



CASTIÑEIRA, M. Teresa (2006)
«Precisión del lenguaje y principio de legalidad»
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The article “Precisión del lenguaje y principio de legalidad” by M. Teresa Castiñeira is included in the book *Terminología y derecho: complejidad de la comunicación multilingüe*, edited by M. T. Cabré, C. Bach and J. Martí. This three-hundred-page book contains the texts of lectures, presentations and roundtables which took place at the *V Actividades de IULATERM de Verano* (4-14 July 2005) in the *V Simposio Internacional de Terminología* and the *V Escuela Internacional de Verano de Terminología*. Other articles in the same book are written in Spanish, Catalan or French by distinguished professionals who work in terminology, translation and applied linguistics in general, such as L. González, J. Gómez de Enterría, R. Greeinstein, L. Santamaría, N. Gallardo, E. Ferran and A. Pou.

M. Teresa Castiñeira, the author of *Precisión del lenguaje y principio de legalidad*, is a Professor of Criminal Law at Pompeu Fabra University. Over her long career she has become a specialist in legislative technique and legal terminology. An example of her expertise in both fields is the fact that she has jointly edited the translation of the Criminal Code into Catalan with M. T. Cabré and J. Silva. The article being reviewed here is the written version of the keynote lecture, also called *Precisión del lenguaje y principio de legalidad*, given at the International Symposium on Terminology referred to above. As the reader will find in the introduction to the book from which the article being reviewed is taken, the International Symposia on Terminology organized by IULA are interdisciplinary meetings of specialists interested in terminology, and this fifth edition was dedicated to the interrelationships between language and the law.

In her article Castiñeira aims to demonstrate that, according to the Principle of Legality established in the Spanish Constitution, criminal laws should be more precise and indicate exactly what actions are prohib-

ited and the consequences any person who does not abide by the law will suffer.

In her theoretical remarks the author stresses the fact that because the Criminal Law is the only branch of the legal system that can impose prison sentences (and imprisonment is always harsher than other sanctions, such as fines or disqualification for instance) it has some special safeguards. Among them, there is the *Principle of Legality*, which as its title indicates is one of the main topics of the article. In general terms, according to this principle criminal laws should be strict, written and enacted prior to the conduct they criminalize (“*lex scripta, praevia et certa*”).

Castiñeira explains that the Principle of Legality gives origin to the *mandate of accuracy* (*mandato de precisión* or *principio de taxatividad*) according to which criminal laws must be precise and, as the author emphasizes several times, let citizens know which actions are forbidden by law as well as the consequences in case of infringement. This is meant to safeguard legal security and guarantee impartiality, i.e. people must be able to know in advance which deeds constitute an offence and what may happen to them if they commit such offences, while arbitrary actions must be avoided so that all citizens are treated equally under the Law.

In order to exemplify what is meant by *precision* or, perhaps better said, by the lack of precision of legal language, Castiñeira presents numerous articles from the prevailing Spanish Criminal Code (*inter alia* Articles 159, 178, 250, 273, 319, 325, 369 and 370) that contain vague expressions:

“Fraud will be punished [...] when: It has *special gravity*, considering the amount of the fraud, the entity of the damage and the economic situation in which the victim or his/her family is left”. (Article 250)

“Impose punishment to any person who makes [...] a model or industrial or artistic drawing or topography of a semiconductor product for a third party”. (Article 273)

“The promoters, constructors or technical directors who carry out an *unauthorized construction* [...] shall be punished by imprisonment”. (Article 319)

“Those cases in which the amount of the drug [...] notably exceeds the amount considered as being of *marked importance*, or when ships or planes are used as means of transport [...] or when three or more circumstances provided for herein are concurrent shall be considered to be of *extreme gravity*”. (Article 370)

Castiñeira questions the precision in the content of expressions such as the ones in italics in the extracts from the articles above. When does a fraud have *special gravity*? What is the *topography of a semiconductor product*? What does *unauthorized construction* mean? Who are the *promoters* and *constructors*? When is the quantity of drug to be considered of *marked importance*? What should be understood by *extreme gravity*? What does ‘Where is the level set?’ mean?

Questions of this sort summarize the essence of Castiñeira’s article. Throughout her exposition she deals with these issues as she illustrates, through well-chosen examples with different characteristics, the lack of precision in the language of criminal laws. The author provides examples of vague concepts and also of clearly technical ones (such as *topography of a semiconductor product*), which, in her view, lead to problems in understanding content.

Castiñeira also looks at the so-called *blank criminal laws* (*leyes penales en blanco*) (i.e., a criminal law that defines a penalty for a criminal offence that is in turn defined in another law) and in particular what she calls the ‘special cases’ of drug and terrorist offences. Here the requirements derived from the principle of legality seem to be reduced and, she argues, this is shown in the language, which is even vaguer. Article 576 (related to collaboration with armed groups), for example, enumerates a series of acts of collaboration for the sake of precision; however, the element of vagueness or lack

of precision then appears in the final expression, which says “[...] or any other equivalent form of collaboration”.

Through this interesting description of the instances of a lack of precision in criminal language, Castiñeira points out that there have been various legislative reforms with the aim of rendering some legal concepts more specific. Nonetheless, as the Constitutional Court states in its Ruling 89/1993 concerning the unconstitutionality of the expressions ‘terrorist element’ or ‘terrorist organisation’: “Not one concept used by the legislator can be free of ambiguity or vagueness, indelible signs of our finite condition [...] laws, as the work of humans, necessarily contain ambiguity, vagueness or imprecision; the problem that arises is a ‘problem of limits’”.

In this respect Castiñeira argues that even though absolute precision is hardly possible, in her view laws are improvable and can achieve a higher degree of precision.

From the very beginning the author of *Precisión del lenguaje y principio de legalidad* displays her great knowledge and expertise about the legal branch and the linguistic and terminological aspects she deals with. This, together with the quasi-spoken style of the text (it is, after all, the written version of a lecture) renders the reading of this interdisciplinary text an agreeable experience for anyone who has an interest in law or language from different perspectives. There is little doubt that this text is a valuable contribution to the idea that if precise terminology in all legal texts is highly desirable, in the field of criminal law it is even more so.

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