PRINCIPLES OF TRANSLATING LEGAL TEXTS

Principii de traducere ale textelor juridice

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Abstract: In an increasingly globalised world, translations need to cope with a high level of demand. The process of text production and reception is therefore opened towards a large number of countries and it applies to all spheres of human interaction.

My essay dedicates itself to the translation of the language of law, concentrating on defining the translations and their function as social communication elements.

Keywords: translation, language, difficulty.

Definition of Translation

James Boyd White says "*that translation is an art of recognition and response, both to another person and to another language*" and that *"it carries the translator to a point between languages, between people (and between peoples), where the differences between them can be more fully seen and more nearly comprehended – differences that enable us to see in a new way what each other is, or, perhaps more properly, differences in which the meaning and identity of each resides*"[1]. Also the translator is not just moving from one technical language to another, but he wishes to connect in his mind two different worlds, ways of being and seeing.

My essay dedicates itself to the language of law; it concentrates on defining the translations, their function as social communication elements. Some may ask *what do these two have in common?* Boyd White gives an answer to this question: "*Translation and justice first meet at the point where we recognize that they are both ways of talking about right relations, and of two kinds simultaneously: relations with languages, relations with people*"[2].

With respect to the term *translation*, it means to "carry something over", from one place to another. The word itself comes from the Latin language and has two elements: *trans* which means across and *latus*, the past participle of *fero, ferre, tuli, latus* – to carry.

[1] Boyd White, James – Justice and Translation – An Essay in Cultural and Legal Criticism, University of Chicago Press, 1990, page 230;
[2] Boyd White, James – Justice and Translation – An Essay in Cultural and Legal Criticism, University of Chicago Press, 1990, page 230;

The Spanish linguist Ortega y Gasset underlines the idea that when a text is represented in another language there are necessarily modifications of the original; however Roman Jacobsen asserts that "*all cognitive experience and its classification is conveyable in any existing language*"[3]. These modifications are of two kinds: what he calls "*deficiencies*", aspects of the meaning of the original text that cannot be present in the translation, and what he calls "*exuberances*", aspects that appear in the translation, but are not part of the original.

The sources of these exuberances and deficiencies are numerous: the words we use have different histories in two cultures and sometimes they cannot be translated with the same meaning; the structure of each language is unique while some of its aspects do not have an equivalent in other languages; also the social, cultural and physical context of languages lead to a meaning that sometimes cannot be reproduced.

Susan Bassnett offers a more technical definition of translation: "*What is generally understood as translation involves the rendering of a source language (SL) text into the target language (TL) so as to ensure that (1) the surface meaning of the two will be approximately similar and (2) the structures of the SL will be preserved as closely as possible but not so closely that the TL structures will be seriously distorted*"[4].

After 1960 significant changes have taken place in the field of translations, based on the growing acceptance of the study of stylistics and linguistics within literary criticism. The developments in translation studies in the twentieth century are based on the work of Russian groups of researchers (1920) and subsequently by the Prague Linguistic Circle.

Based on their work, the foundation of the translation theory was established, underlining once again that translation is not an easy task, accessible to each person with minimal knowledge of two or several languages, but as Levy (quoted by Bassnett) declares: "*a translation is not a monistic composition, but an interpenetration and conglomerate of two structures. On the one hand there are the semantic content and the formal contour of the original, on the other hand the entire system of aesthetic features bound up with the language of the translation*".

The translation, as a product, is the result of a complex system of decoding and encoding on the semantic, syntactic and pragmatic levels. Octavio Paz sums up the idea that all texts are "translations of translations of translations".

[3] Boyd White, James – Justice and Translation – An Essay in Cultural and Legal Criticism, University of Chicago Press, 1990, page 248;
[4] Bassnett, Susan – Translation Studies, Routledge, London and New York, 1994, page 2;

Legal Translation

Roman Jakobson, in his article "On Linguistic Aspects of Translation", divides the translation into three categories:

1. Intralingual translation, or rewording (an interpretation of verbal signs by means of other signs in the same language);

2. Interlingual translation or translation proper (an interpretation of verbal signs by means of some other language);

3. Intersemiotic translation or transmutation (an interpretation of verbal signs by means of signs of nonverbal sign systems)[5].

According to other linguists translations can be classified into the following categories:

- general translations;
- literary translations;
- specialist or technical translations.

Legal translation falls into the third category – specialist or technical translations. It involves the use of language for special purposes, namely the use of language for legal purposes. According to Deborah Cao, this type of translation can be further classified into several categories: translation of statutes and treaties; translation of private legal documents; translation of legal scholarly works; translation of case law.

