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Challenges in translating legal terminology

Abstract: This research work is a proof of an attempt to find peculiar aspects of legal terminology as a part of the language vocabulary. It helped us understand better the process of terms evolution and their development within the framework of one specialized language. It is a kind of analysis and foreseeing of the legal terms creation, assimilation and their implementation into the actual specialized vocabulary.
This research is a good source of information for terminologists helping them to choose what term should be used, what information and meaning it designates and when it should be used.
This field needs a permanent study, because this specialized field is always in evolution that depends on the country development and progress.

Keywords: term, equivalence, interpretation, challenge, strategy, system, etymology

Introduction

Much has been written about the challenges of legal translation and its pitfalls in general, in particular, the problems is happening at the interface between different legal systems and languages in the translation of EU law of equivalence and congruency. It has been argued that translators at supranational institutions function without any theoretical analysis at present, and it has been observed that 'each institution has its own usually unwritten guidelines for translators The search for a theoretical account of what judgments leads into the field of applied comparative law. It soon

becomes evident that the analysis of the legal translation experience in the EU is spread across different disciplines: comparative law, European Union law and Translation Studies.

Overview on the Research

In our scientific research, we define *a term* as a word or a word combination belonging to the specific field of usage, either specially created or borrowed for determining a specific concept and based on a definition. In that way, «*a legal term* is a word or a word combination which stands for a general name of a legal concept, has a specific and definite meaning, and is often used in legislation and legal documents» (*The Importance of Legal Language*).

The language of law as a special sublanguage has its own content and a set of specific characteristics, which vary depending on a language system. However, irrespective of a language, the major part of its distinctive features and peculiarities are explained by the influence of historical, cultural, social and political factors on the language community.

Contemporary language of law makes several requirements relating to legal terms that should be taken into consideration in the process of translating. The *legal term* should meet the following important requirements: satisfy the rules and norms of a corresponding language; be systematic; correspond to a certain definition oriented to a certain concept; be relatively independent of the context; be precise; be as concise as possible; aim at one-to-one correspondence (within the certain terminological system); be expressively neutral; be euphonical (*Ibid.*).

English Legal Language

It is impossible to fully appreciate the nature of legal language without having some familiarity with its history. There is no single answer to the question of how legal language came to be what it is. Since much of the explanation can be found in the historical events, which have left their mark on the language of English law, we should first take a glance at the historical background of today's British legal language.

Like their language, the law of the British Celts had little lasting impact on the English legal system. The Germanic invaders who spoke Anglo-Saxon or Old English developed a type of legal language, the remnants of

which have survived until today, such as *bequeath*, *theft, guilt, land*. The Anglo-Saxons made extensive use of alliteration in their legal language, which survived in today's English legal language in expressions such as *aid and abet*, *any and all*, etc.

Even without alliteration, parallelism was an important stylistic feature of Anglo-Saxon legal documents, which has also survived. Even today witnesses swear to tell *the truth, the whole truth, and nothing but the truth* (*Legal Language as Distinctive Discourse*).

A significant event for the language and law of England was the spread of Christianity in 597, since it promoted writing in Latin. Through the Roman Catholic Church the Latin language once again had a major presence in England. Its influence extended to legal matters, particularly by means of the Canon Law, through which the Church regulated religious matters such as marriage and family. The use of Latin as legal language introduced terms like *client, admit* and *mediate* (*Ibid.*).

After the Duke of Normandy claimed the English throne and invaded England in 1066, the main impact of this Norman Conquest on the written legal language was to replace English with Latin. Beginning in 1310, the language of statutes was French, but it was not until two hundred years after the Conquest that French became the language of oral pleadings in the royal courts. For the next one or two centuries French maintained its status as England's premier legal language. However, in 1417, while fighting the French, King Henry V broke all linguistic ties with his Norman ancestry and decided to have many of his official documents written in English.

Despite the emergence of French, Latin remained an important legal language in England, especially in its written form. The fact that writs were drafted in Latin for so long explains why even today, many of them have Latin names. The use of Latin and tireless repetitions by the judges have endowed these legal maxims with a sense of timelessness and dignity; moreover, they reflect an oral folk tradition in which legal rules are expressed as sayings due to the ease of remembering a certain rhythm or rhyme.

