LOGIC ERRORS IN ROMANIAN LEGAL TEXTS AND DIFFICULTIES POSED IN TRANSLATION

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Abstract: The difficulties of translating legal texts justify the interest and concern of both scholars and translation practitioners. The main source of these difficulties is, obviously, the difference between the two major legal systems in use today, grounded on civil vs. common law. Furthermore, the existence of phenomena such as terminological disparities, syntactic and semantic dissimilarities between languages and language families, adds a new dimension to the complexities of legal translation. Nevertheless, this is not our focus here. Instead, we are interested in the issues that a faulty drafting of a source text can raise and must be overcome by translators. The selected corpus of authentic texts, which are excerpted from original judicial decisions issued by Romanian courts of law are representative as examples of blatant infringements of grammatical, syntactic and semantic rules leading to instances of illogical discourse. This article is an attempt to establish the limitations on the translator's work brought on by these peculiar cases. Among the various types of difficulties, the ones affecting the logic of the sentences are the toughest to surmount, at times being even impossible to reasonably resolve. The examples analysed below propose likely solutions, at the same time striving to reconstruct the logic of the defective source texts, making use of all the grammatical, syntactic and semantic tools that linguistics provides us with.

Keywords: legal translation, legal discourse, logic errors, grammaticality, syntactic rules, semantic analysis

1. Introduction

As mentioned in the Abstract, this study responds to a real-world situation we oftentimes confronted as translators of legal texts, i.e. different types of errors in the source texts (Romanian). In the space of this article we are focusing on the most serious errors impeding comprehension and which affect the text at the logical level. The imperfections of the Romanian legal text, in general, have been previously scrutinized by Rodica Zafiu in the book Diversitate stilistică în România actuală (2001). In her view, legal texts must be analysed both in terms of the general common sense and of the inherent requirement of the legal style "obligatoriu explicit (chiar redundant) și nonambiguu". The problem arises when, out of the long, convoluted phrasing, controversies are brought forth on account of the difficulty to retrieve a correct and unique interpretation, which contradicts the purpose of the legal text. Most of the times, these are generated by the absence or misuse of indexicals that, if used properly, would enable the retrieval of a referent out of several possible referents and also the reconstitution of the logical relation amongst them.

The fact that the issues we deal with herein are of current stringency is confirmed by Svetlana Guțu (Head of the Drafting and Editing Department of the Supreme of Court of

Justice), whose abstract from her article entitled "Language Issues in Writing of the Judicial Text"[1] we quote below:

> *"Romanian language is often incorrectly used by most speakers, particularly by legal professionals, and this deeply flawed expression distorts the message and, for this reason, must be vehemently condemned. The fairness of speech remains to be one of ardent topics.*
> *It is important that the society at all levels will deepen the communication process. We communicate in all areas, and if this happens, why won't we learn how to make communication more efficient in the field in which we operate". (p. 56)*

2. Samples and method of analysis

The source legal texts used for the analysis carried out herein are authentic materials extracted from commercial judgments issued by Romanian courts of law before 2007. The materials, in their entirety, may be consulted, for context clarification purposes, by checking the relevant digital collections of documents at the links provided in footnotes. The texts have been subjected firstly to an analytical scrutiny in terms of intrinsic feature and error identification, and, secondly, to a contrastive review, when comparing the two translations. It is essential to note, however, that they are representative for two different approaches to translation: V1 is closer to the traditional, faithful, ad litteram trend generally deemed safe in the case of legal translation, while V2 is more modern and is drafted in the vein of relevance theory principles experimentally applied to this conservative genre, and which are considered useful and justified, in certain cases when the logic of the discourse in general is affected to such a degree that the comprehension of source texts is no longer possible or becomes heavily obstructed due to their defective nature.

