

THE TRANSLATION OF LEGAL DISCOURSE

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Abstract:

The translation of legal discourse is not a strictly a functional approach, but also a means of cultural transfer, standardization and language enrichment, a process that involves the overlapping of multiple fields (legal sciences, translation science, linguistics, stylistics, cultural studies), law being the discipline that regulates aspects of life and coexistence in a society and a culture. The present paper discusses the importance of the social, economic and cultural systems in which the legal concept and legal terminology operate, as well as the differences between those legal systems. The second part illustrates some features regarding the differences between English and Romanian legal systems as well as some semantic aspects to consider when translating legal texts.

Key words: legal terminology, legal systems, translation, cultural transfer, ambiguities

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Legal translation has been described by researchers as an independent category, due to the complexity of legal discourse that combines two extremes: the terminological precision of specialized translation and the inventiveness of literary language used in interpreting ambiguous meanings.

Since the advent of legal translation, experts have debated various views on the role of the legal translators, whether they should be a lawyers or linguists, their relationship with the source and purpose of legal texts. The provocative nature of the role of the legal translator comes from the essence of legal translations themselves. When it comes to legal translation, many researchers have found a legal equivalence of terms, insofar as the same legal effect can be produced in the translated text, while fidelity is maintained in the source text.

Given that the meaning of legal texts is determined by the legal context, legal criteria should be taken into account when selecting the most appropriate strategy for a translation. The idea is supported that the legal translation should formulate two equal versions for the same instrument, for linguistic purity within the limits of legal equivalence.

A literal translation emphasizes terminology, replacing words and expressions of the source language with equivalents. But this cannot be achieved when working on legal documents, because several implications are at stake, especially contextual ones. This is the reason why a legal translation is essentially a process of translating legal systems, which brings another consideration into question: the intertwining of legal translation with comparative law. It is difficult to say which discipline is a tool for the other, because legal translators need the technicality of lawyers to dispel conceptual doubts. Translation of legal terminology is recognized by many specialists as an area that requires sustained methodological effort, attention and maximum concentration from the translator both in terms of legal concepts and the definition of terms.

The specific features of this terminology are determined and are primarily due to the nature and content of these normative acts. According to the French researcher Jean-Claude G mar, who attaches great importance to the study of legal terminology, the

legal text presents three fundamental characteristics that distinguish it from other texts: it is a normative text, with a specific style and vocabulary (2005:106).

The translation of the legal text is at the interface of the linguistic field, that of translation technology and the legal field, being strongly influenced by global changes such as globalization, the cross-border movement of labour and even changes in other areas of society.

Legal terms are dynamic in nature and their meaning is changed under the influence of changes in the social and cultural environment, the development of human knowledge and new technologies.

Thus, communication between lawyers in Europe is often hampered by language barriers and misunderstandings caused by differences in each country's legal systems. It is well known that in order to perform an effective translation of the legal text, the translator must know not only the two languages, but also the social, economic and cultural system in which the legal concept and legal terminology operate, as well as the differences between those legal systems. Thus, the translators have a double task, which can prove to be extremely difficult: they must know both the target language in which the translation is performed and the language to which the text belongs, as well as to possess sociocultural and specialized knowledge, if the text is a specialized one. For an accurate translation it is necessary that the translator proceeds to an assiduous interdisciplinary documentation, involving study of legal sources, similar types of documents, glossaries and unilingual and bilingual documents existing in both languages.

Compared to other fields, legal terminology is culturally marked at an considerable extent, reflecting the complexity of a society, whose institutions and vocabulary are the expression of a culture and history. It consists of abstract terms, strongly and deeply rooted in the intellectual and cultural tradition. Thus, the real problem of legal translation is not related to the language itself, which is only its manifestation, but to the conceptual differences of the notions belonging to different national legal systems.

Researchers in the field unanimously argue that the main problems in legal translation is the transposition, exporting the legal message from one legal system to another. According to the researcher S. Šarčević, the Law remains primarily a national phenomenon. Each national or municipal law constitutes an independent legal system, with its own terminological system and conceptual structure underlying it, its own classification rules, sources of law, methodological approaches, as well as socio-economic principles (1997:76).

This is why each legal system has its own terminology, its own way of formulating, interpreting and applying the rules, which results from the way society and the social order are conceived, giving rise to various institutions, hierarchies and judicial procedures specific to a state. In such situations, the translations obtain double values, integration and rapprochement of foreign cultural notions. The transfer of the content of a legal text that carries a vast range of notions with historical content and traditions present an increased degree of difficulty for translators, especially for those who have no knowledge in the field of law.

This means that, in order to accurately translate the legal terminology of one state into the legal terminology of another state with different legal traditions, it is first necessary to understand the traditions and legal specificity, as the main challenge for the translator of legal texts is the incongruity of legal systems.

