AN ENGLISH-ROMANIAN CASE STUDY IN LEGAL TRANSLATION: PROBLEMS RAISED BY THE LEGAL NATURE OF TEXTS

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Abstract:Legal language is thought to be complex, pompous, laborious, and archaic, with Latin expressions and "twisted" syntax constructions. Due to its complexity, a great number of people encounter great difficulty in fully understanding important documents, such as decisions expressed by a court or by a tribunal, the regulations embodied in a statute or the legal terms specified in a contract. A very important aspect that should be taken into consideration is that translation is not simply a matter of linguistic transference. In order to perform an accurate translation, the translator has to focus on a complex network of factors, such as the context of situation, the intended use of the translation, the communicative purpose, the generic knowledge. Translators must have basic knowledge of the legal cultures and systems of the source and target languages, and they must be aware of the differences of these cultures and even of the absence of equivalent concepts (Bhatia et al., 2008). This article reveals the above mentioned translation issues, by means of a case study, i.e. an analysis of several problems encountered in the translation of the "Hamburg Rules. United Nations Convention on the Carriage of Goods by Sea, 1978" from English into Romanian.

Keywords: legal language, translation, English, Romanian

1. Introduction

Due to the complexity of legal language, a great number of people do not fully understand important documents (their rights and obligations granted by a constitution, decisions expressed by a court or by a tribunal, the regulations embodied in a statute or the legal terms specified in a contract).

Legal translation may become necessary in more than a situation and most importantly, for different purposes. A legal text may need translation for informative and

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prescriptive purposes, with differences of outcome in terms of legal force. Translation may also be needed at an international level, in a bilateral or multilateral treaty, involving parties speaking different languages, or during the writing of a contract, for the same reason, as well as at a domestic level, in the case of a bilingual or multilingual country, both for its law and for the regulation of disputes among people belonging to different language communities (Dan 2015). History shows that in Europe the foundations of the law of obligations are based on a long standing cultural matrix – the heritage left by the Roman Law. Despite these roots and the circulation of legal ideas, differences are linked to national needs, customs and the financial sources of a nation.

2. Several considerations on the concept of translation

According to Munday (2008), translation studies is an academic discipline related to the study of the theory and the phenomena of translation, being multilingual and interdisciplinary. A very important aspect that should be taken into consideration is that translation is not simply a matter of linguistic transference, but "an attempt to communicate someone else's message through another language. It is an attempt to communicate one word in terms of another" (Vystrčilova 2000: 96). The fact that translation is based on linguistics stems from the idea that a text is a sum of signs and structures which have to be analyzed, understood and decoded by the translator. However, it does not operate only on the linguistic structure, but also on the message (Baca 2007).

One of the main issues a translator has to deal with is represented by the amount of knowledge required from a certain field, as "it is difficult for someone who never translated a scientific text to do so convincingly and completely accurately for the first time" (Popescu and Chirobocea 2013). In order to perform an accurate translation, the translator has to focus on a complex network of factors, such as the context of the situation, the intended use of the translation, the communicative purpose, the generic knowledge, the rhetorical context. Translators must have basic knowledge of the legal cultures and systems of the source and target languages, and they must be aware of the differences of these cultures and even of the absence of equivalent concepts (Bhatia et al. 2008). In this situation, the translator usually resorts either to neologisms or to the repetition of the word in the source language, making an explanatory translator's note. Other situations which require an interdisciplinary approach are the existence in the target language of more than one different concept for a single legal term in the source language

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or the existence of different meanings of the same term, in different branches of law – private or public law.

Those who profess in the legal field and in the field of legal languages should be aware of the fact that legal translation is not a process that focuses only on the linguistic side, but it also implies the understanding of legal concepts in the source language and in the target language as well. Susan Šarčević, author of plurilingual dictionaries and of several studies on legal translation theories, states that "legal terminology of different legal systems is, for the most part, conceptually incongruent" (Šarčević 1989: 278).