It is true that, in what concerns legal texts, the mainstream recommendation is to preserve/transfer errors encountered in the source text into the target translated text, which is reasonably doable when dealing with orthographic and some types of grammatical errors, yet the question remains on how to proceed when the grammatical errors are injuring the logic of the source text so seriously that the translator is left in a state of confusion on how to act any further. Our proposal, in such cases, is to resort to the principles of the Theory of Relevance and intervene, as significantly as necessary, into the source text, so that its logic is restored by restructuring and the translation process is enabled, without interfering, in any way whatsoever or as little as possible, with the authorial intention thereof.

3. Theoretical background

Before proceeding to further analysing the examples chosen to illustrate our point of view, it is necessary to outline a few theoretical considerations on communication and the good formation of discourse, the written one inclusively.

At an empirical and basic level, communication is regarded by speakers as an act of transmitting information (a message) from a sender to a recipient. In practical terms, this process may be successful or not in terms of the correct decodification thereof by the addressee. In order for this to happen the participants in communication must follow a set of rules. These have firstly been explained by Roman Jakobson (1960)[2] , and later expanded upon and further refined by Paul Grice (1975)[3] and Sperber & Wilson (1986, 1995)[4].

[1]https://ibn.idsi.md/sites/default/files/imag_file/56_65_Aspecte%20lingvistice%20in%20redactarea%20textului%20juridic.pdf

[2] According to Roman Jakobson (1960) communication is carried out by means of a (linguistic) code that has the following six components: issuer, receiver, code, channel, message, context. Communication is treated as a simple

In agreement with the above-mentioned authors, we consider that communicating is a process entailing the simultaneous use of the following operations:

1. having a communicative intention being transposed as an utterance and wishing to make it manifest;
2. choosing the lexical elements needed to express such intention and organizing them according to syntactic and semantic rules, in a logical manner;
3. uttering the content thus assembled (orally or in writing) with the illocutive force adjusted to the communicative purpose.

In order for communication to be successful, it is necessary that **textual clues**[5] embedded in the discourse be correctly used by the sender and decoded by the receiver, which confirms its well-formedness.

The model we considered, from this point of view, is the one proposed by Eugen Coșeriu in his ground-breaking work Linguistic Competence: What is it Really? (1985).

According to the aforementioned scholar, the language and linguistic activity are, from a theoretical perspective, multi-layered constructs, which are based on three types of knowledge: **elocutive, idiomatic** and **expressive**. Each of them corresponds to a separate level of linguistic activity and is activated/becomes operational simultaneously during the act of speaking. A deficient use thereof may obstruct the communicative process. For this reason, Coșeriu, taking into account each of the types of knowledge employed while speaking, evaluates an utterance via three concepts: congruency, correctness and adequacy, which are value judgments that the common speaker habitually makes in communication.

In more specific terms, such concepts represent the three axes for assessing a piece of discourse and its well-formedness. We summarize them, in a simplified manner, as below:

(i) **Congruency**: correspondence between an utterance and its extra-linguistic reality (whether physical objects or abstract concepts) according to the knowledge of the speaker concerning such reality (**elocutionary knowledge**).

(ii) **Correctness**: assessment of a linguistic structure from a grammatical point of view according to the linguistic knowledge in particular (**idiomatic knowledge**).

(iii) **Adequacy**: degree of adjustment of an utterance to a concrete situation, as a result of the attitudes, intentions and suppositions of the speaker according to his/her knowledge of the respective situation (**expressive knowledge**).

We can conclude that an utterance is the resultant of three facets: logical, grammatical and pragmatic. Therefore, when assessing it, the restrictions imposed on each of these levels may fail. What is obtained is an utterance lacking, as the case may be, congruency, correctness or

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procedure for the coding and decoding of a message (i.e. the correct decoding of the message sent by the issuer). This process is deemed to have a high degree of accuracy if all conditions for a successful communication are met.

