COMMERCIAL JUDGMENTS ISSUED IN ROMANIA, THE UNITED KINGDOM AND THE UNITED STATES OF AMERICA. A COMPARATIVE REVIEW

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Abstract: This study is a comparative review of a few representative samples that make up a corpus of legal texts, i.e. excerpts from commercial judgments issued by law courts in Romania, the United Kingdom and the United States of America. The samples will be analysed in terms of form, layout, editing, structure, general arrangement of paragraphs, visual presentation, as well as, to some degree, content. The importance of comparing how commercial judgments are drafted in different legal systems and geographical regions is evident and leaves room for improvement of legal translators' work. Starting from the assumption that the legal translator should be allowed to even intervene in the way that the source text is presented (and everything this entails format-wise), then commercial judgments from the UK and the USA may serve as a model for further developing the layout and structure of Romanian commercial judgments, and, why not, in providing an impetus for change, in this respect, to the authors of the original source texts. The purpose of such action is that, by doing so, the reception of TTs by the readers/addressees is optimal, since comprehensibility becomes greatly facilitated. The benefits may work in both directions, for translators and authors alike. Therefore, the aim of this paper is to state the advantages of such endeavour and serve as an encouragement for translators to better their work in formal terms as well, provided that the content of the ST is preserved unaltered, and the general principles of achieving a good translation are observed.

Keywords: commercial judgments, translation, comparative analysis, specialized language, legal language.

Introduction

This study is aimed at scrutinizing a few representative samples making up a corpus of commercial decisions chosen by availability. The analysis considers them as Source Texts (ST) and will highlight the possible difficulties faced by translators in the process of carrying meaning from one language to another.

First of all, as will be shown below, the samples were selected from public online sources, i.e. the archives of Commercial Courts of England and Wales[1] and the United States of

[1]**British English commercial judgments (common law tradition)**
The British English corpus was extracted from the archives of the England and Wales High Court (Commercial Court) available online at the address: http://www.bailii.org/ew/cases/EWHC/Comm/. The society hosting this site of legal resources is the **British and Irish Legal Information Institute** (BILII).

America, District of New York[2], respectively, as well as a specialized website containing legal information and case law from Romania[3].

Secondly, it is worth noting that the texts are representative for the genre of legal decisions/judgments. The intention was to find examples of commercial judgments covering a similar subject matter (*i.e.* the object of the case) or at least to have a common general domain or framework, so as to facilitate a comparison, and not get the specificity of differing cases in the way of an objective analysis. To this end, a few of the sample decisions referred to herein deal with matters related to the field of (maritime) transportation, insurances and/or claiming of damages.

It is interesting that, across the three geographical regions selected, it becomes obvious how writing techniques, layout and structure changed both culturally and in terms of the times, in line with the development of the respective societies, nevertheless preserving a conservative basis especially in terms of content, phrasing, legal terminology, etc.

Furthermore, it is important to draw attention to the fact that the Romanian samples have been mildly "censored" by the website publisher, in the sense of having the exact details of the case eliminated, most likely on account of confidentiality. Yet, the body of the decisions has not been tampered with, thus allowing us to carry out the proposed analysis.

Finally, it is also essential to mention that the purpose of this study is not to carry out a quantitative analysis based on a very large corpus of examples, as just a few texts are representative enough to make a point. The main features of the language corpus and their relevance for linguistic and translational research are highlighted. The most important contribution of this study is that, by analysing authentic texts, real language in action and its continuous change and evolution have been captured.

1. Corpus overview: structure, layout. First-hand observations.

Corpus-based research is important because it can provide an insight into how legal language is used in real-life situations. It consists of naturally occurring texts selected on criteria centred around a common theme. With the technological advent of the recent decades, accessing such authentic materials has become much easier and free. Many courts of law or legal societies or institutes regulating the field of law have set up virtual databases or archives that can be accessed by any law professionals, students or researchers.

Also, corpus-based research can address many issues and, in the case at hand, it may be a thorough method of analysis. Besides the formal comparison, which is our focus here,attention will be given, as the case may be, to lexical, morphological, grammatical features, the frequency of certain constructions, stretches of specialized language, frozen terminology, stylistics issues, preference for certain verb tenses, as well as to the overall communicative functions of the analysed texts.

