

Perspectives on Legal Translation

Vanina Narcisa Botezatu¹

Abstract: Translation, as a phenomenon of enrichment of language and culture, is a means of knowledge for those who cannot speak a foreign language. Given the fact that legal translation combines good knowledge of language, the art of translation, and a series of legal notions, this type of translation should be defined considering that linguistic, cultural and legal particularities are determined by changes in the contemporary legal systems of the languages brought into contact.

Keywords: legal translation; language; culture; communication

1. Introduction

Legal communication as a research tool on the legal or judicial activity represents an important aspect for both lawyers and linguists. The study of specialized language, in this case, of the legal language, provides the possibility of expressing ideas and of making observations on the stylistic structure of the language, on linguistic interference and on linguistic and cultural relations between different nations. Due to the existence of legal relations between states, linguistic, social and cultural interferences have caused countless changes in the legal systems, seen in constant motion, reconstruction and innovation. The relationship between one or more cultures, between one or more legal systems is strengthened through translation. If the translation in the past was essentially cultural, it has now become an activity which plays an important role in the economic, legal and social life.

Translation aims at facilitating communication between people with different languages, cultures and ways of thinking. Since words are the key elements in any

¹ PhD Researcher, National Autonomous University of Mexico, Philological Research Institute, Mexico, Address: Circuito Mario de la Cueva s/n, Ciudad Universitaria, Delegación Coyoacán, 04510, Ciudad de México, Tel.: (+52) (55) 5622-7488, Corresponding author: vanina.botezatu@hotmail.com.

translation, their meanings become an essential aspect in the process of translation. This is due to the fact that, semantically speaking, every word is a complex set consisting of several nuances of meaning. In the translation process, translators have not only to explain the meaning of words and to identify the equivalents of the source language notions in the target language, but also to transfer ideas, expressions, and above all, the message of the original text.

2. Perspectives on Legal Translation

2.1. The Linguistic Perspective

Given the numerous opportunities of contact with the common language, the legal language has a certain linguistic importance. The linguistic perspective on legal translation involves the identification of specific features traceable in words with legal meaning relevant for the science of law as well as for the interpretation and application of law. If common language includes all words used by the speakers of a community, specialized language implies using terms specific to particular domains of activity. Legal texts aim at achieving unambiguous communication, by using a denotative language, and at avoiding misunderstandings or introduction of subjective interpretations. It is essentially a written language based on official (laws, treaties, conventions) and unofficial documents (contracts, wills, powers of attorney).

The legal language belongs to the group of specialized languages, so it has its own particular terminology, grammar and style. If words seem to have a common meaning at first, subsequently they take make up domain specific formulas, essential for those who use legal concepts. Unlike other specialized languages, the legal language abounds in technicalities, archaisms, Latinisms, and specific forms accessible to operators of law only.

Since many words have one or more common meanings and a specialized meaning, mention should be made that there exists a close relationship at the lexical level between the common language and the legal one. Specialized language is part of the common language, and that is why it is not independent. The legal system uses terminology which includes terms with dual affiliation, i.e. words of the common vocabulary used with their legal meanings (for example *evidence*, *action*, *section*, *college*, *investigation*, *detention*) and specific legal terms (for example *contumacy* “failure to appear to trial”).

The specialized lexicon serves as a means of formal and functional communication among specialists in a particular field. Legal terminology represents, on one hand, “il mondo delle norme e il modo del loro operare” (Belvedere, 2000), and, on the other hand, in it “si riflette un complesso intreccio di realtà giuridiche ed extragiuridiche” (Belvedere, 2000) which is expressed in “normative terms”, as a contract whose use “richiede un previo accertamento del rapporto esistente tra una realtà di fatto ed una o più norme giuridiche” (Belvedere, 2000).

First, with respect to legal wording, mention should be made that it is subjected to rules and conventions. (e.g. “con promessa di rato e valido” expresses usually, but not necessarily, the fact that the acts performed by the lawyer are considered valid and effectively authorized).