[3] Paul Grice (1975) changes perspective and focuses on the speech act, stating his famous conversational maxims: maxim of quantity (true contribution, not false, and based on evidence), the maxim of quality (as informative as possible according to the purposes of the exchange, and not more than it is necessary), the maxim of manner (be clear, i.e. avoid obscurity of expression, ambiguity, be concise and orderly), and the maxim of relation or relevance (be relevant).

[4] Sperber & Wilson (1986, 1995) added the inferential component to Jakobson's primary code model. According to their ostensive-inferential model, the linguistic material (formerly named the Code) in an utterance serves as clue that the speaker (issuer) offers with regard to its intentions (two components: informative and communicative). The receiver uses these clues to infer the most adequate interpretation possible starting from the utterance made by the issuer.

[5] In our opinion, textual clues include: connectors, indexicals, ordering elements, adequate use of all the rules that intervene in text organization.

adequacy. Hence, the transgression of elocutive knowledge rules would result in an incongruent utterance, the one of the idiomatic level would affect the grammaticality thereof (producing an incorrect utterance), whereas the breach of the expressive one would generate an inappropriate/inadequate utterance.

4. Defective source legal texts and difficulties in translation

In the case of the source legal texts proposed for analysis (excerpted from commercial judgements), the most frequently found transgressions are those that affect congruency and correctness, as explained above, leading to close-to-incomprehensible and difficult-to-translate texts, as can be seen below:

Example 1[6]:

Source text	Translation 1	Translation 2
Cu privire la greşita admitere a excepţiei lipsei calităţii procesuale active a reclamantei, arată că pârâta a invocat această excepţie motivat de faptul că poliţa de asigurare ar fi „cesionată" către banca B., iar prima instanţă în mod eronat a admis această excepţie în esenţă cu această motivare, constatând în mod eronat că poliţa de asigurare ar fi „cesionat" în favoarea unui terţ, în speţă băncii B.	Related to the wrong acceptance of the exception concerning the lack of capacity of the claimant to pursue the proceedings shows that the plaintiff invoked that exception given the fact that the insurance policy would be „surrendered" to the bank B., while the first court erroneously admitted the respective exception having in essence that explanation, erroneously finding out that the insurance policy would have "surrendered" to a third party, in this case to bank B.	Where the erroneous admission of the exception of the claimant's lack of active trial capacity is concerned, it is shown that the defendant invoked the exception grounded on the fact that the insurance policy was, supposedly, "assigned" to bank B. [Further on], the first court erroneously admitted this exception essentially on the same ground, [that is], by acknowledging, [again] erroneously, that the insurance policy was supposedly "assigned" to a third party, in this case, bank B.

Analysis:

It is worth pointing out that the biggest grammatical error is represented by the absence of the subject of the verb *'arată'*. In Romanian the subject may be left unexpressed without affecting the comprehension of the text in general only if it can be retrieved anaphorically, given that the number and person of the verb are embedded in its conjugation. Yet, in this case, none of the NPs placed before can stand as subject. Therefore, we believe the error is, in fact, the omission of the reflexive pronoun *'se'*[7] which can be a marker for an impersonal utterance (passive reflexive) with an unexpressed Agent. The addition of *'se'* normalizes the construction from a grammatical point of view but does not solve the problem of *'who'* the actant of the verb actually is. Hence, a thorough re-reading of the whole judgment was needed. In spite of this, we could still not identify precisely the exact subject thereof. This error is, as can be seen from the footnote, a recurring one. In English, nevertheless, this may pose even bigger problems, as it is a language which mandatorily requires an expressed subject. This deficiency will become

[6] *http://www.curteadeapelcluj.ro/Jurisprudenta/sectia%20comerciala/Comercial%20trim%201%202014.pdf*

