

TRANSLATION OF LEGAL TEXTS

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Abstract in original language:

This paper deals with the questions of legal language, legal translation and conceptual equivalence. It shortly comments on the problematic points arising when translating a legal text from Czech into English and vice versa. Furthermore, it tries to specify basic requirements a truly competent legal translator should fulfil. To step away from the dry theory, a reference is made to an experiment, focusing solely on the translation of contracts.

Key words in original language:

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1. INTRODUCTION

This paper deals with the questions of legal language, legal translation and conceptual equivalence. As the internationalisation of society has brought closer contacts among foreign countries in various aspects, translation of various legal documents becomes a relevant part of an everyday legal life. The European Union as well as the states themselves produce a large amount of legislation with which the companies and individuals have to deal. Still, an important part of legal relationships is carried out by means of ‘private’ regulations set by bi- or multi-lateral contracts by the individuals themselves (within a given legal context). Therefore, translating these contracts becomes a big issue and the main activity of numerous translation agencies.

Nowadays, English is the Latin of today. It is the main language of international trade and commerce. It is not only the language of contracts when one of their parties comes from an English-speaking environment but even when no native English-speaking party is involved. Although in certain cases English serves as the ‘neutral’ language of legal agreements, the general understanding of English is not at such a level that they would not need to be translated to people’s mother tongues. Apart from that, legal English and ordinary English are not identical languages (Gubby 2007, 9) and the mastery of ordinary English does not mean a mastery of legal English. Therefore, to communicate properly the rights and obligations set in a contract is crucial.

This paper shortly comments on the most problematic points arising when translating a legal text from Czech into English and vice versa. It focuses on the problems of translation of legal concepts and it tries to specify basic requirements every truly competent legal translator should fulfil. To step away from the dry theory, a reference is made to an experiment conducted for the purpose of writing my BA thesis, focusing solely on the translation of contracts. Examples of actual translational solutions are given and commented on; and the experimental hypotheses are analyzed.

2. CONCEPTUAL EQUIVALENCE

Law's main function is to regulate social relationships. To fulfil this function, it has to communicate legal norms to their addressees. This is carried out solely by language. Legal language is dependent on a legal system in question – it is a system- and culture-bound language for special purposes.

It follows from the systemic differences between Czech and English law that often there is no equivalence between individual legal concepts. To find suitable translational solutions for legal terms is said to take up to 75 per cent of translational time (Biel 2008, 22). Even when there seems to be an obvious solution at hand, the terms hardly ever have the same semantic potential in the SL and TL (Biel 2008, 24). Cao (2007, 54) gives an excellent example of such an obvious concept as that of a theft, which I will try to extend to Czech as well. In English law, theft is the “*dishonest appropriation of property belonging to someone else with the intention of keeping it permanently*”.¹ In the Czech Republic the concept of theft is defined in a very different way.

The Czech Criminal Code offers different kinds of theft² which have in common only the first part of the definition: “*Whoever appropriates a thing belonging to someone else by taking possession of it...*”. The Czech definition does not explicitly require dishonesty or an intention to keep the stolen thing permanently. Even though *theft* is routinely translated as *krádež* and vice versa and everyone would agree that it means basically the same, the legal concepts behind these terms are not equivalent. Cao (2007, 33, quoting Toury 1986, 1123) proposes that because translating legal texts is a rather relative affair, “equivalence is a combination of, or compromise between, the two basic types of constraints that draw from the incompatible poles of the target system and the source text and system”. It seems to be futile to search for absolute equivalence when translating legal texts.

Legal language is dependent on law and law is in turn dependent on the society. As Alcaraz and Hughes write (2002, 25):

¹ English Theft Act 1968.

² Act No. 140/1961 Coll., Criminal Code, as amended: § 247 *Krádež* (1) *Kdo si přisvojí cizí věc tím, že se jí zmocní, a a) způsobí tak škodu nikoli nepatrnou, b) čin spáchá vloupáním, c) bezprostředně po činu se pokusí uchovat si věc násilím nebo pohrůžkou bezprostředního násilí, d) čin spáchá na věci, kterou má jiný na sobě nebo při sobě, nebo e) byl za takový čin v posledních třech letech odsouzen nebo potrestán, bude potrestán odnětím svobody až na dvě léta nebo peněžitým trestem nebo propadnutím věci nebo jiné majetkové hodnoty.*

“...in legal texts, terms are continually being redefined, as social developments overtake past practice and thus force legislation to change, simply in order to keep abreast of new standards of acceptable and unacceptable behaviour.”

