

# ERRORS AND DIFFICULTIES IN TRANSLATING LEGAL TEXTS

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## Abstract:

*Nowadays the accurate translation of legal texts has become highly important as the mistranslation of a passage in a contract, for example, could lead to lawsuits and loss of money. Consequently, the translation of legal texts to other languages faces many difficulties and only professional translators specialised in legal translation should deal with the translation of legal documents and scholarly writings.*

*The purpose of this paper is to analyze translation from three perspectives: translation quality, errors and difficulties encountered in translating legal texts and consequences of such errors in professional translation. First of all, the paper points out the importance of performing a good and correct translation, which is one of the most important elements to be considered when discussing translation. Furthermore, the paper presents an overview of the errors and difficulties in translating texts and of the consequences of errors in professional translation, with applications to the field of law. The paper is also an approach to the differences between languages (English and Romanian) that can hinder comprehension for those who have embarked upon the difficult task of translation. The research method that I have used to achieve the objectives of the paper was the content analysis of various Romanian and foreign authors' works.*

**Keywords:** *translation quality, errors and difficulties in translation, legal texts, translation analysis.*

**JEL Classification:** K0

## Introduction

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 many things 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 versed in statutory requirements and the legal intricacies of foreign cultural and legal systems.

Translating legal documents in foreign languages are considered more difficult than other technical translations. The legal terminology is what makes it difficult because each country has its own legal terminology as well as legal system. More often than not, 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 part 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.

## Methods

The main methods I have used in this article are the content analysis method of various Romanian and foreign authors' works, 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.

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The main aim was to emphasise the need and the usefulness of analysing the translation of legal texts, without the assistance of specialists, in order to underline the main threats and risks generated by this type of translation. This translation analysis can be thus seen as a way of allowing the researcher/translator to identify possible problems.

### **Background**

In an era of globalization, we are bombarded with the demand for constant and instant communication, which incorporates many different languages and cultures, and which very often involves legal terminology. All translators are aware of their responsibility to produce adequate and easily understandable translations, particularly when dealing with legal texts. It is for this reason that the ability to use appropriate strategies, based on properly chosen theories, is so important in such work. The theories must always be read in conjunction with the pragmatic rules that govern the trade, although the reality is that many of these rules are dictated by theory.

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 utilize 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 Romanian 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.

Following this, if the translator is sure about what each part of the source text exactly means, the next level of the translation can take place, namely seeking out the best vocabulary and linguistic structures with which to express the meanings in the source text. There are three ways to do this:

1. By retaining some cultural-specific elements, such as the names of institutions, the titles of officials, or actual legal regulations etc. In such circumstances, some translator's notes will be needed to explain the sense of ideas, particularly when the source information is left in the original language;
2. By localising common elements within the meaning that are different in form in the source and target language, such as different formats of dates, times, currencies, weights, measures, and more specific legal terms;

3. And, most easily, by the equivalent translation of content that is similar in form and meaning in both cultures.

Comparative analyses that utilize comparative corpora, term databases, glossaries, websites, etc. are of great help when carrying out the work mentioned in points 2 and 3 above. Yet the translator should always bear in mind the most common rule of translation of such culturally-rooted texts, namely first be faithful to the source language culture's principles. There is a further level to be included in the process of translation, which relates to its recipient. The kind of reception that the work receives is the final proof of how correct, or otherwise the translation is. Accordingly, obtaining such feedback information may be an additional factor of interest to the translator.

### **Case study**

The present work is addressed first of all to the juridical specialists being connected with the terminology in the domains of public and private law. It includes the English, American and European law terms of Latin origin because some of them do not have exact structural correspondences in the Romanian language, this leading to difficulties in finding an equivalent in the process of translation of the English juridical texts into Romanian.

This part is a practical approach on translation. Using a number of case studies (legal texts extracted from various documents and articles), the case study illustrates the diversity of situations which can arise as a result of translation errors and difficulties. This section is an analysis of the translations of economic texts and the errors that may occur in the attempt to give an accurate and correct translation of the original text.

Law as an abstract concept is universal as it is reflected in written laws and customary norms of conduct in different countries. Legal concepts, legal norms and application of laws differ in each individual society reflecting the differences in that society. Legal translation involves the translation from one legal system into another.