[7] 'Astfel prima zi de judecată în care părţile au fost legal citate a fost la data de 14.03.2013, când apelanta a depus o precizare conţinând cuantificarea dobânzilor în vederea stabilirii taxei de timbru.
Având în vedere aceste aspecte, prima zi de înfățișare va fi considerată ca fiind în data de 05.04.2013 dată la care părţile au fost legal citate și prezente la şedinţă.
Arată că la următoarele termene de judecată, 'a fost amânată cauza pentru soluţionarea incidentelor legate de timbraj, iar acţiunea a fost legal timbrată la termenul din data de 07.06.2013, termen la care părţile legal citate au pus în discuţie cereri incidentale și cereri în probaţiune, instanţa pronunţându-se asupra lor. '

obvious when reviewing V1 of the translated text (see the highlighted verb *'show'* without an expressed subject – an *ad litteram* translation) which actually results in an ungrammatical structure. On the other hand, V2 corrects this error, as below:

ST	V1	V2
Cu privire la…, arată că...	Related to…., [HE/SHE/IT???] shows that…	Where… is concerned, IT IS SHOWN that…

Another awkwardly-sounding structure in Romanian is the following: 'motivat de faptul că polița de asigurare ar fi „cesionată" către banca B', the result, in our opinion, of anacoluthon caused by the merging of two different syntactic functions that the past participle with adjectival value 'motivat' can take. In the structure 'motivat de' (+ Prep) it is, usually, a predicative adjunct, being governed simultaneously by a noun and a verb, in agreement with the governing noun. On its own, it can be an invariable adverbial of manner, in which case, the governor would be the verb 'a invocat'. In the first case, we tend to establish the agreement by proximity with the feminine noun 'excepție' and mark it for the feminine singular 'motivat**ă**'. Nevertheless, the gender marking is for the masculine without a corresponding masculine antecedent, which leads us to the conclusion that it was used as a manner adverbial even though it occurred accompanied by the preposition 'de'. We think that the better solution would be to substitute 'motivat de' with the frozen structure 'cu motivarea că', frequently used in legal texts, which introduces the adverbial clause of manner. Nevertheless, as it can be confirmed by the frequency of practical examples, the ungrammatical structure 'motivat de' has become a cliché and is preferred by legal professionals, justified probably by its compactness, as compared to the lengthier 'cu motivarea că'.

An error of a different nature is the wrongly used connector 'iar', which can be characterized as [+Contrast]. Yet, the discourse segments that it connects are in a causative-resultative relation (cause-effect), therefore they can be semantically described as [+Cause, +Result] [-Contrast]. In this case, it is advisable to use the connector 'și' ('and'), instead, for instance, of the proposed 'while' (see V1) which carries a slight Contrast value. Considering that the cause-effect relation does not necessarily require an explicitation, we can also alternatively omit the connector or substitute it with a causative-resultative connector such as 'further on' (see V2). The splitting of the complex sentence at this point, as suggested in V2, does not affect, in any way whatsoever, the logical structure of the text.

Given that the communicative purpose of a legal text in general should be an effective comprehension by the addressee, it is preferable for it to be concise, clear, and accessible. Therefore, redundancy should be avoided. Along these lines, the repetition of the adverb phrase 'în mod eronat' is unnecessary taking into account that the second occurrence happens as a logical consequence of the first use thereof. Hence, it can be totally left out.

Last but not least, the final error of this text regards the inadequate semantic selection of a verbal form ('ar fi cesionat' which requires a subject that is [+Agent, +Animate]) while, in this example, the subject 'polița de asigurare' is [-Animate]. Considering that, in the above similar occurrence 'polița de asigurare ar fi cesionată', the agreement in gender has been realized, we assume that the intended form would have been a passive as well, instead of a conditional-optative form with an active reading, which is not acceptable.

Example 2[8]:

Source text	**Translation 1**	**Translation 2**
Prima instanţă a interpretat eronat adresa primită din partea BRD-GSG, constatând netemeinic faptul că: „construcţiile fiind în continuare în garanţie la B., asigurate la o altă societate de asigurare cu cesionarea drepturilor în favoarea băncii B."	First court erroneously interpreted the letter received from BRD-GSG, considering unfounded the fact that: "the building continuing to be further on as a warranty at B., insured with a different insurance company with the surrender of the rights in favour of bank B."	The first instance court has erroneously interpreted the letter received from BRD-GSG acknowledging as ungrounded the fact that: "the buildings continue to be kept as security at B., since they are insured with another insurance company which assigned the rights in bank B's favour".

