

Translation and Law

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Abstract

On St. Jerome's Day 2012, the specific issue of the relationship between translation and law has formed the subject of a lecture at NHH, Bergen. Law is present in many texts, and legal translators will, in their practice, apply a special perspective characterized by a duplicity of views when approaching them.

In the scholarly talk of "translation and the law", the focus is on two **different academic disciplines** – Translation Studies and Comparative Law. They do specific research – either on translation theories or on legal systems. And the relationship between both concepts – law and translation – is somewhat unclear at first sight. We might split it up into various questions:

- 1) What is law, can we translate it?
- 2) Where is translation in the field of law?
- 3) What are the special problems of translation here?

1 The purpose of law

Law according to its purpose is a system of social convention defined by legislation that regulates the orderly living together of people within their culture. It has been created and developed in history. All aspects of life – in dealing with offence and crime, in trade, in family affairs, in administration, in education, etc. – are governed by law and legislation. The fields where such rules apply are both national and international. And today, there is even global interaction in economy and in the upcoming of hybrid societies, and various concepts of law confront each other.

We cannot translate "law" as such. What we can do at first is to compare legal systems. Comparative law is an important field of research today and it concentrates on the differences in the legal concepts.

At first sight, the human values seem to be the same for all peoples in the world: internal peace, justice, equality of persons, public order, freedom of speech and of religion, recognized education, punishment of crimes, etc. But the respective ideas are not identical everywhere and their legal treatment is different, according to the cultural background. The difference between existing legal systems is mainly visible in the central concepts regarding those values.

The **link** between both areas of research – Comparative Law and Translation Studies – is the fact that law is deposited, handed down and interpreted within texts, by language. "*The law is alive in language*" (Arntz 1986: 286), and this is the link to other questions regarding translation. There are texts in various fields of law such as civil, penal, trade, administrative, family, international, European law, etc. We find legal language here, and the translator will approach texts with a double perspective: regarding law and regarding linguistic features. The legal backgrounds in different cultures are decisive.

2 Various legal backgrounds and function of translation

There is the well-known difference between the Common Law in the Anglo-Saxon countries with its old history of case law decisions, and the written law in most of the countries on the

European continent that derives from the Roman constitutional law in Ancient times. The Nordic law also belongs to this area (Simonnæs 1996). And recently there is the influence of European legislation by means of Directives that have to be integrated into the national legislation of every member state (Legrand 1996). On the global level there is the confrontation, in politics and commerce, with Arabic and Asian law and with African law traditions as well.

The British **Common law** has developed from the 13th century by court days under the king and through travelling judges. They used to decide in similar cases in analogy to the precedent. Hence, a case law developed where the law is revealed and evolves by means of judicial decisions. This replaced the older local and religious orders and is called Common law, common to all subjects of the crown. The individual judge is free in his or her decision, and the parties try to convince the jury with their arguments. The law is developing constantly in a collection of superior court decisions and the judge will have to back-up his decision by rational arguments. His decisions appear in an individualistic style using terminology with general concepts.

To the contrary, the European **continental law** as a Civil law has developed out of the Roman constitutional law. In Germany, there is the constitution in the *Grundgesetz* (Basic Law) and the Civil law in *Bürgerliches Gesetzbuch*. Articles from the written legislation are being mentioned in the court sentences. This structure of law has developed in the 15th century out of the Roman *Corpus iuris civilis* which was translated into the vernacular languages, e.g. Italian, French, Spanish, German. A science of legal interpretation, Jurisprudence, has developed. A judge has to interpret the given text of the respective code and subsume the contentious case under the law. Mentioning of the relevant articles of law in decisions led to the fact that they were copied literally with much influence on the style of writing, and also introducing antique formulae and Latin words into the legal language in Germany. The terminology is full of specific concepts according to the law.

The **European law** is a supranational law created to develop the European Union. It has a tendency to unify the regional national laws. The *Acquis communautaire* is valid for all member states, and all legal texts are being formulated in 23 languages involved. The basic languages for draft are English and French. All versions are deemed to be equally valid. So we see supra-national legal concepts in a new terminology.

