation
In pre-trial detention	Tutuklu	Adaptation
In form and substance	Hem şeklen hem de içerik olarak	Literal Translation
On no legal basis	Yasal gerekçe gösterilmeksizin	Transposition
Equal treatment	Eşit muamele	Literal Translation
Assize Court	Ağır Ceza Mahkemesi	Equivalence
Without holding a hearing	Duruşma yapmadan	Literal Translation
Remand prisoner	Tutuklu	Modulation

Whole-life imprisonment	Ağırlaştırılmış müebbet hapis cezası	Equivalence
Blanket prohibition	Diğer tutuklularla temasının tamamen yasaklanması	Adaptation
Without being examined on the merits	Esastan incelenmeden reddedildiğinden	Equivalence
Discretionary power	Takdir hakkı	Literal Translation
Principle of proportionality	Orantılılık ilkesi	Literal Translation
Admissibility	Kabul edilebilirlik	Literal Translation
Merits of the application	Başvurunun esasına ilişkin	Equivalence
Enforcement proceedings	İcra takibi işlemleri	Equivalence
Enforcement Court	İcra Mahkemesi	Literal Translation
Expert's report	Bilirkişi raporu	Literal Translation
First instance court	İlk derece mahkemesi	Literal Translation
Domestic law	İç hukuk	Literal Translation
Defendant	Davalı taraf	Transposition
Rectification of the decision	Kararın düzeltilmesi	Literal Translation
Right of access to a court	Mahkemeye erişim hakkı	Literal Translation
Margin of appreciation	Takdir payı	Literal Translation
Court fees	Mahkeme ücretleri	Literal Translation
Level of jurisdiction	Yargı düzeyi	Literal Translation
Imposition of the fine	Para cezası uygulaması	Literal Translation
Right to a fair hearing	Âdil yargılanma hakkı	Literal Translation
Peaceful enjoyment of its possessions	Mülkiyet hakkı	Adaptation
Just satisfaction	Âdil tazmin	Literal Translation
Form of redress	Tazmin şekli	Literal Translation
Court registrar	Zabıt kâtibi	Equivalence

Post of head registrar	Yazı işleri müdürlüğü	Equivalence
Lodged an application for judicial review	Red kararının iptali istemiyle... dava açmıştır	Equivalence
Uphold the applicant's claims	Başvuranın taleplerini haklı bulmak	Literal Translation
Quash the impugned judgment	Temyiz edilen kararı bozmak	Literal Translation
Judicial committee	Adli yargı komisyonu	Transposition
Civil rights and obligations	Medeni hak ve yükümlülükler	Literal Translation
Lawfulness of the Administrative Court's first judgment	İdare Mahkemesinin iptal kararının hukuka uygunluğu	Literal Translation
Nature and extent of the judicial review	Hukuki denetimin kapsamı ile niteliği	Literal Translation
Rapporteur	Raportör	Borrowing
Appearance of impartiality	Tarafsızlık görünümü	Literal Translation
Joint dissenting opinion	Müşterek ayrık görüş	Literal Translation
Case-law	İçtihat	Equivalence

Table 5.2 above illustrates all the available the terms taken from the judgments of the ECtHR, their translations and the translation methods applied. The following table displays the exact number of the strategies applied by the translators in the translation process.

The following figure illustrates the percentage of the translation methods used (see Figure 5.4).