Formally, the length of commercial decision is one factor that distinguishes the samples from the aforementioned regions. Romanian decisions are generally much shorter. Romanian judgments are, by contrast with their English and American counterparts, just "briefs" of the

[2]**American English commercial judgments (common law tradition)**
The American English corpus is available at the web address: http://dockets.justia.com/. We have chosen a few decisions issued by courts of law in the circuit of the state of New York.

[3]**Romanian commercial judgments (civil law tradition)**
The Romanian commercial decisions chosen for this study have been downloaded from the legal resources website: LEGEAZ (Legea de la A la Z) - http://legeaz.net/spete-drept-comercial-iccj-2012/. to be found under the title: Decizii ICCJ – Secţia comercială.

cases, and it can be stated that they tend to be more synthetical (not analytical) presentations of the cases under judgement. Romanian commercial judgments (without limitation thereto) do not focus on a detailed account/narrative of the facts, in contrast with British and American versions which contain comprehensive presentations of the facts that are deemed essential and relevant for the case. One observation that we want to make, from the very beginning, is that the latter approach is far more helpful as it reduces the time spent on referencing back to other texts that are mentioned, in the case of Romanian decisions, but not actually quoted in full. Hence, reading a Romanian judgment may be a more strenuous and time-consuming activity, requiring constant consultation of sources that must be collected separately by every reader (translator) in order to better understand the subject matter of the source text.

1.1. Romania: 3 samples (1 pattern)[4]

For the purposes of this study, we have chosen three commercial judgments to be analysed both at linguistic and textual level. The particular features of the beginning sections thereof are presented in the table below:

No.	Title/Case name	Issuing court	Procedural stage/Object	Year issued	No. of pages
1.	Decizia nr. 1116/2000. Secţia Comercială / Judgment no. 1116/2000. Commercial Division	ICCJ*	Recurs = Second appeal / Obligation to replace power cables and payment of damages/ indemnifications	2000	2.5
2.	Decizia nr. 2818/2012, Secţia Comercială / Judgment no. 2818/2012, Commercial Division	ICCJ*	Recurs = Second appeal / Obligation to pay damages or indemnification for a car accident	2012	4.5
3.	Decizia nr. 98/2012, Secţia Comercială / Judgment no. 98/2012, Commercial Division	ICCJ*	Recurs = Second appeal / Unrealized profit. Establishing damages or indemnifications amount	2012	3

* ICCJ = Înalta Curte de Casaţie și Justiţie (High Court of Cassation and Justice)

Example (1):

ICCJ. Decizia nr. 2818/2012. SECŢIA COMERCIALĂ
ROMÂNIA
ÎNALTA CURTE DE CASAŢIE and JUSTIŢIE
SECŢIA COMERCIALĂ
Decizia nr. 2818/2012
Dosar nr. 7082/100/2009
Şedinţa publică din 27 septembrie 2011
Deliberând asupra recursului comercial de faţă, reţine următoarele:
Prin sentinţa civilă nr. 3052 din 15 septembrie 2010, Tribunalul Maramureş a admis acţiunea formulată de reclamanta SC A.T.A. SA, sucursala Baia Mare and a obligat pârâta SC V.A.D.T.L. SA la plata sumei de 63.518,88 Euro, echivalent în lei la data plăţii and a cheltuielilor de judecată în cuantum de 6.818 lei.

1.2. United Kingdom: 3 samples (1 pattern)

No.	Title/Case name	Issuing court	Procedural stage/Object	Year	No. of

[4]**Note**: All the sample texts used for analysis in this paper are excerpts from documents available online at the addresses mentioned above.

				issued	pages
1.	Cero Navigation Corporation v Jean Lion & CIE [2000] EWHC 207 (Comm) (11 January 2000)	England and Wales High Court (Commercial Court)	Appeal Interpretation of a clause from a Sugar Charter party 1969 re: strikes occurring during laytime	2000	14
2.	Barclays Plc v Villers [2000] EWHC 197 (Comm) (25 January 2000)	England and Wales High Court (Commercial Court)	Claiming of damages arising out of the circumstances in which B&C acquired Atlantic Computers Plc in 1988	2000	17
3.	Youell & Ors v Kara Mara Shipping Company Ltd & Ors [2000] EWHC 220 (Comm) (13 March 2000)	England and Wales High Court (Commercial Court)	Claim for anti-suit injunction and against insurers re: a collision between two vessels	2000	46.5

Example (2):

