

THE CHALLENGES OF LEGAL TEXTS TRANSLATION IN TERMS OF EUROPEAN INTEGRATION

I. Kobyakova, PhD in Philology, Professor;

M. Habenko, student

Sumy State University,

2, Rymkoho-Korsakova St. Sumy, 40007, Ukraine

E-mail: i.kobyakova@gf.sumdu.edu.ua

The article deals with defining the current problems of legal texts translation. Nowadays the accurate translation of legal texts has become highly significant as the Ukrainian government have chosen the European way of development and the incorrect translation of documents could lead to negative consequences in this regard. Consequently, the translation of European Union legal texts into other languages, Ukrainian in particular, faces many difficulties on different levels. The paper points out the importance of performing a professional translation, which is one of the most important elements to be considered when discussing the language of law. Furthermore, the paper presents an overview of existing classifications of legal texts and their communicative purposes. This paper is also an approach to underline the relevance of the parallel education of translation students in connection with successful employment and career development.

Key words: *legal translation, professional skills and competencies, classifications, terminology, communicative purpose, affinity the legal systems and languages.*

Introduction. One of the questions the Translation major students often ask is *How can I check if my language skills are good enough to work at the European Council?* The answer is on the web-site of European Personnel Selection Office. As part of the selection procedure for each open competition published on the EPSO website, candidates will be expected to take a series of tests to assess both their general and professional skills and competencies. The first round of tests that most candidates will be asked to take are computer-based multiple-choice tests, unless they are applying for specialist roles in which case the initial selection procedure may be judged on qualifications only [1].

The list of careers includes Lawyer-Linguists, Translators and Interpreters. Candidates who succeed at the computer-based multiple-choice tests and/or the selection based on qualifications, and whose online application forms show that they meet all general and specific eligibility conditions of their competition, are invited to an assessment centre.

The assessment centre is normally held in Brussels or Luxembourg, and may take place over one or more days. In the assessment centre, candidates' general competencies and their specific competencies related to the duties in question are tested.

It should be noted though that EPSO does not provide any preparatory courses or material apart from these sample tests, neither does it endorse any other organisations' publications or training courses.

Legal translation needs the services of an expert that is highly knowledgeable in legal terms and practices. Translating legal documents needs accurate and correct translation and is one of the most difficult among all translation work. There are a lot of texts that need legal translation, including birth certificates, application letters, technical patent confirmation, deposition records, financial statement, evidence documents, litigation materials and business contracts. Translators should not only possess general knowledge of legal terminology, they should also be well informed of statutory requirements and the details of foreign cultural and legal systems.

Translating legal documents in foreign languages are considered more difficult than other technical translations [2, p. 86]. The legal terminology is what makes it difficult

because each country has its own legal terminology as well as legal system. Often, this is also different from another country even if the language they speak is identical. A legal translator must have the competencies in three areas: competency in the target language's particular writing style, familiarity with the pertinent terminology and general knowledge of the legal systems of the source and target languages. There is no room for word-for-word translation when translating legal documents.

Due to this, the professional translator of legal documents must be a detective, legal scholar and linguist with the amount of research work that needs to be done to be able to decode the source and write its actual meaning that will never, in any circumstances, deviate from the originate content, even if an exact translation is not possible.

The relevance of the study is defined by current trends of modern linguistic research of cultural concepts multidimensional analysis, and the translation aspect in particular. Since legal translation involves law, and such translation can and often does produce not just linguistic but also legal impact and consequence, and because of the special nature of law and legal language. The article shows detailed analysis of the translational difficulties of translating legal terms.

The objective of the article is to describe translation difficulties in the translation of legal terms into the Ukrainian language.

The tasks of this research are: (1) to describe the problems in the existing classification of legal texts; (2) to analyse the legal texts from the point of view of purpose; (3) to define scenarios depending upon the affinity of the legal systems and languages.

The scope of the research is the general challenges that modern translators and interpreters meet while dealing with legal translation or applying for a translator's position in EU.

The major **methods** applied in this research are the content analysis method of various foreign authors' publications, of the reference sources and of the texts chosen to exemplify the case studies and examples in point, the comparative approach through qualitative research, and the observation method starting from empirical research in the field.

