TRANSLATION AND THE DIALOGUE OF LEGAL CULTURES IN A MULTILINGUAL EUROPE

Simina Badea, Assist. Prof., PhD, University of Craiova

Abstract: In a multilingual and multicultural Europe, translation plays a major role in fostering the contact and dialogue of cultures. The mutual influences and interactions of legal cultures in particular are reflected in the translation process, the primary aim of which is to provide linguistic guidance to EU countries and to ensure the enforcement of EU law by preparing legislative texts in all official languages. EU multilingualism involves the mandatory equal treatment of all these languages, as a guarantee for the preservation of cultural and linguistic diversity, for the achievement of unity in diversity. Legal translation is most often an exercise in comparative law, based on the comparison of national legal concepts and institutions with those at European level. It also concerns the translation of EU legislation into the languages of the Member States, as well as the translation of some aspects of domestic law in the context of international/European public or private law, in a judicial environment or for scientific purposes. In this framework, the paper deals with some practical issues regarding the translation of certain system-specific terms and phrases from Romanian into English.

Keywords: legal translation, multilingualism, European Union.

1. We live in a multilingual and multicultural Europe, where the contact and dialogue of cultures is established and fostered by a wide range of factors, and translation is one of them. As for legal cultures, their mutual influences and interactions are also reflected in the translation process, the primary aim of which is to provide linguistic guidance to EU countries and to ensure the enforcement of EU law by preparing legislative texts in all official languages. EU multilingualism involves the mandatory equal treatment of all these languages, as a guarantee for the preservation of cultural and linguistic diversity, for the achievement of unity in diversity. It therefore becomes a way of avoiding linguistic 'disenfranchisement'[1].

Legal translation is an extensively used tool in the European environment and, at the same time, an element of the legal drafting process. Most often, it is an exercise in comparative law, based on the comparison of national legal concepts and institutions with those at European level. In this framework, the relationship between EU legislation and the national law of the Member States can be better understood and highlighted if we take into account that there are two types of translated legislation[2]: (1) translated legislation that is equally binding, usually characterizing bilingual and multilingual jurisdictions; (2) translated legislation that is non-binding, being common in monolingual jurisdictions.

The former type is performed for normative purposes, referring to the production of equally authentic and authoritative texts in countries (such as Canada) or supranational structures (such as the European Union) where different language texts have equal legal force, forming a single legal instrument. It is known that, at the European Commission, the language of legislative proposals is English or French, any other language versions of EU legislation are translations from these two languages, and they are deemed equivalent, presumed to have

[1] L. Biel, 2006, p. 145.
[2] Deborah Cao, 2007a, p. 72.

the same meanings in order to observe the principle of plurilinguistic equality, also termed the principle of equal authenticity or the principle of equality of authentic texts[3].

The latter type refers to legal texts which are translated for informative, not normative purposes, with constative or descriptive functions[4]. For instance, Romanian laws may be translated into English, but the translation is not binding, it has no legal force[5].

2. The translation of system-specific terms – some practical issues

Legal translation at EU level concerns not only the translation of EU legislation into the languages of the Member States (which is law in all senses and therefore binding), but also the translation of some aspects of domestic law in the context of international/ European public or private law, in a judicial context or for scientific purposes. Such aspects of Romanian law, when translated into English, are informative in nature, providing and disseminating information related to the dynamics of our legal system, which stands for an important basis for comparative studies, also meeting some practical needs of both legal and natural persons (e.g. foreign investors).

Thus, this paper deals with some practical issues regarding the translation of certain system-specific terms and phrases from Romanian into English.