These poetic features are still occasionally found in the English legal language. Latin has also remained in expressions relating to the names of cases and parties; for example, in England the term for the crown in criminal case names is *Rex or Regina* (*Ibid.*).

When Anglo-French died out as a living language, the French used by lawyers and judges became a language exclusive to the legal profession. It

was incomprehensible both to their clients and to the speakers of ordinary French. Legal French also contained many terms for which there were no English equivalents.

Several French terms are still common in legal English such as *accounts payable/receivable, attorney general, court martial*. The most lasting impact of French is the tremendous amount of technical vocabulary that derives from it, including many basic words in the English legal system, such as *agreement, arrest, estate, fee simple, bailiff, council, plaintiff* and *plea*. As in the early Anglo-Saxon influence, which had phrases featuring the juxtaposition of two words with closely related meaning, which are often alliterative such as *to have and to hold*, this doubling continued in legal French, often involving a native English word together with the equivalent French word, since many people at the time would have been partially bilingual and would understand at least one of the terms, for example *acknowledge and confess*, *had and received, will and testament, fit and proper* (*Ibid*.).

As we see through the Middle Ages, the legal profession made use of three different languages. During the rest of 17th century, Latin and legal French continued their slow decline.

In 1731, Parliament permanently ended the use of Latin and French in legal proceedings; however, it became difficult to translate many French and Latin terms into English. With another statute, it was provided that the traditional names of writs and technical words would continue to be in the original language and the ritualistic language remained important. The exact words of legal authorities mattered very much to the profession. Rewriting an authoritative text in your own words was considered to be dangerous and even subversive.

Once established, legal phrases in authoritative texts take on a life of their own; you meddle with them at your own risk. He adds that, in authoritative written texts, the words will remain the same even if the spoken language and indeed the surrounding circumstances have changed, and lawyers will use the same language even if the public no longer understands it. Once this happens, the professional class that is trained in the archaic language of the texts becomes indispensable.

Therefore, the English legal language is characterized by a specific set of terms. First of all, it comprises numerous Latin words and phrases (ex. *lex loci actus, res gestae, corpus delicti, lex domicilii,* etc.). It also has words of the Old and Middle English origin, including compounds which

are no longer in common usage (*aforesaid, hereinabove, hereafter, whereby*, etc.). Besides, the English legal language includes a large amount of words derived from French (*appeal, plaintiff, tort, lien, estoppel, verdict* etc.). The language of law also uses formal and ceremonial words (*I do solemnly swear, Your Honour, May it please the court...)* and technical terms with precise meanings (*defendant, negligence, bail* etc.) (*The Importance of Legal Language*). Thus, the present content of the English language of law is due to the influence of different languages and that has a historical explanation.

All these developments throughout history have led to an obtuse, archaic and verbose legal language in English, which is one of the main reasons of the difficulties encountered by Romanian translators in translating legal texts written in English.

Romanian Legal Language

Being considered as a whole, the legal terminology is influenced by the political, social and cultural context, in which it is used. As a result, it reflects in the plane of linguistic expression, the changes which occur in the society, the reflection being mediated by the legal system.

As follows, we will try to analyze the three stages from the history of the Romanian legal terminology, in the order they appear in the works of reference:

1. The first legal rules, the so-called *pravile*, translated and printed in Moldova and Walachia in the middle of the 17th century.

The first rules with legal power date from the 16th century, being represented by rules of mixed and heterogeneous character (legal and canonic). The first codes of legal rules were translated from Greek and printed in Moldova in 1646 and in Walachia 1652.

The legal vocabulary of these first texts had popular and traditional characteristics, being mainly represented by old Romanian words, some of them used with specialized intention, for example *arătare – proof, tocmire – contract, a feri – to respect the law, a învăța – to order,* etc. (*Case of Deliuchin v Moldova Romanian*).

The dialectal peculiarities were present at the phonological, morphological and lexical levels. From the lexical point of view, it is worth mentioning some Slavonic borrowings: *canon – torture, dealã – misdemeanor, zapis – document*, etc., and as well, the presence of compound

words, even phrases to name a concept: *făcător de rău – delinquent*, *lucrurile ce sunt împregiur – circumstances* (*Ibid.*).