England and Wales High Court (Commercial Court) Decisions

Neutral Citation Number: [2000] EWHC 220 (Comm)

Case 1999 Folio No 536

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Case 1999 Folio No 536
Royal Courts of Justice
Strand, London, WC2A 2LL

13 March 2000

B e f o r e :

The Hon. Mr. Justice Aikens

_____

Between:

(1) JOHN RICHARD LUDBROOKE YOUELL
(Suing as a representative Underwriter for and on behalf of the members of Syndicate 79 at Lloyd's and on behalf of all other members at Lloyd's subscribing to policy no. HO478394) and others **Claimants**

-and-

(1) KARA MARA SHIPPING COMPANY **Defendants**

LIMITED and others

_____

Jonathan Gaisman QC and Rebecca Sabben-Clare instructed by Hill Taylor Dickinson appeared on behalf of the Claimants.
Stewart Boyd QC and Claire Blanchard instructed by Ince & Co. appeared on behalf of the Defendants.
JUDGMENT

1.3. United States of America: 4 samples (2 or more patterns)

No.	Title/Case name	Issuing court	Procedural stage/Object	Year issued	No. of pages
1.	United States of America against Victor Podejko Decision and Order	United States District Court, Northern District of NY	Second Motion for default judgment re: failure to repay loans under a promissory note	2014	3
2.	Harbor Boating Club v. Red Star Towing & Transp. Co., 179 F. Supp. 755 (1960)	US District Court for the Eastern District of NY	Motion to remand the proceedings to the Supreme Court of the State of NY – recovery of a sum for property damages to pier, float and gangway as a result of alleged negligence in towing operations in the harbour	1960	2
3.	McLeod v. LOCAL 239, INTERNAT'L BRO. OF TEAMSTERS, ETC., 179 F. Supp. 481 (1960)	US District Court for the Eastern District of NY	Motion for a temporary injunction pending final adjudication re: unfair labour practice - picketing	1960	10
4.	ANIMAL SCIENCE PODUCTS, INC., et. Al., v. HEBEI WELCOME PHARMACEUTICAL CO. LTD., et. Al.	United States District Court, Eastern District of NY	Re: Vitamin C Antitrust Litigation	2014	15

Example (3):

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

IN RE VITAMIN C ANTITRUST LITIGATION	06-MD-1738 (BMC) (JO)
This document relates to:	
ANIMAL SCIENCE PRODUCTS, INC., et al., Plaintiffs, v. HEBEI WELCOME PHARMACEUTICAL CO. LTD., et al., Defendants.	**MEMORANDUM DECISION AND ORDER** 06-CV-149 06-CV-987 06-CV-988

COGAN, District Judge.

Presently before me is a motion by the Indirect Purchaser Plaintiffs ("plaintiffs") for leave to file a second amended class action complaint in this multi-district litigation. Most of the proposed amendments are unopposed, but for one that would add an additional defendant, a minority shareholder of a present defendant. As to this proposed additional defendant, the main question is whether, under Federal Rule of Civil Procedure 15(c), the addition of this defendant will relate back to the prior pleadings for purposes of the applicable statutes of limitations and thus save plaintiffs' proposed claim against this new defendant from futility. I answer the question negatively as to both the federal and state rules governing the doctrine of relation-back, except that as to Massachusetts, for which the amendment shall be allowed.

2. Comparison

The first observation we can make when comparing the different samples of commercial decisions issued in each of the countries chosen for review refers to their visual presentation, i.e. how they are arranged on the page, in terms of layout, paragraph structure, placement of titles and subtitles, highlighted font types (bold, italic, underline), spacing, and any other editing elements facilitating, if used properly, reading and referencing of the text.

This is one aspect that is considerably underused in the case of the Romanian judgments(*see* Example 1), while the UK and US counterparts make ample use thereof. The phenomenon is more frequently noticed when dealing with older documents, dating, possibly, before 2007, when Romania became a EU member state and standards for the drafting of legal documents began being harmonized with the ones in use at European level.

In our analysis, we also noted that paragraphs tend to follow one after the other in a continuous flow, sometimes making it difficult to capture the logical sequence of events.

A) The **title sections** in the beginning of the judgments do show some variation in between two options: everything is either aligned to the left side, or centred, yet lacking, most of the times, any other highlighting by bold or underlined font which could place the focus on the actual role of such elements (introducing the reader into what the following text will deal with).