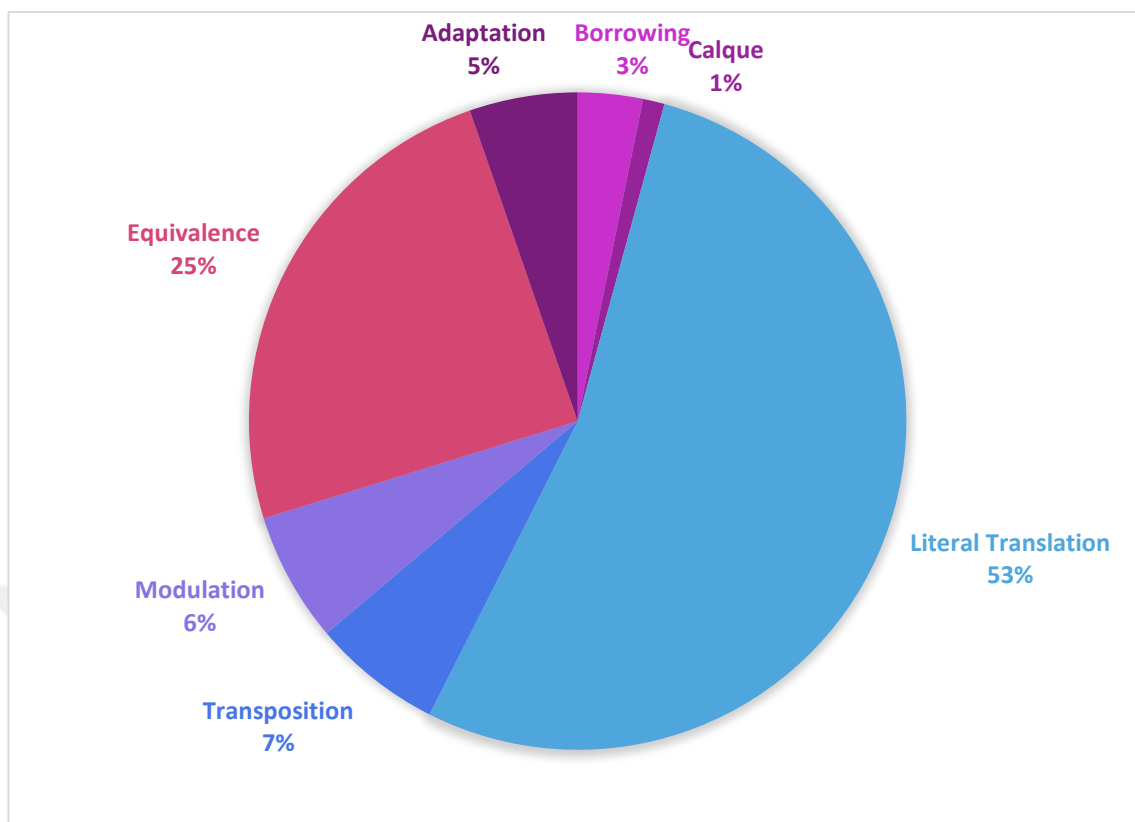


Figure 5.4: Translation Methods Applied in the Translation of Legal Terminology

As the figure above illustrates the percentage of the translation methods employed in the translation of the judgments of the ECtHR, the most frequently used method is the literal translation with 53%. The second translation method that is applied the most is equivalence with 25%. The rest is as follows: the percentage of transposition is 7%, modulation is 6%, adaptation is 5%, borrowing is 3%, and calque is 1%.

While Figure 5.4 displays the percentage of strategies, it also shows the number of the most and least strategies applied during the translation process. According to the figure, one can conclude that the direct translation methods (borrowing, calque, literal translation) are used more frequently than the oblique translation methods (transposition, modulation, equivalence, adaptation). In line with this result, it can be inferred that the translation of the judgments are more source-oriented than being target-oriented. This leads to the fact that the translations of the judgments are made adequately according to the approach of Toury. However, it is worth mentioning that “the poles of adequacy and

acceptability are on a continuum as no translation is totally adequate or totally acceptable” (Toury, 1995, p. 57).

Each percentage is illustrated as follows:

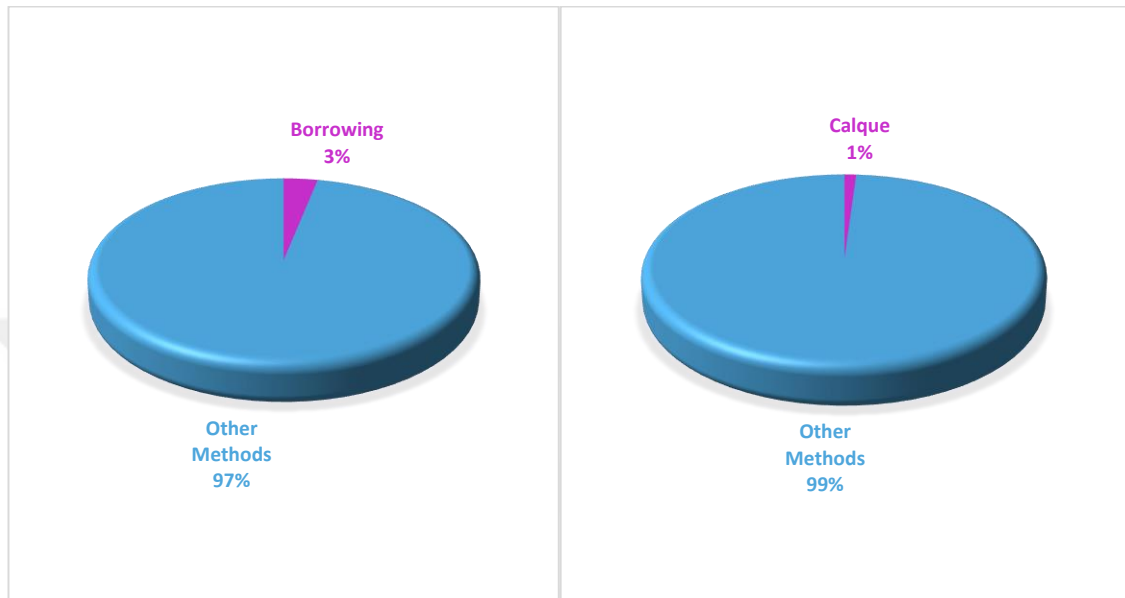


Figure 5.5: Borrowing

Figure 5.6: Calque

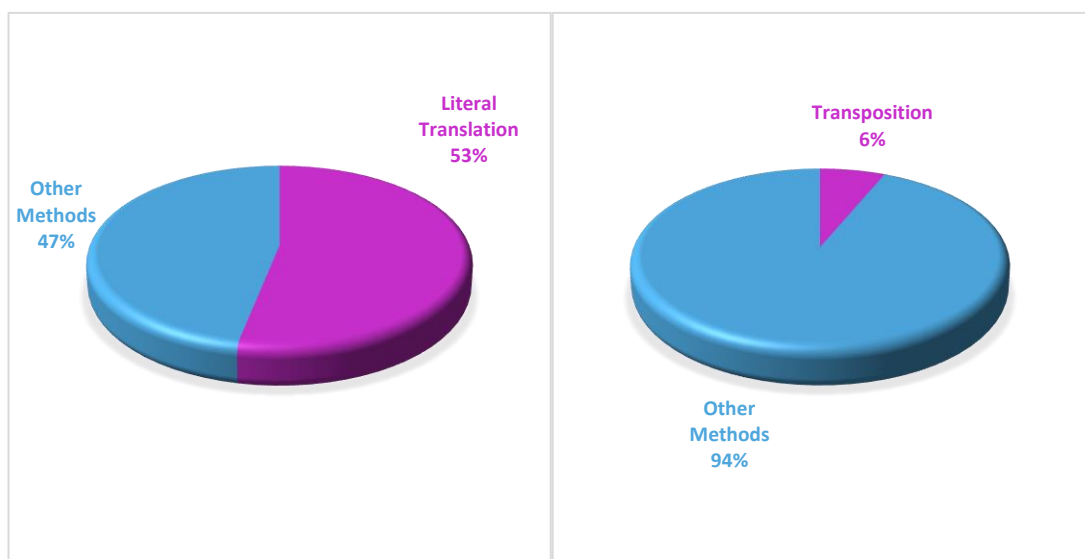


Figure 5.7: Literal Translation

Figure 5.8: Transposition

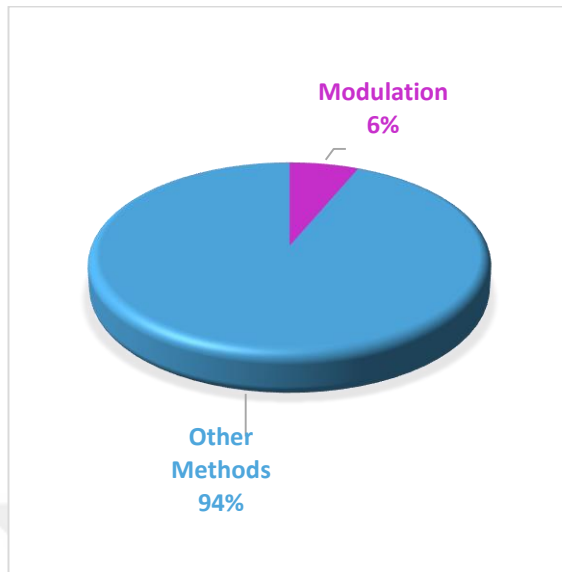


Figure 5.9: Modulation

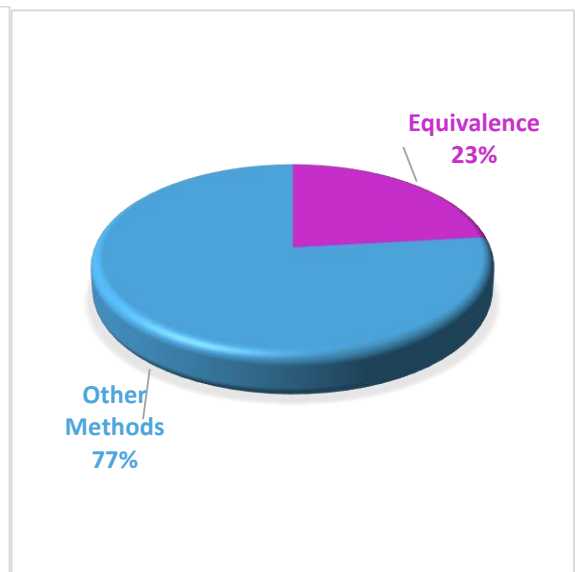


Figure 5.10: Equivalence

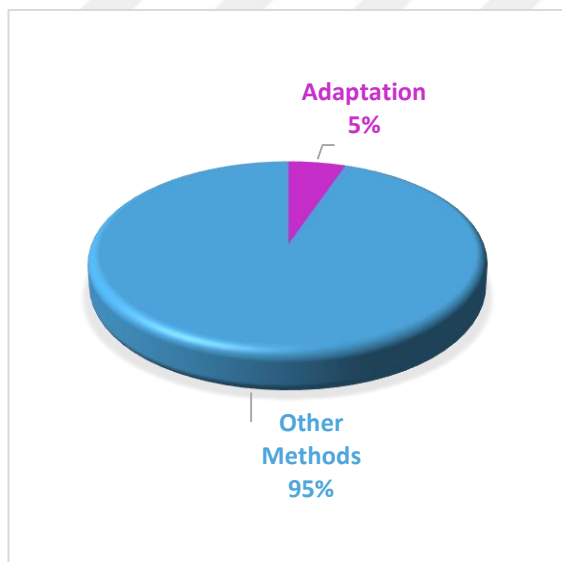


Figure 5.11: Adaptation

An inference can be drawn from the tables and charts above that the choices made by the translators during the translation process that the translation of the TT are more source

oriented with 57% of direct translation. The overall percentage of the oblique translation methods is 53%, a figure that cannot be disregarded in search of trying to find out to what extent the TT is translated in an adequate or acceptable way according to the approach of Toury.

Table 5.3: The Number of Translation Methods Applied in TT1, TT2, TT3, TT4 and TT5

	Direct Translation Methods			Oblique Translation Methods			
Translation Methods	Borrowing	Calque	Literal Translation	Transposition	Modulation	Equivalence	Adaptation
TT1	0	0	14	2	2	9	0
TT2	2	1	10	0	1	3	1
TT3	0	0	5	2	3	5	3
TT4	0	0	14	1	0	2	1
TT5	1	0	7	1	0	4	0
Total Number	3	1	50	6	6	23	5
	54			40			
	Adequate Translation			Acceptable Translation			

Table 5.3. above presents the frequency of usage of the translation methods in the translation of the judgments of the ECtHR from English into Turkish which have been released in the last five years – between 2012 and 2017- related to Turkey that have the importance level 1 which denotes “high importance.” As the table illustrates, the most frequently applied translation method is literal translation with the record of 50. The second most frequent employed translation method is equivalence with the record of 23. The rest of the strategies which are approximate to each other in terms of frequency of usage are as follows: modulation is used for 6 times, transposition is used for 6 times, adaptation is used for 5 times, borrowing is used for 3 times, and calque is used just once in the translation process. Borrowing, calque and literal translation methods are classified under the direct translation methods, while transposition, modulation, equivalence and adaptation are categorized under the oblique translation methods by Vinay and Darbelnet (1995, p. 31). According to the Table 5.2 displaying the frequency of usage of the translation methods, the total account of usage of the direct translation methods equals to 54 (literal translation: 50, borrowing: 3 and calque: 1). As the relevant table illustrates, the total account of application of the oblique translation methods equals to 40

(equivalence: 23, transposition: 6, modulation: 6, adaptation: 5).