This rather general overview has two consequences for the **text structures** possibly found in legal translation texts: English texts will be more individualistic in style than German ones, where the structure is often ruled by official decrees. And the legal terms for concepts are more general in English than in German, where specific aspects of a case have already been defined by law. When you ask a British lawyer about the correct translation of a certain word, you often hear “it depends on the case”.

3 Focus on translation problems in the law

When we ask how translation might interact with aspects of law, we look at texts that actually have to be translated. Our perspective is reversed from general characteristics of legal systems to the concrete language level.

Texts to be translated in the field of law come from various text genres, but are mainly **documents** by which a person wants to enforce a right in another culture: *personal certificates, diplomas, contracts, affidavits* etc. *Court sentences* and some *articles* from

legislative codes are also translated sometimes for information. But in all these translations, the validity and the meaning of those texts are bound to the source language culture, and this cannot be changed. There is no transfer of culture, but only transparent formulation in a “documentary translation” (House 1997: 29). She calls it also “overt translation”. The translation is a secondary text to help understanding.

The texts are rooted in one specific law as just described, and law is a part of culture. Culture is the background of every human communication, and the cultural aspects referring to that extra-textual environment are only implicit in the texts.

Legal texts are for **jurists**. Law or jurisprudence as a specialist declarative knowledge in its concepts would rather easily function with only an exclusive, fixed technical terminology. Expert communication among lawyers and judges does not require general comprehensibility. However, legal texts – such as *codes, court sentences, certificates, trade agreements* – do rule the life and activities among persons. So these texts must also appeal to general language in order to be understood by the people.

Legal language as a specialist language has **two kinds of addressees**, the lawyer and the general public (Müller-Tochtermann 1969: 91; Stolze 2009: 103). Its terms have a double coding – not only a specialist concept but also a lay meaning, and often they use the same linguistic frame. This is true for all fields of legal discourse. Therefore, several authors plead for vague legal terms as to the linguistic side (Simonnæs 2007; Kjær 1995). This has consequences for the translation work that will be discussed below.

4 Cases of legal translation

When it comes to concrete translation of a text we should be aware of the legal background, either in Common law or in Civil law. But any text is also rooted in a **specific field of law**, such as penal or civil or international or contract law, etc. A special legal terminology is relevant in these fields, dependent on the social function of such texts, both as originals and as translations. There are some typical cases of practical translation:

1. **Personal administrative documents** are being used to create or enforce a right in another country: birth certificate and/or divorce decree for marriage, affidavit, education certificate or diploma for studies abroad, work testimonial for a new employer, medical certificate about an illness during holidays abroad, police report of theft abroad for the domestic insurance, medical certificate of aliens for their home pension scheme, and other things alike. The difference of conceptual meanings and the equivalence of terms have to be checked. Sometimes the acceptance of such documents depends on inter-state agreements.
2. In **penal proceedings** there is often the need to translate *court sentences* or *investigation documents* for the request of international judicial assistance. *Summons, office texts* and *statements of charge* may be translated for foreigners. The difference between criminal and civil proceedings is important here, e.g. we have to distinguish between *Staatsanwalt / Angeklagter / Verteidiger* (*public prosecutor / accused / counsel for the defence*) and *Klägerin / Beklagte / Prozessbevollmächtigter* (*petitioner, claimant / defendant / counsel for the plaintiff*).
3. **Foreign court decisions** with included articles of code (*penal and civil proceedings*) have to be translated. Among others, the linguistic style is a problem.
4. **Trade contracts** are signed in order to sell goods or transmit licenses. They will be written in one *valid language copy* with a translation for convenience. *Articles of*

incorporation or shareholder books and extracts from commercial registers have to be translated when a company wants to open a business establishment in another country. Cultural differences regarding company forms and publication duties etc. are important here.

