Legal Language and Legal Translation

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Abstract

The process of globalization has gained impetus in recent years; accordingly the international law, which regulates the relations between organizations and states, has gained importance as well. Considering this development, it can be said that international law (as a result of this translation and interpreting as well) became crucial. Therefore, legal translation became prominent among the other domains of translation. However, translating legal documents is not easy at all. Even minor errors in the translation of legal documents can result in lawsuits and legal exposure.

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. This paper attempts to make a modest contribution in this regard and the description and discussion of the legal language and legal translation and solutions offered herein may be taken as a basis for further research.

This paper discusses the legal language, the nature of the legal language and the legal translation. It will elaborate the legal language, explain what makes the legal language difficult and then set out linguistic characteristics of the legal language. Further it will also discuss the nature of the legal language and elaborate the legal translation. Finally, it will present the importance of the legal translation in the globalized world and some of the requirements that good legal translators need in order to render professional and accurate translations.

Keywords: *legal language, legal translation, document, translator,law.*

Introduction

The focus of this paperis the legal language and legal translation.Initially, it will discuss the legal language, the nature of the legal language and the legal translation. Further it will elaborate the legal language, explain what

makes the legal language difficult and then set out linguistic characteristics of the legal language. Then it will also discuss the nature of the legal language and elaborate the legal translation. Finally it will present the importance of the legal translation in the globalized world and some of the requirements that good legal translators need in order to render professional and accurate translations.

Legal Language

Legal language refers to the language of and related to law and legal process. It 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.

As Tiersma suggests, "legal language has been called an argot, a dialect, a register, a style and even a separate language. In fact, it is best described with the relatively new term sublanguage, a sublanguage that has its own specialized grammar, a limited subject matter, contains lexical, syntactic and semantic restrictions and allows deviant rules of grammar that are not acceptable in the standard language. However we describe it, legal language is a complex collection of linguistic habits that have developed over many centuries and that jurists have learned to use quite strategically" (1999, p.142).

What makes the legal language difficult?

Linguistic difficulties in translation 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. Legal translation is distinguished from other types of technical translation that convey universal information. In this sense, legal translation is *sui generis*. Each legal language is the product of a special history and culture.

One of the main reasons why legal language 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.

Linguistic characteristics of the legal language

Because of the nature and function of law, the legal language has developed particular linguistic features like: lexical, syntactical and pragmatic to fulfill the demands of the law. Such linguistic characteristics of legal language have profound implications for legal translation. If we examine legal language as a whole, common and singular linguistic features can be identified across different legal languages. They are manifested with respect to lexicon, syntax, pragmatics, and style.

Legal lexicon is full of archaic words, formal and ritualistic usage, word strings, common words with uncommon meanings and words of over-precision.

A common feature of the syntax of legal language is the formal and impersonal written style joined with considerable complexity and length. Complex structures, passive voice, multiple negations and prepositional phrases are extensively used in legal language.

Another pragmatic consideration in legal texts is ambiguity, vagueness and other uncertainties found mainly in statutes and contracts. Legal writing is characterized by an impersonal style, with the extensive use of declarative sentences pronouncing rights and obligations.

Some features of English and Albanian Legal Languages

Legal vocabulary is different from everyday vocabulary and is generally archaic. In English, there is abundant number of terms originating from Latin; accordingly in Albanian, there are several legal terms borrowed from Serbian and Turkish.

The prominent feature of legal style is very long sentences. This tendency for lengthy sentences both in Albanian and in English is due to the need to place all information on a particular topic in one complete unit in order to reduce the ambiguity that may arise if the conditions of a provision are placed in separate sentences.

The law is always phrased in an impersonal manner so as to address several audiences at once. For example a lawyer typically starts with "*May it Please the Court*" addressing the judge or judges in the third person while in Kosovo the announcement of a court judgment begins with "*Në Emër të Popullit*" (**In the name of the people**) when a court sentences somebody to a certain penalty.

Another feature is the flexible or vague language. Lawyers both try to be as precise as possible and use general, vague and flexible language. As Tiersmanotes, "flexible and abstract language is typical of constitutions which are ideally written to endure over time"(1999, p.176).

Historical factors and stylistic tradition explain the character of present-day English and Albanian legal languages. Many old phrases and words can be traced back to Anglo-Saxon, old French, and Medieval Latin, while in Albanian they can be traced back to the old Albanian and Ottoman language.

In both legal languages there are many words that have a legal meaning very different from their ordinary meanings. Tiersma calls the legal vocabulary that looks like ordinary language but which has a different meaning peculiar to law as legal homonyms. For instance, **Action**: is not only a physical movement but legally it is also a lawsuit; **Aggravation**: not merely something that annoys you but also a reason to sentence someone to death according to death penalty law; **Ankesë** (**complaint/appeal**): is not only a simple complaint but also an appeal against a Court Decision; **Bashkëpunimi** (**cooperation**): is not only an act of cooperation on certain issue but also assistance in the act of commission of a criminal offence. Though expressions as presented above that have a legal meaning different from their ordinary meanings are problematic for translation of legal texts, a good translator equipped with necessary knowledge, skills and experience can translate such expressions in an appropriate way.