The results of the research. Legal texts involve a number of different types of translation problems and require specific methods with which to make a translated text understandable for the reader in the target language, while simultaneously reflecting the original character and unique features of the legal system of the source language country. These requirements force a translator to take great care with the constant connection of the translated text to the source language's culture, by using strategies such as borrowing original terms, naturalizing some specific terms into the target language, using language calques, or introducing descriptive translation, in which some explanations are mandatorily included.

Sometimes it is enough to apply equivalent terms that are used comparatively in the target and source languages, or, alternatively, the translator must localize some elements in order to make them understandable. To solve the problem of which strategies are dominant, comparable analyses of a number of legal texts written in Ukrainian and English have been carried out, leading to the conclusion that the most useful strategy is the ability to maintain the source culture's features and not deprive the texts of their specific character, although localization is sometimes necessary. Some terms also necessitate simple equivalent translation, as they function simultaneously in both language cultures.

To perform such a translation, a two-fold approach is necessary on the part of a translator. Firstly, he is obliged to decipher all of the meanings included in a source text through the detailed analysis of its contents. Such analysis will not only be of a linguistic nature, but it also necessitates some specialist legal knowledge of the text's contents if it is to be understood properly. This means that the translator must engage in the analysis of some of the legal bases of the text's meaning. The best way to do this is to either study the actual Acts and Regulations which govern the shape of a document, or find some other accessible information or credible consultants through which any possible doubts can be dispelled.

According to Sarcevic, legal translation can be classified according to the functions of the legal texts in the SL into the following categories: (1) primarily prescriptive, e.g. laws, regulations, codes, contracts, treaties and conventions. These are regulatory instruments containing rules of conduct or norms. They are normative texts; (2) primarily descriptive and also prescriptive, e.g. judicial decisions and legal instruments that are used to carry on judicial and administrative proceedings such as actions, pleadings, briefs, appeals, requests, petitions etc.; and (3) purely descriptive, e.g. scholarly works written by legal scholars such as legal opinions, law textbooks, articles etc. They belong to legal scholarship, the authority of which varies in different legal systems [3, p.11]. Sarcevic defines legal translation as special-purpose communication between specialists, excluding communication between lawyers and non-lawyers [3, p. 9]. One major problem with the existing classifications of legal translation is that they are based on the function or use of the original legal texts in the SL, without due regard to the various TL factors, such as the functions or status of the translated texts. However, there is a need to distinguish the functions of the SL text from those of the TL text. It is necessary to consider the TL variables, in addition to those of the SL.

Another problem of the existing classifications is that many documents that are used in the legal process and translated as such are excluded from the classifications, e.g. documents used in court proceedings. A third major problem is that some of the classifications such as Sarcevic's exclude communications between lawyers and non-lawyers (clients). The restriction in Sarcevic's 'legal texts for specialists only' disqualifies some text types that make up a large part of the legal translator's workload in real life: private agreements and correspondence between lawyers and clients, for instance.

In this study, legal language refers to the language of and related to law and legal process. This includes language of the law, language about law, and language used in other legal communicative situations. Legal language is a type of register, that is, a variety of language appropriate to different occasions and situations of use, and in this case, a variety of language appropriate to the legal situations of use.

Legal texts may have various communicative purposes. They can be for normative purpose as in the case of bilingual and multilingual statutes and other laws and documents that establish legal facts or create rights and obligations. These are mostly prescriptive. Legal texts can also be for informative purpose as in some legal scholarly works and commentaries, legal advice, correspondence between lawyers, between lawyers and clients, and documents used in court proceedings. These are mostly descriptive [4, p. 79].

For the translator, it is necessary to ascertain the legal status and communicative purpose of the original texts and the target texts as these may impact on translation. Also importantly for our purpose, the legal status and communicative purposes in the SL texts are not automatically transferred or carried over to the TL texts. They can be different. Given the foregoing description of legal language and legal texts, legal translation refers to the rendering of legal texts from the SL into the TL. Legal translation can be classified into three categories in the light of the purposes of the TL texts [5, p. 269].

Firstly, there is legal translation for normative purpose. It refers to the production of equally authentic legal texts in bilingual and multilingual jurisdictions of domestic laws and international legal instruments and other laws. They are the translation of the law. Often such bilingual or multilingual texts are first drafted in one language and then translated into another language or languages. They may also be drafted simultaneously in both or all languages. In either case, the different language texts have equal legal force and one is not superior to another irrespective of their original status. Such legal texts in different languages are regarded as authoritative once they go through the authentication process in the manner prescribed by law. By virtue of this process, such texts are not mere translations of law, but the law itself [3, p. 20].