What do these numbers and the frequency of usage of the translation methods mean for the overall inferences that can be drawn from the results? As the Table 5.2 illustrates, on the basis of the analysed data, it is seen which translation methods are used more frequently in the translation of the legal terminology all of which are found and analysed in the judgments of the ECtHR related to Turkey released in the last five years having the importance level of high importance contributing to the case-law of the Court. In TT1, 27 legal terms are analysed, as the number denotes all the available terms found in the text. Thus, the number of translation methods resorted equals to 27 as well. However, it should be noted here that sometimes several methods are applied in translating one legal term, all the methods applied are explained in the commentaries under each table in the previous sections in the analysis of the terms, but the overriding method is given in the tables to be counted in the overall frequencies. This applies all the terms which are translated by using several methods.

In TT1, the most preferred translation methods are literal translation and equivalence, while transposition and modulation are used for several times, and there is no usage of borrowing, calque and adaptation. When it is seen in terms of the division of direct and oblique translation methods, direct translation methods are applied for 14 times, and the oblique translation methods are applied for 13 times, which is a clear indication of the fact that the poles of adequacy and acceptability are so close in TT1.

In the TT2, it is seen that the most employed translation method is literal translation, while equivalence is used for three times, borrowing is used twice, modulation and adaptation are used once and there is no usage of transposition when analysing all the available terms found. Looking through the division of direct and oblique translation methods, direct translation methods are used for 13 times, and the oblique translation methods are applied for 5 times, which signifies that the former methods nearly triples the latter ones, widening the gap between the poles of adequacy and acceptability in TT2.

When it comes to TT3, a different picture is drawn when compared to the TT1 and TT2. It is clearly seen that the oblique translation methods are used more frequently than the

direct translation methods. The most applied methods are literal translation and equivalence, and they are used equally. Modulation and adaptation are used equally, but not as frequent as the previous two methods. While transposition is applied twice, borrowing and calque are not adopted in translation of the TT3. However, the total usage of direct translation methods is 5, while the total number of the usage of the oblique translation methods is 13. Taking into account this, one can easily draw the consequence of that the number of usage of the oblique translation methods nearly triplets the direct translation methods, widening the gap between the poles of adequacy and acceptability in TT3 on the contrary of the TT2.

In TT4, it is seen that the most employed translation method is literal translation. While equivalence is used twice, transposition and adaptation are used once for each. Borrowing, calque and modulation are not adopted in translation of the TT4. As for this number of frequency of usage of the translation methods, direct translation methods are used more frequently than the oblique translation methods, which leads to the inference that the translation of the TT4 is so close to the pole of adequacy since the translation is made source-text oriented. Acceptability in this translation is at the lowest level when looking at the previous translated texts discussed here.

Analysing the TT5, literal translation is the most applied translation method and equivalence follows it in the second place. Borrowing and transposition are used once for each while there is no usage of calque, modulation and adaptation in the TT5. The overall usage of the direct translation methods prevail the oblique translation methods, but the gap is not so wide between the two poles of adequacy and acceptability.

When taking into account the TT1, TT2, TT3, TT4 and TT5, one can conclude that in translating the TT1, the poles of adequacy and acceptability are so close to each other. The translator preferences in the TT1 are both target-oriented and source-oriented. In TT2, the gap between these poles are widened by preferring the direct translation methods over the oblique translation methods. Therefore, it can be suggested that the TT2 is translated in a more adequate way, since the translator preferences in translating the legal terms are more source-text oriented. In TT3, since the number of usage of the oblique translation methods nearly triplets the direct translation methods, this result leads one to

the conclusion that the the gap between the poles of adequacy and acceptability are so wide and the translator preferences are so much target-oriented. Hence, it can be said that the the TT3 is translated in an acceptable way according to the approach of Toury. As for the TT4, direct translation methods are used more frequently than the oblique translation methods which is a clear indication of the fact that translation is made source-text oriented. TT4 is so close to the pole of adequacy. In TT5, the gap is not so wide between the two poles of adequacy and acceptability, since the overall usage of the direct translation methods prevail the oblique translation methods.

After discussing each TT individually, the translation methods applied in all the TTs show that the most used method is literal translation, which is followed by equivalence. Transposition, modulation, adaptation and borrowing are used several times, while calque is applied just once out of all the available terms found and analysed in the translation of the judgments of the ECtHR related to Turkey, released in the last five years. The direct translation methods are used more frequently than the oblique translation methods proposed by Vinay and Darbelnet for the taxonomies of translation procedures. One can conclude that the translations are made in a more adequate way than being acceptable. Even though the adequacy prevails over acceptability, the ratio of acceptability cannot be ignored. This leads one to the fact that both source-text oriented approach and target-text oriented approach are resorted by the translators to some extent.

