

International Journal of English Language & Translation Studies

ISSN: 2308-5460



Issues in Translating Legal Texts

[PP: 69-74]

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ABSTRACT

We live in a world which is globalized and where international relations are much more active than ever. As people do not speak common language, need for translation and interpreting is more crucial in this regard. We cannot think of close contacts among states, societies, people and businesses without the mediation of translation and interpreting than before. Thus, translation and interpreting have become crucial and are playing a very important role in human interactions. International law, which regulates relations between organizations and states, has also gained importance. Thus, it can be said that international law (as a result of this translation and interpreting as well) has also become more crucial. Thus, legal translation has also become important among the other domains of translation. However, translating and interpreting are not easy at all. There is no room for error in translation and interpreting as legal consequences may follow. Legal translation involves very complex matters and specialized terminology. This is why it is extremely important to assign the legal translation task to a translator who is well qualified and specialized to handle translation of legal documents. The field of legal translation in Kosovo is not so much developed. There is a limited work and study done in this regard. Therefore, this paper attempts to make a modest contribution in this regard with description and discussion of the issues regarding translation of legal texts. Solutions offered herein may be taken as a basis for further research.

Keywords: Translation, Legal Text, International Law, Kosovo, Interpreting, Translator

ARTICLE INFO | The paper received on: **20/07/2016** Reviewed on: **14/08/2016** Accepted after revisions on: **09/09/2016**

Suggested citation:

MURIÇI, M. (2016). Issues in Translating Legal Texts. *International Journal of English Language & Translation Studies*. 4(3), 69-74. Retrieved from www.eltsjournal.org

1. Introduction

This paper deals with issues in translating legal texts. Initially, it discusses the legal language which is the language of the translation category dealt with herein and then sets out linguistic characteristics of the legal language. Further it will discuss the legal translation, categories of the legal translation and finally, it will present issues in translating legal texts by providing some of the requirements that good legal

translators need in order to render professional and accurate translations.

2. The Legal Language

Legal language refers to the language of and related to law and legal process. It is a variety of language appropriate to the legal situations of use. Because of its characteristics, it is also regarded as a separate language - different from the ordinary language. Linguistic difficulties in legal languages arise from the



differences found in the different legal cultures and legal systems. Legal language has developed its characteristics to meet the demands of the legal system in which it is expressed. It is distinguished from other types of technical languages that convey universal information. In this sense, legal language is *sui generis*. Each legal language is the product of a special history and culture.

One of the main reasons why the language of the law is difficult to understand is that it is often very different from ordinary language. In legal language writing conventions are different, like: sentences often have peculiar structures, punctuation is used insufficiently, foreign phrases are sometimes used instead of ordinary phrases (e.g. *inter alia* instead of among others), unusual pronouns are employed (the same, the aforesaid, etc.), unusual set phrases are to be found (null and void, all and sundry), technical vocabulary, unusual and archaic words, impersonal constructions, use of modal like shall, multiple negation, long and complex sentences and poor organization are all problematic.

3. Legal Translation

Translation is an act of communication between text producers and text receivers and the translator is regarded as a mediator between the two. Translators of legal documents not only translate from one language into another language but also from one legal language into another legal language. The translation of law has played a very important part in the contact between different people and different cultures in history and is playing an even more important role in our globalized world.

Legal translation is a special and specialized area of translational activity. This is due to the fact that legal translation involves law and such translation can and

often does produce not just linguistic but also legal impact and consequence because of the special nature of law and legal language. Legal translation is a complex process that requires special skills, knowledge and experience on the part of the translator to produce such translation. It is a cross-cultural and inter-lingual communicative act and as a complex human and social behavior.

Legal translation refers to the rendering of legal texts from the source language into the target language. In the light of the purposes of the target language texts, legal translation can be classified into following categories:

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, international legal instruments and other laws. 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. 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. 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, 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 category of legal translation,

the communicative purposes of the source language and target language texts are identical.

Then, there is legal translation for informative purpose, with constative or descriptive functions. This includes 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 category, the source language is the only legally enforceable language while the target language is not. For instance, a statute written in Albanian translated into English for informative purpose for the benefit of foreign lawyers or other English readers is not legally enforceable.

And 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 source language texts of this type may include legal documents such as statements of claims or pleadings, contracts, agreements and ordinary texts such as business or personal correspondence, records and certificates, witness statements and expert reports etc. Such translated texts have legal consequences attached to them due to their use in the legal process. 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.

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 is quite different even from the legal terminology of another country with the same language. Law, as a social phenomenon and product of a culture, acquire a unique character in every society. Every society organizes its legislation or its legal system according to the legal concept it has. For instance, Common Law in English is difficult to translate into Albanian. This is linked with the differences in legal systems we have. Common Law legal system is characterized by case law, which is law developed by judges through decisions of courts. The body of precedent is called Common Law and it binds future decisions. In cases where the parties disagree on what the law is, a common law court looks to past precedential decisions of relevant courts. If a similar dispute has been resolved in the past, the court is bound to follow the reasoning used in the prior decision. If the court finds that the dispute is fundamentally distinct from all previous cases, judges have the authority and duty to make law by creating precedent. On the other hand our legal system is different. We have a civil law system and our court decisions are based on written legal framework - primarily on Constitution and then on other laws. Therefore, legal translators find it difficult to translate **Common Law** into Albanian as there is no equivalent in Albanian legal system. They translate this expression as **e drejta zakonore**. However, this translation is not accurate as **e drejta zakonore** includes unwritten norms transmitted from one generation to another



which have regulated social relationships. So, the equivalent of **e drejta zakonore** in English is customary law. Common law should be translated as **e drejta që bazohet në precedent gjyqësor** and it is appropriate to support this with a footnote explaining the difference in the respective legal systems.

