

# DIFFICULTIES AND STRATEGIES IN THE PROCESS OF LEGAL TEXTS TRANSLATION

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## Abstract:

*This article aims to identify the difficulties and find approaches in translating legal texts which involve a lot of different types of translation problems. The translator has the task to discover proper strategies to render the translated text comprehensible for the reader in the target language simultaneously reflecting the unique character of the legal system from the source language country. Some of the necessary strategies which the translator should take into account are: the borrowing of original terms, the naturalization of specific terms into the target language, the language calques usage, or the introduction of descriptive translation. Even if a translator tries to solve any difficulty when he translates a legal text, he must maintain the source culture characteristics and do not deprive the texts of their specific character.*

**Keywords:** legal terminology, equivalence, literate translation, literal translation, culture

## 1. English as an international language of legal communication

Globalisation and the growth of international organisations (e.g. UN, EU, NATO, WTO) have brought an increasing interest in legal documentation (e.g. legislation, regulations, agreements) using English as a common language. The importance of *legal English* lies expressively in its being the medium for international (including electronic) commerce. English is the standard language for many companies, for take-over bids, for international commercial contracts, for arbitration, for all cross border legal transactions and international legal issues in particular” despite all national language legislation.

English is the language of international law and multidisciplinary professional service firms. In addition, English may be either source or target language, even the medium or relay language between source and target languages.

Legal English is in course of conquering the world while the other major languages are incapable of posing a threat to the position of English as the “lawyer’s *lingua franca*.”

## 2. Cultural factors in producing and translating legal texts

These circumstances as thus described imply the necessity for meaningful communication of information and ideas. At the same time, increased global interaction means that the capacity to communicate interculturally in the world using a common means, in our case the English.

If the language is perceived as a social practice, culture becomes the fundamental principle of language teaching. The relationship between language and culture is both complex and elaborate; in addition communication problems may arise from cultural differences; moreover, these factors become particularly acute in professional setting when interacting parties use the same linguistic code (i.e. English), but not the same cultural style. Thus also English can be defined as a device for mutual understanding, it can also be discussed that English “can also act as a medium and subject of global misunderstanding.”<sup>2</sup>

In the legal context, these factors play a role, since language and law are closely related and are generated through social practices. Indeed, language is the core of the law, since the law is substantially formulated through language.

The development and status of both ordinary and legal language reveal the relatively autonomous development and status of legal cultures and legal systems. The

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<sup>2</sup> Spinchtinger, D., “The Spread of English and its Appropriation”, p. 66, Master’s Thesis: Vienna University. Available at <http://www.geocities.com/dspichtinger/dipl.htm> last visited 02 September 2014

result is that “the technical language of jurists is extremely system-bound. Since legal systems vary from state to state, each country has its own independent legal terminology.”<sup>1</sup>

Legal translation is often more difficult than other types of technical translation because of the system-bound nature of legal terminology. Unlike scientific or other technical terminology, each country has its own legal terminology (based on the particular legal *system* of that country), which will often be quite different even from the legal terminology of another country with the same language.

The system-bound nature of legal text means that successful translation into another language requires competency in at least three separate areas:

1. basic knowledge of the legal systems, both of the source and target languages;
2. familiarity with the relevant terminology;
3. competency in the specific legal writing style of the target language.

Without these skills, the translator’s interpretation will be a word-for-word translation that is often incomprehensible.

Personally, I find translation of legal documents to be one of the most interesting and challenging areas of translation, because they often require both a combination of the creativity of literary translations and the precision of technical translations.

Thus, the professional legal translator must be part linguist, part legal scholar and part detective, willing and able to search out and define legal concepts expressed in the source language of a document that may not even have an equivalent in the language or legal system of the target text. The translator must first *decode* the source text and reconstruct its meaning in the target text. In many cases, the translator is limited to finding a functional equivalent for a word or phrase or a parenthetical explanation because an exact translation is impossible.

Translation of legal documents tends to involve more culture-specific than universal components. In contrast to what happens with mathematics or chemistry, where there is an objective common knowledge base, legal terminology is based on the particular legal system of each country.

Each legal system has its own history, social values and political context, and has been designed to meet the needs of a particular nation, which obviously differ from one country to another. For instance, the Anglo-Saxon and Continental legal systems differ in many respects.

Due to this diversity of legal systems, one of the major difficulties faced by legal translators is finding exact terminological equivalents. A particular concept in the Romanian legal system may not necessarily exist within the framework of the English system, or, it may exist, but refer to a different concept.

In many other countries, public jury “trial” processes do not exist, but there are other judicial systems. In these situations, a literal translation of the word “trial” might mislead the reader.

Translators of legal texts must have a complete understanding of legal classification, legal processes and the systems of both of the source and target languages. Terminology mistakes in the translation of legal documents may have serious repercussions, such as losing a case or causing liability issues.