Examples of these are the legislation in the bilingual jurisdictions of Canada and Hong Kong, the multilingual legal instruments of the UN, and the multilingual laws of the EU. In the case of the EU, the authentic language versions of EU laws, now twenty four languages,

are equivalent since they have the same legal force and value and can be invoked indiscriminately in appeals to the ECJ by EU citizens or businesses, irrespective of their Member State of origin or that country's official language or languages [6, p. 242]. They are usually drafted in English or French first to be translated into the other official languages. Nevertheless, they all have equal legal force. This category of legal translation may also include private documents such as contracts, the bilingual texts of which are equally authentic in a bilingual or monolingual jurisdiction. For instance, in a non-English speaking country, contracts sometimes may stipulate that the versions of the contract in the official language of the country and English are both authentic, even though the language of the court and the country does not include English. In this first category of legal translation, the communicative purposes of the SL and TL texts are identical.

Secondly, there is legal translation for informative purpose, with constative or descriptive functions. This includes the translation of statutes, court decisions, scholarly works and other types of legal documents if the translation is intended to provide information to the target readers. This is most often found in monolingual jurisdictions. Such translations are different from the first category where the translated law is legally binding.

In this second category, the SL is the only legally enforceable language while the TL is not. For instance, a statute written in French from France translated into English for informative purpose for the benefit of foreign lawyers or other English readers is not legally enforceable. This is different from the first category where, for instance, a statute written in French in the bilingual jurisdiction of Canada is translated into English or vice versa and where both the French and English versions are equally authentic [6, p. 247]. Sometimes, publishers of translations of laws in the second category include a disclaimer to the effect that the translation of such and such a law is for reference only, and that in legal proceedings, the original language text of the law shall prevail. Another example is the translation of the legal instruments of the WTO, which has English, French and Spanish as its official languages. Here only the texts written in the official languages have legal force while their translations into other languages are not binding, but for information only. In this category, the SL and TL texts may have different communicative purposes.

Thirdly, there is legal translation for general legal or judicial purpose. Such translations are primarily for information, and are mostly descriptive. This type of translated document may be used in court proceedings as part of documentary evidence. Original SL texts of this type may include legal documents such as statements of claims or pleadings, contracts and agreements, and ordinary texts such as business or personal correspondence, records and certificates, witness statements and expert reports, among many others. The translations of such documents are used by clients who do not speak the language of the court, e.g. statements of claims, or by lawyers and courts who otherwise may not be able to access the originals such as contracts, correspondence or other records and documents. Such translated texts have legal consequences attached to them due to their use in the legal process. In practice, for instance, in Australian courts, a sworn affidavit from the translator is normally required as to the quality of the translation and the competency of the translator. Sometimes, the translator is also called upon as a witness in court regarding the translation. For some of these, the otherwise ordinary non-legal documents written by nonlawyers are elevated to legal status because of the special use of the original and the translation [7].

This is similar to court interpreting. Court interpreters in most cases interpret oral evidence of witnesses who may be retelling ordinary events and answering ordinary personal questions. These witnesses could say the same or similar things outside the courtroom in non-legal settings. The main difference is that interpreting the same story in a non-legal setting is ordinary interpreting while interpreting the same in court is legal interpreting as the interpreted words are used for a legal purpose under special circumstances and conditions. In these situations, the language use or translation use is contingent upon the existence of a legal order, which must be considered to be part of the communicative situation. The law's institutional character plays a major part in language

use in legal settings [8, p. 10], thus, should be given prominent consideration in our classifications of legal texts and legal translation. Many parts of the court or litigation documents are the closest to resemble everyday language use in all the sub-types of legal texts.

The third type of translation is different from the second category described above in that the third category may include ordinary texts that are not written in legal language by legal professionals, but by the layperson. This type of legal translation is often left out in the discussion and classification of legal translation. However, in fact, in the practice of legal translation, it constitutes a major part of the translation work of the legal translator in real life, the 'bread and butter' activities [5, p. 248].

Thus, we can say that legal translation refers to the translation of texts used in law and legal settings. Legal translation is used as a general term to cover both the translation of law and other communications in the legal setting. For the legal translator, it is important to ascertain the status and communicative purposes of both the original text and the translation.