Another inference that can be drawn from the analysis and the findings is that translators have a tendency to stick to specific translation approaches during the translation process. Translation is an activity governed by macro strategies and the preferences of translators which guide them in choosing for certain translation procedures. Translation methods applied by the translators point to the fact that they have adhered to translation approach of adequacy which is source-oriented and acceptability which is target-oriented during the translation process by opting for one macro strategy over the other ones while translating the judgments of the ECtHR. The methods applied by the translators imply that the translators have contemplated particular macro strategies or during the translation process employing particular lexical items, selecting particular expressions which have led to changes at the level of macro and micro strategies. It is clearly seen that generally the source-oriented approach is adhered to and the originality of the text is preserved to a

great extent, while the target-oriented approach governed by the translators should be taken into consideration as well since the frequency of usage of the macro and micro strategies governed by the translators is high as well.

In this chapter, five judgments of the ECtHR related to personal affairs and their translations in Turkish related to Turkey released in the last five years (2012-2017) are analysed on the lexical level consisting of all the available terms found. The micro strategy of Vinay and Darbelnet including seven translation methods is used in order to analyse the legal terminology of the judgments (direct translation methods: borrowing, calque, literal translation; oblique translation methods: transposition, modulation, equivalence and adaptation). The macro strategy of Gideon Toury is used in order to find out the overall translation strategy applied during the translation process questioning to what extent the translations are made in an adequate or acceptable way. The findings and the frequency of usage of the translation methods are displayed in the tables and figures above, and they are commented and discussed in detail. In the next chapter, the implications of each micro strategy and macro strategy used, and the contribution of this study to the translation studies are given within the framework of the theoretical and methodological framework. What is more, a couple of suggestions regarding what can be done more in judgment translation are presented at the very end of the next chapter.

CHAPTER 6

CONCLUSION

In this thesis a comparative analysis is conducted in order to find out which translation methods of Jean Paul Vinay and Jean Darbelnet are used in translating the legal terminology of the judgments of the ECtHR from English into Turkish. The ECtHR judgments analysed are the ones related with personal affairs that have been released in the last five years (2012-2017) related to Turkey having the high importance level according to the filter system of the HUDOC. As for the micro strategy, taxonomy of Vinay and Darbelnet is used since just the seven procedures of these two scholars are identified in the translation of the analysed terms available in the judgments. These seven methods are divided into two groups by Vinay and Darbelnet: direct translation methods and oblique translation methods. Direct translation methods which are source-oriented are borrowing, calque and literal translation. Oblique translation methods which are target-oriented are transposition, modulation, equivalence and adaptation. After evaluating the findings of the analysis of the ST and the TT, it is questioned to what extent the legal terminology in the judgments of the ECtHR are translated in an adequate or acceptable way according to the approach of Gideon Toury since adequate translation is based on the ST-oriented macro strategy while acceptable translation is based on the TT-oriented macro strategy.

Translation continues to make a significant contribution not only to the globalization but also to the harmonization of international arbitration, despite the growing use of English. Arbitration experts assert that this is a significant point as the future of international arbitration lies in its harmonization with the other legal systems (Šarčević, 2008, p. 291). Translation makes contribution to the globalization of arbitration by eliminating cultural and linguistic barriers, providing organizations from all nations with resolution of international disputes through arbitration.

In this respect, legal translation plays a significant role in a number of different aspects of international arbitration, which includes numerous documents such as the legal

documents for the proceedings, the translation of national arbitration laws into world languages, the translation of standard arbitral clauses and institutional procedural rules, and the production of multilingual instruments of international arbitration law and others (Sanders, 1999, p. 143). Legal language is tied to system, specifically; it mirrors the culture, history, evolution, and most of all the law of a particular legal system.

Each legal system deals with various legal situations in a unique way, and even though two legal systems might look alike from the outside, legal concepts and their terminology might differ to a great extent. As legal translation produces legal effects, legal translation is also unique from the other areas of subject specific translation. Therefore, the competence and profile of the translator is a subject of debate. In legal circles, it is insisted that the legal translator should be a lawyer taking into account that the lawyers are “natural legal translators” (Šarčević, 2000, p. 114). Most of the legal translation scholars such as Cao, Šarčević, Borja Albi, Smith, and de Groot agree upon the fact that the legal translator must have translation competence, linguistic qualification, good command of the legal systems and a basic knowledge of law. Concisely, it is agreed by the legal translation scholars that the legal translator must have a particular profile, who is considered a translation specialist and is an expert in all areas of law.

As for the terminology issue in translation activity, the main challenge in front of a legal translator is the “incongruency of legal systems” (Šarčević, 2000, p. 13). Šarčević makes reference to the terminological incongruence as a challenging factor for the legal translator and she points out to the so-called system-bound terms explaining this concept that all the legal systems have some terms which have no equivalent in the other legal systems, since a specific concept, procedure or action does not exist in the other legal systems (2000, pp. 232-233).

In line with the uniqueness of legal translation, the competence of a legal translator, and the legal terminology issue, the judgment translation comes up as an important translation activity for the members of the COE since the countries act accordingly with the final decision of the Court. For the accurate translation of the judgments, the ECtHR launched a few projects in recent years for translating and disseminating the judgments of the ECtHR at the COE level and for furthering the role of the ECtHR as well. By this way, the importance of the

translation of the judgments of the ECtHR into national languages and research in this field has been confirmed. All the decisions of the ECtHR are binding over the member states of the COE; hence, the ECtHR has jurisdiction over the member states. To this respect, the understanding, activity, judgments and the proceeding system of the ECtHR and the dissemination of the translations in member countries could make contributions to a better awareness of the European human rights legal system and its influence over the national courts.