1. Working with a corpus of juridical texts we came across a big quantity of Latin juridical expressions. Latin being in the Middle Ages the language of law on the territory of Western Europe influenced immensely the formation of the juridical terminology of the majority of the European languages, not to speak about the fact that Latin was the basis of many Romance languages, and also the English language, because English was not an exception. All the possible languages borrowed both roots of Latin origin of words, word-combinations, winged expressions as well. Thus, a basic linguistic difficulty in legal translation is the absence of equivalent terminology across different languages. The English juridical vocabulary included such elements from Latin. In the domain of jurisprudence the so-called "Latin layer" or "the antique heredity" was very important, for example, *sub judice* – în cursul judecătii; *subpoena ad testificandum* – citație adresată unui martor pentru a se prezenta și a depune mărturie; *salvo jur e* – fără prejudiciu, *bona fide* – bună credință; *mala fide* – rea credință, etc.

2. Another source of difficulties in legal translation is represented by cultural differences, "culture" being defined as a "semiotic system" and "a system of meanings" or information encoded in the behaviour potential of the members of the society. Translation involves trust on the side of the reader or user. The audience that does not know the original meaning of the terms of the text believes that the translation is a fair representation of it. Hence, the translator should be ready, whenever possible, with observance of all cultural details to translate the legal lexicon in the texts of legal documents.

3. Translation of words having equivalents in the Romanian language but specifying the realities not inherent for the Romanian legal culture. In such cases the literal translation demanding some notes or approximate translation when the specific term in the English language is translated by the patrimonial term in Romanian is possible. Anyhow, such units

demand either the use of the intra-linguistic compensation, i.e. a word is translated by the phrase, or intercultural compensation when a translation demands some commentary. A typical example is the use of such pair as jail-prison translated usually as *închisoare* or *penitenciar*. It is not necessary to define the difference between these two words in all contexts but the translator should know that jail is a place where people are kept during the process of investigation or the offenders, serving time punishments till 1 year for not severe crimes. Prison is an establishment of execution of punishments where the persons who have committed grave crimes and serving time punishments more than for 1 year are kept. It also should be noted that the modes of the maintenance of prisoners in establishments of these two types are various on severity degree, as well as on financing sources. In the English language there are some nouns with the meaning *infrațiune/delict/crimă* from which one, murder, is patrimonial, and others – specific terms: homicide (premeditated murder) and manslaughter (unpremeditated murder). The example of functioning of such words as crime – felony – misdemeanor is similar. The noun *crime* designates a crime in general (unlike an administrative offence), while misdemeanor (not severe crime) is punished with either the penalty, or serving a term of punishment in local prison (jail), and felony – the heavy criminal offence punishable with a long term of imprisonment in a state or federal prison.

4. The literal translation of word-combinations demanding detailed explanation on the part of a translator if, of course, the translator is competent to give such comment. Let's consider the translation of such word-combinations, as *limited divorce*, *indeterminate sentence*, *Index crimes*, *Crime index*, *sensibility training* and *verbal judo*. In all these cases, word-combinations designate the realities which do not exist in the practice of the Russian judicial-legal system and consequently demand to compensate objective discrepancy of translation with the cultural comment. So, *limited divorce* is *separație de corp*, *indeterminate sentence* is *sentință fără soluție/nerezolvată*. *Crime Index* is *clasificarea infracțiunilor*, a list from 8 of the most grave crimes, among which 4 types of crimes are against the person (murder, sexual assault, robbery, aggravated assault) and 4 – against the property (burglary, larceny, car theft, arson). Accordingly, *Index crimes* are the types of crimes listed above. Comprehension and equivalent translation of such word-combinations as sensibility training or verbal judo demand from the translator not only the linguistic competence, but penetration into the sphere of the professional culture of the police as well. We think that it is the most difficult case for the translator who is not a specialist in this area to find the equivalents in the target language. So, *sensibility training* is *pregătire pentru stărnirea emotivității* (negotiating with terrorists; interrogation of the victims who are in a condition of a psychological trauma, etc.). *Verbal Judo* often translated as *atac verbal*. The translator should know that it is a technique of application of certain language means with the purpose to achieve the results with the help of a dialogue.

5. When it comes to certificates and diplomas, with the cultural-specific elements widely used, the aim of which is the delivery of personal information, its recognition and application, the strategy is generally to retain original forms without cultural adaptation. This normally means using the simplest translation equivalents as suggested by dictionaries, glossaries, encyclopedias or other credible sources. Moreover, some elements must also be left untouched (e.g. addresses, names of people and places). Borrowings, calques, naturalizations or descriptive translations are commonly used because the first and most critical rule in the translation of such texts (apart from being communicative) is the retention of the source cultural elements. This is done with official names of countries, institutions, job titles, and the forenames of the holders of the documents. We also retain the sense (or names) of administrative units, the names of normative acts governing the formats of the documents if they are mentioned, and the references to all forms of proof of authenticity – stamps, watermarks etc. It is even possible to somehow adjust the format of the documents to assure the target reader that the document they are dealing with is the official one, albeit in a different language.

