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**CHALLENGES OF LEGAL TRANSLATION***Svetlana CORCODEL**Universitatea de Stat din Moldova*

This research work is a proof of an attempt to find peculiar aspects of legal terminology as a part of the language vocabulary. It helped us understand better the process of terms evolution and their development within the framework of one specialized language. It is a kind of analysis and foreseeing of the legal terms creation, assimilation and their implementation into the actual specialized vocabulary.

This research is a good source of information for terminologists helping them to choose what term should be used, what information and meaning it designates and when it should be used.

This field needs a permanent study, because this specialized field is always in evolution that depends on the country development and progress.

**Keywords:** *term, equivalence, interpretation, challenge, strategy, system, etymology.*

**PROVOCĂRI ÎN TRADUCEREA JURIDICĂ**

Problema pe care se bazează cercetarea noastră este traducerea legislativă și abordarea caracterului controversat al acesteia.

În lucrarea de față se face o delimitare directă a terminologiei juridice, o reprezentare teoretico-practică referitor la termenii juridici și la utilizarea acestora în planul cel mai convenabil al domeniului. Această temă a fost aleasă dat fiind că este un aspect important al limbii, tratează probleme majore ale termenilor existenți și ale celor nou-creați.

Materialul de studiu include evoluția, analiza și previziunea termenilor juridici, apariția, asimilarea, proveniența și implementarea acestora în vocabularul de specialitate deja existent.

Tema este considerată a fi foarte actuală, ținându-se cont de importanța teoretică și practică pe care o impune drept obiect de studiu multor lingviști, terminologi și specialiști în domeniu.

**Cuvinte-cheie:** *termen, echivalență, interpretare, provocare, strategie, sistem, etimologie.*

**Introduction**

Much has been written about the challenges of legal translation and its pitfalls in general, in particular the problem is happening at the interface between different legal systems and languages in the translation of EU law of equivalence and congruency. It has been argued that translators at supranational institutions function without any theoretical analysis at present, and it has been observed that 'each institution has its own usually unwritten guidelines for translators' The search for a theoretical account of what judgments leads into the field of applied comparative law. It soon becomes evident that the analysis of the legal translation experience in the EU is spread across different disciplines: comparative law, European Union law and Translation Studies.

**Overview on the Research**

The translation of legal texts is a practice boasting a long history. The best-known artefacts in this field include the peace treaty between Egypt and the Hittite Empire in 1271 BC as well as the translation of the *Corpus Iuris Civilis* into numerous languages after its initial translation into Greek [1, p.2]. The translators of these and other legal texts from past centuries – most of whom remain unknown to us – must certainly have reflected on the methodological problems associated with their complex and demanding task. Unfortunately, these reflections have not been handed down in history.

To date, legal translation has primarily been researched through the perspective of terminology. In this regard, the emphasis has fallen largely on the question of how terms indigenous to one legal system can be conveyed in the equivalent terms of another legal system. Research aimed at demarcating areas of semantic correspondence among legal terms, e.g. *beni* (Italian), *biens* (French) or *goods* (English). Moreover, legal linguistics has shown that the transfer of information not only takes place within the context of legal systems, but also concerns two predominantly technical language systems [1, p.3]. This poses two significant problems. First, there is the question of the conditions under which the target legal text corresponds to the source legal

text, whereby the requirements of equivalence must be ascertained in the context of a technical language. Second, specific problems must be resolved, depending on which source language is being translated into which target language. After all, a legal system with numerous institutions that have developed over time represents only one of challenges for the translator. The language system itself with its syntactic and semantic implications places certain demands on the translator and even creates limits for the translation. Legal translation has been described as the practical application of both linguistic and legal knowledge. Interdisciplinary research into both translation theory and comparative methodology in the field of legal translation is therefore a logical consequence for the analysis of the problems encountered. However, only a handful of chapters in more recently published English works on comparative law are devoted to the question of legal translation [2, p.43].

The field of Legal Linguistics is an emerging subject and it has been argued that cooperation across those disciplines that take an interest in the workings of language in law does not occur. Bridging institutional and disciplinary boundaries is the aim of multidisciplinary research, which is geared towards the solution of practical problems.

It often appears as if legal translation in the EU is an administrative task, which should not cause too much room for discussion other than as concerns issues of costs and management issues. Some authors at the other end of the spectrum argue that the comparison of laws is extremely complex and that legal translation is impossible. However, the fact that in the EU legal translation and the production of multilingual language versions takes place on a daily basis proves that language, despite the difficulties that are encountered, is the most important tool for integration. In the words of one famous linguist "To understand is to translate" [2, p.52]. Understanding the conundrum of the translation of legal language poses particular difficulties and is different from other fields of translation. The translation of law is a special type of cultural transfer insofar as the legal contents of one legal order and cultural community are being transferred into another legal order. Legal writing has been described as "typically ritualistic and archaic, being subject to very strict stylistic conventions in terms of register and diction as well as highly codified genre structures. All this is further complicated by the culturally mediated nature of legal discourse, which determines profound differences in categories and concepts between legal systems, and in particular between English law and its Roman-Germanic continental counterparts, suggesting some degree of incommensurability between texts produced within the framework of common and civil law systems respectively" [3, p.25].