In this regard, in order to support the purpose of this thesis stated at the very beginning, concrete data drawn from the 50 samples and all the available legal terms which constitute 94 terms are analysed in the previous chapter. The legal terms extracted from the ST, their translations and the translation methods applied for each legal term and a total illustration of the the most and least used translation methods of the analysed terms for the TT1, TT2, TT3, TT4 and the TT5 are given. By this way, to what extent the tendency of each TT to the source-oriented and target-oriented poles are identified and commented. Then, the total frequency of translation methods for the all the TTs are given and the overall tendency is identified.

As for the micro strategy and macro strategy applied for the analysis, the implication of the each method for the translation studies are tried to be explained as follows:

As it is illustrated on the tables and the figures in the previous chapter, the most frequently used translation methods are literal translation and equivalence. The most notable finding of the analysis is that the legal terms found in the ECtHR judgments are heavily translated literally, which points out that a source-oriented approach is applied and that can be criticized by the advocates of purity in Turkish language. This outcome derives from the nature of the legal translation. Another outstanding finding is that the equivalence method is used most commonly in the second place, which signifies that a target-oriented approach is applied heavily as well by taking into account the aspects of the target culture. The following figures give an insight about to what extent the legal terms found in the ECtHR judgments are translated in an adequate and acceptable way.

It is clear that the terms that are peculiar to the ECtHR literature are transferred to the target culture directly by applying the method of borrowing. It can be discussed whether using borrowed terms is a right method by the proponents of purity in the Turkish language; however, to overcome a gap, borrowing can be used by a translator frequently for an unknown term or concept. As Munday states borrowings are occasionally applied by a translator to add local colour to the TL (2001, p. 56). The older borrowings which become well-established in the target culture are so commonly applied that they turn into being a component of the TL terminology. For the borrowed terms in the ECtHR judgments, it is found out that the translator are generally concerned with the new borrowings which enter Turkish through translation, which are analysed in the previous chapter. The decision to borrow a SL expression with a view to introducing a component of local colour into the TL is a matter of style as a result of the message tried to be given.

The method of calque applied in the translation process becomes an integral part of the language after being used frequently in the TL. As can be seen in the example analysed, a new calque is used to fill a gap without using an actual borrowing.

As can be seen from the analysis, the method of literal translation is the most frequently applied method among the seven procedures. Vinay and Darbelnet claim that literal translation is the prescription of the author for good translation (1995, pp. 33-34). As the analysed terms demonstrate that the translated terms are reversible and complete in each other. From the standpoint of these two scholars, this assertion is accurate for the legal terms analysed in this study since literal translation is applied mostly in translating the terms that are reversible between English and Turkish.

Transposition, which is the change of one word class for another with no change of the sense of the message, is seen as the most common structural change applied by the translators as it is the case that is undertaken in translating the familiar legal terms between the language pair of English and Turkish in this thesis. For the analysed terms, it can be said that the message is the same while the parts of speech are different.

As can be seen in the analysed terms, modulation changes the semantics and the point of view of the SL terms and expressions. Modulation is seen as the standard of a qualified

translator by Vinay and Darbelnet since this method points to a very good command of both SL and the TL while transposition shows a very good command of merely the TL, as this is the case for the language pair of English and Turkish in this thesis.

It is seen that equivalence is used while translating the terms where the SL and the TL illustrate the same case by two texts using totally different structural and stylistic methods. In order to transmit the message, not the exact words but the context is translated from the SL to the TL. It is seen that while translating the institutional names and some specific names of the posts at the judiciary the equivalence method is resorted generally.

The adaptation method, which is seen as “the extreme limit of translation” by Munday, is not frequently applied in the translation of judicial texts. However, since all the legal terms found in the judgments are analysed in this thesis, some examples of the method of adaptation are encountered. The examples refers to the situation that the SL message is unfamiliar in the culture of the TL, which includes changing the cultural reference of the messages when a situation in the source culture does not exist in the target culture. In such cases it is seen that the translators materialize a new situation that can be regarded as being equivalent. Adaptation can thus be illustrated as a special sort of equivalence. However, the rejection to employ the method of adaptation is constantly identified within legal translation since it has an effect not only on the syntactic structure, but also on the enhancement of ideas and how they are characterized within the text.

For the first research question of the study “*Which translation methods of Jean-Paul Vinay and Jean Darbelnet are used in the translation of the judgments of the ECtHR?*” the frequency of usage of the methods are given above and what they mean for the translation studies are explained in detail. The translation methods employed in the TTs demonstrate that the most used method is literal translation, and what follows is equivalence. Transposition, modulation, adaptation and borrowing are applied several times, while calque is used just once. The direct translation methods are used more frequently than the oblique translation methods.

The second research question is “*Are the judgments of the ECtHR translated in an adequate or acceptable way? And to what extent this approach of Gideon Toury is applied*

to?” In line with the analysis of the legal terms, the frequent usage of the direct translation methods of literal translation points out to the fact that the translation of the judgments are made ST-oriented, which is a clear indication of the adequacy of translation according to the approach of Gideon Toury. As mentioned before, the translator’s macro-level decisions are defined by many scholars of translation studies. These common approaches are the dichotomies with source-text focus at one end of the spectrum, and target-text inclination at the other (Vesteraager, pp. 120-121). In this thesis, the translator’s strategies at macro level is referred to as either a “adequate translation” based on the ST-oriented macro strategy (focus on the form and content of the source text) or an “acceptable translation” based on the TT-oriented macro strategy (focus on the effect of the target text) (Toury, 1995, pp. 53-70). According to Toury “a general choice is made by translators” (1995, p. 56). Therefore, translators could make themselves liable to the ST or to the TL. The poles of adequacy and acceptability are on a continuum as no translation is totally adequate or totally acceptable” (Toury, 1995, p. 57). Taking into account the translation methods applied in the translation of the judgments in this thesis, it is seen that direct translation methods are used more frequently than the oblique strategies in the translation process. This is a clear indication of that the legal terminology in the judgments of the ECtHR are translated in a ST-oriented way at macro level by focusing both on form and content of the ST prevailingly, which makes the translation of them an adequate translation.