The term "translation" can refer to the process, i.e. the act of producing the translation, to the general subject field, or to the product (the text that has been translated). Therefore, the translation process between two different languages involves the changing of an original written text (ST) into the target text (TT) of a different verbal language. This process is described by Roman Jakobson in his seminal paper "On linguistic aspects of translation" (1959). Jakobson (1959/2004: 139, emphasis in original) distinguishes between three main types of translation: intralingual translation or *rewording* (i.e. an interpretation of verbal signs by means of other signs of the same language), interlingual translation or *translation proper* (i.e. an interpretation of verbal signs by means of some other language), intersemiotic translation or *transmutation* (i.e. an interpretation of verbal signs by means of signs of nonverbal sign systems.

3. Translation issues in legal language. Case study

Legal translation is a special purpose translation, the goal of which is to preserve the meaning of the source text and. Legal language is different both from ordinary language and from special languages of other domains. In legal translation, many scholars linked legal equivalence to the extent to which the same *legal effect* can be produced in the translated text, while the fidelity is maintained in the source text. This technique is described by Newmark (1981), as a procedure which occupies the area between the source language (SL) and the translating language (TL), and it is often referred to as a functional equivalence. Newmark also suggests that, when dealing with legal documents, like contracts currently valid in the translated language, the translator should tackle the communicative approach (Newmark 1981: 10).

Translating is not simple transposition. It is typical for legal translation to have to do with more than one legal system, so that translation should not only be terminological,

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but also conceptual. Translators should therefore be able to produce a text, not only understandable in terms of words, but also in terms of ideas (Dall'Omo 2011/2012).

A literal translation puts the stress on terminology, replacing words and phrases of the source language, with equivalents of the target one. But this cannot be done when working on legal documents since more implications are on the scene, especially context. This is why legal translation is basically a process of translating legal systems.

In order to reveal, in a practical way, the difficulties encountered by translators of legal texts, we chose to analyze several problems encountered in the translation of the "Hamburg Rules" and "United Nations Convention on the Carriage of Goods by Sea, 1978" ("Convenţia din 1978 a Naunilor Unite privind transportul de mărfuri pe mare, 1978"),from English into Romanian, and some problems raised by the legal nature of the text itself. Consisting of a set of rules governing the international shipment of goods, this Convention was an attempt to form a uniform legal base for the transportation of goods on oceangoing ships.

Here is an excerpt from the analyzed corpus (article 5, paragraphs 5 and 7). As it may be noticed the translator kept the redundant style in order to remain faithful to the source language text and to avoid its misinterpretation:

With respect to live animals, the carrier is not liable for loss, damage or delay in delivery resulting from any special risks inherent in that kind of carriage. If the carrier proves that he has complied with any special instructions given to him by the shipper respecting the animals and that, in the circumstances of the case, the loss, damage or delay in delivery could be attributed to such risks, it is presumed that the loss, damage or delay in delivery was so caused, unless there is proof that all or a part of the loss, damage or delay in delivery resulted from fault or neglect on the part of the carrier, his servants or agents.

În cazul transportului de animale vii, cărăuşul nu este răspunzător de pierderile, daunele sau întârzierea în livrare care rezultă din riscuri speciale inerente acestui fel de transport. Dacă cărăuşul dovedeşte că s-a conformat instrucţiunilor speciale care i-au fost date de către încărcător şi că, în împrejurările de fapt, pierderea, dauna sau întârzierea în livrare poate fi atribuită unor astfel de riscuri, se presupune că pierderea, dauna sau întârzierea în livrare a fost astfel cauzată, dacă nu se face dovada că pierderea, dauna sau întârzierea rezultă, în totalitate sau în parte, dintr-o culpă sau dintr-o neglijenţă a cărăuşului, a prepuşilor

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sau a mandatarilor săi.

Where fault or neglect on the part of the carrier, his servants or agents combines with another cause to produce loss, damage or delay in delivery the carrier is liable only to the extent that the loss, damage or delay in delivery is attributable to such fault or neglect, provided that the carrier proves the amount of the loss, damage or delay in delivery not attributable thereto.