The editors of the texts do use capital letters in order to emphasize or draw the reader's attention to such titles.

B) These **first sections** routinely contain a few elements that are almost never changing but whose order is sometimes re-arranged. They are as below:

1) Country
2) Court
3) Court division
4) Place of jurisdiction/Venue
5) Title/document type (*i.e.* commercial judgment) with number and year
6) Case number as filed on the dockets of the respective court
7) Public session held on (date)

In contrast to the English and American counterparts to be analysed below, the **Romanian judgments** do not mention the names of the parties in litigation in the introductory title section, which is very unusual and even counter-productive, as they will have to be recovered from the first paragraphs of the actual body of the judgment, where they will also not be visually marked in any manner at all (except, sometimes, for editing in capital letters). This is also an issue that slows down the processing of the text and increases the time spent in the initial stages of the translation process (*i.e.* the translation brief, the analysis, understanding of the source text, which should ideally not last unreasonably long before proceeding to the translation work *per se*).

On the other hand, the **British samples** (see Example 2 above) are quite unitary in this regard. All three texts are introduced in the same way, with the title section arranged according to the same standards:

1) The lines are arranged to the left, centre and right, depending on what they traditionally designate: the case number is aligned on the right, the name of the court, division, branch, etc. are placed on the left, whereas the names of the judge, of the parties in controversy and the type of document are always centred. Even here, there are also other elements of differentiation and separation, facilitating easy visual reference, such as division of parties by an interrupted straight line, placement of the parties' positions (as either Claimant or Defendant) to the right side below their actual names which are centred, etc.;
2) There is also a differentiation according to the importance of the title's individual elements marked by the size of the font used. For instance, the case number is edited with 8./9./10. font while the rest of the text is edited in 12.;
3) Highlighting is also present (Bold);
4) They even use extra spacing between the letters of a word in order to make it stand out from the others, for instance in the case of the word "B e f o r e:"
5) The parties are also numbered in between brackets: (1) and (2).

American texts (*see* Example 3) are more diverse, due also to the fact that the samples used are dated many years apart (1960 - 2014). This difference is reflected in how the general presentation of the texts has changed in time. Older samples stand out due to layout patterns constrained by the different technological editing devices used (typewriters, basic Word processor software, for example). The oldest model of this type, dating back to the 1960's, starts off by presenting the parties on top, centre page in Bold font, very large letters, followed by the name of the court in smaller letters. This section is then separated by a line from the second section of the titles, a repetition of the names of the parties, in smaller letters, the case number, the court and the date of the session (the latter in Regular font). The position of the litigating

parties is inserted in regular font starting off from the left edge of the page (libellant, respondent, counsel, district judge etc.).

The second, most recent document model from 2014 has a very peculiar design. The names of the court, the case, and the parties are aligned to the left, divided by dashed lines in a format similar to a table, marked by a vertical line of colons on the right side, topped and ending with a capital X letter. On the right-hand side the case number is specified, while a few lines below the title in Bold Underlined letters is included in bigger font, followed, again a few lines below, by different identification numbers and codes. It is an interesting layout that is very clear and airy, light and easy to read, visually speaking. It also must be noted that the names of the parties in the left panel are always written in capital letters, just as the name of the court and the object of the case. The positions of the parties (Plaintiffs, Defendants) preserve the structure valid for the previous pattern, slightly to the left, below the names of the parties.

The next element with which the actual introductory section of the judgment starts off is, with slight variations, a frozen legal phrasing that is carried through any text of this type.

(Romanian)
1. "Din examinarea actelor și lucrărilor dosarului, constată următoarele:"
2. "Din examinarea lucrărilor din dosar, constată următoarele:"
3. "Deliberând asupra recursului comercial de față, reține următoarele:"

(British English)
1. Mr. Justice Aikens: (…) *Narrative account of the facts*
2. Mr Justice Langley: (…) **INTRODUCTION**
3. The Hon Mr Justice Thomas (…) **Introduction**

(American English)
1. (*straight to the first paragraph*): "Motion to remand the proceedings to the Supreme Court….")
2. (*straight to the first paragraph*): "This proceedings comes before the Court upon petition filed by…"
3. (*straight to the first paragraph*): "Presently before me is a motion by the Indirect Purchaser Plaintiffs ("plaintiffs") for leave to file a second amended class action complaint in this multi-district litigation."
4. *(different layout)*:
   "DECISION and ORDER
   I. INTRODUCTION

   On July 13, 2012, Plaintiff commenced this action alleging that V.P. ("Defendant") defaulted on a promissory note."