As is commonly acknowledged, legal translation is complex and difficult. There are many reasons why this is the case. In general, the complexity and difficulty of legal translation is attributable to the nature of law and the language that law uses, and the associated differences found in intercultural and interlingual communication in translating legal texts. Prominently, legal language is identified and linked with the normative, performative and technical nature of language use, and the inherent indeterminate nature of language in general.

The normative language of law derives from the fact that law has the basic function in society of guiding human behaviour and regulating human relations. Closely related to the normative nature of law and legal language is the notion that language is performative. Law depends upon language, in particular the normative and performative nature of language. In speech act theory as first proposed by J. L. Austin [9], speech is not just words, as people normally associate it with, but also actions. Words are not only something we use to say things, we also use them to do things. The performative use of language is not exclusive to law, but law relies heavily on performative utterances. Legal effects and legal consequences are commonly obtained by merely uttering certain words, for instance, '*You are guilty*', or '*You are fined \$1000*' as regularly pronounced in court.

Legal language is a technical language. Furthermore and importantly, legal language is not a universal technical language but one that is tied to a national legal system [3, p. 203], very different from the language used in pure science, say mathematics or physics. Law and legal language are system-bound, that is, they reflect the history, evolution and culture of a specific legal system.

Each legal system or family has its own characteristics and, has a vocabulary used to express concepts, its rules are arranged into categories, it has techniques for expressing rules and interpreting them, it is linked to a view of the social order itself which determines the way in which the law is applied and shapes the very function of law in that society [10]. Due to the differences in historical and cultural development, the elements of the source legal system cannot be simply transposed into the target legal system [3, p.13]. Thus, the main challenge to the legal translator is the incongruity of legal systems in the SL and TL.

According to White, one of the most problematic features of legal discourse is that it is 'invisible'. He claims that 'the most serious obstacles to comprehensibility are not the vocabulary and sentence structure employed in law, but the unstated conventions by which language operates'. There are expectations about the way in which language operates in legal contexts. Such expectations are not explicitly stated anywhere but are assumed in such contexts [11, p. 28].

A basic linguistic difficulty in legal translation is the absence of equivalent terminology across different languages. This requires constant comparison between the legal systems of the SL and TL. The absence of an exact correspondence between legal concepts and

categories in different legal systems is one of the greatest difficulties encountered in comparative legal analysis. It is of course to be expected that one will meet rules with different content; but it may be disconcerting to discover that in some foreign law there is not even that system for classifying the rules with which we are familiar. But the reality must be faced that legal science has developed independently within each legal family, and that those categories and concepts which appear so elementary, so much a part of the natural order of things, to a jurist of one family may be wholly strange to another [11, p. 29].

Conclusions. When we translate legal texts between different legal systems or families and languages, the degrees of difficulty may vary. There are the following scenarios depending upon the affinity of the legal systems and languages:

- when the two legal systems and the languages concerned are closely related, e.g. between Spain and France, or between Denmark and Norway, the task of translation is relatively easy;
- when the legal systems are closely related, but the languages are not, this will not raise extreme difficulties, e.g. translating between Dutch laws in the Netherlands and French laws;
- when the legal systems are different but the languages are related, the difficulty is still considerable, and the main difficulty lies in *faux amis*, e.g. translating German legal texts into Dutch, and vice versa;
- when the two legal systems and languages are unrelated, the difficulty increases considerably, e.g. translating the Common Law in English into Ukrainian.

The degree of difficulty of legal translation is related to the degree of affinity of the legal systems and languages in question. An a priori argument of the disparity in legal systems is that variations exist in the different legal languages of individual societies using language to communicate law. The 'system gap' between one national legal system and another results in linguistic differences. Generally speaking, the wider the 'system gap', the wider the legal language gap.

Sumy State University offers a few courses related to Legal Translation. These courses are provided by the Department of Germanic Philology [12]. Future translators and interpreters study such disciplines as *Civil Law Texts Translation*, *International Law Texts Translation*, *Legal Translation*, *Basics of Conference Interpreting*. The students are also encouraged to get the second degree in Law. It is possible due to the flexible system of so-called parallel learning at SSU. Without doubt, this training allows the students to apply for translation-related vacancies in EU.