In order to illustrate the difficulties that translators encounter and to show that many terms from the common language, when used in the legal language, are vague – i.e. they have an *intension*, as the sum of the attributes contained in a term, which does not offer explicit criteria to decide whether it is part of the *extension* of the term or not[6] - and their legal meanings are activated only in a legal context, we have selected the following Romanian legal concepts and institutions: *capacitatea de folosinţă, capacitatea de exerciţiu, gestiunea de afaceri, plata nedatorată, îmbogăţirea fără justă cauză, a pune în întârziere.*

These syntagms are likely to cause "linguistic uncertainty", denoting "the indeterminate property of language such as linguistic vagueness, generality and ambiguity"[7] which are inescapably present in the language of law. They represent instances of inter-lingual uncertainty (when translating them into English, for example). To non-experts, these terms are just ordinary words which are part of the word stock of the Romanian language: *capacitatea* 'capacity', *folosinţă* 'use', *exerciţiu* 'exercise', *gestiune* 'management', *afaceri* 'business, affairs', *plată* 'payment', *nedatorată* 'not due, undue', *îmbogăţire* 'enrichment', *justă cauză* 'just, fair reason', *întârziere* 'delay'.

Translation from Romanian into English usually involves the establishment of an equivalence relation between notions expressed in the languages of two types of legal cultures (the civil law type and the common law one). The real problem occurs in the translation of system-bound terms which have no conceptual equivalent in English and are not linguistically standardized as vocabulary items specific to the specialized field they belong to.

[3] *Apud* L. Biel, 2006, p. 146.
[4] For a more detailed description of legal translation for normative and informative purposes, see Deborah Cao, 2007b, pp. 10-11. According to this author, there is also a third category of legal translation, i.e. for general legal or judicial purpose.
[5] See, for example, the English version of the Romanian Constitution, available on the site of the Chamber of Deputies.
[6] C. Radu-Golea, 2012, p. 205.
[7] Deborah Cao, 2007a, p. 70.

As for the expressions we have selected, their literal translation, as a means of achieving linguistic equivalence[8], cannot establish an identity of elements in the two languages, in point of legal content. A literal translation is therefore irrelevant (although it is a solution in certain cases) in an English-speaking legal environment where there are no precise equivalents for the Romanian concepts.

Legal translation, in general, aims to achieve functional equivalence. The translator's ability to functionally provide a legal concept is determined by the understanding of the concept (which involves thematic documentation or thematic and terminological competence), as well as the understanding of its legal effects or consequences[9]. But the real problem, again, emerges when there is no equivalent in the target legal culture, as with the expressions we have proposed for analysis.

The first of the above-mentioned syntagms, *capacitatea de folosinţă,* literally 'capacity of use', refers, according to the new Civil Code which entered into force on 1st October 2011, to "the aptitude of the person to have civil rights and obligations"[10]. It starts upon a person's birth and terminates upon death. Bilingual dictionaries[11] provide equivalents only for the term *capacitate* s. capacity, ability (and *capacitate legală* legal competency, legal capacity), or for the term *folosinţă* s. use; utilization; enjoyment; possession; usufruct; tenure. A pertinent translation excludes literal translation ('capacity of use') based on structural equivalence and unable to offer a conceptual correspondence of terms in the two languages. A functional translation should encapsulate the Romanian legal notion *capacitate de folosinţă* so that the English addressee may understand the legal meaning of this expression, therefore an appropriate translation variant would be 'capacity to have civil rights and obligations'.

Capacitatea de exerciţiu is defined in the Civil Code as "the aptitude of a person to conclude civil legal acts by himself"[12]. Dictionaries list the words "exercise" and "practice" under the entry *exerciţiu,* so, again, formal equivalence (i.e. 'capacity of exercise') cannot "capture" the legal content of the phrase in English. A practical solution might be 'capacity to conclude legal acts' or 'legal/ full capacity to exercise rights'.

As for *gestiunea de afaceri*, the requirements to be met for the existence of such a licit juridical fact are: "(…) when, without being required, a person called an administrator, voluntarily and conveniently manages the affairs of another person, called a beneficiary, who does not know the existence of the management or, having knowledge of it, is not in a position to appoint an agent or to take care of his affairs"[13]. Taking into account that bilingual dictionaries offer equivalents only for *gestiune* and *afacere*, as separate entries, translation variants include: 'management of affairs' (in this particular case, literal translation also proves functional, fostering a fair perspective on the legal meaning of the syntagm) or, in order to emphasize the characteristics of this act, 'benevolent intervention in another's affairs'.