The Romanian samples include phrasings that are quite similar, as seen in the examples above, characterized by the absence of an expressed subject, denoting impersonality and the authoritative voice of a superior instance, *i.e.* the law: "constată" ("acknowledges"), "reține" ("notes"), which announce that the court is going to make a review of the facts being discussed during the proceedings. A characteristic feature of the legal language is also the preference for gerunds as concentrated, concise forms that are specific for the legal register which tends towards an economy of language, and which sound more official. As an alternative to the gerundival forms of verbs used to begin the sentence with, other options include: "Din examinarea" ("Further to examining", "As a result of examining") -- manner adverbials followed by objects -- "actelor/documentelor" + either a genitive form of the NP "dosarului" or a PP "din dosar". The entire phrasing sounds, indeed, awkward or unnatural to a lay person on account of the above features, the reader feeling the need to maybe add an element or two here and there to render it more fluent. Yet, this elliptical manner of expressing content is a feature of legal

language that can also be noticed in the case of the English examples, which only note the name of the judge, followed by colon, announcing that, in what follows, he/she will make a presentation of the facts: "Mr. Justice Aikens:" (to be mentally filled in by something along the lines of: "has listened to the facts, or has reviewed the facts and is herein below making a summary thereof") or any other similar continuation of a laconically stated utterance. By contrast, the American versions do not begin with a fixed frozen sentence similar to the ones above, proceeding immediately to the description of the facts.

All three typologies of texts are then continued both by a presentation of facts and a history of the case (enumeration and summaries of all previous procedural stages).

C) The **body of the text** contains:

a) in the case of the Romanian samples, a short description of the object of the case, the litigating parties, amounts disputed, damages requested, followed by the largest and bulkiest section represented by the history of the case, which, in the situation of a second appeal judgment, may be a long list of procedural stages starting from the base of the court hierarchy. The following are excerpts from the body of a judgment:

> „Împotriva acestei sentinţe a declaratapel, pârâta, arătând că, deşi reclamanta şi-a întemeiat acţiunea pe dispoziţiile relative la plata nedatorată şi pe clauze incluse în condiţiile generale la poliţa de asigurare, instanţa de fonda reţinut în speţă, aplicarea art. 998 C. civ. relativ la răspunderea civilă delictuală, deşi nu au fost probate condiţiile acestei forme de răspundere civilă. În plus, apelanta-pârâtă a arătat că nu pot coexista cele două forme de răspundere civilă, respectiv, răspunderea contractuală şi cea delictuală, aspect nelămurit de prima instanţă de fond.
> Prin Decizia civilă nr. 14 din 25 ianuarie 2011, Curtea de Apel Cluj, secţia comercială, de contencios administrativ şi fiscal a respins apelul declarat de apelanta-pârâtă ca nefondată.
> În argumentarea acestei soluţii, instanţa de apel a apreciat că prima instanţă de fond şi-a fundamentat în mod corect soluţia pronunţată pe temeiul răspunderii civile delictuale, în raport de starea de fapt din speţă constând în încasarea despăgubirilor pentru acelaşi accident, de către pârâtă, atât de la reclamantă, cât şi de la asigurătorul german, fapt ce a determinat imposibilitatea reclamantei de a-şi mai exercita dreptul de regres către persoana vinovată." (Decizia nr. 2818/2012. ICCJ. Sectia Comerciala, p. 2).

The general observations that can be made on the excerpt above are that the syntax is convoluted, characterized by subject-object inversions, passive constructions, many subordinate clauses and appositions. In terms of content, it may be noted that there is not enough substance in the sense that the text is, to a degree, not individualized or personalized, and tends to sketch a more abstract description than build up an actual narrative.

The Romanian text presented above is also interspersed with grammatical errors, probably due to insufficient drafting time, such as:

- misuse of commas:
  - "Împotriva acestei sentinţe a declarat apel, pârâta, arătând că...",
  - "instanţa de fond a reţinut în speţă, aplicarea art. 998 C. civ.",
  - "Curtea de Apel Cluj, secţia comercială, de contencios administrativ şi fiscal a respins apelul",
  - "în raport de starea de fapt din speţă constând în încasarea despăgubirilor pentru acelaşi accident". (the absence of the comma resulting in ambiguity: *constând* refers to *starea de fapt* or to *speţă*?)
- wrong agreement in gender between a participial adjective and its governing noun:
  - "a respins apelul declarat de apelanta-pârâtă ca nefondată".