In conclusion, as translating judgments of the ECtHR is essential for the members of the COE, undertaking the translation of these texts is a significant task. The role of translation in the enhancement of international right system grow as translation enables crucial standard of language access to a fair trial in the court and ensures access to all court services.

It is worth pointing out that there is no published research about the translation of the judgments of the ECtHR and which translation methods are applied in translating the legal terminology of the ECtHR judgments. Thus, this thesis contributes to the field of translation studies, as it presents completely new data. Taking into account that, this study carried out in the area of the judgment translation will hopefully create awareness among the legal translators and academic circles, and it can even make further contribution to

the improvement of judgment translations. Besides, further studies on translating judgments on syntactical and textual level may contribute to the judgment translation which is a completely new field in translation studies.



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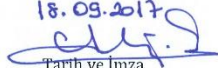
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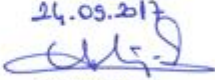
APPENDIX 1: ETİK KURUL İZİN MUAFİYET FORMU

 HACETTEPE ÜNİVERSİTESİ SOSYAL BİLİMLER ENSTİTÜSÜ TEZ ÇALIŞMASI ETİK KURUL İZİN MUAFİYETİ FORMU
HACETTEPE ÜNİVERSİTESİ SOSYAL BİLİMLER ENSTİTÜSÜ MÜTERCİM TERCÜMANLIK ANABİLİM DALI BAŞKANLIĞI'NA
Tarih: 18.09.2017
Tez Başlığı / Konusu: <u>Ancap İnsan Hakları Mahkemesi Kararlarında Yer Alan</u> <u>Hukuk Terminolojisinin Çevirisinde Kullanılan Yöntemler</u>
Yukarıda başlığı/konusu gösterilen tez çalışmam: 1. İnsan ve hayvan üzerinde deney niteliği taşımamaktadır. 2. Biyolojik materyal (kan, idrar vb. biyolojik sıvılar ve numuneler) kullanılmamasını gerektirmemektedir. 3. Beden bütünlüğüne müdahale içermemektedir. 4. Gözlemsel ve betimsel araştırma (anket, ölçek/skala çalışmaları, dosya taramaları, veri kaynakları taraması, sistem-model geliştirme çalışmaları) niteliğinde değildir.
Hacettepe Üniversitesi Etik Kurullar ve Komisyonlarının Yönergelerini inceledim ve bunlara göre tez çalışmamın yürütülebilmesi için herhangi bir Etik Kuruldan izin alınmasına gerek olmadığını; aksi durumda doğabilecek her türlü hukuki sorumluluğu kabul ettiğimi ve yukarıda vermiş olduğum bilgilerin doğru olduğunu beyan ederim.
Gereğini saygılarımla arz ederim. 18.09.2017  Tarih ve İmza
Adı Soyadı: <u>EBRU ALTUN ORHAN</u> Öğrenci No: <u>N11128742</u> Anabilim Dalı: <u>MÜTERCİM TERCÜMANLIK</u> Programı: <u>İNGİLİZCE MÜTERCİM TERCÜMANLIK</u> Statüsü: ☒ Y.Lisans ☐ Doktora ☐ Bütünleşik Dr.
<u>DANIŞMAN GÖRÜŞÜ VE ONAYI</u>  PROF. DR. AYFER ALTAY
Detaylı Bilgi: http://www.sosyalbilimler.hacettepe.edu.tr Telefon: 0-312-2976860 Faks: 0-3122992147 E-posta: sosyalbilimler@hacettepe.edu.tr

APPENDIX 2: ETHICS BOARD WAIVER FORM FOR THESIS WORK

 HACETTEPE UNIVERSITY GRADUATE SCHOOL OF SOCIAL SCIENCES ETHICS BOARD WAIVER FORM FOR THESIS WORK
HACETTEPE UNIVERSITY GRADUATE SCHOOL OF SOCIAL SCIENCES TO THE DEPARTMENT OF ENGLISH TRANSLATION AND INTERPRETING PRESIDENCY
Date: 18.09.2017
Thesis Title / Topic: <u>Methods Used in the Turkish Translation of Legal Terminology in the Judgments of the European Court of Human Rights</u>
My thesis work related to the title/topic above: 1. Does not perform experimentation on animals or people. 2. Does not necessitate the use of biological material (blood, urine, biological fluids and samples, etc.). 3. Does not involve any interference of the body's integrity. 4. Is not based on observational and descriptive research (survey, measures/scales, data scanning, system-model development).
I declare, I have carefully read Hacettepe University's Ethics Regulations and the Commission's Guidelines, and in order to proceed with my thesis according to these regulations I do not have to get permission from the Ethics Board for anything; in any infringement of the regulations I accept all legal responsibility and I declare that all the information I have provided is true.
I respectfully submit this for approval. 18.09.2017  Date and Signature
Name Surname: <u>EBRU ALTUN ORHAN</u> Student No: <u>N11128742</u> Department: <u>TRANSLATION AND INTERPRETING</u> Program: <u>TRANSLATION AND INTERPRETING IN ENGLISH</u> Status: ☒ Masters ☐ Ph.D. ☐ Integrated Ph.D.
<u>ADVISER COMMENTS AND APPROVAL</u> Approved  PROF. DR. AYFER ALTAY