Cao (2007, 55) proposes that a legal concept is three dimensional: it has a linguistic, referential and conceptual dimension. Real equivalents have to be equivalent or at least similar in these three dimensions. In reality, the words are rarely equivalent in all the three dimensions: there may be only a partial equivalent or there may be no equivalent at all. In these cases, translation methods can vary from an introduction of a new word (with an explanation of the concept), most often either by keeping the word in the SL (for example the English term and concept of *estoppel* is slowly finding its place in legal Czech) or by formal equivalence, that is a word-for-word translation (as with the *rule of law*, Czech: *vláda práva*; or *Rechtstaat – právní stát*), functional equivalence (*law* is translated as *právo* although the Czech word means *right* as well) or descriptive equivalence (*tort – mimosmluvní civilní delikt*).

2.1 FAUX AMIS

A related issue in translation between European languages is the problem of ‘false friends’ – terms that look similar in both the SL and the TL. This issue is more topical in translation between English and French for example, but there are certain *faux amis* in Czech and English as well. One of them is *magistrate*. The word almost wants to be translated as *magistrát*. However, there is a difference: the magistrate is a person appointed to judge minor cases and dispose of ‘summary offences’ at the magistrate’s court (within British legal context), not a municipal authority’s office.

2.2 AMBIGUITY

A large part of legal English and Czech vocabulary consists of words that carry both specific legal meanings and ordinary use meanings. For a translator, it is necessary to discern the meaning correct in the circumstances. To translate polysemous words correctly, the ‘context of utterance’ – the immediate physical, temporal and verbal environment in which the communication takes place – becomes crucial (Alcaraz and Hughes 2002, 37).

Another type of ambiguity may arise from the syntax. To solve it is not in the scope of a translator’s competence. Alcaraz and Hughes (2002, 45) write that

“[s]ince the ambiguity is inherent in the syntactic structure of the sentence, any translation that reproduces this is bound to be correct, in the sense that it will be equally ambiguous, and for the same reason. And that is what translators must do in cases of this kind, since it is no part of their business to decide between alternatives (...)”

3. LEGAL TRANSLATOR

Translation is a special type of communicative language use that requires language competence in two languages, the SL and TL. In addition to the language competence, legal translation requires a certain degree of understanding of law. There have been many opinions on what the ideal legal translator should be like. Sarcevic (1997, quoted by Cao 2007, 37) believes that the legal translator’s competence presupposes in-depth knowledge of legal terminology, thorough understanding of legal reasoning and the ability to solve legal

problems, to analyze legal texts, to foresee how a text will be interpreted and applied by the court. Weisflog (1987, quoted by Cao 2007, 37) wants the legal translator to have a thorough acquaintance of law as the subject matter, including laws and legal systems of the SL and TL countries. One can start wondering whether such ideal translators exist. Both these 'definitions' mention one very important element, though. A translator of medical science writings can translate them without any deep understanding of the subject, knowing only the relevant terminology. A translator of legal texts is lost without an insight into the legal systems of both, the SL and TL. I agree that a competent legal translator must have three prerequisites proposed by Smith (1995, 181 as quoted by Cao 2007, 37): basic knowledge of the legal systems, knowledge of the relevant terminology and competence in the TL specific legal writing style.

One may then ask whether it is even possible for a translator without legal education to translate legal texts. The problem is that having Czech legal education does not mean understanding English law and vice versa.

Although it is not the translator's job to have a sophisticated insight into all the legal problems, I believe that he/she should be able to understand the legal text in a way to be sure about the rights and obligations it imposes, various concepts used and the main problematic points. Czech and English legal practitioners know a translation when they see it. Unless the translator is active in given legal environment, it is almost impossible to give the TL text a truly idiomatic sound. I have to admit that it is very difficult for a Czech translator to translate into English legal language. But I am convinced that such a translator should be fully competent in Czech legal writing.