By contrast, in one of the American samples, provided below, we can notice that, despite the same frequent use of passives, the general impression of the text is that it is more individualised

and "active" or "dynamic" and not "dragging". One possible cause might be the predominant use of action verbs, as compared to mostly mental ability verbs preferred in the Romanian text.

> "Before the Board may petition this Court for appropriate injunctive relief, the charge must be investigated and after a preliminary investigation the Board must have "reasonable cause to believe such charge is true and that a complaint should issue". Once the petition is filed it is the role of this Court to ascertain whether the Board had "reasonable cause to believe" that the charge was true. Douds v. Milk Drivers and Dairy Employees Union, 2 Cir., 1957, 248 F 2d 534, 538 (…) No criteria is set forth in the statute for determining whether the Board had such "reasonable cause to believe" and the Court is remanded to the same principles employed in the exercise of its discretion for injunctive relief in similar cases. It has permissive range to exercise its discretion to grant or to deny its writ." (McLeod v. LOCAL 239, p. 5)

An excerpt from a British judgement is also relevant in showing that the phrasing is more dynamic, consisting of shorter sentences, or, in the case of longer stretches of language, interspersed with appositions or relevant and necessary explanatory, clarifying information, whether or not provided in between brackets. Dynamism is rendered prevalently by the use of the active voice of the judge (representing the authority) or of the parties, in the present tense, and the use of quotations in italics (intertextuality), which makes the text clearer, more fluent and consistent. Verbs are more diversified in nature, being either existential, declarative, descriptive, expressing mental ability or action, as seen below:

> "The real dispute is not difficult to understand. Barclays contends that on the true construction of the Settlement Agreement and in particular Clause 5, Equitas is bound to pay the sum stated in the sworn claim and has no relevant right to an assessment of the costs paid to LWD included in it. Therefore, any assessment is otiose, even if (which Barclays submits it is not) Equitas was entitled to one under the provisions of Section 71. LWD contends that all but the last 7 of the bills included in Barclays' claim are now time-barred for any assessment under the 1974 Act (as the application for an assessment was made only after the expiry of 12 months from the payment of the previous bills) and that, as a matter of discretion, it would in any event be inappropriateto order a detailed assessment of any of the bills.
>
> On December 7 LWD wrote to Equitas' solicitors inviting their agreement that at this hearing the court should deal with:
>
> *all issues as to the true construction of the Settlement Agreement and the question of whether, in the light thereof, a detailed assessment can and/or should be ordered pursuant to section 71.*" (Barclays Plc v Villers [2000] EWHC 197 (Comm) (25 January 2000) p. 5)

Even if the characteristic features of the legal genre are visible in all of these samples, some are clearer or better drafted than others, and more or less challenging for the translator. Such comparative review may be beneficial for the translator in choosing his/her strategies starting from models of authentic materials in the target language so as to aim at producing a naturally sounding translation.

D) The **ending section** of the texts:

The last sections of the commercial judgments shall be presented in table format for an easier comparison:

Romanian	**British English**	**American English**
„PENTRU ACESTE MOTIVE ÎN NUMELE LEGII	**"DISCRETION** The consequence of the conclusions	"Upon the record, the Court is of the opinion, therefore, that…. (…) It remains to decide what injunctive