Analysis:

This example is relevant for two other types of errors encountered quite frequently in source legal texts: the abuse/misuse of gerunds and the absence of quote adaptation when necessary.

Due to the fact that the gerund is a non-predicative mode, it must have a governor, usually another verb. If the first gerund 'constatând' follows this syntactic pattern as manner adverbial of the verb 'a interpretat', it is not the case of the second one 'fiind' whose governor is nowhere to be found, situation that is the result of a truncated, incomplete quoting. Even if most legal professionals advocate for a translation that is faithful to the source text, in this case, as seen in V1, the target text preserves the lack of comprehensibility as well. However, the translator's duty would be to correct a deficient source text, in this particular case, by adapting quotes. This is a necessary and not an optional step given that the meaning of the text remains unaltered. See, for illustration, V2, in which the second gerund has been replaced with a predicative tense.

Example 3[9]:

Source text	***Translation 1***	***Translation 2***
Prin aceeaşi adresă, Sucursala Zalău B. a înştiinţat-o pe reclamantă că aceasta nu înregistrează restanţe, astfel că drepturile de despăgubire pot fi încasate integral de proprietarul bunului asigurat (fila 398). *Poziţia astfel exprimată de către bancă nu este aptă să transfere drepturile recunoscute sieşi chiar de către lege înspre asigurat, căci aceasta contravine scopului pentru care s-a încheiat poliţa de asigurare obligatorie.*	By the same letter, the Zalau B. branch informed the claimant that it does not have back payments, therefore the right over the compensation shall fully be of the owner of the insured good (page 398). The position expressed in this way by the bank – that it is not able to transfer the rights recognized by the law itself to itself to the insured party, as that violates the scope the mandatory insurance policy was taken out for.	By the same letter, Zalau B. branch informed the claimant that she does not have any outstanding payments [to make], therefore the right to be indemnified shall be cashed in full by the owner of the insured good (page 398). Despite its position on this matter, the bank is not able to transfer the rights recognized as its own by the law, towards the insured party, as this would contradict the purpose for which the mandatory insurance policy was concluded.

Analysis:

[8] *http://www.curteadeapelcluj.ro/Jurisprudenta/sectia%20comerciala/Comercial%20trim%201%202014.pdf*
[9] *http://legeaz.net/spete-drept-comercial-csj-2002/decizia-149-2002*

As in example (1) the main issue of this text is a case of deficient semantic selection. The subject 'Poziția' [-Animate] cannot select 'nu este aptă' [+Animate, +Ability], which requires a complex intervention in order to reestablish the logic of the text thus seriously altered. The one that can transfer the rights is, obviously, the bank through its representatives that are [+Animate], the position adopted by the entity being irrelevant, in the light of legal provisions, as mentioned in the text. For this reason, we changed the syntactic function of the Agent DP 'the bank' from by-PP in the structure 'Poziția astfel exprimată de către bancă' into Subject as in V2 '…the bank is not able to transfer the rights', i.e. from a passive position into an active one. We indicated the irrelevance of the position expressed by the bank via the addition of the concession adverb 'despite', meaning which has been retrieved from the abnormal construction 'The position… is not able to transfer…' (see V1 vs. V2). It can be noted, comparing the two translation versions, that through a minimal reconfiguration at the surface structure level and an addition that preserve the meaning of the assertion, the text normalizes itself.