2. The period between 1780 (when new legal rules appeared) and 1864-1865 (when the legislative unification of the Romanian Principalities under Alexandru Cuza was made).

In this period, the Romanian legal terminology is marked by the contradiction between the tradition and the innovation. Therefore, in the legal vocabulary, we can observe the coexistence of words of common usage (which represented in that period 52% of the legal vocabulary, with a Latin predominance), many archaic words (*gloabă – fine, jalobă – complaint*), as well as many borrowings. The main sources of the borrowings were Latin (for example *act, autoritate, contract, testament*), Turkish (for example *avaiet – tax, sinet – act*, etc.), Neo-Greek (for example *pronomio – advantage, dicheoma – aw*, Russian (for example *cinovnic – official, delă– affair*) (*Ibid.*).

3. The period after 1865, when the Romanian legal terminology was modernized and began to acquire the form that it has nowadays.

In comparison with the previous periods, in this period was given a more precise definition of the legal texts, the models of their composition and organization.

The biggest contradictions were between the innovatory tendencies, which characterized the terminology, and the conservatory, traditional ones, present in some fields of syntax and phraseology.

The main tendency in the evolution of the syntax of the Romanian legal language is the simplification and the specialization of the syntactic structures and of the correlative elements, in order to ensure a coherent, logical and clear expression, which would prevent the ambiguity and the subjective interpretation of the law. Therefore, the unusual constructions, which resulted from the influence of the law sources used as a model at the creation of the first modern Romanian codes, were eliminated or simplified and adapted to the syntactic requirements of the Romanian language.

The archaisms were gradually eliminated and replaced by neologisms, mainly of Latin origin, for example *codica – cod* (code), *clironom – moştenitor* (inheritor), *diată – testament* (will), *sprafcă – anchetă, osândit – condamnat* (convicted), *furtişag – fur*t (burglary), *gonit – expulzat* (expelled) (*Ibid.*)

At the same time, contemporary Romanian legal language has been enriched by the new law terms derived from English (for example *leasing*

– leasing, antitrust – antitrust, corporative – corporate, factoring – factoring, impeachment – impeachment, speaker – speaker, etc.) (*Ibid.*)

The evolution of the Romanian legal language was directed to ensuring the clarity and the concision, in a process of specialization and modernization at all the levels. If we take the percentage of interference of the common vocabulary and the specialized legal terminology as a criterion, than it can be observed a decrease of the number of the words of common usage until the 20th century. The Romanian legal terminology is marked by the Latin and English neologisms, which allow a precise and unambiguous expression of the legal concepts.

Thus, English and Romanian legal languages are characterized by their own specific features, which are explained by the historical, political, social and cultural influences.

General Features of Legal Language

The general features of legal language will be discussed applied to both: English and Romanian legal languages. As David Mellinkoff has suggested, *legalese* is a way of «*preserving a professional monopoly by locking up the trade secrets in the safe of an unknown tongue*» (Mellinkoff, *The Language of the Law* 101). On the other hand, as Peter Tiersma suggests quoting from Sir Edward Coke, lawyers justify keeping the laws in an *unknown tongue* by pretending *to protect the public* (Tiersma, *Some Myths About Legal Language*).

Lawyers tend to defend their technical vocabulary as essential to communication within the profession, since they can easily understand each other using the special terminology. Studying law is in a large measure studying a highly technical and frequently archaic vocabulary and a professional argot (Philips, *7 things you should know about legal document translation*).

Law is a profession of words. The general features of legal language that apply to both English and Romanian legal languages are the following: it is different from ordinary language with respect to vocabulary and style.

One prominent feature of legal style is very long sentences. This predilection for lengthy sentences both in Romanian and in English is due to the need to place all information on a particular topic in one complete unit in order to reduce the ambiguity that may arise if the conditions of a provision are placed in separate sentences.