The idea is also supported by linguist J.C. Gémard, who states that the translatability of legal texts depends directly on the kinship of the legal systems involved in translation, and the essential difficulty of translating legal texts lies in finding equivalences in terms of notion and legal system (2005:107).

P. Lerrat considers that language has a social character, which is revealed in the sociolinguistic orientation, the specific features of this language as well as its individuality. Thus, a community or a social group tends to systematize the differences, considering them determinants, conferring the given domain of language the elements of recognition. These features thus become indicators of identity (1995:49).

The basic linguistic principle is to achieve effective communication, which is possible only if the author of the text interacts with the recipient of this text. Thus, we can conclude that the main objective of legal translation is to transmit communication between specialists in a field. A similar opinion is expressed by the linguist S. Šarčević, who defines legal language, with all its terminology, as an act of special purpose communication between specialists (1997:76).

Therefore, the fundamental differences between the English law system and the Romanian, generate difficulties for translators in the field, because the difference between the systems implies a difference not only in terms of concepts, legal norms, but also the names of institutions and professions. The concepts of the English law system (Common Law) are different from the concepts of the Romanian law system, which is largely taken from French law, the part of the family of continental law, in its turn based on Latin law. The fact generates problems both in terms of translation and terminology. However, the institutions, concepts and notions are not always different, because during the evolution both systems of law have evolved together, with Latin as the basis for all terms in both systems.

If from a statistical point of view the French legal terminology abounds in Latin legal terms, the English one does not register such a high use of these Latin constructions. The phenomenon is explained by the fact that English legal system is part of the Anglo-Saxon family of legal systems, which is why some Latin expressions in Anglo-Saxon law have different meanings from those existing in the Roman-Germanic system. Another cause that explains these divergences is the existence of institutions specific only to English and American law that have no correspondent in Roman law, therefore the difficulty of finding equivalent terms. Latin terms that set out the principal fundamentals of law are, however, the same, the common ground of terms expressing the universality of concepts and values being identical.

Over time, the systems have developed differently, giving rise to new institutions and concepts. This is why it is possible that there is a referent in only one of the two cultures or, even if it exists in both, it could be differently conceptualized. In this case, the way of conceptualizing a referent has implications in terms of terminology and translation itself; it is also possible for two notions or concepts to be conveyed differently in the two languages, which again creates linguistic problems.

A relevant example in this case is the field of legal professions providing legal assistance and representation of citizens in the courts of law. To exemplify the idea presented, we will resort to the presentation of the term *avocat*/lawyer. Thus, the term *avocat* in Romanian, a concept that occupies the basic place in any legal system, has no direct equivalent in the system of Anglo-Saxon law. For the term *avocat* several English translations are possible: lawyer, counsel, advocate, attorney, solicitor, barrister, counselor, defense lawyer. The choice of this category of synonymous examples is motivated not so much by their number but by the importance of correct understanding and adequate use of each term separately.

Greater attention must be paid to the correct translation of the names of legal institutions, because in the translation process it is important to transpose the full meaning of these terms. In the vast majority of cases, one will notice that it is not possible to simply transfer this name, so it becomes necessary to look for the equivalent of this institution, which has the same functions and responsibilities. With regard to institutions, for example, the translator should first determine whether a particular

institution exists in the target system, then he or she should check whether it has the same role and identical responsibilities in both systems. When it comes to the supreme legislative body of the country, the Parliament, linguistically equal in many Western languages, but not necessarily referring to completely identical institutions. In such cases, translators usually choose to leave the original name in the translation or at least specify that the two institutions are different.

Regarding the problem of untranslatability of some legal terms from English, there are a few selected examples from various sources: common law, trust, tort law, Law Lords, usury (pretenția unei rate de dobândă mai mare sau amenzi mai mari decât prevede legea), true test copy (document legal dat cu sigiliul funcționarului, dar care nu este autorizat), standing (dreptul legal de a începe un proces).

The terms listed above do not have a functional equivalent in Romanian legal terminology and none of the most recent bilingual or monolingual dictionaries tried to translate them. In such situations, the translator must first understand the implications of the term in English law and then find a corresponding concept in the legal terminology of the target language. In such cases, the translator should take into account the structure, classification, scope and legal effects of the functional equivalent and the source term. Therefore, when there are such untranslatable terms, legal conceptual gaps or partial equivalents, the legal context becomes fundamental for the translator in order to perform a correct translation.

Another possible difficulty when it comes to translating legal terminology is the interference of false friends, i.e. related terms in two different languages, very similar or identical, but which have completely different meanings, thus creating difficulties in the translation process. Although Romanian terms and their English equivalents have the same origin in the vast majority of cases - Latin/French, their semantics have evolved differently in the two languages, resulting in situations in which they have nothing in common. Nowadays, under the influence of English, which is particularly prosperous in the media and in corporate environments, speakers often misinterpret English terms, choosing meanings based on phonetic similarity. The impediments that appear in the process of translating these terms should not be neglected, because they can have a negative effect on the translation, creating problems of ambiguity and violating conceptual accuracy.