APPENDIX 3: ORJİNALLİK RAPORU

	HACETTEPE ÜNİVERSİTESİ SOSYAL BİLİMLER ENSTİTÜSÜ YÜKSEK LİSANS/DOKTORA TEZ ÇALIŞMASI ORJİNALLİK RAPORU
HACETTEPE ÜNİVERSİTESİ SOSYAL BİLİMLER ENSTİTÜSÜ MÜTERCİM TERCÜMANLIK ANABİLİM DALI BAŞKANLIĞI'NA	
Tarih: <u>24.09.2017</u>	
Tez Başlığı / Konusu: <u>Avrupa İnsan Hakları Mahkemesi Kararlarında Yer Alan</u> <u>Hukuk Terminolojisinin Gevresinde Kullanılan Yöntemler</u>	
Yukarıda başlığı/konusu gösterilen tez çalışmamın a) Kapak sayfası, b) Giriş, c) Ana bölümler ve d) Sonuç kısımlarından oluşan toplam <u>115</u> ... sayfalık kısmına ilişkin, <u>24.09.2017</u> tarihinde şahsım/tez danışmanım tarafından Turnitin adlı intihal tespit programından aşağıda belirtilen filtrelemeler uygulanarak alınmış olan orijinallık raporuna göre, tezin benzerlik oranı % <u>7</u> 'tür.	
Uygulanan filtrelemeler: 1- Kabul/Onay ve Bildirim sayfaları hariç, 2- Kaynakça hariç 3- Alıntılar hariç 4- 5 kelimeden daha az örtüşme içeren metin kısımları hariç	
Hacettepe Üniversitesi Sosyal Bilimler Enstitüsü Tez Çalışması Orijinallık Raporu Alınması ve Kullanılması Uygulama Esasları'nı inceledim ve bu Uygulama Esasları'nda belirtilen azami benzerlik oranlarına göre tez çalışmamın herhangi bir intihal içermediğini; aksinin tespit edileceği muhtemel durumda doğabilecek her türlü hukuki sorumluluğu kabul ettiğimi ve yukarıda vermiş olduğum bilgilerin doğru olduğunu beyan ederim.	
Gereğini saygılarımla arz ederim.	<u>24.09.2017</u>  Tarih ve İmza
Adı Soyadı: <u>EBRU ALTUN ORHAN</u> Öğrenci No: <u>N11128742</u> Anabilim Dalı: <u>MÜTERCİM TERCÜMANLIK</u> Programı: <u>İNGİLİZCE MÜTERCİM TERCÜMANLIK - TEZLİ YÖKSEK LİSANS</u> Statüsü: ☒ Y.Lisans ☐ Doktora ☐ Bütünleşik Dr.	
DANIŞMAN ONAYI UYGUNDUR.  PROF. DR. AYFER ALTAY	

APPENDIX 4: THESIS ORIGINALITY REPORT

	HACETTEPE UNIVERSITY GRADUATE SCHOOL OF SOCIAL SCIENCES THESIS/DISSERTATION ORIGINALITY REPORT										
HACETTEPE UNIVERSITY GRADUATE SCHOOL OF SOCIAL SCIENCES TO THE DEPARTMENT OF TRANSLATING AND INTERPRETING IN ENGLISH											
Date: <u>24.09.2017</u>											
Thesis Title / Topic: <u>Methods Used in the Turkish Translation of Legal Terminology in the Judgments of the European Court of Human Rights</u>											
According to the originality report obtained by myself/my thesis advisor by using the Turnitin plagiarism detection software and by applying the filtering options stated below on <u>24/09/2017</u> for the total of <u>115</u> pages including the a) Title Page, b) Introduction, c) Main Chapters, and d) Conclusion sections of my thesis entitled as above, the similarity index of my thesis is <u>7</u> %.											
Filtering options applied: 1. Approval and Declaration sections excluded 2. Bibliography/Works Cited excluded 3. Quotes excluded 4. Match size up to 5 words excluded											
I declare that I have carefully read Hacettepe University Graduate School of Social Sciences Guidelines for Obtaining and Using Thesis Originality Reports; that according to the maximum similarity index values specified in the Guidelines, my thesis does not include any form of plagiarism; that in any future detection of possible infringement of the regulations I accept all legal responsibility; and that all the information I have provided is correct to the best of my knowledge.											
I respectfully submit this for approval.	<u>24.09.2017</u>  Date and Signature										
<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20%;">Name Surname:</td> <td><u>EBRU ALTUN ORHAN</u></td> </tr> <tr> <td>Student No:</td> <td><u>N11128742</u></td> </tr> <tr> <td>Department:</td> <td><u>TRANSLATION AND INTERPRETING IN ENGLISH</u></td> </tr> <tr> <td>Program:</td> <td><u>MASTER OF ARTS IN TRANSLATION AND INTERPRETING IN ENGLISH - MA</u></td> </tr> <tr> <td>Status:</td> <td> ☒ Masters ☐ Ph.D. ☐ Integrated Ph.D. </td> </tr> </table>		Name Surname:	<u>EBRU ALTUN ORHAN</u>	Student No:	<u>N11128742</u>	Department:	<u>TRANSLATION AND INTERPRETING IN ENGLISH</u>	Program:	<u>MASTER OF ARTS IN TRANSLATION AND INTERPRETING IN ENGLISH - MA</u>	Status:	☒ Masters ☐ Ph.D. ☐ Integrated Ph.D.
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Status:	☒ Masters ☐ Ph.D. ☐ Integrated Ph.D.										
ADVISOR APPROVAL											
APPROVED.  PROF. DR. AYFER ALTAY											