Example 4[10]:

Source text	**Translation 1**	**Translation 2**
Referitor la excepţia de neexecutare a contractului formând obiectul celui de-al treilea motiv de recurs, se constată că această excepţie nu a fost ridicată nici în faţa instanţei de fond şi nici în apel, în condiţiile art.136 C. proc. civ., cum se impunea pentru a putea fi luată în considerare şi, oricum, toate susţinerile pârâtei sub acest aspect au fost examinate şi au fost respinse, reţinându-se corect în soluţionarea cauzei că reclamanta şi-a îndeplinit obligaţia de a produce şi livra mărfurile potrivit celor stipulate în contractul încheiat între părţi, iar pârâta le-a preluat prin procesul verbal de recepţie, aşa cum au fost executate, fără a face obiecţiuni sau solicita refacerea lor, astfel încât datorează plata acestora şi în mod nejustificat a refuzat achitarea diferenţei contravalorii lor, pe care o datorează, în sumă de 16.025 dolari SUA.	In regard with the exception of default on the contract, the third reason for appeal, the Court finds that this exception has not been raised neither before the first instance court nor before the appeal court, under the provisions of Art. 136 of the Civil Procedure Code, as it would have been appropriate so that it may be taken into account, and, however, all the respondent's claims on this matter have been analysed and dismissed; the Court withholds correctly in settling the case that the applicant fulfilled its obligation to produce and deliver the goods according to the provisions of the agreement the Parties concluded, and the respondent took them over by means of delivery-receipt protocol, as they were executed, without objections or requests for their being remade, so the respondent owes the corresponding payment and has refused without justified reasons to pay the difference it owes to the amount of 16,025 US dollars	Regarding the withholding performance that is the object of the third ground of the second appeal, it can be acknowledged that this exception was not invoked either in front of the first instance court or the appeal court, as per Article 136 Civil Procedure Code, as it should have been done in order to be taken into consideration. Yet, all of the defendant's claims regarding this matter have been examined and overruled, having been correctly considered, in issuing the ruling, that, [firstly], the claimant has fulfilled the obligation to produce and deliver the merchandise according to contractual provisions, and, [secondly], that the defendant has accepted them as they were, without objecting or requesting them to be redone, as attested by the reception protocol. Henceforth, the claimant must make the payment thereof, i.e. USD 16,025, but has unjustifiedly refused to pay the owed due balance.

Analysis:

Besides the misused gerund 'formând obiectul', which, as already seen, is a recurrent error in legal texts, we note the existence of another major problem of Romanian legal texts,

[10] *http://legeaz.net/spete-drept-comercial-csj-2002/decizia-149-2002*

which is an overelaborated syntax with departures from a main logical thread. To facilitate the comprehension of the text, we operated, in V2, two splittings of the complex sentence into independent discourse segments introduced by discourse markers with the same instructions as the corresponding subordinate conjunctions: 'oricum' has been rendered as 'Yet', while 'astfel încât' as 'Henceforth'. The second issue we dealt with occurs at the logical level, where an opposition relation is wrongly marked. The two parts of the discourse we discuss herein are marked [+Opposition] given the meaning of the VPs datorează plata/ a refuzat achitarea…. Consequently, a discourse marker to highlight this relation is required. That explains the substitution in V2 of the coordinative conjunction 'și' with the adversative 'dar' also marked [+Opposition]. For the same purpose of facilitating comprehension of the source text, V2 opts for the addition of ordering/sequencing discourse markers: 'firstly', 'secondly' where the enumerated subordinates have the same level in the argumentation. These words act as anchors that the reader can use to stay grounded in the text and not let their attention drift away out of focus.