The following examples are the most frequent misleading terms when it comes to translating and interpreting the English-Romanian legal terminology: e.g. evidence - probe/evidență, to appeal - a înainta recurs/a apela, to entitle - a fi în drept/a întitula, just satisfaction - reparație echitabilă/satisfacție, natural person - persoană fizică/persoană natural, costs for bringing an action - cheltuieli de judecată, merit of the case - fondul cazului/meritul cazului, interviews - audieri/interviu, offence - faptă penală/ofensă.

Translation in the field of law is subject to a large number of rules and restrictions, like any other specialized translation. This is explained by the strict dependence on concepts and institutions conveyed by the related legal system. Thus, the translator is often forced to resort to the source of law for a correct understanding of the concepts in the field before starting the actual translation. In order to know if the translation is acceptable in the target language, the translator must take into account a number of pragmatic elements, to be familiar with the framework in which the translation takes place, its function and destination.

The evolution over time of legal systems has given rise to an abundant polysemy which, together with archaic terms, neologisms, loans, false friends and specialized terms, creates at first sight a state of ambiguity and opacity. As a result, the impression appears that this language can only be understood and decoded by a professional in the field. However, the law is inspired by current vocabulary, which demonstrates that legal

language is not conceived as hermetic, but on the contrary, must be accessible to all interested persons.

The polysemy of some words in the legal terminology contradicts the requirement of clear and precise expression of legal concepts. Therefore, one of the central problems in the legislative technique is to ensure a rigorous technical acceptance of these terms, by using them in legal contexts. Thus, they become legal terms by delimiting and specifying the meaning or by selecting a meaning from several possible ones.

By virtue of its recognized conservatism, current legal terminology preserves many terms from the common vocabulary, which it uses with their usual meaning. This fact can be explained by the coexistence of the same term in different linguistic realities. A considerable number of basic terms, which express fundamental concepts in the field of law, as a result of the frequency of use in texts with a high degree of different specialization, develop extensions of meanings or semantic changes. Thus, a term, a word or even a phrase in common language has a specific meaning, but in legal terminology the term may have another meaning. To name a few examples: applicant, act, appeal, satisfaction, hearing, chamber, suit, etc. Depending on the purpose of the communication, the term acquires a specific meaning in certain circumstances.

What further complicates the understanding of legal concepts is the existence of several terms that are absolute synonyms, but which can express in several terms the same concept of Anglo-Saxon law, one of French origin or a Latin term. The same concept can be expressed both by a foreign term (often of Latin origin) and by a new "original" term, which was formed later. An example is the Latin term *delictum*, which initially evolved as a crime, and later a new English term was formed which names the same concept - tort. Here are some examples: assign - transfer, breach - violation, goods - chattels, clause - provision, free - clear, contract - agreement, final - conclusive, act - deed, lessee - tenant, acknowledge - confess, promise - assurance - undertaking, breaking - entering, void - invalid - ineffective, will - testament, save - except.

The accumulation and use of synonyms within the same language is also a specific feature of English legal terminology. Most pairs of synonyms become binomial constructions, being composed of two lexical units, in most cases created ad-hoc by the legislator (nouns, adjectives, adverbs or prepositions), which are usually joined by the conjunctions: and (act and deed, custom and usage, leave and license, legal and valid, object and purpose, over and above, pains and penalties, power and authority, due and owing). Because both terms denote the same conceptual meaning, one of the terms becomes additional (useless) and does not contribute to the intensification of the meaning. Synonymy should be avoided in legislative acts, as it generates confusion and prevents the unification of terminology that serves as a basis for the standardization of concepts.

The issues discussed above are just some of the aspects to take into consideration when translating legal texts. However, there are many more other features that can be analysed and considered. It is quite clear that translation is not just a simple transposition. This is a universal statement valid for translation in general, especially so for legal translations. When translating a legal text, the translator must transmit not only a linguistic translation, but also a legal one, which means that what should be translated is not the text itself, but the words of the legal message expressed. It is typical for legal translation to have to do with more than one legal system, so the translation should not only be terminological, but also conceptual.

The approach to legal discourse from the perspective of the culture on which it is based, beyond the linguistic, terminological and translational analysis, is essential from the perspective of the lawyer, translator, translator or language teacher. The legal text is sometimes hybrid, borrowing specialized discourse from all areas it seeks to

standardize. But, unlike other specialized languages that tend to become universal, legal discourse is the expression of a constantly evolving society and culture, hence the inherent translation difficulties that arise with transposition into the target language. In this context, the legal culture is one of the main challenges both for the translator, especially when there is no standardized terminology or specialized dictionaries, and for the lawyer, in the interpretation, transposition and application of the translated text. The analysis of the particularities of the source legal culture is an essential step, prior to the translation process.

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