
LEGAL TRANSLATION AS AN ACT OF DOMAIN-SPECIFIC COMMUNICATION

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Abstract: The article aims to analyze the role of translation in domain-specific communication, in particular legal communication. Translating legal language is one of the most difficult tasks among all translation work. It is an act of communication whereby legal information is conveyed by making use of all available linguistic and stylistic resources of the target language. In this framework, effective communication is affected by such factors as incongruity of legal systems and cultures. The empirical part of this study outlines instances of Romanian legislation, with its English variant, in terms of domain-specific communication building and enhancing knowledge in the field of law.

Keywords: translation, domain-specific communication, legal communication, legislation, law.

1. Defining domain-specific communication

The study of the specificity of legal communication as domain-specific communication is relevant not only from a diachronic standpoint, but also for practical purposes like teaching text production or translation¹. Domain-specific communication has been systematically investigated in its multidimensionality and linguists have tried to identify its characteristics.

It would be interesting to start this study from a definition that Lothar Hoffmann, the forefather of research in this area, gives to domain-specific communication, which stands for “exteriorisation and interiorisation of knowledge systems and cognitive processes, motivated internally or externally and oriented towards specialised events or series of events. They lead to changes in the knowledge systems of the individual specialist and of the community of specialists”². This definition marks the pathway from a traditional perspective, coagulated around more delineated and abstract linguistic systems (sublanguages, genres), to a more knowledge-related and communication-focused perspective.

The main purpose of the paper is to show that domain-specific communication, and in this particular case legal communication, is also achieved through translation, performed in order to ensure a unity of communication in which ‘knowledge’ becomes a core notion, being transferred from one legal culture to another, whereas ‘knowledge systems’ and cognitive processes are dynamically exteriorized and interiorized, with a relevant impact on legal experts – as individuals or groups of individuals - and legal language.

2. Legal translation, an act of domain-specific communication

The relationship between language and law is special indeed. Although applied linguistics offers insights about educational issues in fields which are related, medical discourse studies, for instance, do not have a great impact on medical communication

¹ Jan Engberg, 2010, p. 48.

² Hoffmann, Fachwissen und Fachkommunikation. Zur Dialektik von Systematik und Linearität in den Fachsprachen. In: Bungarten, Theo (Ed.), Fachsprachentheorie, Bd.2: Konzeptionen und theoretische Richtungen, Attikon, Tostedt, pp. 595–617, *apud* Jan Engberg, 2010, p. 52.

practice, while language and law are inseparable³. It has been rightly noted that “language is more or less at stake within the world of legislation”, that ‘law’ is a kind of ‘language use’, ‘discourse’, deserving a place within the various discursive traditions of any community⁴.

Legal traditions and cultures have always established and maintained linguistic relationships with other legal traditions and cultures. Translation has played an essential role in rendering these relationships dynamic, sometimes involving the use of ‘lingua franca’ rules. The linguistic agenda of law studies has been enlarged in the age of globalization. Thus, recent discussions on law and language/translation stem from the assumption that language appears to be a problem for law in/because of the age of globalization⁵, since this phenomenon has entailed important consequences in socio-cultural and communication terms, also affecting the specificity and dynamism of the legal domain.

Translating legal language is one of the most difficult tasks among all translation work. Legal translation is an act of communication whereby legal information is transmitted by making use of all available linguistic and stylistic resources of the target language, whereby “the pragmatic and functional intentions and implications of the original text” are conveyed appropriately in both languages⁶. Legal translation is an act of cross-cultural communication, constructing and shaping legal discourse in accordance with the communicative needs of an international audience⁷.

Effective communication in legal translation is affected to a certain extent by the incongruity of legal systems and cultures, an area where intercultural factors become subject to investigation. This process is visible within the European Union, where legal translation represents an essential activity, since it has to safeguard the cultural identities of all Member States, while achieving standardization from a terminological perspective.

Legal texts are generally translated for normative or informative purposes. The former category contains translated legislation that is equally binding, usually characterizing bilingual and multilingual jurisdictions. Such is the case of the European Union law, which prevails over national law, in an attempt to create a ‘common’ European regulatory framework. The latter category refers to translated legislation that is non-binding, being common in monolingual jurisdictions⁸.

Although translation for informative purposes is not binding, it has no legal force, it is as challenging and important as translation for normative purposes. It equally requires knowledge of domain specificity and research into the cultural and legal background of both source language and target language.

In this context, the empirical part of the study deals with the Romanian offence *ucidere din culpă*. The English translation of this concept – for informative purposes - proves again that legal translation is an act of domain-specific communication building and enhancing knowledge in the field of law. The paper aims to discuss certain elements which

³ G. Georgieva, 2014, p. 569.

⁴ Lambert, 2009, p. 76.

⁵ Lambert, 2009, p. 77.

⁶ Gotti, 2009, p. 56.

⁷ Gotti, 2009, p. 55.

⁸ Deborah Cao, 2007, p. 72.

provide the domain specificity of legal communication through translation, in the light of Hoffmann's definition.