Example 5[11]:

Source text	**Translation 1**	**Translation 2**
În sfârşit, mai susţine că este nefondată reţinerea potrivit căreia procesul verbal a fost semnat de reprezentantul apelantei fără să observe menţiunea inserată „în mod abuziv şi fără consultarea reclamantei" privind rezilierea contractului şi că aceasta ar constitui o eroare obstacol, cât şi cea privind eroarea evidentă asupra chiar substanţei obiectului convenţiei, error in substantiam, pe care o consideră inaplicabilă în speţă.	Finally, it also maintains that the retained argument whereby the Appellant's representative who signed the minutes overlooked the mention that concerned the contract cancellation which, by the way, was inserted "abusively and without having consulted the Claimant" is unfounded and represents an obstacle-error. It also maintains that the obvious error regarding the very object of the agreement, error in substantium, deemed inapplicable in this case, is unfounded.	At last, it is also sustained that the argument according to which the minutes were signed by the appellant's representative without noticing the mention inserted "abusively and without consulting the claimant" on the termination of the contract is ungrounded, and that it could be an obstacle error. Moreover, the obvious error regarding the very substance of the convention object, i.e. error in substantium, is considered inapplicable in the case at hand.

Analysis:

As in example (1), we draw attention to a recurrent error: an agentive verb ('mai susține') in active form without an expressed subject (which disambiguates who the doer of the action is). The only possible solution to circumvent this omission in the source text is to transform the active structure into a passive-reflexive one ('se mai susține') where the agent is not mandatory. The gain becomes obvious comparing V1 and V2: 'it also maintains' (active form requiring an identifiable Agent subject) vs. 'it is also sustained' (passive-reflexive form which is self-sufficient).

Furthermore, another source of ambiguity is, in this case, the retrieval of the antecedent of the demonstrative pronoun 'aceasta' marked for the feminine. The presence of three feminine NPs that could stand for such antecedent is confusing. Although the rule applicable in such cases is agreement by proximity, here 'rezilierea' cannot stand as such from a logical point of view. That explains why both translators assigned as antecedent the NP 'reținerea' which is, nevertheless, quite remote but logically compatible. This source text deficiency has

[11] *http://legeaz.net/spete-drept-comercial-csj-2003/decizia-398-2003*

burdened the translation process given that the clarification required further time-consuming work on explaining the legal concept of 'eroare-obstacol' and what it actually entails. Only as a result of this, could we cross out the possibility of 'rezilierea contractului' or 'menţiunea' from standing as antecedents, and finally retrieve 'reţinerea' as the correct one. An additional operation applied here was the restructuring of the text in order to pinpoint the logical relation between the discussed concepts, as follows: 'este nefondată' was moved further down, as it becomes logically easier to comprehend the text if the classical inversion preferred in the legal style is undone ('este nefondată reţinerea' versus 'reţinerea este nefondată') and coordinated with 'ar constitui o eroare-obstacol'.

Example 6[12]:

Source text	**Translation 1**	**Translation 2**
Prin urmare, hotărârea ce se pronunţă beneficiind de un dublu grad de jurisdicţie: apel şi recurs, în mod greşit Curtea de apel care prin aceiaşi ordonanţă a pierdut competenţa de a soluţiona în primă instanţă litigii în materie comercială, a continuat judecata şi a pronunţat o hotărâre în primă instanţă, supusă numai recursului, în loc de a scoate cauza de pe rol şi a o trimite tribunalului, devenit competent după legea nouă, pentru a face posibilă aplicarea prevederilor acesteia cu privire la sistemul căilor de atac.	Subsequently, the decision was given while having a double degree of jurisdiction: as both appeal and recourse. The Appeal Court, which through the same rule has lost the capacity to settle in first instance the commercial litigations, has wrongfully continued the trial and has given a decision in first instance, subjected only to recourse, instead of dismissing the case and sending it to the Court, which became able, according to the new law, to apply its articles regarding the means of appeal system.	Hence, the issued judgment was subjected to a double jurisdiction: appeal and second appeal. Nevertheless, the Court of Appeal, which, by the same ordinance, has lost its competence to judge commercial disputes as first instance court, has erroneously continued the judgment and issued a first instance decision subjected only to second appeal instead of declining its jurisdiction and resending the case to the competent tribunal, according to the new law, so as to enable the enforcement of its provisions concerned with the system of legal remedies.