According to Luminița Frențiu, the translators of legal texts should convey the meaning not just of words but of the legal system that imposes the choice of certain words. A good translation should have the same impact on the target language audience as the original has on the source language audience.

> "*The law should be regarded as creating a distinct discourse of its own, in which words are given their meanings by reference to the purposes and contexts of the law, not to the shifting usages of ordinary speech*"[6].

When translating a text, a translator needs to bear in mind the destination of translation and also its purpose. It is important to know whether a translation is for information only or if it represents an original document with legal value.

[5] Bassnett, Susan – Translation Studies, Routledge, London and New York, 1994, page 14;
[6] Boyd White, James – Justice and Translation – An Essay in Cultural and Legal Criticism, University of Chicago Press, 1990, page 240;

As Slawson agrees "*in laying down that private law, there is no good reason to use language other than plain, modern English"*[7], but the trend is also applicable when talking about translations. However the translator can choose this option: to use a plain, modern language, to make his translations accessible to the general public or the other option: to use the traditional legalese, whose defenders are still numerous.

Difficulties of Legal Translation

My paper refers to the translation of different types of documents: contracts, corporate communication documents, private legal documents. In the following pages I will talk about the difficulties a translator meets when translating this kind of documents from one language into another.

The first issue is **equivalence.** The concept of equivalence was largely discussed in the last decades by the theorists in this field such as Vinay and Darbelnet, Jakobson, Catford, House, Baker and others. Mona Baker speaks about equivalence at word level, equivalence above word level, grammatical, textual and pragmatic equivalence. In the following paragraphs I will write a few ideas regarding each of them:

Equivalence at Word Level

A translator is concerned with transferring the meaning of a language into another language. But in this respect he needs to decode the source language's smallest units and structures; so he should start with the word – the smallest unit with individual meaning. The word is "*the smallest unit of language that can be used by itself*" [Bolinger and Sears quoted by Baker], or as Baker writes "*the written word is any sequence of letters with an orthographic space on either side"*.

After decoding the meaning, he searches for an equivalent in the target language. But not always a word has an equivalent in the target language. Sometimes a word is equivalent with a string of words or has no equivalent and the translator needs to search and find an equivalent with at least similar meaning. When talking about the language of the law, searching for equivalents

[7] Slawson, David W. – Binding Promises, Princeton University Press, Princeton, New Jersey, 1996, page 126;

can be even more difficult. For example, in 2009, the news in Romania spoke about a case referring to *cerere de extradare* (in English *extradition request*, according to:

http://www.proz.com/kudoz/english_to_romanian/law_general/2046080-affidavit_in_support_of_request_for_extradition.html) with a file of more than 700 pages and the Prosecuting Attourney of Romania, Laura Codruța Kovesi, declared: "*There was a problem with the translation of some parts of the file, certain Romanian words had no equivalent in English, such as patrimoniu* (in English *assets*, according to the Romanian-English Dictionary of Economic and Legal Terms of the European Institute, Iaşi, 1999) *or abuz în serviciu* (in English *abuse of office*, according to http://www.proz.com/kudoz/romanian_to_english/law_general/1446012-abuz_in_serviciu.html), *and for this reason we had to rewrite some parts of the translation*" [downloaded from www.realitatea.net on 24.06.2009].

So if we analyse several languages we can conclude that there is no "*one-to-one equivalence*", as Mona Baker calls it, between orthographic words and elements of meaning within languages.

Frențiu Luminița writes about the difficulties in achieving word equivalence, difficulties which are often generated by the coexistence of three distinct lexical layers:

1. strictly specialized legal terms: there is no precision problem regarding these terms often used in "the language of lawyers", only equivalence raises certain issues. Very few monosemantic terms, used in the legal language, have equivalents belonging to the same lexical layer.

For example the word *comodat* (it refers to a type of contract, of Romanian origin, for a loan made for current use - http://dexonline.ro/definitie/comodat). Some researchers use the translation *free loan*, while others the word *commodate* from the Latin *commodatum*, referring to a gratuitous loan or free concession of anything moveable or immovable, for a certain time, on condition of restoring again the same individual after a certain time.

The Latin expressions used in legal language raise no concern for the translators as they may be used as they are, without requiring a translation.

2. "technical terms" borrowed from other terminologies: they have a general character and for this reason they are accessible to several fields of activity, although their occurrence is rather limited. We can include here for example medical terms used in the legal language:

politraumatism cu leziuni cranio-cerebrale (in English *polytraumatism with cranio-cerebral injuries*), *hemoragie* (in English *haemorrhage*) or *autopsie* (in English *autopsy*).

