

TRANSLATING LEGAL TERMINOLOGY

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Terminologia juridică constituie limbajul utilizat de către Justiție și de juriști, spre deosebire de limbajul comun, care se deosebește prin anumite caracteristici din punctul de vedere al sintaxei și stilului, pe lângă nomenclatura sa specială. Scrisul este principala sa sursă, fie că aceste documente sunt oficiale (legi, tratate, hotărâri judecătorești ...) sau (contracte, testamente, vizualizări ...). Specificul terminologiei juridice îl pune pe traducător deseori în situații de problemă, în special în înțelegerea și interpretarea textului, în plus, trecerea de la un sistem la altul prezintă probleme speciale, atât în plan conceptual care ilustrează în special traducerea de legi într-o țară bilingvă, acorduri internaționale și documente, cum ar fi actele notariale, precum și în plan formal.

La traduction est nécessairement une lutte. Le bon traducteur est celui qui cherche, qui se pose des questions, qui, loin de se contenter de ce qu'il a trouvé d'abord, commence par s'en méfier; il est comme le médecin scrupuleux qui, son diagnostic a été à peine posé, cherche les indices qui pourraient le conduire à le remplacer par un autre mieux fondé. En matière de traduction, on ne pourrait dire que la première idée n'est jamais la meilleure.

J.C. Gémar, La traduction juridique et son enseignement, 1979

Legal terminology may be defined as the technical language used by the legislators, administrative authorities, the courts and members of the legal professions. It is characterized by the special terms and expressions peculiar to this particular field, and it also exhibits a number of special syntactic, stylistic and idiomatic features.

The technical language of the legal field is found primarily in written texts, which may be classified as follows:

- official texts, whose wording is prescriptive and must therefore also be used by translators, i.e. laws, statutory instruments, texts of ratified international agreements;
- other documents issued by authorities and courts, whose contents are legally binding but whose wording is not prescriptive, i.e. judgments and other decisions handed down by courts, decisions taken by administrative authorities, official announcements, letters, etc.;
- non-official texts, i.e. documents drawn up by members of the legal profession in performance of their functions (e.g. documents authenticated by a notary public, such as contracts, wills and powers of attorney; written applications and submissions by lawyers; legal literature; written opinions on legal or administrative matters; sometimes also private correspondence if it is used for the purpose of providing evidence in a legal dispute, etc.).

Not every text that is generated in connection with legislative, judicial or administrative activity or in connection with the practising of the legal profession automatically contains legal terminology. Since law and administration cover all aspects of human life, a number of problems arise when we try to distinguish legal terminology from the terminologies of other technical language or even from the vocabulary of standard language. By standard language is meant the totality of words and expressions that should be known to all users of a particular language. It covers the vocabulary of all the subjects taught at an ordinary school and permits the speaker of the language to read a daily newspaper or follow radio and television programs without any particular problems. Standard language is the base on which the various technical languages are built up. While standard language can exist without specialized technical language, the reverse is not true – technical language presupposes the existence of standard language. Universities that train translators and interpreters are therefore quite right in insisting that their students should acquire a perfect command of standard language, for without it a specialized text cannot be appropriately translated into another language.

As in all areas of language, it is not possible to draw a clear dividing line between specialized language and standard language. If only because of the mass media, many terms used in technical language have become part of a person's everyday vocabulary, whereas on the other hand some expressions used in standard

language have acquired a specific meaning in a particular subject area and have thus become *termini tehnici* in that area. This process can frequently be observed in the case of legal terminology as well.

Legal translation is a special type of a Language for Special Purposes (LSP) translation involving cross-linguistic communication in the legal context. Many aspects of translation, in particular in the field of LSP, transcend cultural boundaries and are, in some sense, universal. Simplifying somewhat, translation can be depicted as a domain of socio-culturally determined linguistic behaviour with both culture-specific and universal components.

In contrast to other types of LSP translation, such as medicine, science or technology, legal translation tends to involve more culture-specific than universal components. It is to a large degree attributable to the system-bound nature of legal terminology since legal concepts are usually the product of a national legal system. Legal systems have their own history, organizing principles, patterns of reasoning and have been designed to answer the needs of a particular nation. This inevitably leads to the incongruity of legal concepts between national systems. There are few publications on legal language and legal translation which would not acknowledge this fact; yet few go beyond mere acknowledgement. It is therefore necessary to investigate the nature of incongruity in more detail.

Sager [5], one of the most distinguished terminologists, defines terms as depositories of knowledge and units with specific reference in that they “refer to discrete conceptual entities, properties, activities or relations which constitute the knowledge space of a particular subject field”. Terms are therefore embedded in complex knowledge structures and cognitive linguistics may come in handy to explain how such structures are organised and how meaning emerges from them.