Atunci când culpa sau neglijenţa cărăuşului, a prepuşilor sau a mandatarilor săi este combinată cu alte cauze de producere a pierderii, avarierii sau intârzierii în livrare, cărăuşul este răspunzător numai în măsura în care pierderea, avarierea sau întârzierea în livrare se datorează unei astfel de culpe sau neglijențe, cu condiţia ca el să dovedească cuantumul pierderii, al avarierii sau al intârzierii în livrare care nu poate fi atribuit respectivei culpe sau neglijențe.

In the next two examples, one can also notice that the hypothetical nature of the legal text is also enforced by the use of the adverb “probably”. In the Romanian version of the text, the translator chose, in the first instance, to use the verb “poate” (the indicative mood, present tense) in order to preserve the hypothetical nature and, in the second instance, he used the same verb, but in the conditional mood (“ar putea”), its use being required, this time, by the adverb “probably”/“probabil”.

Delay in delivery occurs when the goods have not been delivered at the port of discharge provided for in the contract of carriage by sea within the time expressly agreed upon or, in the absence of such agreement, within the time which it **would** be reasonable to require of a diligent carrier, having regard to the circumstances of the case (art. 5, paragraph 2).

Se consideră întârziere a livrării atunci cînd mărfurile nu au fost livrate la portul de descărcare prevăzut în contractul de transport maritim în termenul convenit în mod expres sau, în lipsa unui asemenea acord, într-un termen ce **poate** fi în mod rezonabil pretins unui cărăuş diligent, avâ nd în vedere împrejurările de fapt (art. 5, paragraph 2).

The carrier is not entitled to the benefit of the limitation of liability provided

Un prepus sau un mandatar al cărăuşului nu este îndreptăţit să beneficieze

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for in article 6 if it is proved that the loss, damage or delay in delivery resulted from an act or omission of the carrier done with the intent to cause such loss, damage or delay, or recklessly and with knowledge that such loss, damage or delay **would probably** result (art. 8, paragraph 2).

de limitarea răspunderii aşa cum este prevăzută în art. 6, dacă se dovedeşte că pierderea, avarierea sau întârzierea în livrare rezultă dintr-un act sau dintr-o omisiune a acestui prepus sau mandatar, comis fie cu intenţia de a cauza o asemenea pierdere, avariere sau întârziere, fie prin nechibzuința şi cunoscând că o asemenea pierdere, avariere sau întârziere **ar putea probabil** să se producă (art. 8, paragraful 2).

In its turn, the use of the modal verb "may" further reveals this hypothetical feature, specific to the legal text:

Where the goods have been carried on deck contrary to the provisions of paragraph 1 of this article or where the carrier may not under paragraph 2 of this article invoke an agreement for carriage on deck, the carrier, notwithstanding the provisions of paragraph 1 of article 5, is liable for loss of or damage to the goods, as well as for delay in delivery, resulting solely from the carriage on deck, and the extent of his liability is to be determined in accordance with the provisions of article 6 or article 8 of this Convention, **as the case may be** (article 9, paragraph 3).

Atunci când mărfurile au fost transportate pe punte contrar prevederilor pct. 1 al prezentului articol sau când cărăuşul nu poate invoca o înţelegere privind transportul pe punte potrivit pct. 2 al prezentului articol, cărăuşul, independent de prevederile pct. 1 al art. 5, este răspunzător de pierderea sau avarierea mărfurilor, ca şi de întârzierea în livrare care rezultă numai din transportul pe punte, iar întinderea răspunderii sale va fi stabilită conform prevederilor art. 6 sau art. 8 din prezenta convenţie, **după caz** (art. 9, paragraful 3).

The words "if" and "unless" are also especially frequent in legal language. Within our corpus, these two words are used for approximately 25 times. Such examples are:

The provisions of this Convention

Prevederile prezentei convenţii se

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are applicable to all contracts of carriage by sea between two different States, **if:** (article 2).

aplică la toate contractele de transport pe mare între două state diferite, **dacă:** (art. 2).