DECIDE Admite recursul declarat de recurenta-pârâtă SC V.A.D. T.L. SRL VIŞEU DE SUS prin lichidator CABINET DE INSOLVENŢĂ B.L. împotriva deciziei nr. 14 din 25 ianuarie 2011 pronunţată de Curtea de Apel Cluj, secţia comercială, de contencios administrativ şi fiscal, casează Decizia recurată şi trimite cauza aceleiaşi instanţe spre rejudecare. Irevocabilă. Pronunţată în şedinţă publică, astăzi 27 septembrie 2011”	which I have already expressed is that (…) (*three pages of judge's conclusions – **our note***) As a matter both of general discretion, and because I can see no special circumstances in this case within Section 70(3) of the 1974 Act, therefore in my judgment it would be wrong to order an assessment of any of LWD's bills and I decline to do so. Because of the nature of the applications before the Court, I will give the parties an opportunity to make submissions as to the form of any orders which should be made as a result of this judgement and any other matters which arise.”	relief, if any, shall be just and proper (…) The relief requested is necessary to assure the discontinuance of the kind of conduct intended to be enjoined by Congress and falls within the scope of “just and proper” criteria established by the Act as amended. The petition is accordingly granted, and an order may be entered hereon. **NOTES** [1] (*definitions of terms quoted from statutes or laws*) [2] (*ibid [1]*)
Comments:		
Frozen phrases: *Pentru aceste motive/În numele legii/Decide*: **Verbs are performative**, in the **present tense3rd person singular** (designating the court and its authority): *admite, casează, trimite cauza spre rejudecare* **One-word sentences:** (peformative): *Irevocabilă* **Truncated, elliptical passives**: *Pronunţată în şedinţă publică, astăzi...* **Ceremonial tone and structure of the text**. Parallel syntactic structures.	**Specialised use of a common word** (pertaining to the general vocabulary): *DISCRETION* **Decision made by a person (the judge – Mr Justice Langley),** assumed at individual level through the use of the personal pronoun singular in the nominative/genitive cases: *I/in my judgment* **Explanation of reasons and performative effect of the text**: *I can see no special circumstances (...), I will give the parties an opportunity (...)* **More humane tone, not ceremonial and aloof**: general turn of phrase is free, does not fit a predetermined pattern.	**Frozen phrases**: *Upon the record* **The decision is not personal but taken in the name of the Court**: *The Court is of the opinion, therefore, that…* **Announces the following step**: *it remains to be decide…* **Motivation or justification** of the decision to grant/or not grant a request: *the relief requested is necessary to assure discontinuance of (...) conduct* **Decision rendered through the use of passives**: *the petition is accordingly granted, an order may be entered* **Further notes included for clarification** of terms as defined by the relevant applicable laws and statutes. **Mildly ceremonial tone** rendered by the passives and 3rd person subject

On the whole, it may be stated that, in terms of style, Romanian judgments are more laconic, similar to a wire message, at times, whereas British and American judgments resemble a freely-flowing story (not just in the narrative parts but also in the descriptive or expository ones).

3. Possible difficulties posed to the translator by the Romanian commercial judgments as Source Texts

Further to comparing the sample texts briefly reviewed above, it may be concluded that a few of the difficulties of Romanian judgments that could be challenging for translators are as below:

1) **Excessive use of specialized terminology**, which absconds the meaning and creates petrified instances of language;

2) **References** to laws, legislative texts, decisions issued during other trial stages, **are not included as excerpts in the current text** (**intertextuality**). Doing so would facilitate comprehension and reduce the research time both readers/translators. Most of the times, consulting a document mentioned in a judgment is close to impossible on account of its inaccessibility, tight deadlines, etc;
3) **First introductory paragraphs**, specifying the litigating parties, **do not contain enough information on the object/grounds of the case**, except for brief mentions. Previous courts are not precisely defined and, sometimes they are referred to in more than one way, for example: "prima instanţă de fond", "instanţa de fond", "tribunalul", "tribunalul M.", "Curtea de Apel C.", "Instanţa de Apel", "Înalta Curte", "instanţa de casaţie", "instanţa de judecată", resulting in an inconsistent use of terms referring to one or several institutions, creating ambiguity, confusion and hesitancy in the reader/translator. The latter will have to go back and forth many times through the text just to make sure that he/she grasped the referents correctly, which, again, extends the time spent on decoding the source text;
4) **Parties and courts are not clearly and consistently defined/stated** in the beginning;
5) **Insufficient attention paid to punctuation and correct use of grammatical rules** sometimes resulting in ambiguous, truncated phrases giving rise to speculative interpretations. Examples are: misuse/absence of comma in the correct places (sometimes inserted between subjects and predicates), too many subordinate clauses resulting in anacoluthon (author losing track of the initial thread of ideas);
6) **Excessive use of some features of the legal language** such as: Latinisms, gerunds and gerundival constructions, passives, impersonal reflexives, subject-predicate inversions, pre-posed adjectives, appositions, technical legalisms (and even numerous instances of "wooden language" or bureaucratic, administrative jargon) that build up and create a feeling of pretentiousness and unnecessary grandiosity instead of clarity and authority, when contrasted, on the other hand, with incomplete and unsubstantial presentations of facts, events, rationales, etc., thus giving an impression of hurried, superficial drafting;
7) **Use of synonymy**, which should not actually occur in the legal register, which must be denotational, clear, and transparent. Decisions/judgments are referred to either as: "decizie", „sentinţă", „soluţie", „rezolvare". This may be due to the author's need to avoid possibly irritating repetitions of the same terms;
8) **Insufficient development of the narrative part**, in some judgments issued by higher courts, when the facts at the basis of the conflict/litigation have to be presented again, not just mentioned briefly, if at all, by reference to previous trial proceedings. In our opinion, better summaries of the facts would not constitute a futile repetition, as they would help readers/translators who cannot access auxiliary documents quoted in the text.
9) The greatest difficulties in the translation of legal texts do not necessarily reside in the specialized terminology or intricate syntax thereof but in **the effort to retrieve the correct intended meaning from those sections that give rise to ambiguity**.
10) Therefore, a possible source of discomfort for the translator might stem from the fact that Romanian judgments **lack clarity**, thus rendering their work more time-consuming and uncertain. Translators may feel insecure as to whether they have decoded, transferred and re-coded the original meaning of a source text into the target language with 100% accuracy. Furthermore, this is also reflected in their decision-making abilities. Due to the fact that the source texts might be "deficient", from several points of view, the best