[8] Also called formal, textual, syntagmatic, structural equivalence, according to G. Lungu Badea, 2005, p. 111.
[9] G. Lungu Badea, 2005, p. 110.
[10] The new Civil Code, Book I, Title II, Chapter I, Section 1, art. 34.
[11] We have consulted three such dictionaries: Lister, R.; K. Veth, *Dicţionar juridic român-englez, englez-român,* Traducere: Roxana Dinulescu, Bucureşti, Editura Niculescu, 2010; Grecu, Onorina, *Dicţionar juridic român-englez, englez-român,* Bucureşti, Editura C.H. Beck, 2008; Hanga, Vladimir ; Calciu, Rodica, *Dicţionar juridic român-englez, englez-român,* Bucureşti, Lumina Lex, 1998;
[12] The new Civil Code, Book I, Title II, Chapter I, Section 2, art. 37.
[13] The new Civil Code, Book V, Title II, Chapter III, Section 1, art. 1330.

Occasionally, if the context allows it, a solution for expressing civil law concepts is (especially where there is no precise conceptual equivalent in the target language), the use of Latin terms, phrases, even adages. For instance, when translating from Romanian, the language of a legal system and culture which originate in Roman law and which have been subject to repeated and obvious influences coming from French law, into English, the language of preponderantly common law systems, a Latin term may be a better, more functional choice. Latin legal terms have the advantage of universality and authority, condensing centuries of wisdom, of legal tradition and enjoying the prestige of a language once spoken in an empire which gave institutions and an effective model of state organisation to Europe and the entire world. Latin civil law terms are explained in larger English dictionaries of law[14], and they are still made use of in the absence of English equivalents for terms specific to civil law systems or when they express certain legal concepts more clearly and concisely (e.g. *intuitu personae, ex officio, de jure* etc).

Therefore, the Romanian legal institution *gestiunea de afaceri* may also be expressed by the Latin phrase *negotiorum gestio* denoting the situation, whereas *negotiorum gestor* is the person, the manager of affairs. Thus, *negotiorum gestio* refers to a quasi-contractual situation in which a person, called *negotiorum gestor,* manages or interferes in the business transaction of another person, called *dominus negotii,* in the absence of the latter, without his authority, but as a friendly act[15].

The legal definitions and conditions of *plata nedatorată* and *îmbogăţirea fără justă cauză* prove that 'undue payment', with the variants 'not owed; not due (money)'[16], 'payment not due' (for the Romanian *plata lucrului nedatorat*)[17] for the former, and 'unjust enrichment'[18] for the latter, are proper equivalents in English, which provide relevant information on the significance of these legal syntagms, even to non-professionals in the field of law. Thus, *plata nedatorată* concerns three essential aspects: "(1) The one who pays without owing is entitled to restitution. (2) What has been paid as a liberality or management of affairs shall not be subject to restitution. (3) It is presumed, until otherwise proved, that the payment has been made with intent to discharge one's own debt"[19], and *îmbogăţirea fără justă cauză,* literally 'enrichment without a just cause' occurs under the following circumstances: "The one who got rich without a just cause to the detriment of another shall be compelled to restitution, in proportion to his own enrichment and within the limits of the patrimonial loss suffered by the other person"[20].

A pune în întârziere (literally, 'to put in delay') and *punere în întârziere* (literally, 'putting in delay') best illustrate how words belonging to common language become ambiguous and vague when used in legal language. Actually, *punere în întârziere* means "notification sent by the creditor to the debtor so that the latter will perform his obligation

[14] See, for instance, *Black's Law Dictionary,* 1999, which gives detailed accounts of numerous civil law notions.
[15] *Black's Law Dictionary,* 1999, p.1060.
[16] V. Hanga; R. Calciu, 1998, p. 115.
[17] O. Grecu, 2008, p. 117.
[18] R. Lister and K. Veth, 2010, p. 442, give a US meaning: "unjust enrichment (resulting from an action without legal cause of the party prejudiced).
[19] The new Civil Code, Book V, Title II, Chapter III, Section 2, art. 1341.
[20] The new Civil Code, Book V, Title II, Chapter III, Section 3, art. 1345.