Another typical feature is joining together the words or phrases with the conjunctions *and, or* in English and *și, sau* (meaning *and*, *or*) in Romanian. Peter Tiersma suggests that these conjunctions are used five times as often in legal writing as in other prose styles (*Ibid.*).

Thirdly, there is abundant use of unusual sentence structures in both languages. The law is always phrased in an impersonal manner to address several audiences at once. For example a lawyer typically starts with *May it please the court* addressing the judge or judges in the third person (*The Importance of Legal Language*).

Another feature is the flexible or vague language. Lawyers both try to be as precise as possible and use general, vague and flexible language. Flexible and abstract language is typical of constitutions, which are ideally written to endure over time (Philips, *op. cit.*).

The features of *legalese* that create most problems are its technical vocabulary and archaic terminology. Both Romanian and English legal languages have retained words that have died out in ordinary speech, the reasons of which have been explained above. Historical factors and stylistic tradition explain the character of present-day English and Romanian legal languages. Many old phrases and words can be traced back to Anglo-Saxon, old French, and Medieval Latin, while in Romanian they can be traced back to the Latin, Slavonic and even, more rarely, to Persian used in the Ottoman Empire.

Archaic vocabulary and the grammar of authoritative older texts continue to influence contemporary English and Romanian legal language. Just as the Bible is the authoritative source of religion for believers, documents such as statutes, constitutions, or judicial opinions are the main sources of law for the legal profession (*Legal Language as Distinctive Discourse*).

Legal language is conservative because reusing tried and proven phraseology is the safest course of action for lawyers. Archaic language is also authoritative, even sounds majestic both in Romanian and English languages.

In both legal languages, there are many words, which have a legal meaning very different from their ordinary meanings. Peter Tiersma calls the legal vocabulary that looks like ordinary language but which has a different meaning peculiar to law as *legal homonyms* (Tiersma, *op. cit.*). This is one of the problematic features in translation.

There are also synonyms in legal languages of both Romanian and English, that is, different words with the same meaning. One of the features of legal language, which makes it difficult to understand and translate (for an ordinary translator/reader) of course, is its unusual and technical vocabulary.

Another feature of the English legal language is the modal verb *shall*. In ordinary English, *shall* typically expresses the future tense, while in English legal language, *shall* does not indicate futurity, but it is employed to express a command or obligation (*Legal Language as Distinctive Discourse*). However, in Romanian legal documents, the way of expressing legal obligation is using either simple present tense or corresponding verbs which express the obligation.

As we have seen, each legal system is situated within a complex social and political framework, which responds to the history, uses and habits of a particular group. This complex framework is seldom identical from one country to another, even though the origins of the respective legal systems may have points in common.

The diversity of legal systems makes research in the field of legal terminology more difficult because a particular concept in a legal system may have no counterpart in other systems. Sometimes, a particular concept may exist in two different systems and refer to different realities, fact that raises the problem of documentation and legal lexicography. Legal translation implies both a comparative study of the different legal systems and an awareness of the problems created by the absence of equivalents.

The translation of legal texts is a practice boasting a long history. The best-known artefacts in this field include the peace treaty between Egypt and the Hittite Empire in 1271 BC as well as the translation of the *Corpus Iuris Civilis* into numerous languages after its initial translation into Greek (Galdia M., *Comparative Law and Legal Translation* 2). The translators of these and other legal texts from past centuries – most of whom remain unknown to us – must certainly have reflected on the methodological problems associated with their complex and demanding task. Unfortunately, these reflections have not been handed down in history.

To date, legal translation has primarily been researched through the perspective of terminology. In this regard, the emphasis has fallen largely on the question of how terms indigenous to one legal system can be conveyed in the equivalent terms of another legal system. Moreover, legal linguistics has shown that the transfer of information not only takes place

within the context of legal systems, but also concerns two predominantly technical language systems (*Ibid.* 3). This poses two significant problems. First, there is the question of the conditions under which the target legal text corresponds to the source legal text, whereby the requirements of equivalence must be ascertained in the context of a technical language. Second, specific problems must be resolved, depending on which source language is being translated into which target language. After all, a legal system with numerous institutions that have developed over time represents only one of challenges for the translator. The language system itself with its syntactic and semantic implications places certain demands on the translator and even creates limits for the translation. Legal translation has been described as the practical application of both linguistic and legal knowledge. Interdisciplinary research into both translation theory and comparative methodology in the field of legal translation is therefore a logical consequence for the analysis of the problems encountered. However, only a handful of chapters in more recently published English works on comparative law are devoted to the question of legal translation (Bomberg and Stubb, *The European Union: How Does It Work?* 43).