3. words belonging to the general vocabulary but used within legal environment. These words have to be translated according to the context, avoiding any ambiguity. Frențiu Luminița offers for the word *act* several contextual equivalents: *act de grațiere - act of grace, act de forță majoră – act of God, act de procedură - proceedings, act fictiv – fictitious transaction, act autentic – deed.*

The semantic relations also influence the translator's search for equivalents and the translation process. They need to be taken into consideration because they can turn the meaning of a text into a totally different and unwanted direction.

First we need to speak about polysemy. There are words totally or partially identical in the general use compared with the specialized one. Frențiu Luminița gives a few examples with equivalents belonging to the same lexico-semantic category, that do not raise special difficulties: *a aplica – to apply, circumstanță – circumstance, a constata - to establish, a dispune – to decide, a interzice – to forbid, tentativă – attempt.* On the other hand words with archaic or popular character have as equivalents specialized terms or words from the general vocabulary. Due to the fact that this analysis refers to legal language, many researchers prefer as equivalents specialized terms. Examples of this kind of words: *tăinuire – concealment, nevinovăție – innocence, pagubă – damage.*

There are also legal terms "*which have 2 or more meanings within the same or different areas of law*"[8]. Some examples: *apel, probă, obligație, procedură*. The word *obligație* may refer to a civil legal relation and a debt – it is translated into English as *obligation*, or it may refer to stocks or shares – the English equivalent being *bond*.

In order to avoid ambiguity of polysemantic legal terms in translations we should use them "*in fixed syntagmatic units: ticluire de probe mincinoase – fabrication of false proof, viciu procedural – procedure defect, tulburare de posesie – disturbance of possession, complet de judecată – panel of judges/ bench*"[9].

[8] Frențiu, Luminița – Instances of Discourse Analysis, Mirton Publishing House, Timișoara, 2004, page 18;
[9] Frențiu, Luminița – Instances of Discourse Analysis, Mirton Publishing House, Timișoara, 2004, page 18;

In general synonymy is avoided as it can easily generate ambiguity. Perfect synonyms could make translators' jobs easier. But unfortunately there are few cases when a perfect semantic, contextual and stylistic equivalent can be found.

On the other hand partial synonyms require a detailed research especially regarding legal language. For example, Frențiu Luminița gives the following equivalents for an act of breaking the law: *abatere – infringement, act – act, cauză – case/ suit, contravenție – minor offence, crimă – crime, delict – offence, litigiu – litigation*. So, in translation, the most appropriate equivalent should be used, based on the definition of word and the context to be used in. Another example given by Frențiu Luminița is the person involved in a criminal case: he or she can be *acuzat – accused, autor – author, făptuitor – doer, infractor – offender, învinuit – defendant, pârât – accused*, the differentiating criterion being the stage of the criminal case.

Equivalence above Word Level

Words are not put together at random in any language. There are rules on how they should be combined to express meaning. The tendency of words to co-occur regularly in a language is referred to as collocation. Often this co-occurrence is related with their propositional meaning. Mona Baker uses the word *cheque* to indicate that it is more likely to occur with *bank, pay and money* than *moon, butter or repair*.

Also words with similar meaning, synonyms, can have quite different sets of collocates. In English for example, people *break rules* but they do not *break regulations.* But it is acceptable to *deliver a verdict or pronounce a verdict;* however it is unlikely to *deliver a sentence*, while *pronounce a sentence* is accepted in language.

The following examples are collocations used in legal English: *absolute right (a right set out in the European Convention on Human Rights that cannot be interfered with lawfully), admissibility of records (in civil cases documents containing information are admissible as evidence of the facts stated in them), breach of trust (any improper act or omission, contrary to the duties imposed upon him by the terms of the trust), case law (the body of law set out in judicial decisions), discharge of contract (the termination of a contractual obligation), effective date of termination (the date on which a contract of employment comes to an end), impossibility of performance (the impossibility of carrying out a contract), restrictive trade practices*

(arrangements in industry designed to maintain high prices or earnings or to exclude outsiders from a trade or profession) (taken from Oxford Dictionary of Law).

Collocational patterning differs from one language to another, so when it comes to source language and target language it can generate translation problems. In order to overcome these problems, Baker recommends the translator to detach himself from the source text and "*to put the draft translation aside for a few hours. One can then return to the target text with a better chance of responding to its patterning as a target reader eventually would, having not been exposed to and therefore influenced by the source-text patterning in the first place. At any rate, translators are well advised to avoid carrying over source-language collocational patterns which are untypical of the target language, unless there is a very good reason for doing so*"[10].

On the other hand idioms and fixed expressions are frozen patterns of language, with little or no variation in form, and the meaning (in case of idioms) is different from the meaning of each word taken separately.