A good legal translator also knows that even within the legal field there are completely separate areas of law that require specific translation techniques: a contractual document has little in common with a will, an administrative certificate, a judicial decision or a statute, to name a few examples.

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<sup>1</sup> Mattila, H., *Comparative Legal Linguistics*, p. 106, Ashgate, 2006

The legal decoder knows that he or she must consult not only a monolingual legal<sup>1</sup> dictionary, but also an important documentation regarding the subject matter, and that bilingual dictionaries, while useful, should be used with caution.

When faced with international disputes involving different languages and legal systems, legal counsel and their clients would be well advised to obtain the services of translators able to successfully bridge the divide of legal systems, as well as language and culture, in order to provide *literate* rather than *literal* translation<sup>2</sup>

### 3. Legal Terminology & Style

Legal terminology and phraseology is the major concern for the legal translator as he/she may bring to a common two or more legal systems which are sometime extremely diverse and culture-bound. I have chosen **legal terminology** as point of this lecture because this is the key characteristic of language which actually connects a variety of legal genders and is one of the most important aspects in legal translation. Each legal language has its own specific and complex vocabulary, phrases, and denominations. This more than often faces the translator with the impossibility to find a correspondent in the target language, i.e. the problem of non-equivalence.

Legal languages differ greatly when it comes to using a specific terminology. For example, the lexicon of legal English, abundant in archaism, Latinism, terms of Norman and French origin, terms with flexible meanings, has traditionally been a source of wonder for the common people and at the same time the source of many debates concerning its demanded renewal among specialists in the legal and the linguistic fields: “Legal English [...] has traditionally been a special variety of English. Mysterious in form and expression, it is mixed with law Latin and Norman French, heavily dependent on the past and unashamedly archaic”<sup>3</sup>.

Comparing it to other legal languages, legal Romanian has a relatively restricted terminology. In the contemporary Romanian language, legal vocabulary is an organized body of terms, statistically characterized by restricted wealth and high concentration. The legal terminology used by the Romanian specialists includes a variety of neologisms, especially from French, as this language favoured the development of derivational process “by adapting an inventory of *neologic* affixes and *affixoids* from the classical languages”<sup>4</sup>

A generalized feature of all legal terminologies is the mixture of strictly legal terms with terms of belongings to other specialized fields. In community law, for example, one is likely to find terms pertaining to a variety of disciplines, ranging from medicine (the approval of a new drug for example) to agriculture (ex. Grant contracts for farmers specifying the type of crop, chemicals allowed and forbidden etc.) The example below is an excerpt from a European Council document.

Commission of the European Communities	Comisia Comunităților Europene
Brussels, 9.10.2009 COM(212)662 final Proposal for a COUNCIL DECISION on the conclusion of an Agreement in the form of Exchange of Letters between the European Community and Barbados, Belize, [...] on the	Bruxelles, 9.10.2012 COM(212)662 final Propunere de DECIZIE A CONSILIULUI privind încheierea unui accord sub forma unui schimb de scrisori între Comunitatea Europeană și Barbados, Belize, [...] privind prețurile garantate

<sup>2</sup> By the dychotomy of *literate translation* and *literal translation* we want to point out the difference between a *well-documented translation* and a *word-for-word translation*.

<sup>3</sup> Butt, P., Castle, R., *Modern Legal Drafting*, New York: Cambridge University Press, 2006, p. 1

<sup>4</sup> Cazan, O., *Procedee de formare a terminologiei juridice românești*, în revista “Philologica Romanica”, 9, p. 226 available online at <http://www.romaniaminor.net/ianua/Ianua09/09.pdf>

<p>guaranteed prices for cane sugar for the 2008/2009, 2009/2010, 2010/2011, and from first July 2011 to 30 September 2011 delivery periods and on the conclusion of the Agreement in the form of Exchange of Letters between the European Community and the Republic of India on the guaranteed prices for cane sugar for the same delivery periods.</p> <p>EXPLANATORY MEMORANDUM</p> <p>1. Protocol 3 on ACP sugar attached to Annex V to the ACP –EC Partnership Agreement, and the agreement on sugar between the European Community and the Republic of India provide for a Community undertaking to purchase and import at guaranteed prices cane sugar which the exporting countries concerned cannot market in the Community at prices equivalent to or higher than the guaranteed prices.</p>	<p>pentru zahărul din trestie pentru perioadele de livrare 2008/2009, 2009/2010, 2010/2011, și de la 1 iulie 2011 până la 30 septembrie 2011 și a unui accord sub formă de schimb de scrisori între Comunitatea Europeană și Republica India privind prețurile garantate pentru zahărul din trestie pentru aceleași perioade de livrare.</p> <p>EXPUNERE DE MOTIVE</p> <p>1. Protocol nr. 3 privind zahărul ACP atașat la anexa V la Acordul de parteneriat ACP –EC, și acordul privind zahărul încheiat între Comunitatea Economică Europeană și Republica India prevăd angajamentul Comunității de a cumpăra și a importa, la prețuri garantate zahăr din trestie pe care țările exportatoare în cauză nu îl pot comercializa în Comunitate la prețuri echivalente sau mai mari decât decât prețurile garantate.</p>
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As can be clearly seen from the example, legal terms and phrases like *decision*, *proposal*, *conclusion of an agreement*, *explanatory memorandum*, *guaranteed prices*, *delivery periods*, *to provide for* are used alongside economic terms like *to purchase* and *import*, exporting country, while the object of the decision is related to agriculture, more specifically, *cane sugar*.