6. When it comes to the names of institutions, it is sometimes difficult to find a foreign language equivalent in accessible sources like dictionaries, glossaries, or corpora. If the institution itself does not suggest the officially established and acceptable version of its name, the only solution is to borrow the original name and add the translator's version of descriptive translation, or sometimes a calque (the only excuse for using the name of an equivalent institution in the target culture is the situation in which the functions of both institutions are similar and there is no better solution). However, we must remember that the translation is introduced after the first appearance of the original term for informative purposes, as the most appropriate strategy is still to use the original versions of such names.

7. There should be no doubt about the appropriate way of translating the official functions of the individuals referred to in the documents. Again the rule is to retain the sense and not to try to adapt the functions to the target culture's requirements. If the translator has doubts about choosing an equivalent for a function which does not correspond to the target culture, the best way forward is to read the actual legal regulations relating to the translated documents, which usually provide detailed information about the principles behind their usage, their contents and issues. For example, a British or Romanian translator, in whose countries there are comparable rules for the solemnization of a civil marriage, may wonder why we find such terms as judge or clerk and not registrar, in American marriage certificates (e.g. in the State of Illinois). But after the analysis of the contents of chapter 40, paragraph 209 of the "Illinois Marriage and Dissolution of Marriage Act" (750 ILCS 5/), which states that the marriage ceremony must proceed in the presence of a judge or a county clerk, the translator can be sure that the simplest non-adapted terms that are chosen according to the strategy of word-for-word translation, are the most appropriate, even if they may not correspond to the target culture. Having read the act referred to, the translator will have no doubts about the function of the certificate itself since its title, "Marriage License," does not directly suggest that the document is a marriage certificate. According to the laws in Illinois, the document acquires the power of a marriage certificate after being signed by an appointed individual in the space provided and sent to the institution responsible for keeping marriage records. When it comes to the title, it should be translated literally, possibly with some translator's notes, again to keep the source culture's rules.

Generally, as has already been stated, the translation process in the type of texts described should be reduced to an attempt to render the meaning of the source information within the target language, according to the principle that the strict correspondence of meaning is retained by word-for-word, literal or technical translation.

The main rule of translation should be the parallelism of terminology and using grammar and stylistic rules that are adequate to the target language's conventions. All of these will mainly be applied to the titles of documents, headings that refer to personal data, school subjects and some formulations of certification. A completely different strategy, based on cultural adjustments and the attempt to express the same ideas but in different ways, will be needed when the source and target languages differ in some aspects of cultural and linguistic traditions, but the ideas expressed are universal. This applies to elements such as dates, times, systems of measures and weights or some more detailed legal terms. In situations where the traditions differ and there is only minimal correspondence between culturally-rooted ideas, like with scales of school marks, scientific titles, currencies, it is better to leave the original versions untouched and add the translator's notes by way of explanation.

### **Conclusions**

The case study that we have accomplished gives us the possibility to make some conclusions:

- the principal group of Latin words which came into English has no analogies there. They represent "law" itself and present a certain linguistic interest.

- some Latin juridical words and word combinations are translated in a descriptive way;
- juridical terms have always only one meaning, are not polysemantic, their meanings do not depend on the context.

The proper equivalent translation of the legal texts requires from the translator a high level of his linguistic and cultural competence. As a rule to get a sufficient degree of completeness and accuracy the translator often uses the inter-language and intra-language compensations.

The greatest difficulty for the translator is caused not by the use of terms and phrases which are fixed in specialized dictionaries but the use of those linguistic units which are connected with the cultural aspects regularly used in legal texts. It is difficult to overestimate the importance of the translational notation which allows to provide complete understanding of the translated legal text, to fill lacks of the background knowledge of the reader of the target text and to resolve the conflict of cultures in the professional area.

As can be seen from the texts chosen, legal translation requires appropriate knowledge, skill and methodology. Bearing in mind how often such texts arise these days, and the inadequate number of properly qualified translators, it is obvious that the pedagogical contribution towards the development of those skills is a big challenge for the academic community. Also worth mentioning here is that translation is no longer a process exclusively based on traditional tools and methods. This should be borne in mind by scholars when dealing with scientific issues concerning the field. New opportunities are available as a result of developing technology. It is for this reason that attempts to facilitate the process of translation and unify its results, need to continue. The problem for future decades is how to ensure that there is awareness of these new translation tools and that they are more widely used.

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