5. New law texts from the **European Commission**, *Directives* etc. have to be translated into a local language in order to develop their effect in the national legal system. The EU law uses a social common terminology, and its conformance or difference to national terminology is important.
6. Some countries have since long **several languages** representing the same law, e.g. Switzerland, Canada, South Tyrol. Here, translations are parallel texts, and certificates often are issued in two languages already. Identity of conceptual meaning is vital.
7. After **political changes** it can be necessary to translate a whole national body of legal texts from the former main language into other local languages, as for example is the case in Hong Kong (Chinese) or South Africa (Kwa Zulu, Xhosa), in the former Yugoslavia (and others).
8. **International Treaties** are formulated in a general way open to interpretation following the *political agreements*, and then we have their formulation in a language coherent in both bilateral and multilateral conventions. The divergence of conceptual meanings from national legislation is important.

It has to be checked which kind of translation is relevant in each individual translation commission. The most frequent case, of course, is translation of a national document so that it may deploy its legal effect in another country. Šarčević (1997: 71) stresses the functional effect of legal translations:

While lawyers cannot expect translators to produce parallel texts which are equal in meaning, they do expect them to produce parallel texts which are equal in legal effect. Thus the translator's main task is to produce a text that will lead to the same legal effects in practice.

This means that even if the translation is not the legal document as such, it should be precise enough to be accepted with its intended legal effect, which is based in the source legal system.

The translation does not replace the original text with its legal status. But translations as secondary texts should be transparent to produce the same legal effects in practice. The German translation, for instance, of an Italian article of statute law will give precise information, but it is no German law. Or: The English translation of a German school certificate should be clear enough to enable to study abroad, but it will never be a British certificate or the like.

5 Legal concepts and terminology

Given the fact of double legal addressees, we see expert concepts with **various levels of abstraction** presented in lexemes from standard language. The specific problem of translating, then, is to recognize such expert concepts in a text which, at first view, may seem to offer itself to "normal" understanding. The natural meaning is narrowed by a legal definition (Fuchs-Khakhar 1987: 39), the expert concept constitutes a specification of the stereotypical concept into a specialist one, but it still refers to the former. There are several levels of abstraction. We can distinguish the following groups:

- Subjects (specified concept in standard lexemes)
- Conditions (vague legal terms)

- Actions & relations (specific legal terms)
- Legalistic ideas (abstract terms of jurisprudence)
- Concepts of European law (multilingual terms)

5.1 Specified concepts in vague standard language frames

There are difficulties for the layman if standard lexemes regarding legal subjects like *man*, *woman*, *father*, *animal*, *birth*, *object*, *marriage*, *equality*, *freedom* etc. are being fixed into some specific usages by legal discourse. A “father”, for instance, is not only somebody who procreated a child, but he is also legally responsible for its maintenance (according to varying national rulings). One might doubt about the equivalence of en. *marriage* with fr. *mariage* or de. *Ehe*, as the legal concepts are rather different in the respective civil codes regarding the rights of the persons. But socially it is more or less the same thing. A *dog* is not only a beloved animal, a pet, but also an object with a certain value to be determined in case of damage.

Such terms are much less evident than laymen would believe, as shows a commentary of 500 pages on article 3 GG: “Alle Menschen sind vor dem Gesetz gleich” (*All persons shall be equal before the law*). The reason is that individual ideas can differ widely even in the same country, in history, and all the more internationally.

5.2 Vague legal terms

There are also “vague” legal terms needing interpretation, like for instance *good faith*, *public decency*, *important reason*, *high value*, *law and order*, *state of the art*, *night-time peace*, etc. We might call them conditions of the living together. The opinion regarding *silence in the night* may cause dispute. *Freedom of speech* is interpreted differently in a democratic or in a dictatorial regime. Their schematic concepts are easily inferable at first sight and the terms might be translated literally, but their legal content is not at all precise. The idea behind these terms may vary from group to group. The choice of target language terms can even require court decisions, e.g. when a product is not in the promised “state of the art”. Or: What is included in “Höhere Gewalt” (only *Act of God*, or also *strike*, other *damage*, *political upheaval*, *lack of electricity*, etc.). The vague legal terms may have specific definitions in a local legislation.