A translated text (...) is judged acceptable by most publishers, reviewers and readers when it reads fluently, when the absence of any linguistic or stylistic peculiarities makes it seem transparent, giving the appearance that it reflects the foreign writer’s personality or intention or the essential meaning of the foreign text – the appearance, in other words, that the translation is not in fact a translation, but the ‘original’ [7].

Venuti’s claim may be extended to LSP translation. He himself notes that foreignising strategies have been used in literary rather than technical translation which is predominantly domesticated, “intended to support scientific research, geopolitical negotiation, and economic exchange, it is constrained by the exigencies of communication and therefore renders foreign texts in standard dialects and terminologies to ensure immediate intelligibility” [8].

Another obstacle which may limit the applicability of functional equivalents in legal translation is a problem of determining what a target legal system and recipients are. Ideally, a translation brief should provide such details; yet this is rarely the case. It is not so much a problem when translating from English into a language with one standard variety, such as Romanian, but vice versa, i.e. legal translation into English. Is the target text intended for the UK, US, Australian or Canadian audience? If for the UK audience, is it England or Scotland with its distinct legal system? The translation may be also intended for some undefined European audience, for which English is not a native language but is a lingua franca used to access texts written in languages of limited diffusion. As noted by Weston [9], it is more likely that an English translation will be read by a non-native rather than a native speaker of English. Would this audience prefer common law-based legal English or non-common-law based one. When it is difficult to identify the target, it may be difficult to find TL-oriented equivalents.

To sum up, unless the degree of incongruity is too large, the translator should strive to find a natural TL-equivalent or in other words “a term is designating a concept or institution of the target legal system having the same function as a particular concept of the source legal system” Šarčević [6]. A TL-oriented equivalent allows the recipient to activate knowledge structures attached to it; it allows him/her to access the unfamiliar through the familiar.

An equivalent of a term should show the properties of a term that is a specific reference to the right legal system/knowledge base from which its meaning emerges and it should be short and practical. To function properly, there must be some convention (agreement) in the speech community as to what it refers to. Equivalents have their own life: they may be adopted by a speech community, used repeatedly and become entrenched as cognitive routines. Such an equivalent is called an **established** equivalent [4], in fact it may be either SL-oriented or TL-oriented. for example *limited partnership*, which is “A business structure that allows one or more partners (called limited partners) to enjoy limited personal liability for partnership debts while another partner or partners (called general partners) have unlimited personal liability. The key

difference between general and limited partners is with management decision-making--general partners run the business and limited partners (who are usually passive investors) are not allowed to make day-to-day business decisions. If they do, they risk being treated as general partners with unlimited personal liability” [10] translated in Romanian as *societate în comandită* has a SL-oriented equivalent, i.e. *professional partnership (asociație/societate profesională)*, while it could easily be referred to through a TL-oriented equivalent – *limited liability partnership (societate cu responsabilitate limitată)*.

“A type of partnership recognized in a majority of states that protects a partner from personal liability for negligent acts committed by other partners or by employees not under his or her direct control. Some states also protect partners from personal liability for contract breaches or intentional torts. Some states restrict this type partnership to professionals, such as lawyers, accountants, architects, and health care providers”.

The translator has to find the right terminology, look for an equivalent and check how established it is.

Thus, there are certain terms which appear similar in two different legal systems but which might mislead the reader if he tried to understand them literally, assuming they cover the same concept in both legal systems. This is the case of the term *mortgage*.

The English term *mortgage* is terminologically associated with the Romanian term *ipotecă* but with so many caveats and reservations that, if dictionaries did not associate both terms, no lawyer would have ever identified them as equivalent [1].

It is obvious that English and Romanian terminology, as well as the legal concepts they formulate, are far from coinciding exactly; so, as Gémar [2] puts it, “une traduction fidèle en esprit d'une langue dans l'autre est extrêmement difficile”. And there lies the real dilemma of legal translation. Legal translators must look for juridical and linguistic equivalence of the terms of their speciality, without sacrificing one equivalence in favour of the other. Thus, legal translators can only look for the pragmatic equivalence of concepts, that is to say, the same outcome in both texts; even if by so doing they must apply different strategies:

«D'un côté, elle [l'équivalence] doit se garder de corrompre la langue par le calque servile qui n'en respecte pas le génie et la structure, de l'autre côté, il lui faut ne pas trahir le sens du message par l'imperfection inhérente à ce genre d'équivalence» [ibidem 2].