The carrier is liable for loss resulting from loss of or damage to the goods, as well as from delay in delivery, **if** the occurrence which caused the loss, damage or delay took place while the goods were in his charge as defined in article 4, **unless** the carrier proves that he, his servants or agents took all measures that could reasonably be required to avoid the occurrence and its consequences (article 5, paragraph 1).

Cărăuşul este răspunzător pentru daune rezultate din pierderea sau avarierea mărfurilor, precum şi din intirzierea în livrare, **dacă** împrejurarea care a cauzat pierderea, avarierea sau înâirzierea s-a produs în timpul cât mărfurile se aflau în grija sa în sensul art. 4, **dacă nu** dovedeşte că el, prepuşii sau mandatarii săi au luat toate măsurile care se cereau în mod rezonabil sa fie luate pentru a evita apariţia şi consecinţele acestei împrejurări (art. 5, paragraful 1).

Legal terms can be divided into three subcategories: purely technical terms (restricted to a specific legal framework), semi-technical terms (consists of vocabulary and phrases from everyday language, and have additional meaning in their legal context) and non-technical legal terminology (the everyday lexis used in legal texts) (Rek-Harrop, 2010).

Pure technical terms are monosemic, unambiguous and semantically stable and attached exclusively to their legal context. These terms are easy to distinguish from the rest of the lexical items, because they are often highly culture-bound (Nădrag 2011). For example, in the Hamburg Rules, the term “consignee” is defined as “the person entitled to take delivery of the goods” (article 1, paragraph 4). For the Romanian version of the text, the translator used the word “destinatar”. Another technical term frequently used within the English legal version of the text is "bill of lading" (translated into Romanian by “conosament”) which, according to the definition given by the text, “means a document which evidences a contract of carriage by sea and the taking over or loading of the goods by the carrier, and by which the carrier undertakes to deliver the goods against surrender of the document. A provision in the document that the goods are to be delivered to the

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order of a named person, or to order, or to bearer, constitutes such an undertaking". Other technical words present within the legal text are: to mitigate ("a limita"), "claimant" ("reclamant"), "shipping practices" ("practica transporturilor maritime"), "statutory rules" ("reguli statutare"), "provisions" ("prevederi").

When translating legal terminology, the translator covers two opposites extremes – the preservation of a number of indefinite and vague non-technical concepts and the importance of achieving precision in translating the technical terms. The translator aims at increasing elasticity of the vague terms. Ambiguity, in legal documents – the syntactic ambiguity - (Rek-Harrop, 2010) is usually deliberate and it is used for reaching a compromise, or to create uncertainties (that one party might seek). The problem of translating ambiguity raises the question of interpretation, which puts the translator into a difficult position, because he must avoid interpreting legal uncertainty, which is a task for legal professionals. For instance, the word *reasonable*, a very common term in English contracts, is unknown in Romanian civil law, and would require a further investigation and clarification.

Semi-technical terms. The most problematic group of terms for a translator is the semi-technical legal lexis. It can contain terminology that has one or many meanings in the everyday language, as well as one or different meanings in the specialized legal context. The number of semi-technical terms is constantly growing. This means that any popular word might acquire, in time, a legal meaning in the view of the expansion of the law and the requirements of social evolution. The semi-technical terms are semantically more complex than the other two groups of terms (technical and non-technical), and therefore, their translation is complicated by the additional connotative meaning (Rek-Harrop 2010).

The noun *law* is mostly used in English legal discourse, while the term "right" is much less common. The ambiguity of words makes it difficult for lawyers to manipulate their technical language, as some terms as "property", "goods", "acceptance" and "implied contract", "servant", "agent" have at least seven, four, or two different meanings.