5.3 Specific legal terms

Lawyers also use so-called “specific” legal terms formally taken from standard language regarding **social interaction and relations** like *purchase*, *sale*, *debt*, *exchange*, *rent*, *burglary*, *theft*, *offence*, *ownership*, *possession*, *murder and manslaughter* a. o. Their legal meaning is determined by a description of their legally relevant semantic content in the facts of the case (Müller-Tochtermann 1969: 90). The problem is that this semantic content often is not identical in various legal backgrounds, what may cause problems especially in international trade. There are a lot of relevant studies, but the dictionaries are only partly reliable.

Literal translation is not always possible: see en. *ownership* that corresponds to de. *Besitz* (*possession*), *Eigentum* (*property*), *Rechteinhaberschaft* (*title*). The layman concept of such terms may, of course, also be deviant, and this will create dispute and the expert meaning has then to be specified in a court procedure.

5.4 Abstract relationships and terms of jurisprudence

On the next level of abstraction there are terms for phenomena that are only theoretically conceivable, some legalistic ideas in their significance for society. The concepts of such terms are exactly defined by legal provision.

Example: Terms like *Rechtsnachfolger* (successor in title), *Willenserklärung* (declaration of will), *Gläubigerverzug* (creditor's delay in acceptance), *Mängelhaftung* (responsibility for defects), *Transporterschleichung* (transport obtained by devious means, fare dodging) etc. They look like being easily comprehensible but they contain some specific legal concepts. This makes such terms difficult to understand for the layperson. Also, they linguistically present the typical technical word compounding, unusual in general language. As precise terms, they fulfil the requirements of an exact terminology which is also well registered in the respective dictionaries.

Finally there are highly abstract terms of jurisprudence being taught during the respective academic studies, like e.g. *desist order*, *concurrency of offences*, *subsidiarity*, *derogation*, *Buchgrundschuld* (uncertificated mortgage), *Faktenbeweis* (real evidence), *Zwangsvollstreckungsklausel* (execution clause), etc. Such terms concern theoretical concepts within a law system, not only interpersonal relationships as the terms mentioned before. They are hardly accessible for non-lawyers.

5.5 Concepts of European Law

The law of the European Union is multilingual. All legal acts are being formulated in all 23 official languages, and all text versions in the various member countries have the same validity and authenticity. In this respect the linguistic problem is the same as in bilingual countries. On the other hand, this law is detached from any local national law.

The texts normally are translations from the original draft versions in English or French, the primary working languages of the European Community. Equivalence of content is of utmost importance, as this is a supra-national law for all member states presented in texts with an intended identical sense. European law is above the various national laws, in terminology not derived from them. Even if the exact meaning of a provision of European Union legislation in its abstract nature is never absolutely clear, one must strictly distinguish between national and European terms in the same language. Since the different countries have each their own national law system, the respective correspondence or deviation of a linguistic frame has to be examined.

The writing of legal texts is now being done in the presence of representatives of most of the individual member states. In implementing the EU directives into the national law systems, this later on will have decisive transforming effects within those systems. The formal link of terms to one legal system shall be cut, in order to find independent formulations in the translation (Kjær 1999: 75) using different, new words.

Regarding legal concepts, the translator will have to be aware of these basic differences between the legal systems involved in the respective language pair. As we are looking at the content of linguistic frames, it seems that lawyers often adopt a purely legalistic point of view. Translational thinking, to the contrary, has the potential of creating a common ground where not only the legal content is taken into account but also the linguistic features. The results of the comparison of law will be useful here in trying to write adequate translations.

And lawyers thus may gain a more conscious usage of their own language that is primarily focused on content rather than on language.