Contracts also contain a lot of fixed expressions. After reading several contracts I came across the following patterns repeated in the majority of contracts: *concluded by and between, null and void, subject to the terms and conditions specified herein, the contract shall be governed and construed in accordance with the laws of…, the party hereby represents and warrants that, seller and buyer - collectively referred to as "parties", this agreement supersedes and extinguishes all previous agreements, for the purpose of this agreement; the party shall indemnify, defend and hold harmless the other party from and against any and all liabilities; the party shall use its best effort to, the party shall hold such information in confidence, the agreement shall be signed in two identical copies, this agreement will be executed by their duly authorized representatives.*

Grammatical Equivalence

Grammar contains rules which establish the way words and phrases combine in a language; the way notions like time, gender, etc, can be made explicit. Here we speak about the structure of words – morphology – and the structure of groups, clauses and sentences – syntax.

[10] Baker, Mona – In Other Words, A Coursebook on Translation, Routledge, London, 1992, page 55;

Compared with the lexical equivalence analysed in the previous pages, grammatical equivalence is different due to the following reasons: grammar rules are compulsory and rather stable – they do not change over time as easily as words do; lexical choices are often optional, while grammar rules must be followed accordingly; words are sometimes changed by speakers or context, while grammar rules cannot be manipulated so easy.

As translation is concerned, each translator is free to decide upon many aspects at a lexical level, but not on grammar rules. They must be followed as they are, with the limitations and restrictions they impose.

Textual Equivalence

The clause as a message can be analysed in terms of two types of structures: thematic structure and information structure. The Hallidayan approach treats these two types of structures separately, while linguists from the Prague School combine the two structures in two in the same description. In Baker's opinion, translators with different linguistic backgrounds should be informed about both points of view and use only the explanations compatible with the language of interest to them.

Thematic structure consists of two segments: theme – indicates what the clause is about and rheme – indicates what the speaker says about the theme. They can be used to account for the acceptability of a sequence in a given context, and not for the grammaticality, as they are not grammatical notions. They have a low influence on whether a sequence is or not grammatical. Also acceptability and coherence are not ensured by grammaticality in a certain context.

Information structure refers to the already known information – given information – and in the same time to the new information given to the audience. Both information and thematic structure are features of the context rather than of the language system. The audience will decide which part of the message is given and which is new. The normal order in a message is the given information followed by the new information; this normal order is recommended by specialists as it will ease comprehension. Due to this principle, longer and heavier structures are placed towards the end of the clause since new information often needs to be stated more fully than the already known message.

Pragmatic Equivalence

Pragmatic equivalence is concerned with the way utterances are used in communication and interpreted in context, as pragmatics is the study of language in use. And I refer here to the study of meaning not based on the linguistic system, but on the way it is perceived and manipulated by the participants in the communication process.

For a better understanding of a text, two important elements raise difficulties: coherence and implicature.

Coherence (like cohesion) is the range of relations that contribute to the organization of a text, cohesion is related to the surface relations – lexical and grammatical dependencies – while coherence to the conceptual relations – meaning dependencies.

As Charolles writes "*no text is inherently coherent or incoherent. In the end, it all depends on the receiver, and on his ability to interpret the indications present in the discourse so that, finally, he manages to understand it in a way which seems coherent to him - in a way which corresponds with his idea of what it is that makes a series of actions into an integrated whole*"[11].

The coherence of a text depends on several elements such as: the expectations of the sender and the receiver of the message, their knowledge and life experience, the society they act in. So the same text may be coherent for one reader, while for another may not be coherent.

For this reason, in translation, the producer of a text may not take it for granted that the audience will have the necessary background knowledge to understand and interpret that text. So for the translator the knowledge of its audience, the organization of language in general and the structure of social relations are all important aspects which affect the coherence of a text.

If we take for example several decontextualized clauses, Charolles suggests that the reader will automatically connect them in his mind, and even so he might not fully understand the real meaning.

Implicatures are aspects of meaning above the literal and conventional meaning of an utterance; for Grice the term implicature does not refer to what the speakers really say but to what they mean or imply.

Regarding the comprehension of a text, the target audience needs to understand first the meaning of the words and structures because else the implied meaning remains unknown. However, "*knowledge of the language system may not be sufficient but it is essential if one is to*

[11] Baker, Mona – In Other Words, A Coursebook on Translation, Routledge, London, 1992, page 219;

understand what is going on in any kind of verbal communication. This means that any mistranslation of words and structures in the source text may well affect the calculability of implicatures in the target text"[12].