For example, the word "shipper", is a semi-technical word which, according to its contextual use, may be translated into Romanian by "expeditor", "încărcător", "furca de comandă", dispozitiv de mutare" or "tijă a dispozitivului de mutare". However, the translator chose to translate it by "încărcător", certainly guiding himself/herself by the provisions of article 1, paragraph 3, which explains the meaning of the word:

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"Shipper" means any person by whom or in whose name or on whose behalf a contract of carriage of goods by sea has been concluded with a carrier, or any person by whom or in whose name or on whose behalf the goods are actually delivered to the carrier in relation to the contract of carriage by sea.	Incărcător înseamnă orice persoană de către care sau în numele căreia sau din autorizarea căreia s-a încheiat cu cărăuşul un contract de transport de mărfuri pe mare, sau orice persoană de către care sau în numele căreia sau din autorizarea căreia mărfurile sunt în mod efectiv predate cărăuşului în legatură cu contractul de transport pe mare.

In our opinion, the Romanian word "expeditor" would have been more appropriate, as, in the Romanian language, the word "încărcător" really refers to a person who loads a recipient, an oven etc. or who fuels a steam engine, according to the Romanian Explicative Dictionary (DEX). Moreover, since the word "destinatar" was chosen for the translation of "consignee", we consider that its corresponding word, "shipper" should have been translated as "expeditor".

In its turn, the word "carrier" also poses some translation problems. The Hamburg Rules define it, in article 1, paragraph 1 as "any person by whom or in whose name a contract of carriage of goods by sea has been concluded with a shipper". For the Romanian version of the text, the translator chose the word "cărăuş". However, DEX defines the latter word as "person who transports passengers or heavy objects by a wagon". Therefore, we consider that the Romanian word "transportator" would have been more appropriate in the sense of the Hamburg Rules, especially since we are talking about the carriage of goods by sea and especially since the translator also chose the Romanian word "transport" for the English word "carriage".

Another translation problem is triggered by the nouns "liability" and "responsibility". These two words were translated by "raspundere" and "responsabilitate". However, as it may be noticed from the following excerpts, the translator was not consistent in his choice of the Romanian words and translates the word "liability" both by "răspundere" and "responsabilitate"; he/she does the same with the word "responsibility" (which is also translated as both "răspundere" and "responsabilitate"); thus, the translator (and, as far as the English version of the text is concerned, the legislator) sees these two

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English words as synonyms, engendering thus confusion and ambiguity in the interpretation of the legal provisions of the text.

b) The **liability** of the carrier for delay in delivery according to the provisions of article 5 is limited to an amount equivalent to two and a half times the freight payable for the goods delayed, but not exceeding the total freight payable under the contract of carriage of goods by sea (article 6).

b) **Răspunderea** cărăuşului pentru intirziere în livrare în conformitate cu prevederile art. 5 este limitată la un cuantum echivalent cu de două ori şi jumătate valoarea navlului plătibil pentru mărfurile livrate cu întârziere, dar care nu va depăşi navlul total plătibil potrivit contractului de transport maritim al mărfurilor (article 6).

(*c*) In no case shall the aggregate **liability** of the carrier, under both subparagraphs (*a*) and (*b*) of this paragraph, exceed the limitation which would be established under subparagraph (*a*) of this paragraph for total loss of the goods with respect to which such **liability** was incurred (article 6).

c) În nici un caz totalul **responsabilităţii** cărăuşului potrivit subpunctelor a) şi b) ale prezentului articol nu va depăşi limitarea care ar fi stabilită conform subpunctului a) al prezentului articol pentru pierderea totală a mărfurilor la care o asemenea **responsabilitate** a apărut (article 6).

Where and to the extent that both the carrier and the actual carrier are liable, their **liability** is joint and several (article 10, paragraph 4).

Dacă şi în măsura în care atât cărăuşul, cât şi cărăuşul efectiv, sunt responsabili, **responsabilitatea** lor este solidară (article 10, paragraph 4).

*Article 4. Period of **responsibility***

1. The **responsibility** of the carrier for the goods under this Convention covers the period during which the carrier is in charge of the goods at the port of loading, during the carriage and at the port of

ART. 4. Durata **răspunderii**

1. **Răspunderea** cărăuşului pentru mărfuri în baza acestei convenţii acoperă perioada în care mărfurile sunt în grija sa la portul de încărcare, pe timpul transportului şi la portul de descărcare.