As a result of the increasing role of international relations and the increasing demand for the free movement of people, goods and capital, in one way or another legal translation affects all of us. In other words, we can say that law has a close relation with language because it cannot exist without language. According to Mellinkoff, (1963, p. 259) “Law is a profession of words” whereas Arntz suggests that, “the law is alive in language” (1986, p. 92).

In legal translation, due to the differences in legal systems, many of the legal terms in one language do not correspond to terms in another. This is the problem of non-equivalence and represents a major source of difficulty in translation. Smith, (1995, p. 60) explains that “the system-bound nature of legal text means that successful translation into another language requires competency in at least three separate areas:

1. the legal translator must acquire a basic knowledge of the legal systems, both in the source language and target language;
2. must possess familiarity with the relevant terminology; and
3. must be competent in the target language-specific legal writing style”.

As seen above, without these competencies, the translator’s rendition will be a word-for-word translation that is often incomprehensible.

Moreover, as noted, translation of legal texts of any kind, from statute laws, contracts to courtroom testimony, is a practice that stands at the crossroads of legal theory, language theory and translation theory. Therefore, it is essential that the legal translator has a basic understanding of the nature of law and legal language and the impact it has on legal translation.

As Šarčević points out, “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” (1997, pg. 127).

However, Schroth suggests that “in order to produce a text that leads to the same results in practice, the translator must be able to understand not only what the words and sentence mean, but also what legal effect it is supposed to have and how to achieve that legal effect in other language” (2010, p. 71).

The central requirement for the translator is to comprehend the given text within an adequate legal perspective. For this purpose one needs a well-grounded understanding based on subject knowledge by doing researches. Specialist translation in the field of law requires the formulation of communicatively adequate technical texts in the other language.

Legal translator’s task is to convey what is said in the source text and not what he/she believes it ought to say. In other words, a legal translator should not provide legal advice and solve legal problems, but translate and facilitate communication across linguistic, cultural and legal barriers through the medium of language. He/she

should produce a text that preserves its meaning, legal effect and intend.

Lawyers should not expect translators to produce parallel texts that are identical in form. Yet, they should expect them to produce parallel texts that are identical in their legal meaning and effect. Thus the translator's main task is to create a text that will produce the same legal effect in practice. To do so, the translator must be able to understand not only what the words mean and what a sentence means, but also what legal effect it is supposed to have and how to achieve that legal effect in the other language.

Translators must be able to use legal language effectively to express legal concepts in order to achieve the desired effect. They must be familiar with the conventional rules and styles of legal texts in every field of the individual legal systems. A legal translator must not forget that even a 'Will' is not valid if not written in the correct style.

4. Translation of Ambiguous Legal Texts

Translation of any ambiguous text is difficult. In legal translation it is even more difficult and problematic. This is due to linguistic uncertainties like vagueness, generality and ambiguity. Legal disputes often arise from linguistic uncertainties found or allegedly found in contracts and statutes.

An important point for the legal translator with regard to linguistic uncertainties is that one should always bear in mind the task of the translator. A legal translator is not a lawyer. The central task of the translator is to translate, not to solve legal problems. Thus, one of the tasks for the translator in such situations is to recognize the linguistic uncertainty that may have occurred, intentionally or unintentionally, in the original text and whenever possible, the translator should

always try to clarify or make the word more precise or less ambiguous.

The best way to avoid different interpretations of your writing is to replace the ambiguous words with concrete language. For example, if a local district wants to ban heavy trucks from their highways, the legislation would be clearer if it specifically contained the words trucks over [x] tonnage rather than saying large vehicles.

Alimi, (2013, p. 18) suggests that "ambiguous words should be avoided and substituted with another word which is tantamount and monosemic". He rightfully provides that: "any time a translator faces a word that would seem or sound even a little ambiguous, with no hesitation or indolence, it is appropriate that he/she looks for and necessarily finds the adequate word for the concrete situation that eliminates possible and tiresome dilemma for the reader affiliated with different social environment" (2013, p. 21). Then he finishes by asserting that: "the clearer the text is in the translated language, the closer the translator is in performing his/her task" (2013, p. 22).

5. Conclusion

In the light of findings of this paper, the following conclusion is provided:

Initially, this paper discussed the legal language and provided that it is the language of and related to law and legal process, that it is regarded as a separate language - different from the ordinary language. It also mentioned that each legal language is the product of a special history and culture. Further it presented that the legal translation has played a very important part in the contact between different people and different cultures in history and is playing an even more important role in our globalized world and that legal translation is a complex process that requires special



skills, knowledge and experience on the part of the translator to produce such translation as it is a cross-cultural and inter-lingual communicative act and as a complex human and social behavior.

Finally, it provided the role of a translator in the translation process by highlighting that the central task of the translator is to translate, not to solve legal problems and that he/she should produce a text that preserves its meaning, legal effect and intend.

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