

An Approach to Legal Translation

Une approche à la traduction de textes juridiques

Un mod de abordare a traducerii textelor juridice

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Abstract

Legal translators rely on translatorial procedures and practices that are not so widely different from the ones used in general translation practice. However, due to the distinctive quality of legal texts, and to the high incidence of extra-linguistic issues, the legal translator frequently has to adopt special strategies to suit the specificity of legal translation problems. Legal translation encounters two major obstacles: the first one refers to the differences in the legal systems, and the second one to the differences in the linguistic system. The paper presents an analysis of the nature of law that considerably influences the process of translating legal texts, as well as a set of 'dedicated' strategies to cope with the difficulties of legal translation.

Résumé

Les traducteurs de textes juridiques se fondent sur des procédures et pratiques qui ne sont pas très différentes de celles généralement utilisées par les traducteurs. Toutefois, à cause de la qualité distinctive des textes juridiques et l'incidence élevée des problèmes extralinguistiques, le traducteur juridique doit souvent adopter des stratégies particulières qui répondent aux problèmes spécifiques auxquels sont confrontés les traductions juridiques. Les traductions juridiques soient confrontées aux deux problèmes majeurs: la première se réfère aux différences entre les systèmes juridiques et la deuxième à la différence entre le système linguistique. Cet article présente une analyse des différences propres aux systèmes juridiques qui influencent de manière significative la traduction de textes juridiques, et un ensemble de stratégies "dédié" pour faire face à des difficultés dans la pratique de la traduction dans le domaine juridique.

Rezumat

Traducătorii textelor juridice se bazează pe proceduri și practici translatoriale care nu sunt foarte diferite de cele utilizate în general de traducători. Cu toate acestea, din cauza calității distinctive a textelor juridice, precum și a incidenței ridicate a problemelor extra-lingvistice, traducătorul juridic trebuie să adopte frecvent strategii speciale care să corespundă specificului problemelor cu care se confruntă la traducerea juridică. Traducerea juridică întâmpină două probleme majore: prima se referă la diferențele din sistemul juridic, iar al doilea la diferențele în sistemul lingvistic. Lucrarea prezintă o analiză a deosebirilor specifice sistemelor juridice care influențează considerabil procesul de traducere a textelor juridice, precum și un set de strategii "dedicate" a face față dificultăților intampinate în practica traducerii în domeniul juridic.

Keywords: law system, legal text, specific terminology, equivalence, strategy

Mots-clés: système juridique, texte juridique, terminologie spécialisée, équivalence, stratégie

Cuvinte cheie: sistem juridic, text juridic, terminologie de specialitate, echivalența, strategie

An essentially cultural activity in previous centuries, translation and particularly LSP translational activity has become nowadays a widespread and growing practice worldwide. The translator processes texts. As translation is a special kind of communication, which takes place in at least two different languages, the LSP translator must possess certain knowledge and skills. A plausible list of skills is suggested by Johnson and Whitelock: "... the professional (technical) translator has access to five distinct kinds of knowledge; target language (TL) knowledge, text-type knowledge; source language (SL) knowledge' subject area ("real world") knowledge; and contrastive knowledge." [1]

Translation of legal texts has always raised issues of adequacy of terminology. Everything starts from the existence (in any language) of a specialized subset of terms that have specific meanings in the normative framework. Whether you call this subset "specialized language", "technical terms", "legal jargon" or referring to "autonomous concepts", all accept that law uses a number of terms whose meaning is not easy to be dealt with by the ordinary reader/speaker.

Legal translation is a special type of translation involving crosslinguistic communication in the legal context. As stressed by Wilss:

Many aspects of translation, in particular in the field of LSP, transcend cultural boundaries and are, in some sense, universal. Simplifying somewhat, translation can be depicted as a domain of socioculturally determined linguistic behaviour with both culture-specific and universal components. In contrast to other types of LSP translation, such as medicine, science or technology, legal translation tends to involve more culture-specific than universal components. [2]

The translator of specialized texts must take into account not only the morphological and syntactic rules of the general language, but to concretely attach importance to the rules of the specific vocabulary. In our opinion, addressing issues related to the translation of legal texts requires firstly, an analysis of the law itself, its nature, content, forms, and so on, as legal translation is a confrontation of different laws, even if they are part of the same legal system. Lawyers and translators of legal texts distinguish major structural differences in the legal system, a different cropping of legal reality, no equivalent notions and concepts (*Common law*). Different notional fields do not overlap completely, hence, lawyers tend to consider that some terms are untranslatable, thereby justifying calques and loans. Such difficulties encountered by lawyers are, unfortunately, quite valid for translators too. The differences between the legal systems of various countries are major problems in terms of translation, which involves the transfer of the source legal reality into the target legal reality (*equity, consideration, common law*). Such notions are absolutely unknown to the Roman-Germanic legal system underlying the Romanian legal system. From this perspective, knowledge of the different legal systems plays an important role in legal translation.