4. PRACTICAL EXAMPLES

To demonstrate clearly what the main mistakes made by Czech translators are, let me draw on the results of the research I conducted when writing my BA thesis. I have addressed two translation agencies (both advertising their competence in legal translation) and commissioned them with translating two texts: contracts. I have chosen the most common type of contract to deal with: the contract of purchase. The Czech text is a general purchase agreement (Czech: *rámcová kupní smlouva*), the English text is a share purchase agreement (Czech: *smlouva o koupi akcií*). Both the texts are real contracts, drafted by practising lawyers. Both contain an average amount of Czech and English legalese and they represent pieces of legal writing typical of each legal system, especially regarding their length. For the purpose of this research, and because of their length, whole Czech contract has been translated, but from the 25-page long English contract only chosen passages were translated.

I have expected the Czech texts to be better translations than the English ones and that the main mistakes in the translations will be related to conceptual (non-)equivalence. The findings of my research did not confirm these hypotheses. Although there have been problems with understanding the concepts, the main drawback of all the translations was their obvious incompetence in Czech legal writing. Let me present some of the examples of un-idiomatic translation:

...pro případ porušení závazku	...fail to fulfil his commitment	in case of breach of Seller's obligation...
dáno	executed	given
písemná vyhotovení	original copies in writing	counterparts

All the translations have shown fairly decent understanding of the individual concepts and subsequent proper – or at least acceptable – translational solutions. Let me shortly comment on several of them.

Vlastnické právo: ownership or ownership right. There is a difference in the conceptual perception of owning things between the continental and common-law legal thinking. Although I believe *ownership right* (text B) is an acceptable translational solution, for an English legal practitioner it is obvious that this term refers to continental legal thinking. The English idiomatic term *property* is not acceptable, because the concepts of *property* and *vlastnické právo* do not overlap to that extent. The most suitable equivalent may be just *ownership*. *Ownership right* in this sense is a calque rather than a conceptual equivalent, but I am convinced that a highly acceptable one. *Ownership title* (text A) seems to refer more to the Czech *vlastnický titul* which in legal Czech means the entitlement to own; therefore I would judge this solution as less acceptable.

Výpověď: Czech law distinguishes different ways of terminating a contract. *Výpověď* is one of them. It refers to a legal situation when a party is entitled to announce to the other party that he or she does not want to continue the legal relationship established by the contract. There may or may not be a period of time between the announcement and the actual termination of the contract. The common law does not think like that. It does not recognize this way of discharging of contractual obligations as a separate way. This way of ending the contract may fall under the “discharge by express agreement” (for individual ways of ending a contract refer to Gubby 2007, 188-193) because the contracting parties may agree on a notice period (e.g. one hour's notice, two week's notice), that is the period from the announcement to the termination of the contract. In this respect, I do not agree with the text B solution that calls it *written notice of withdrawal*, because withdrawal (if it is accepted in this sense of the word) refers rather to *odstoupení* – another specific Czech legal concept.³ The text A solution *terminated on the basis of a three months written notice* seems to be more equivalent to the fundamentals of *výpověď*.

³ See §48 of Czech Civil Code.

SL text	Text A	Text B
Vlastnické právo	Ownership title	Ownership right
Tuto smlouvu lze také vypovědět výpovědí výpovědní lhůtou...	...terminated on the basis of a three months written notice...	...withdrawn from by written notice of withdrawal with three-month notice period...

Shares: the first translational problem in the Share Purchase Agreement is the term *shares*. It may mean both *podíly* (shares) and *akcie* (stock); in British English the word *shares* means and very often replaces the word *stock*. The translator may choose any of the solutions, but he or she should keep the terminology throughout the text. Text D titles the contract as “*Smlouva o nákupu akcií*” but continues to use the word *podíl* further in the text.

5. CONCLUSION

In legal texts, translators face mainly conceptual problems arising from the difference between individual legal systems. To achieve mastery of legal translation, the translator should not be only well competent in the SL and TL. He or she should be acquainted with the legal systems, the relevant terminology and the TL specific legal writing style.

In general, it must be said that all the translations I analyzed were rather clumsy. Although there have been correct or highly acceptable translations of individual concepts or phrases, the overall style was not TL idiomatic and sometimes it was inconsistent; with regard to some of the texts even careless. From the results of this research follows, that none of the translations points at a truly competent translator, that is a translator who would fulfil the three requirements laid down by Smith (1995, 181 as quoted by Cao 2007, 37).

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