6 Linguistic features of legal translation

Law is a part of culture. Understanding, then, is possible by putting down implicit cultural references to certain structures on the text level (Stolze 2009). Cultural elements appear in the texts on all levels – from the form of words for concepts, to the sentences and stylistic text structure, up to pragmatics in its social function. Culture as the background of every human communication is a dynamic phenomenon based on historical tradition including the individual's personal development.

When we now look at the concrete translation of legal texts, it is clear that the linguistic aspects come to the foreground. These may be described on various language levels. There are:

- Standard macro-structures
- A Special terminology
- Technical style
- Speech acts in legal language
- The procedural repetition in formulae.

The question is: How can a translator deal with these aspects which, in every single text, are mixed with one another? At first we see some **standard macro-structures** when we look at the text to be translated as a whole. Every text genre, such as the paragraph of a code, a patent text, a school certificate, a contract, a court sentence, etc. has a specific macro-structure. It is important for a professional translator to know the relevant macro-structures for texts in the languages dealt with.

However, translation is not comparison of facts, translation is a service, a means for understanding when it presents the text precisely. There is never a cultural transfer in the sense of changing a source text document into a target language document. To the contrary: documentary translation will not change the form but rather follow its shape in a narrow way. So the source text structure will be visible, and the certificate which contains its legal value only in the source document, can be read and understood via the translation. The target text is transparent for the source. In contracts it is adequate to look at linguistic, idiomatic qualities, but we have to keep the amount of sentences identical in the text. So readers with different mother tongues will be able to discuss the text, saying for instance: in clause 8 the 3rd sentence, etc.

There is also the **special terminology** we mentioned already. We find those terms for concepts with different levels of abstraction side by side on the text level. There are various possible reactions to this by the translator:

- Literal translation
- Loanword
- Substitute by a target term
- Use of a hyperonym which is more general
- Translation with explicative extension
- Target version with source term in brackets

- Use of source term with a footnote
- Original word as a target neologism.
- The respective decision has to be taken based on subject knowledge.

What we have also to observe is the **technical style** which serves a specific function of speech. Legal texts are specialist communication, and their style is different from the creative language in general utterances such as in family, in literature, in the newspapers. The characteristics of technical style are anonymity, precision, economy of expression, as the key function of the language for special purposes is “specification, condensation and anonymity of the propositions” (Gläser 1998: 206). And this is also true for legal texts and is realized by a special style:

- **Anonymity:** passive voice, 3rd person in present tense, focus on function not on persons, orders in the infinitive
- **Precision:** many nouns focusing on facts, functional verbs with noun, factual adjectives, syntactic appositions, linguistic condensation
- **Economy of expression:** word compounding, series of hypotaxes for explicitation, phraseological forms.

A further important feature of legal texts is the fact that there are many **speech acts** in the legal language, and this is realized by special verbs. “How to do things with words” (Austin) is a central question in the law, because actions and relations have to be designated verbally. There are five forms of such speech acts:

- assertives (statements, description)
- declarations (self-commitment, warranty)
- directives (orders, recommendations)
- commissives (binding, obligations)
- expressives (expression of feelings).

You have to observe the special forms of language relevant here: orders, for example, are made in the infinitive: *push button*, obligations are indicated in English by ‘shall’: *the parties shall inform each other...*, descriptions of facts are done by nouns and with infinitive verbs: *the mutual information of the parties is considered effected when ...*, affirmations of parties appear in indirect speech: *they affirmed that* A self-commitment or warranty is often designed expressly: *person A declares that he warrants to do this...* (Trosborg 1994). Finally, the expression of feelings is more rare in legal texts.

The translator has to meticulously observe these aspects, in order to render a transparent, precise legal information in the translation.

As the law and court decisions do refer to relevant other texts, such as previous sentences or constitutional texts and codes, there is usually a reference to similar aspects, to analogue procedures, to repetitive activities. Naturally, such reference is made by repeating the same formulation, there is a **procedural repetition in formulae**. We note:

- The same expression is used for a similar action
- No literal translation is applied, as style is different
- A stylistic collection of formulae would be helpful.