Analysis:

This text brings forth another case of a misused gerund. As already explained in the examples above, the gerund requires a governor, otherwise the complex clause remains unfinished. This is the case of the gerund 'beneficiind' which serves the role of argument for something that is supposed to follow but is irretrievable. The complex sentence begins with a few subordinated clauses that build up momentum for some arguments that should be presented in the main clause, but because of the misused gerund and the improperly connected subordinated clauses not only do they not manage to support the assertions made in the main clause, but they actually lead to an anacoluthon which makes the whole structure incomprehensible. In order to remedy this situation, in V2 we transposed the gerundial verb to one expressed in a passivized personal mode. Furthermore, we split the sentence at the place where the anacoluthon marks the syntactic hiatus (change in thinking): *în mod greşit Curtea de apel* (…). Thereafter, given the nature of the relation between the two split sentences, we added the counter-argumentative discourse marker *nevertheless*, which ensures the fluent passage from one part of the discourse to the next one. Additionally, we reversed the emphatic inversion typical of legal texts "în mod greşit Curtea de apel ... a continuat" into an unmarked structure,

[12]*http://legeaz.net/spete-drept-comercial-iccj-2005/decizia-968-2005*

from the syntactical point of view, "the Court of Appeal ... has erroneously continued" due to the internal rules and syntactic requirements of the English language and the need to create an objective tone of the legal text.

5. Conclusions

From the examples above, we noted that the errors of the grammatical/morphological and syntactic type, are the most frequent and have given rise to utterances that are deficient from a logical point of view.

Therefore, considering also the main tenet of Relevance Theory, which refers to how communication should become optimal, we can definitely assert that the above texts may be considered suboptimal. The purposes of a communicative act are not achieved in the best manner possible. Hence, the translator has the duty, not just the option, to remedy any defects, that are reasonably in his/her power and ability, so as to produce a target text that fulfils the purposes of a successful communicative act. In the case at hand, the purpose of a legal text (commercial decision) would be to: 1) inform the reader, as quickly and accurately as possible, on the decisions reached by a court of law on a litigated matter; and 2) function as a performative act by which the reality of the litigating parties is changed/resolved.

Most of the times, this effort to restore the clarity of a defective source text is possible. This has been seen, by some scholars, as an effort to weed out whatever elements are misplaced/misused. A concept originating in information technology has been borrowed to explain this need: GIGO (Garbage In – Garbage Out).

Yet, in some cases, source texts generate confusion resulting from several possible readings of a textual segment that cannot be eliminated further to delving into the larger context. In such instances, the translator can only leave the source text as it is and transfer it to the target text as seen in the example below:

fără să observe menţiunea inserată „în mod abuziv şi fără consultarea reclamantei"	overlooked the mention that concerned the contract cancellation which, by the way, was inserted "abusively and without having consulted the Claimant"	without noticing the mention inserted "abusively and without consulting the claimant"

The confusion is generated by considering also a likely scenario in which, had the quote been graphically signaled by a colon before the actual inserted text, the meaning would have been totally different. We assume this could be due to an instance of editing negligence. See, for comparison: (1) *fără să observe menţiunea inserată „în mod abuziv şi fără consultarea reclamantei"*, and (2) *fără să observe menţiunea inserată: „în mod abuziv şi fără consultarea reclamantei"*. In translation, both versions preserve the source text ambiguity.

Eventually, the translator has two options: to mend or to keep source text errors, to the benefit or to the detriment of the translation. Whether they should choose one option or the other is a matter that is still largely open to debate. Nevertheless, accepting the errors of the source text is a comfortable solution that exonerates the translator from any responsibility. In our view, the translator should not operate any modifications on the substance of the text, but the form thereof, by using extensive knowledge of generative linguistics. Evidently, this presupposes a greater effort on the part of the translator, which, given real-world requirements (tight deadlines) is not always possible and explains the conservatism of the customs adopted in this field.

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