ПРОБЛЕМИ ПЕРЕКЛАДУ ЮРИДИЧНИХ ТЕКСТІВ В УМОВАХ ЄВРОПЕЙСЬКОЇ ІНТЕГРАЦІЇ

I. К. Кобякова, канд. філол. наук, професор;

М. Габенко, студент

Сумський державний університет,

вул. Римського-Корсакова, 2 м. Суми, 40007, Україна

E-mail: i.kobyakova@gf.sumdu.edu.ua

Стаття присвячена визначенню актуальних проблем перекладу юридичних текстів. Сьогодні точний переклад юридичних текстів став дуже важливим, оскільки український уряд обрав європейський шлях розвитку, а неправильний переклад документів може призвести до негативних наслідків у цьому відношенні. Отже, переведення правових текстів Європейського Союзу на інші мови, зокрема на українську, стикається з багатьма труднощами на різних рівнях. У роботі вказується важливість виконання професійного перекладу, що є одним з найважливіших елементів, який слід розглянути при обговоренні мови юриспруденції. Крім того, в документі представлений огляд існуючих класифікацій юридичних текстів та їх комунікативних цілей. Ця стаття також є спробою підкреслення актуальності паралельної освіти студентів-перекладачів в аспекті подальшого успішного працевлаштування та кар'єрного розвитку.

Ключові слова: юридичний переклад, професійні навички та компетенції, класифікації, термінологія, комунікативна мета, спорідненість правових систем та мов.

ПРОБЛЕМЫ ПЕРЕВОДА ЮРИДИЧЕСКИХ ТЕКСТОВ В УСЛОВИЯХ ЕВРОПЕЙСКОЙ ИНТЕГРАЦИИ

И. К. Кобякова, канд. филол. наук, профессор;
М. Габенко, студент
Сумский государственный университет,
ул. Римского-Корсакова, 2, г. Сумы, 40007, Украина
E-mail: i.kobyakova@gf.sumdu.edu.ua

Статья посвящена выявлению актуальных проблем перевода юридических текстов. Сегодня точный перевод юридических текстов стал очень важным, поскольку украинское правительство выбрало европейский путь развития, а неправильный перевод документов может привести к негативным последствиям в этом отношении. Перевод правовых текстов Европейского Союза на иностранные языки, в частности на украинский, сталкивается со многими трудностями на разных уровнях. В работе указывается важность выполнения профессионального перевода, что является одним из важнейших элементов, которые следует рассмотреть при обсуждении языка юриспруденции. Кроме того, в документе представлен обзор существующих классификаций юридических текстов и их коммуникативных целей. Эта статья также является попыткой подчеркнуть актуальность параллельного образования студентов-переводчиков в аспекте дальнейшего успешного трудоустройства и карьерного развития.

Ключевые слова: юридический перевод, профессиональные навыки и компетенции, классификации, терминология, коммуникативная цель, родство правовых систем и языков.

REFERENCES

1. *European Personnel Selection Office Sample Tests*. Retrieved from https://epso.europa.eu/how-to-apply/sample-tests_en
2. Munday, J. (2012). *Introducing Translation Studies. Theories and Applications*. London: Routledge, 3rd ed.
3. Sarcevic, S. (2000). *New Approach to Legal Translation*. The Hague: Kluwer Law International.
4. Hardy, J. (1961). The Interpretation of Plurilingual Texts by International Courts and Tribunals. *The British Yearbook of International Law*, 37, 72-155.
5. Nord, C. (Mar. 2011). Translating as a Purposeful Activity. *Translation and Literature*, 7(2), 266–276. Manchester, UK: St. Jerome.
6. Hhjort-Pedersen, M., Faber, D. (2010). Explication and Implication in Legal Translation – A Process Study of Trainee Translators. *Meta* 55(2), 237–250. Les Presses de l'Université de Montréal.
7. *Federal Court of Australia. Interpreters*. (2017). Retrieved from <http://www.fedcourt.gov.au/services/interpreters>
8. Newmark, P. (1984). *Approaches to Translation*, Oxford: Pergamon Press.
9. Austin, J. L. (1962). *How to Do Things with Words*, 2nd ed.. Oxford: Oxford University Press.
10. *List of national legal systems*. (2017). Retrieved from https://en.wikipedia.org/wiki/List_of_national_legal_systems
11. Cao, Deborah. (2007). *Translating Law*. Clevedon, Multilingual Matters Ltd.
12. Yemelyanova, O. V., & Kobyakova, I. K. (2014). *Justice and Law: Study guid*. Sumy, Ukraine : Sumy State University.

Received: November, 6, 2017