“*Con promessa di rato e valido*, sotto gli obblighi di Legge” (Atto costitutivo del 18.12.2003).

Secondly, it can be said that the use of an expression instead of another or the use of two expressions interchangeably may depend on linguistic and legal facts, as well.

According to Alcaraz, legal terminology represents “vocabulario técnico en la representación de la realidad de los juristas” (Alcaraz, 2000), while for Gémaz, each legal system has a specific terminology, reflecting the idiosyncrasy of their culture and their historical evolution (Gémaz, 1995). Moreover, Maria Teresa Cabré states that:

“(…) la terminología es absolutamente imprescindible para el ejercicio de la traducción especializada en tanto que la traducción es necesaria para la terminología sólo en aquellos contextos lingüísticos con necesidades neológicas” (Cabré, 2004, p.2).

Instead of a conclusion, when transferring legal texts from one language into another, the translator has to face not only the difficulties resulting from the correct and appropriate selection of legal terminology used in the languages brought into contact, but also those deriving from the cultural specificity of the legal systems envisaged.

2.2. The Cultural Perspective

In each culture, law represents different ways of thinking, being determined by the socio-cultural and political contexts in which it is used and reflected through the

system of law, linguistics, changes in society. Legal systems are formed in different cultural contexts and largely reflect the political history of each country, the legal discourse being conditioned by the cultural conditions emerging from it.

Ignoring the cultural genesis and the legal tradition of each system can generate differences and confusion related to legal concepts because they come from different hermeneutical traditions. It can be considered that the legal language, as a cultural phenomenon, is susceptible to different interpretations and semantic nuances. The same idea is pointed out by Hurtado who considers that:

“La traducción jurídica, más que producirse entre dos lenguas, se lleva a cabo entre dos culturas, por lo que puede afirmarse que, al hablar de traducción jurídica, en realidad se habla de comunicación intercultural, para la que hay que estar debidamente preparado” (Hurtado, 2001, pp. 607-608)

Furthermore, Schena states that legal translation varies from country to country because it is reflected in the concepts and institutions which defend and regulate the social behaviours of a society.

“Il linguaggio legale interagisce profondamente con la cultura di un popolo. Ne consegue che l’accesso alla traduzione dei testi legali impone lo studio preliminare degli accadimenti storici che hanno determinato l’inserimento, l’uso o l’alterazione del significato di una parola nella codificazione ed applicazione dell’apparato giuridico. L’analisi diacronica si accompagna inoltre allo studio del lemma nel suo contesto (...). I documenti legali, per essere correttamente applicati, richiedono un’adeguata “interpretazione” (Schena, 1997, p. 23).

The same ideas are expressed by Borja Albi (2002) in the following quote:

“Los *textos jurídicos* son instrumentos de uso que tienen una forma y una función determinadas en cada *cultura* y que, en ocasiones, presentan importantes lagunas de equivalencia debido a la *falta de uniformidad* entre los sistemas jurídicos” (Borja Albi, 2002, p. 79)

In Šarčević’s opinion, legal language is separated based on the culture of the country where the text comes from, therefore legal terminology is not universal and legal texts have legal consequences which are not provided in other translations (Šarčević, 1997). Moreover, similarly to language, law is a social construct and, therefore, one of the clearest reflections of a society, of its culture and history (Gémar, 2002).

The relationship between language and culture, between the speaker and the sociolinguistic community should be considered in both the linguistic and pragmatic analysis of legal texts. Any translator must pay special attention to what constitutes the legal culture of a particular nation in order to correctly understand the linguistic “nuances”¹ resulting from legal discourses.

Legal translations require a balanced combination of specific legal, cultural and ideological skills. It is also very important to identify the effects of the legal semantic structure, if we consider that legal relations are established at an international level and have to be interpreted from multiple legal and cultural perspectives. Gémar mentions that:

“el traductor debe llegar a un punto de encuentro entre la cultura de origen y el receptor del texto, transmitiendo el mensaje del texto de partida y el espíritu del sistema que lo rige conforme a las convenciones lingüísticas del Derecho del receptor” (Gémar, 2005, p. 59)

Without elaborating issues that are debated in the specialized literature, the text seen as a possible universal language (Coşeriu, 2013) is configured as a semantic and pragmatic unit, within which the meanings, connotations, assumptions of each linguistic sequence can vary.