For similar actions the same expression is being used again and again. Some standard formulas have developed, e.g. *die Kosten des Verfahrens werden gegeneinander aufgehoben* (*costs offset each other*), and the like. But these aspects have developed differently in the various countries. Often a literal translation of such formulaic expressions is not possible, rather we should build-up bi-lingual collections of such formulae. So far, they are not well documented in the dictionaries. One has to exploit one's own texts during the professional life to build-up a collection of repeated formulae.

In translating legal texts, one will also observe the groups of addressees and apply inclusive language, where requested. Technical phraseology enhances the authoritative appearance of legal text types.

6 The legal translator's approach

The translational problem is to bring all these aspects together: looking both at the content of the legal background and on the language level. The translator has a **double perspective**. The issue in legal translation is to exactly render "what is written there". The legal value of a text is always bound to its original, and the translation is only a means for understanding. A translation is no "cultural transfer" in the sense that the source text would be transferred into the target legal system, even if it may deploy an intended effect therein.

The central prerequisite of translation as a dynamic task for the translator is to comprehend the given text within an adequate legal perspective. For this purpose one needs a "well-grounded understanding" (Stolze 2011: 68) based on subject knowledge by doing research, since a merely intuitive, naïve interpretation of legal texts would be inadequate. For translation in the field of law we will begin with reading a text as given in its original culture and communicative field. Specialist translation in the field of law requires the formulation of communicatively adequate technical texts in the other language.

In the hermeneutical approach to texts the translators have a double perspective and need a **system of orientation**. In first positioning the text within its legal system we will keep in mind the characteristics of the relevant background and its difference with the target situation, as we observe the special forms on the text level regarding terminology, text genre and formulaic style. And in formulating the translation one will focus on correct terminology and the due technical style. For better understanding I present this approach in a table (see Fig. 1) mentioning the fields of orientation for the translator.

Positioning of text	Textual background
Legal world	culture with its own law system (European continental/Anglo-Saxon/Arabic/Chinese)
Form of legislation	continental law/case law/supra-national law/law in other regions
Text genre	macrostructure of text type (paragraph of code, court sentence, certificate, contract, etc.)
Field of law	penal, civil, administrative, works, trade, family, international law etc. of the country
Legal concepts	levels of abstraction of concept and lexis on the text level
Legal style	precision and anonymity in Civil law, individual style in Common law, standard formulae, speech acts
Rhetorics	Formulating

Text function	transparency for ST function, document translation, orientation markers, translation assignment
Terminology	state of equivalence of concepts to be checked, translation principle of “common denominator” of concept, literal translation
Language information	official language, speech acts and verbal tense, sentence perspective, phraseology, technical word compounding, inclusive style
Standardization	Archaic forms, standard procedural formulae

Fig. 1

All these fields of attention with the aim of translating as precisely as possible, in a comprehensive form and based on legal knowledge, have to be observed in every text for its translation. Their combination varies individually.

7 Conclusion

My description of the problems faced by a legal translator in practice may be taken as a basis for further research. The translator applies a double perspective to both the language structure and the content of meaning. Of course, numerous studies on legal language and also on the translation of legal texts have been published already. However, often the focus there is only on external subject matters, such as different legal concepts, stylistic features, analysis of macrostructure, the problems of lexicography, etc. The point where all these individual different aspects come together is their interrelation in the translator him/herself as a professional person who acts on the texts and tries to produce an adequate translation apt for further interpretation by jurists.

The legal translator’s work is based in Hermeneutics, since one needs to understand the text without necessarily being a full jurist. Comparative Law as the field of research regarding legal content finds a concrete application when legal translators can make use of its findings in their translation concerning words and the style of the genre. Whereas jurists focus on the legal consequences of acts and decisions, often speaking intuitively about these aspects, translators will particularly focus on the language form of speech acts, in order to achieve precision in their writing.

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