The present age of globalization is marked by the international and supranational law gaining on importance at the cost of lower levels of the law. As a result, the formerly typically bilingual legal translation process has evolved into a multilingual communication in the law. However, since law is by nature a culture-bound phenomenon, for the said multilingual communication to take place, the translators must overcome not only the linguistic boundaries, but also that of different legal systems.

It is impossible to present a consistent model of procedure applicable to all types of translation. Whereas various contributions on the translation theory reveal the intentions to devise a global technique of translation, these attempts are successful as long as, besides making general statements, they leave room for exceptions and adaptations. In greatly simplified terms, we may say that every translation act should involve source-text analysis, as well as define the purpose of translation, and prospective functions of the target text.

Undoubtedly, the type of text that is to be translated plays a primary role in the selection of proper translation techniques.

The theory of translation is based on an understanding of two texts: a source text, which is to be translated, and a target text, which is the result of the actual translation process. The task of the translator is to establish a relationship of equivalence between the source and target texts, i.e. a substantive homogeneity.

In this age of globalization, the need for competent legal translators is greater than ever. This perhaps explains the growing interest in legal translation not only by linguists but also by lawyers, the latter especially over the past 10 years. Although some scholars believe that lawyers analyze the subject matter from a different perspective, it has been recommended that lawyers also take account of contributions by linguists.

One of the main tasks of translation theorists is to identify criteria to aid translators select an adequate translation strategy. This presumes, of course, that the translator is vested with the power to make such decisions [3, p.92].

At first, it was believed that translation strategy is determined primarily by the type of audience to whom the target text is directed, thus leading to the "discovery" that the same text can be translated in different ways for different receivers. Thereafter, the main emphasis shifted to the communicative function or purpose of a translation. In traditional translation, where the translator is expected to reconstruct the form and substance of the source text in the target language, the function of the target text is always the same as that of the source text. Departing from tradition, the functional approach presumes that the same text can be translated in different ways depending on the communicative function of the target text.

Legal texts are subject to legal rules governing their usage in the mechanism of the law. When selecting a translation strategy for legal texts, legal considerations must prevail.

For the sake of preserving the letter of the law, legal translators have traditionally been bound by the principle of fidelity to the source text. As a result, it was generally accepted that the translator's task is to reconstruct the form and substance of the source text as closely as possible. Thus literal translation (the stricter the better) was the golden rule for legal texts and is still advocated by some lawyers today [4].

In view of the special nature of legally binding texts, it is agreed that substance must always prevail over form in legal translation. Nonetheless, the issue of whether authenticated translations should be literal or free is controversial. As practice shows, translation techniques and methods often vary from jurisdiction to jurisdiction, even for the same type of text.

Authentic legislative texts are translated differently in different jurisdictions, thus suggesting that generalizations about translation strategy based primarily on function are insufficient in legal translation. In order to identify which criteria are decisive in determining a translation strategy for legal texts, it is necessary to analyze the communicative factors in each situation.

Traditionally, the translator has been regarded as a mediator between the source text producer and the target text receivers. In fact, this is still the case in linguistically oriented theories of translation in which translation is generally regarded as a two or three-step process of transcoding.

Today, all the authenticated texts of a legal instrument are usually equally authentic. This means that each authentic text is deemed independent for the purpose of interpretation by the courts and that no single text (not even the original) should prevail in the event of an ambiguity or textual diversity between the various language versions. As equally authentic instruments of the law, parallel legal texts can be effective only if all indirect addresses are guaranteed equality before the law, regardless of the language of the text. To guarantee the underlying principle of equal treatment, plurilingual communication in the law is based on the presumption that all the authentic texts of a legal instrument are equal in meaning, effect, and intent [5].

Whereas the presumption of equal meaning is subordinate to that of equal effect, both are subordinate to the presumption of equal intent. Hence, the translator should strive to produce a text that expresses the intended meaning and achieves the intended legal effects in practice. In jurisprudence this usually implies the legislative intent (legislation), the intent of the States parties (treaties, conventions), or the will of the contracting parties (contracts). This issue raises sensitive questions about the translator's role as interpreter, which cannot be dealt with here. It suffices to say that it is generally accepted that the translator must understand the source text but not interpret it in the legal sense. Above all, the translator must avoid value judgments (to the extent possible). Thus, the translator's task is to produce a text that preserves the unity of the single instrument, i.e., its meaning, legal effect, and intent.

## Conclusion

Assuming that law constitutes a social message, the communicative aspect of legal translation, notably in the multilingual environment such as the EU, becomes even more transparent.

One can quite safely conclude that legal translation is far more than just one out of many subject areas of special-purpose translation. The special status of legal translation derives from the fact that in the multilingual, globalized world, it is not only useful, but indispensable for the unobstructed functioning of the supranational and international law communities. In this context, it becomes apparent that the issue of translation quality and consistency should be given the utmost priority.

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