According to the United Nations Office in Geneva's Terminology and Technical Documentation Section, the Romanian term *ipotecă* and the French *hypothèque* should be translated as *mortgage*. The term *hypothec* is used in academic works and also in Scottish law, but the distinction between the common-law mortgage and the civil-law hypothec is so subtle, and the similarities between them so great, that for all practical purposes they can be regarded as identical in meaning. It should be noted that in England a mortgagee becomes a conditional owner of the property mortgaged to him, but not its possessor (unless he forecloses, in which case he becomes both absolute owner and possessor), whereas the hypothécaire gains neither ownership nor possession of the mortgaged property unless he enforces the mortgage.

Thus, this case clearly shows that the exact translation of certain technical terms is impossible because institutions and legal systems of one country may differ from those in another country due to social, cultural and historical differences. However, in such cases it is absolutely necessary to look for a functional equivalent.

In the framework of English and French legal systems, the terms *mortgage* and *hypothèque* are also far from referring to the same legal reality.

“La comparabilité de ces termes laisse à désirer et il vaut mieux ne pas forcer le rapprochement d'institutions juridiques n'ayant pas la même structure ni la même fonction. Le mieux que l'on puisse suggérer, c'est peut-être de renoncer à traduire et de conserver le terme *mortgage* dans la version française d'un texte de loi. Cette solution, au moins, offre l'avantage d'assurer le parallélisme juridique et linguistique de l'institution désignée dans les deux versions législatives et, encore une fois, d'éviter toute confusion [...]. Par ailleurs, quand on traduit le terme *mortgage* par *hypothèque*, on ne traduit rien du tout! Dans ce cas, la transposition juridique que doit opérer la traduction est fallacieuse. Le raisonnement risque d'être erroné si la précision des termes et la stabilité des rapports reliant les termes aux concepts juridiques ne sont pas assurées” [3].

Sometimes, a term is coined in legal language through the will of the legislator. This also applies to the disappearance of words: a term is deleted from legislation and replaced by another. It is even possible for the legislator to banish a term formerly in use, notably in connection with revolutions. When a term is deleted from legislation, the language of citizen's changes only gradually but that of the authorities is immediately or at least rapidly revised. The vocabulary of legal language – like that of other languages for special purposes –

can be formed in three ways: (a) a word already in existence in ordinary language, or in the language of another specialist, obtains a specialized or broader meaning; (b) a neologism of national origin is created; (3) a word is borrowed from a foreign language (or from another national language) [11].

The several examples above demonstrate the difficulties linked to correctly understanding legal institutions and concepts and translating them faultlessly. The content of these institutions and concepts and the terms expressing them always develop in a complex way: this involves a tangled web in which international legal linguistic interaction is mixed with the autonomous development of legal cultures. To eliminate all possibility of error, we need to have in our grasp detailed legal knowledge about these institutions and concepts themselves as well as linguistic information on the terms designating them. Moreover, such legal and linguistic information should be juxtaposed. This is particularly important as to branches of the law and areas of terminology that are essential from the standpoint of lawyers' international co-operation.

References:

1. Cano Mora V., L. Hickey y C. Ríos García ¿Qué hace, exactamente, el traductor jurídico? // *Livius* 5. - León: Departamento de Filología Moderna de la Universidad de León, 1994. - P.25-38.
2. Gémar J.C. Traduire ou l'art d'interpréter, Langue, droit et société: Éléments de jurilinguistique. Vol. II. - Québec: Presses de l'Université du Québec, 1995.
3. Lauzière L. Un vocabulaire juridique bilingue canadien // *Meta*. - Vol. XXIV. - No1. - 1979. - P.109-114.
4. Molina Lucía, Hurtado Albir, Amparo. Translation Techniques Revisited: A Dynamic and Functionalist Approach // *Meta* [online]. - 2002. - XLVII. - Vol. 4. - P.498-512. Available at: <<http://www.erudit.org/revue/meta/2002/v47/n4/008033ar.pdf>>.
5. Sager Juan. Terminology: Theory // Baker M. (ed.). *Routledge Encyclopedia of Translation Studies*. - London/New York: Routledge, 1998, p.258-262.
6. Šarčević Susan. *New Approach to Legal Translation*. - The Hague: Kluwer Law International, 1997.
7. Venuti Lawrence. *The Translator's Invisibility: A History of Translation*. - London/New York: Routledge, 1995.
8. Venuti Lawrence. Strategies of Translation // Baker M. (ed.). *Routledge Encyclopedia of Translation Studies*. - London/New York: Routledge, 1998, p.240-244.
9. Weston Martin. *An English Reader's Guide to the French Legal System*. - New York/Oxford, 1991: Berg<<http://www.erudit.org/revue/meta/2002/v47/n4/008033ar.pdf>>.
10. <http://www.nolo.com/dictionary/limited-partnership-term.html>
11. Vlasenko (Власенко) N.A. *Iazyk prava (Язык права)*. - Irkutsk: Vostochno-Sibirskoe knizhnoe izdatel'stvo, 1997.

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