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discharge.

Jurists Vasile-Sorin Curpan, Vasile Curpan, Cosmin-Stefan Burleanu and Emilia Mitrofan, in their article "Responsabilitatea/Răspunderea juridică" (http://sorincurpan.ro/wp-content/uploads/2012/12/Responsabilitatea-%E2%80%93-Raspunderea-juridica.pdf), define the Romanian words "raspundere" and "responsabilitate" as it follows: "raspundere" is the term that describes the obligation we have to fulfill certain obligations that come from our actions and activities. These actions and activities are carried out by respecting certain laws, regulations, rules, codes, statutes. In its turn, "responsabilitate" is the term that describes the attitudes that we have in times when we need to take on the results of an activity or action. Furthermore, the Translegal Dictionary (http://www.translegal.com/exercise/2518) also makes a distinction between the terms "liability" and "responsibility", as it follows: "a liability is a legal obligation, as in *he denied any liability for the damage*", while "responsibility refers to the care and consideration a person has for the outcome of their actions. It can also refer to a person's accountability for an outcome to which their actions have contributed, together with any legal obligation they may have to repair any damage caused, as in *the company director accepted full responsibility for the consequences of her actions*". Thus, the above mentioned Romanian and English definitions and understandings clearly underline that the appropriate Romanian translation of the word "liability" is "răspundere" and that the word "responsibility" should be translated by the Romanian word "responsabilitate".

Non-technical terms are general words which have maintained their everyday meaning without receiving legal connotation, but can occur in legal texts. They are easier to understand than to translate, and are often contextually bound. Such non-technical terms used within the corpus are: "transport", "competent", "loss", "obligation", "performance", "accordance", "invoke", "absence", etc.

Latin terms. A significant part of the English legislation was set down in the Middle Ages, when Latin was the lingua franca in Europe, for scholars and legal professionals. This does not mean that the Latin terms used in legal contracts, have the same meaning in each language. The use of Latin phrases by lawyers, generally make the translator's task more difficult. If the English contract includes terms in Latin, these should be kept unchanged in the translation (Rek-Harrop, 2010). However, in the case of

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the Romanian version of the Hamburg Rules, the translator decided to translate the Latin expression into Romanian, for a better understanding of the meaning of the text:

"Writing" includes, ***inter alia***, telegram and telex (art. 1, paragraph 8).	"în scris" include, **printre altele**, telegramă şi telex (art. 1, paragraful 8).

4. Conclusions

Nowadays, due to the scientific and technological progress, as well as the higher complexity of the social, cultural and political context we live in, the translator's task in translating specialized texts has become more and more difficult. S/He comes across obstacles that he/she needs to overcome by crossing linguistic and cultural borders. Most of the new terms and collocations are frequent in the contemporary literature specific to the field. Most of the bilingual and multilingual dictionaries might not include these terms, so the translator's task is much more complex and challenging.

When translating from one legal system into another, the differences between those systems must be taken into consideration. There are some key aspects and problem areas in official translations of legal contracts, in terms of terminology transfer between two different legal systems. Theoretically, the most accurate official translations of legal contracts in terms of legal terminology transfer are the ones where nothing is hidden from the reader and where all the problems are elaborated and all the defects of the original are noted (Rek-Harrop 2010).

Legal language is formalized at lexical, textual, syntactic levels. The essential meaning of the legal terms is directly connected to the tradition of the legal culture they originate from, and the terminology always has to be assessed in relation to varying circumstances. Although language and law are inseparable, language is not the only challenging factor for legal translation and terminology, because different countries, with the same language, develop distinct legal terminologies.

Dealing with legal translation means tackling a two sided subject, "crossing" the boundaries between law and language and even merging them. Legal translation has to be considered a cross-cultural and interlingual communicative process and a complex human and social behavior, a subject constrained by law, on the one hand, and language on the other.

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