The dynamicity of this kind of communication is highlighted, among other factors, by the fact that the English translation of the Romanian offence varies from one dictionary to another, i.e. 'culpable homicide'⁹, 'manslaughter'¹⁰ or 'involuntary manslaughter; homicide through culpable negligence'¹¹.

The offence *ucidere din culpă* (provided under art. 192 of the new Criminal Code) is "the act of a person who culpably caused the death of another" and takes aggravating forms under the following circumstances: as a consequence of the failure to observe legal provisions or precautionary measures for the exercise of a profession or trade, or for the performance of a certain activity; in case the guilty act of killing another is committed by the driver of a mechanical traction vehicle, while exceeding the limit of blood alcohol content, or being intoxicated¹².

Let us analyze the English equivalent. *Oxford Dictionary of Law* provides a definition for the term *manslaughter*, but not for *culpable homicide*. Therefore manslaughter is "homicide that does not amount to the crime of murder but is nevertheless neither lawful, nor accidental"¹³. Generally, there are two categories of manslaughter: voluntary and involuntary. Voluntary manslaughter arises when a person causes the death of another in circumstances which would have amounted to murder if the act had not been done under provocation, with diminished responsibility or in pursuance of a suicide pact. Involuntary manslaughter is the killing of a person without *mens rea* (meaning 'a guilty mind' which in this particular case refers to intention). There are several ways of committing manslaughter: killing as the result of an unlawful and dangerous act, gross negligence, killing by a reckless act or omission, in relation to intoxication.

The choice of the English term is knowledge-based in the sense that it is dictated by the existence of certain stable and similar elements in the legal content of the two offences belonging to the two legal systems: a moral perspective upon the act of causing death to another person (which is morally wrong, according to the general standards of modern societies, beyond the religious implications) which involves the fact that it is totally unacceptable either morally or legally (it is culpable and unlawful), the element of guilt (with or without intention), negligence in some cases, intoxication as an aggravating factor etc.

In the process of translation, a unitary relation of communication – although subject to constant change, therefore dynamic – is established between two domain-specific languages (legal Romanian and legal English). The translation of the Romanian offence into English develops a connection between two legal systems, based on similarities of legal content, while also emphasizing the particularities of each concept.

Legal translation is more than just providing an equivalent term in the target language (if such an equivalent exists), it actually communicates a legal message, it builds knowledge,

⁹ V. Hanga; R. Calciu, 1998, p. 108 (actually, the entry is *omor din culpă*, which refers to the same offence). The same translation occurs in A. Voroniuc, 1999, p. 76.

¹⁰ O. Grecu, 2008, p. 154.

¹¹ R. Lister, K. Veth, 2010, p. 579.

¹² <http://www.dictio.ro/juridic/ucidere-din-culpa>

¹³ *Oxford Dictionary of Law*, 1997, p. 281.

that is why the legal translator first has to understand the stable elements of each concept in both languages.

For a specialist, it is not enough to know that the Romanian offence *ucidere din culpă* is *manslaughter* (or ‘culpable homicide’, or ‘involuntary manslaughter’) in English. He needs to know more developments of meaning, i.e. the implications that the offence of *manslaughter* has in the English legal system (such as the particular circumstances under which it is produced). Otherwise the unity of communication, knowledge and cognition is affected.

3. Conclusions

This paper has tried to answer several questions. One of them is the following: How is it possible to build and enhance legal knowledge through translation, to foster legal communication – as domain-specific communication - in a globalized world?

The answer should take into account all those cultural aspects which stand for important conditioning factors in the construction and interpretation of legal discourse. The context is much larger if we consider the current globalization process with a tremendous impact on the discourse produced by both native and non-native legal experts who work in intercultural and cross-cultural environments¹⁴.

Any legal text which makes the object of translation should not be analyzed only in terms of the linguistic units underlying its formulation and the language regularities influenced by the specificity of the legal domain, which would stick to the traditional approach focused on the linguistic means in language description. Such an analysis should involve the knowledge construction perspective that occurs in the process of translating the legal text, a process appearing as an act of domain-specific communication.

Translators or legal drafters should be aware of all relevant aspects of the dimension called “domain specificity” in their work with legal texts. This fact underlines the creative role of the translator in the conceptualisation of his task. In legal translation (as in legal drafting and in any other kind of text production) decisions must be made in accordance with the relevant stage of the meaning process, dependent on the text production brief and the intended kind of text¹⁵.

Last but not least, we should never forget that the legal culture of a nation constitutes an element of its cultural identity, which is an indicator of cultural congruencies, similarities and distinctions subject to analysis in terms of the register/filter of intersubjectivity, offering the possibility of transferring certain identity paradigms from one cultural dimension to another¹⁶. Legal translation, as a factor of intercultural communication or communication between legal cultures, can contribute to the preservation of cultural (and impliedly national) identities. It should also reflect at the linguistic level the legislative options, dimensions and directions reconciling divergencies and assuming “a preventive attitude towards any possible cultural fracture of identity”¹⁷.

¹⁴ Gotti, 2009, pp. 55-56.

¹⁵ Jan Engberg, 2002.

¹⁶ I. Boldea, 2014, p. 10.

¹⁷ I. Boldea, 2014, p. 8.

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