The field of Legal Linguistics is an emerging subject and it has been argued that cooperation across those disciplines that take an interest in the workings of language in law does not occur. Bridging institutional and disciplinary boundaries is the aim of multidisciplinary research, which is geared towards the solution of practical problema.

It often appears as if legal translation in the EU is an administrative task, which should not cause too much room for discussion other than as concerns issues of costs and management issues. Some authors at the other end of the spectrum argue that the comparison of laws is extremely complex and that legal translation is impossible. However, the fact that in the EU legal translation and the production of multilingual language versions takes place on a daily basis proves that language is the most important tool for integration. Despite the difficulties that are encountered, in the words of one famous linguist *to understand is to translate*, the significance of the language is indisputable (*Ibid.* 52). Understanding the conundrum of the translation of legal language poses particular difficulties and is different from other fields of translation. The translation of law is a special type of cultural transfer insofar as the legal contents of one legal order and cultural community are being transferred into another legal order. Legal writing has been described as

> typically ritualistic and archaic, being subject to very strict stylistic conventions in terms of register and diction as well as highly codified genre structures. All this is further complicated by the culturally mediated nature of legal discourse, which determines profound differences in categories and concepts between legal systems, and in particular between English law and its Roman-Germanic continental counterparts, suggesting some degree of incommensurability between texts produced within the framework of common and civil law systems respectively (Grossman, *Comparative Law and Language* 25).

The present age of globalization is marked by the international and supranational law gaining on importance at the cost of lower levels of the law. As a result, the formerly typically bilingual legal translation process has evolved into a multilingual communication in the law. However, since law is by nature a culture-bound phenomenon, for the said multilingual communication to take place, the translators must overcome not only the linguistic boundaries, but also that of different legal systems.

It is impossible to present a consistent model of procedure applicable to all types of translation. Whereas various contributions on the translation theory reveal the intentions to devise a global technique of translation, these attempts are successful as long as, besides making general statements, they leave room for exceptions and adaptations. In greatly simplified terms, we may say that every translation act should involve source-text analysis, as well as define the purpose of translation, and prospective functions of the target text.

Undoubtedly, the type of text that is to be translated plays a primary role in the selection of proper translation techniques.

The theory of translation is based on an understanding of two texts: a source text, which is to be translated, and a target text, which is the result of the actual translation process. The task of the translator is to establish a relationship of equivalence between the source and target texts, that is, a substantive homogeneity.

In this age of globalization, the need for competent legal translators is greater than ever. This perhaps explains the growing interest in legal translation not only by linguists but also by lawyers, the latter especially over the past 10 years. Although some scholars believe that lawyers analyze the subject matter from a different perspective, it has been recommended that lawyers also take account of contributions by linguists.

One of the main tasks of translation theorists is to identify criteria to aid translators select an adequate translation strategy. This presumes, of

course, that the translator is vested with the power to make such decisions (*Ibid.* 92).

At first, it was believed that translation strategy is determined primarily by the type of audience to whom the target text is directed, thus leading to the «discovery» that the same text can be translated in different ways for different receivers. Thereafter, the main emphasis shifted to the communicative function or purpose of a translation. In traditional translation, where the translator is expected to reconstruct the form and substance of the source text in the target language, the function of the target text is always the same as that of the source text. Departing from tradition, the functional approach presumes that the same text can be translated in different ways depending on the communicative function of the target text.

Legal texts are subject to legal rules governing their usage in the mechanism of the law. When selecting a translation strategy for legal texts, legal considerations must prevail.

For the sake of preserving the letter of the law, legal translators have traditionally been bound by the principle of fidelity to the source text. As a result, it was generally accepted that the translator's task is to reconstruct the form and substance of the source text as closely as possible. Thus, *literal translation* (the stricter the better) was the golden rule for legal texts and is still advocated by some lawyers today (Wright, *From Academic Comparative Law to Legal Translation in Practice*).