The mixture of special-purpose language is another peculiarity of legal language which gives rise to many translation problems. The translator of legal documents must not only be familiar with the source and target languages, the two legal systems involved, but also with the subject matter of the document to be translated.

The fact that the audience of such legal texts is often the common person has been neglected in the choosing simpler terms, closer to common language. Nevertheless, legal terminology is shed from the major changes by the barrier of legal precision and accuracy. The next topic of our lecture will deal with aspects of legal language more likely to suffer changes in this era of communication and interaction.

Under the umbrella of style we can discuss all the other peculiarities of legal language which cannot be accounted for in the category of legal lexicon. The use of old-fashioned syntax, lengthy and complex sentences, the redundancy discourse, the overuse of performative verbs, conjoined phrases and lists of words, preference for impersonal constructions and so on. These are the most important features which allow us to distinguish legal style from the style of the common language or other LSP. One of the defining characteristics of legal style is the use of long sentences. Peter Tiersma concluded that the ground for the preference of complex and long sentences in English is the “desire to place all information on a particular topic into one self-contained unit”<sup>1</sup>. The author is nevertheless worry about choosing this approach in order to rid the language of the supposed ambiguity created by the use of separate sentences. The example below will support the author’s scepticism and stress the reverse of this motivation for the use of long sentences, i.e. the fact that the ambiguity is likely to arise particularly in such long and complex sentences. The excerpt chosen to illustrate this is taken from an agreement of distribution, drafted in bilingual versions Romanian and English:

La terminarea prezentului contract, Distribuitorul va proceda imediat, pe cheltuiala proprie la :	On termination of this Agreement the Distributor shall proceed, at his expense:
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<sup>1</sup> Tiersma, P., *Legal Language*, Chicago/London: The University of Chicago Press, 1999, p. 56

<p>a) întreruperea și scoaterea din uz și/sau expunere, directă sau indirectă, a oricărui nume, marcă de comercializare și a oricărui material tipărit, de reclamă și propagandă, care conține astfel de nume sau mărci;</p> <p>b) retragerea din utilizare și/sau expunere directă sau indirectă, a oricărui nume, marcă de comercializare, cuvânt ștanțat sau combinații de cuvinte asemănătoare numelor sau mărcilor de comercializare utilizate sau reclamate de către Exportator, care ar putea conduce la confuzii și nesiguranță inducând în eroare consumatorii și publicul, și care va deveni efectivă în cadrul unei perioade de timp rezonabile convenite între părți.</p>	<p>a) to cease or take out any direct or indirect display, the use of any name, trade mark, printed materials used as advertisement or for any other publicity purposes;</p> <p>b) to cease using or displaying either directly or indirectly any name, trade mark, stencilled words or word combinations similar to the names or trade marks utilized or advertised by the Exporter which might make confusion or uncertainty, thus misleading the consumers, this cease taking effect within a reasonable period agreed upon by the parties.</p>
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Both languages seem to adopt the same style when it comes to delimitating the chunks of information contained in this sample of legal discourse. The information is nevertheless divided into three main groups with the use of the colon and the two lettered paragraphs, but there is still no sign of formal marking at the end of the clause like a full stop and a capital letter for the first word of the next sentence.

The use of full stop is not the main problem when it comes to understanding this paragraph. The most striking feature, which probably led to adopting this laborious style of the two clauses, is the extensive use of conjoined prepositional phrases: “to cease using **or** displaying **either** directly **or** indirectly any name, trade mark, stencilled words **or** word combinations similar to the names **or** trade marks utilized **or** advertised by the exporter which might make confusion **or** uncertainty, thus misleading the consumers...”

The quest for precision is also behind the use of common names as proper names and the recurrence of some terms making the legal discourse so redundant.

The style of legal language and particularly the one used in written documents is therefore just as different as the systems of law differ from one country to another. Thus the legal translator must be aware of and familiar with these stylistic peculiarities of the legal language in general and with the stylistic features specific to each legal language (source and target) in order to be able to render a functional translation of the original text. The source text should obey the stylistic rules at use in the target language and not import the style of the source text.

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