As a conclusion "*the choice of a suitable equivalent in a given context depends on a wide variety of factors. Some of these factors may be strictly linguistic. Other factors may be extra-linguistic. It is virtually impossible to offer absolute guidelines for dealing with the various types of non-equivalence which exist among languages. The most that can be done is to suggest strategies which may be used to deal with non-equivalence 'in some contexts'. The choice of a suitable equivalent will always depend not only on the linguistic system or systems being handled by the translator, but also on the way both the writer of the source text and the producer of the target text, i.e. the translator, choose to manipulate the linguistic systems in question*"[13].

Different Legal Systems

Another source of difficulty in legal translation is represented by the **different legal systems** around the world. In each country the legal language is connected to a national legal system; although legal language is considered a universal technical language, it has certain specific characteristics that reflect the history, the evolution and the development of that country.

Law is reflected in customary norms as a universal concept; however legal systems are peculiar to the societies in which they were created.

The legal systems around the world are classified into several categories, based on their jurisdictional features. Some researchers speak about several legal families such as: Romano-Germanic Law (Continental Civil Law), the Common Law, Socialist Law, Hindu Law, Islamic Law, African Law and Far East Law, the two more influential being the Common Law and the Civil Law, with 80% of the countries in the whole world using them.

David and Brierley state that each legal system has its own characteristics and "*a vocabulary used to express concepts, its rules are arranged into categories, it has techniques for expressing rules and interpreting them, it is linked to a view of the social order itself which determines the way in which the law is applied and shapes the very function of law in that society*"[14].

[12] Baker, Mona – In Other Words, A Coursebook on Translation, Routledge, London, 1992, page 229;
[13] Baker, Mona – In Other Words, A Coursebook on Translation, Routledge, London, 1992, page 17-18;
[14] Cao, Deborah – Translating Law. Topics in Translation, Multilingual Matters, Clevedon, 2007, page 25;

These differences raise linguistic difficulties in translation. White considers that one of the most problematic features of legal discourse is that it is "*invisible*"; "*the most serious obstacles to comprehensibility are not the vocabulary and sentence structure employed in law, but the unstated conventions by which language operates*"[15].

A basic linguistic difficulty in legal translation is the terminological correspondence between different languages. David and Brierley speak about this linguistic difficulty: "*The absence of an exact correspondence between legal concepts and categories in different legal systems is one of the greatest difficulties encountered in comparative legal analysis. It is of course to be expected that one will meet the rules with different content; but it may be disconcerting to discover that in some foreign law there is not even that system for classifying the rules with which we are familiar. But the reality must be faced that the legal science has developed independently within each legal family, and that those categories and concepts which appear so elementary, so much a part of the natural order of things, to a jurist of one family may be wholly strange to another*"[16].

Culture and traditions had an important impact on the language of the law; the language of the Civil Law and the Common Law are different in style and writing judgments.

In translation the degree of difficulty may vary; an easier translation when the two legal systems and languages are closely related or when only the legal systems are closely related, but the languages are not; a more difficult translation when the two legal systems are different and the most difficult translation is when the legal systems and languages are unrelated. Therefore, as deGroot concludes, "*the degree of difficulty of legal translation is related to the degree of affinity of the legal systems and languages in question*"[17].

Conclusion

The legal language serves as a vehicle for transporting what the law is about, however translating the language of law does not lack difficulty. The translation of law has built a bridge between different cultures in history and its role is increasing nowadays. As Greere sums up: "*Translation is no longer a linguistic shift but rather a textual adaptation to a requested receptive situation-in-culture. The translator provides a service of consultancy involving the*

[15] Cao, Deborah – Translating Law. Topics in Translation, Multilingual Matters, Clevedon, 2007, page 28;
[16] Cao, Deborah – Translating Law. Topics in Translation, Multilingual Matters, Clevedon, 2007, page 29;
[17] Cao, Deborah – Translating Law. Topics in Translation, Multilingual Matters, Clevedon, 2007, page 31;

lingua-cultural transfer. He is foremost a text producer with knowledge and skills in comparative and contrastive issues of the source and target lingua-cultures, which are applied on the ST information in order to incorporate task descriptive necessities"[18].

The globalisation phenomenon specific for the world we live in and the strong commercial relations between countries, as business partners, has increased the demand of translations, especially the translation of laws.

The legal translation practice combines the linguistic and the legal theories; the effects of translation are very important for the development of the law and their future impact.

The act of translation represents enrichment of the languages, cultures and of the human experience itself. "*Language is a guide to social reality*" as Edward Sapir writes, and human beings are at the mercy of the language that has become the medium of expression for their society. Experience, in his opinion, is largely determined by the language habits of the community, with its separate reality.

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