The translator must take into account that law consists roughly of three sources: law, case law and custom. Their importance varies depending on the culture; they are expressed by different discourses within one and the same culture or from one culture to another. All these issues must be taken into account when translating legal texts. Furthermore, we comply with Narcisa Schwarz' acknowledgement that:

Without getting into cultures and sub-cultures, it is perhaps most important for people to realize that a basic understanding of cultural diversity is the key to effective cross-cultural communications. Subsequently culture and communication are inseparable for the reason that culture not only dictates who talks to whom, about what, and how the communication proceeds, it also helps to determine how people encode messages, the meanings they have for messages, and the conditions and circumstances under which various messages may or may not be sent, noticed, or interpreted. [3]

The person who operates with legal terminology must take into account not only the differences in linguistic structure but also the legal rules of the language/culture into which the translation will be performed.

Translation of legal texts from one language to another raises particularly complex theoretical and practical problems as it requires specialized interdisciplinary comparative approach - legal and linguistic- of the two legal systems. Translation can be performed "in the letter of the law" (remaining faithful to the text in the source language and implicitly to the intention of the legislator) or "the spirit of the law" (depending on the recipient and the socio-cultural context of the target language). The lexical-semantic difficulties arise from the use of strictly specialized terms ("terms of art"), belonging to the legal and administrative "jargon", the abundance of archaisms and redundant formulas (null and void). The syntactic structure of the legal sentence might also pose difficulties. The complex logical and syntactic relationships hinder the reception of much too long/short statements. Long sentences containing a large amount of information, expressed by a cluster of subordinates of various types, create difficulties in receiving and storing information; a too concise phrase (passive, gerundial or nominal constructions) can also bring about readability/translation difficulties.

Knowledge of and ability to differentiate the type of legal texts is a prerequisite for the performance of an accurate translation. Legal texts may be documents of public interest, such as laws and regulations, court decisions and pleadings; documents of private interest, such as contracts, administrative and commercial formulas, wills and collective agreements and last but not least, doctrinal texts. The language of legislative acts will be more abstract than common language, while the language of legal literature works will be even more abstract than that of legislative documents, because of theoretical reasons.

On the basis of what we mentioned so far, we conclude that legal translators are confronted with two major obstacles. The first related to the difference in legal systems, the second, the difference in the linguistic systems. We are going to analyze possible ways, techniques and strategies to address these issues.

Specific terminology, (that is, for which no equivalent exists in Romanian) like the four *Inns of Courts*, or the words *lawyer*, *barrister*, *solicitor*, *advocate*, *attorney*: when should they be translated? The choice between the possible solutions depends on the translator's objective: -leave the foreign word untranslated, unannotated; however what precisely would be the point?

- translate the term literally and render it between inverted commas to show its foreignness?

- retain the foreign word, but define it in brackets or in a footnote to avoid an interruption in the text, strategy that we would highly recommend.

Generally, the translator is expected to fill in the knowledge gaps of the target audience. If we are targetted towards accessibility for readers who are ignorant of the source language, it is essential to translate or explain or define. In considering *lawyer*, *barrister*, *solicitor*, *advocate*, *attorney*, one will find out that *lawyer* and *advocate* are general terms, but in the law of Scotland, an *advocate* is a member of the Faculty of Advocates, the professional body of the Scots bar, whereas an *Advocate General* is a member of the European Court of Justice who assists the court by presenting opinions upon the cases, that a *barrister* is primarily concerned with advocacy for parties in courts or tribunals, having the right of audience in the lower courts, whereas a *solicitor's* work mainly deals with giving legal advice, office work, having the right of audience in the lower courts, that *attorney* usually refers to an *attorney at law*, but *Attorney General* has as an equivalent "Procuror General" in the British legal system and "Ministru al Justiției" in the American legal system. The translator can define *Inns of Courts* shortly as the ancient legal societies in London, which every barrister must join. As to the significance of the chosen term: what does the term mean to the Romanian reader? If it labels a particular national or English institution, is that institution equivalent to the one referred to in the target text? It can be necessary to invent a term, or a

combination of terms, in order to compensate for conceptual incongruity or to avoid inappropriate culture-specific terminology.