solution, in practice, has traditionally been to not intervene, to not touch either the syntactical structure or the interpretation of certain concepts or ideas, thus producing translations that are literal, word-for-word translations, which are considered to be safer and not very challenging to the translator's responsibility. Yet, the question remains, should translators be allowed to take a few more liberties in those cases that seem safe, so to actually intervene on the structure of the text as well, and focus on a semantic, functional type of translation, in order to produce better quality target texts?

4. Conclusions and further recommendations

The features described in the case of British and American English commercial judgments make a translator's work easier and swifter. Translators' intervention onto such source texts (during the stage of decoding and re-arrangement of ideas, syntax, etc.) can be minimal, if necessary at all, due, largely, also, to the general layout of the text.

By contrast, Romanian source texts need more action on the part of the translator, who will have to make use of a larger palette of tools to work on the text in order to produce a good quality translation that is adequate.

Another key aspect to be considered, if aiming for naturalness, is that, stylistically, the target text should also match the whole make-up of the genre in the target culture, in the case at hand, the particularities of the legal field (common law) in the English-speaking countries, even if the source texts (i.e. Romanian judgments) do not necessarily allow for an exact adaptation to such requirements. In our view, the translator's contribution can be more consistent, as long as no alterations are brought to the meaning/content of the source texts, by a better editing of the target texts, in line with other models of documents that are acceptable in the target culture.

Translating this genre across such different legal systems, cultures and languages may prove to be challenging, and the translators' efforts and responsibility are rather heavy, reason for which it is mandatory to be extremely familiar with and cognizant of all the array of available tools, linguistic, legal, cultural or otherwise, that may be employed by translators with very good results.

BIBLIOGRAPHY

1. Alcaraz Enrique, Hughes Brian, (2002). *Legal Translation Explained*. Manchester: St. Jerome Publishing Co.
2. Baker, Mona, editor. (1998, 2001). *Routledge Encyclopedia of Translation Studies*, London: Routledge Publishing House.
3. Baker, Mona (1992). *In Other Words: A Coursebook on Translation*, London: Routledge.
4. Butt, Peter (2001). *Legalese versus Plain Language*, Amicus Curiae, Issue 35.
5. Cooper, Frank E. (1963). *Writing in Law Practice*, (2nd ed.)
6. Dainow, Joseph (1966 - 1967). "The Civil Law and the Common Law: Some Points of Comparison", published in *The American Journal of Comparative Law*, Vol. 15, No. 3, pp. 419-435, by the American Society of Comparative Law, online version, http://www.dphu.org/uploads/attachements/books/books_4037_0.pdf on 5 January 2017
7. RodicaDimitriu (2002). *Theories and Practice of Translation*, Iasi: Institutul European.
8. Daniela Ionescu (2003),*Translation: Theory and Practice*, revised edition, Oscar Print Publishing House.

Corpus:

1. Romanian corpus: http://legeaz.net/spete-drept-comercial-iccj-2012/
2. British English corpus: http://www.bailii.org/ew/cases/EWHC/Comm/
3. American English corpus: http://dockets.justia.com/