In view of the special nature of legally binding texts, it is agreed that substance must always prevail over form in legal translation. Nonetheless, the issue of whether authenticated translations should be *literal* or *free* is controversial. As practice shows, translation techniques and methods often vary from jurisdiction to jurisdiction, even for the same type of text.

A term characteristic for legal language is, for example the term «annulment» that is a borrowing from French with Latin origin, and describes a formal invalidation of a judicial proceeding. Even though in English the meaning of the term can be guessed, it can be a «*false friend*» for translators, thinking that it can be translated as «anulare». Actually the legal system in our country has not borrowed the term from French. In Romanian it is used as «*casare*», that has the meaning of a cancellation (total or partial) of a court decision following the admission of the appeal (*Case of Deliuchin v Moldova Romanian*).

False friends are a great challenge for translators, no matter the domain or the language they have to translate from, as they are very «tricky» and

can lead to serious mistranslation. Therefore, translators have to be very careful and pay close attention to «false friends», especially when they are terms, because they do not have permanent equivalents, and the translator has mostly to keep the meaning according to the context, rather than the high formality.

Obviously, when a translator has to deal with such specific terms that can create difficulties, he/she has to translate them so as the terms to be understood and to avoid ambiguity. As well, the translator has to have background knowledge in legal domain, so as to be able to find an appropriate equivalent even for terms that do not have permanent equivalents and have to be either described, defined, or paraphrased.

Authentic legislative texts are translated differently in different jurisdictions, thus suggesting that generalizations about translation strategy based primarily on function are insufficient in legal translation. In order to identify which criteria are decisive in determining a translation strategy for legal texts, it is necessary to analyze the communicative factors in each situation.

Traditionally, the translator has been regarded as a mediator between the source text producer and the target text receivers. In fact, this is still the case in linguistically oriented theories of translation in which translation is generally regarded as a two or three-step process of transcoding.

Today, all the authenticated texts of a legal instrument are usually equally authentic. This means that each authentic text is deemed independent for the purpose of interpretation by the courts and that no single text (not even the original) should prevail in the event of an ambiguity or textual diversity between the various language versions. As equally authentic instruments of the law, parallel legal texts can be effective only if all indirect addresses are guaranteed equality before the law, regardless of the language of the text. To guarantee the underlying principle of equal treatment, plurilingual communication in the law is based on the presumption that all the authentic texts of a legal instrument are equal in meaning, effect, and intent (*European Commission, Internal Market and Services DG*).

Whereas the presumption of equal meaning is subordinate to that of equal effect, both are subordinate to the presumption of equal intent. In jurisprudence this usually implies the legislative intent (legislation), the intent of the States parties (treaties, conventions), or the will of the contracting parties (contracts). This issue raises sensitive questions about the translator's role as interpreter, which cannot be dealt with here. It suffices

to say that it is generally accepted that the translator must understand the source text but not interpret it in the legal sense. Above all, the translator must avoid value judgments (to the extent possible). Thus, the translator's task is to produce a text that preserves the unity of the single instrument, that is, its meaning, legal effect, and intent.

Conclusion

Assuming that law constitutes a social message, the communicative aspect of legal translation becomes even more transparent. In addition, the legal translation is far more than just one out of many subject areas of special-purpose translation. The special status of legal translation derives from the fact that in the multilingual, globalized world, it is not only useful, by indispensable for the unobstructed functioning of the supranational and international law communities. In this context, it becomes apparent that the issue of translation quality and consistency should be given the utmost priority.

Besides, we dare quite safely conclude that:

– It is impossible to appreciate the nature of legal language without having some familiarity with its history;

– The general features of legal language that apply to both English and Romanian legal languages are different from ordinary language with respect to vocabulary and style;

– Each legal system is situated within a complex social and political framework.

Thus, for the sake of preserving the letter of the law, legal translators have traditionally been bound by the principle of fidelity to the source text. Moreover, the translator should strive to produce a text that expresses the intended meaning and achieves the intended legal effects in practice.

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