The techniques suggested above for translating culture-specific terminology and some that will be dealt with further have also been mentioned in "A beginner's course in legal translation: the case of culture-bound terms" by M. Harvey:

1. Functional Equivalence: It means using a referent in the target language culture whose function is similar to that of the source language referent.
2. Formal Equivalence or 'linguistic equivalence': It means a 'word-for-word' translation.
3. Transcription or 'borrowing' (i.e. reproducing or, where necessary, transliterating the original term): It stands at the far end of SL-oriented strategies. If the term is formally transparent or is explained in the context, it may be used alone. In other cases, particularly where no knowledge of the SL by the reader is presumed, transcription is accompanied by an explanation or a translator's note.
4. Descriptive or self-explanatory translation: It uses generic terms (not CBTs) to convey the meaning. It is appropriate in a wide variety of contexts where formal equivalence is considered insufficiently clear. In a text aimed at a specialized reader, it can be helpful to add the original SL term to avoid ambiguity. [4]

Although it is one of the most common procedures used in legal translation, functional equivalence remains very controversial, because confusion may occur when technical terms of a certain legal system are used as functional equivalents for terms used in another legal system. On the other hand, it is a much more economical method, as functional equivalents provide a sort of access key to the legal value and meaning of the text. Readers can relate much more successfully to functional equivalents than to literal translation or calques, which still sound foreign to them.

One of the most traditional translation strategies is literal translation, a remnant and a corollary of traditional approaches to translation. Literalness has been the subject of much debate over the faithfulness and loyalty to either the 'letter' or the 'spirit' of the law, over transferring the form rather than the substance. Literal translation implies the close maintenance of the wording of the text and of all its constituent elements; words, order and syntax. According to some authors this strategy has the status of a default value, and Chesterman maintains that one only needs to deviate from literal translation if for some reason or other it does not work. No one can deny that literal translation has its usefulness, especially between cultures that have similar or related legal systems, but the point that translators should only bear in mind is that they must always be alert to the situations where literal translation does not work.

If we admit to the usefulness of literal translation in certain cases, then the question to be answered is which cases are appropriate for literal translation. Literal translation is actually advocated in a number of cases by both translation theorists and lawyers. The approach adopted for the translation of legal documents produced within the framework of a single national legal system is usually literal, since the translated text has the status of a parallel text, a gloss, and has no validity of its own until it is officially transcribed or legalized in the legal system of the target culture. Within this framework, a special case is that of sworn translations and of translations that are to be presented as court evidence, for which, most of the times, a strict literal approach is prescribed. A sworn translation must be completely transparent and literal to the point that it also reproduces the omissions and mistakes that may be present in the original document.

If we take into account the criteria of both text type and function of the translated text, then the common trend is for authentic versions of national, international and supranational legislation to require absolute literalness, whereas legislative texts translated purely for information purposes, i.e., for the information of foreign businessmen, investors, lawyers, etc., may be translated somewhat more freely. Since their purpose is to offer information about the source legal system, such cases

argue in favour of a more idiomatic translation, one that is easily comprehensible, so that the foreign reader can benefit from it.

One strategy is closely related to literal translation is calque, which refers rather to close translation of terminological units, whereas literal translation implies close rendering of a whole syntactic unit, so it covers both the lexical and syntactic unit.

Calque is also a form of borrowing although not in the sense that the original items are preserved, but only the structure, the arrangement principle. This is translating lexical word for lexical word, and making adjustments of prepositions, endings, and other grammatical features if necessary.

Calque certainly proves in many cases to be not only a legitimate and feasible technique in legal translations, but sometimes, the only appropriate or possible way. Calques are, as a matter of fact, widely used in the translation of the names of the international organizations: "The Council of the European Union" → "Consiliul Uniunii Europene".

Calque is an obvious and easy solution that does not require much effort on the part of the translator. However, there are certain conditions that limit the use of calques. One of them is that the calqued combinations may take the place already occupied by other terms, being thus the cause of polysemy or homonymy. Some of these unhappy calques lead to confusion or nonsense: "trading companies" as a translation of "societăți comerciale" is a misnomer, since trading companies deal exclusively with buying and selling commodities or securities and other financial instruments, whereas the Romanian term, " societăți comerciale" has a much wider scope, including all institutions created to conduct business of any kind for a profit, which could be successfully translated into English by the term "business firm/company."

Conclusion

Legal translations increase international understanding amongst those who do not know the source languages.

The legal translator's responsibility is to solve problems of content, style and form. S/He should be aware of the differences between and inside the legal systems, understand the source document and the related legal culture, have a good command of the languages involved in the translation process, use the concepts and terminology of law in the target language, and last but not least, use the most appropriate translation strategies.

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