Legal texts, irrespective of the language taken into account, follow a specific terminology, and must comply with legal standards, and therefore are characterized by a series of phenomena specific to this type of language. In addition, they are characterized by linguistic phenomena, and, even if they belong to the legal language, they are, however, specific to language depending on the historical and cultural factors from which they evolved.

2.3. The Legal Perspective

Law is closely related to culture because it goes back to the origins of civilization of each language and culture involved. The development of law over time

¹It is worth mentioning here the untranslatable character of words denoting objects, concepts and situations specific to a certain type of culture (in this sense, the Italian “legal” culture) without exact correspondence, that is accurate in other languages, to quote a few: “il Codice d’Onore” (*de los que cometen crímenes de la mafia*), “il codice Barbaricino” (*de los que nunca van a los carabinieri para denunciar el abigeato*), “i pentiti di mafia” (*el reo que, capturado, se arrepiente y colabora con la justicia, a cambio de una sentencia reducida*).

demonstrates the existence of a plurality of sources in the legal system of each country. The reason arises from the complexity of social relations subject to regulations and the variety of forms of organization and government of society, the organization of activity and the competence of government agencies and public authority.

Living together in a human community has led to the appearance of a set of rules of conduct which were simple initially, but, eventually, became legal standards. Legal systems can sometimes be very diverse, reflecting the differences between national legal traditions. The legal perspective defines law as a universe of measures, rules and standards. The standard is a general impersonal and compulsory rule of conduct, designed to regulate the activity of the participants in the society.

The legal discourse and, therefore, legal texts, represent an image of the legal system of a State. The legal text is of fundamental importance because during its transfer from one language into another, it should not be interpreted strictly from a linguistic point of view, but also from a legal one. Translators have to pay special attention not only to the legal concepts closely linked to the culture and society of the legal systems brought into contact, but also to the equivalent transfer of the source language content into the specialized target language culture. This means that it is important to know the basic concepts of law, to know the legal systems and legal orders and the related specialized terminology.

It is important, if possible, to make an analogy with the source text so that the addressee can easily identify the concepts and the notions that the text refers to. In line with this perspective, in the legal field it is argued that “la traduzione di una parola in un'altra è possibile e legittima nella misura in cui le due parole esprimono lo stesso concetto” (Sacco, 1991, p. 24).

The Muslim system, the South American system, or other systems express in their legal standards customs and social concepts that have no equivalent in the legal cultural target language¹. In these cases, translators are faced with a variety of legal concepts governing the functioning of a society, which makes it very difficult

¹ We mention here a very complex example of the Muslim divorce. In Islamic countries there are three types of divorce: revocable, irrevocable and perfect. In this legal system there is the origin of repudiation (representing exclusive prerogative of the husband) which dates back to very remote times, so we find concepts whose references, historical, cultural and mostly religious roots represent a given society.

to establish a proper relationship between the legal concepts of each culture, difficulties which go beyond the terminology. The differences between these legal concepts involve legal systems where there is no equivalence, not only in terms of terminology, but of legal judgment. Sacco points out the same difficulties in his analysis:

“i concetti creati, elaborati, definiti dal legislatore o dal giurista di un certo sistema non corrispondono necessariamente ai concetti elaborati per un altro sistema (...)” (Sacco, 2000, p. 126)

Law and language are inseparable concepts. Studying law allows gaining an insight of legal traditions and their characteristics. The complexity of this language comes not only from grammar, but it is a consequence of the pragmatic aspects of a context which cannot be attributed solely to linguistic factors, as it is a combination of complex conceptual structures requiring a sophisticated form of expression.

From the above mentioned aspects, it results that the study of comparative law is an essential element to understanding, comparing, knowing and translating not only the content, but also the meaning of the legal concepts.

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