One of the features of legal language which makes it difficult to understand and translate (for an ordinary translator/reader) of course is its unusual and technical vocabulary. Some of its vocabulary such as **tortfeasor**, **estoppel** in English and **delikuenca** and **kornizakushtetuese** in Albanian, which do not even suggest a meaning to an ordinary person, is a complete mystery to non-lawyers.

Legal language has many common terms with uncommon meanings. According to Danet, "legal language has an inclination for using familiar words (but) with uncommon meanings" (2005, p.59). For example, the word assignment which is generally known as something assigned - a task or a duty. Students of translation have learnt the word in its general literal meaning and they continue to know it as such until they have to translate an assignment, which is a legal document.

The Nature of Legal Language

As it 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 inter-cultural and inter-lingual communication in translating legal texts. As Cao (2007, p.142) suggests, "the legal language is identified and linked with the normative, performative and technical nature of language".

The normative nature of legal language

Legal philosophers agree that legal language is a normative language. It is related to norm creation, norm production and norm expression. This means that the language used from law or legal sources is largely prescriptive. The normative language of law derives from the fact that law has the basic function in society of guiding human behavior and regulating human relations. In short, the language of the law is a normative language. Its predominant function is to direct peoples' behavior in society. It authoritatively posits legal norms.

The performative nature of legal language

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. 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 uttering certain words, for instance, 'You are guilty!', or 'You are fined with € 100' as normally pronounced in court.

The technical nature of legal language

Legal language is a technical language and legal translation is technical translation involving special language texts. Charles Caton, a linguistic philosopher, believes that legal language is a technical language, but technical language is always an adjunct of ordinary language. According to Schauer, a legal philosopher, legal language as a technical language often operates in a context that makes legal terms have meanings different from those they bear in non-legal contexts of use. The legal philosopher, Hart argues that owing to the distinctive characteristics of legal language,

'legal language is *sui generis*', 'unique onto itself'. Fundamental to Hart's view is that legal language is distinctive because it presupposes the existence of a legal system.

Understanding the meaning of the text in legal language

Legal interpretation differs in several ways from ordinary understanding. In ordinary language, what really matters is what a speaker means by an utterance (speaker's meaning), rather than what a word or utterance means (word or sentence meaning). With statutory interpretation, courts often look to the intent of the speakers (legislative intent). We tend to interpret written texts differently from speech. Someone who writes a text often tries to make it as autonomous as possible, so that any information needed to interpret it is contained in the text itself. This is often necessary, because the reader of a text may be in a very different location, at a very different time and may know little or nothing about the circumstances surrounding the writer. Logically enough, legal documents are written to be very autonomous.

A significant difference between legal and ordinary interpretation derives from the fact that a legal translator must always keep in mind the rules and conventions used by the speaker or writer. There is a symbiotic relationship between encoding and decoding language. Legal writers do indeed use language and drafting conventions that are distinct from ordinary language.

Therefore, one of the tasks for the legal translator is to identify the legal meaning and distinguish it from its ordinary meaning before rendering it appropriately into target language. For instance, in translating English contracts or documents related to contract law, legal terms frequently encountered include **offer, consideration, performance, remedy** and **assignment**. These words in English have an ordinary meaning used in non-legal settings. They are also legal technical terms that carry special legal significance in contract law. In English contract law, **offer** refers to a promise which when accepted constitutes an agreement; **Consideration** refers to the price paid, not **thought** or **thinking** in ordinary usage; **Performance** specifically refers to the doing of that which is required by a contract or condition. A contract is discharged by **performance**. The expression **specific performance** in contract law is not literally what it says. It actually means where damages would be inadequate compensation for the breach of an agreement, the contracting parties may be compelled to perform what was agreed to bed one by a decree of specific performance,

e.g. the sale, purchase or lease of land, or recovery of unique chattels. The word **remedy** is not just a way of solving a problem but a legal means whereby breach of a right is prevented or redress is given, e.g. damages and/or injunction. **Assignment** in contract law means transfer of property or right.

For the legal translator, the lesson here is that when trying to identify andascertain the meaning of a particular word with both ordinary and legal meanings or a word with several legal meanings, one can make use of the context in which the word occurs.

Legal Translation

Translation is regarded as 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 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 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 systemof 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 **edrejta 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".

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.

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 uncertainty like vagueness, generality and ambiguity. Legal disputes often arise from linguistic uncertainty found or allegedly found in contracts and statutes.
An important point for the legal translator with regard to linguistic uncertainty is that one should always bear in mind the task of the translator. The legal translator is not the 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 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).

Conclusion

In the light of findings of this paper, the following conclusion is provided: Initially, this paper discussed the legal language, the nature of the legal language and the legal translation. It presented that legal language refers to the language of and related to law and legal process, that it 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. It also mentioned that legal language has its own specialized grammar, a limited subject matter, contains lexical, syntactic and semantic restrictions and allows deviant rules of grammar that are not acceptable in the standard language.

Further, the legal translation was said to be *sui generis*, as each legal language is the product of a special history and culture. It mentioned that legal language is difficult to understand because often it is different from ordinary language like for instance: sentences often have peculiar structures, punctuation is used insufficiently, then unusual and archaic words, impersonal constructions, use of modal like shall, multiple negation, long and complex sentences and poor organization are all problematic.

Then, it provided that 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 inter-cultural and inter-lingual communication in translating legal texts. 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.

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