which has fallen due"[21]. In bilingual dictionaries, there is only one translation variant for *punere în întârziere*, i.e. 'formal notice'[22], and none for *a pune în întârziere.* The solution 'formal notice' for the former phrase entails 'to formally notify' for the latter, but these two English equivalents involve a broader meaning with regard to the relationship between the one who notifies and the one who is notified, and a wider host of legal situations when such notifications are issued. The legal content of the Romanian expressions is strictly limited to such circumstances under which a debtor has not performed his obligations and consequently, a creditor will notify him.

Romania's EU membership has accelerated translation processes of all kinds and in this context, one of the recommendations that are usually made to translators is to consult different language versions of the text to be translated. This recommendation mainly concerns the translation of EU legislation into the languages of EU countries, but it is also valid in other directions. From this standpoint, knowledge of French is an advantage for the Romanian translator (from and into English) because, on the one hand, the Romanian legal system has imported plenty of French legal concepts and institutions and, on the other hand, the translation interaction between French and English has had a much longer tradition in point of the juridical, economic, political contact between France and the UK as Member States of the European Union (or the contact between a civil law culture and a common law culture, as reflected at the linguistic level). French translators have already overcome some of the challenges Romanian translators are currently confronted with, and they have created vast, flexible and reliable linguistic instruments that are worth consulting. It is important to mention that the preparation of EU legislative texts in all official languages actually involves the translation from English and French into the national languages. Moreover, at the Court of Justice of the European Union, the reference for a preliminary ruling, for instance, is drafted in the language of the national court or tribunal, which is the language of the case, being subsequently translated into French and all other official languages[23].

3. Conclusions

The terms we have dealt with in this article do not exist in isolation, they are perceived within the conceptual context of a specific domain, the legal one. Taking into account the definition of culturems (also named culturebound terms/ realia), i.e. "words containing cultural information or the smallest unit containing cultural information"[24], we could argue that these system-bound legal terms are juridical or legal culturems, since they contain information related to the legal culture specific to our people. As the smallest units containing legal cultural information and due to other considerations as well, they can also be identified as translation units[25], the analysis of which gives rise to various and challenging interpretation and conceptualisation acts. We should not forget that in any scientific approach, theory is a useful starting point for the enhanced applicability of any practical development, but it is not

[21] Vladimir Hanga, 1999, p. 156.
[22] V. Hanga and R. Calciu, 1998, p. 122.
[23] Martina Künnecke, 2013, p. 250.
[24] G. Lungu-Badea, 2008, p. 54.
[25] For a detailed analysis of the concept of translation unit, also called unit of translation or semantic unit, see G. Lungu Badea, 2005, pp. 139-153.

completely enlightening, it cannot fully predict the complexity of practical issues, nor can it offer perfect solutions or a thorough strategy for solving such problems. Translators should be connected to the most recent tenets of translation theory, just as they should never stop exploring and investigating its practical aspects and implications.

Bibliography

Biel, L., *Translation of Multilingual EU Legislation as a Sub-genre of Legal Translation*, in Kierzkowska, D., Court Interpreting and Legal Translation in the Enlarged Europe, pp. 144-163, Warszawa: Translegis, 2006.

Cao, Deborah, *Inter-lingual uncertainty in bilingual and multilingual law*, in "Journal of Pragmatics", vol. 39, issue 1, pp. 69-83, 2007a.

Translating Law, Clevedon, Multilingual Matters, 2007b.

Garner, Bryan A. (ed. in chief), *Black's Law Dictionary,* St. Paul, Minn., West Group, 1999.

Grecu, Onorina, *Dicţionar juridic român-englez, englez-român,* Bucureşti, Editura C.H. Beck, 2008.

Hanga, Vladimir, *Mic dicţionar juridic*, Bucureşti, Lumina Lex, 1999.

Hanga, Vladimir ; Calciu, Rodica, *Dicţionar juridic român-englez, englez-român,* Bucureşti, Lumina Lex, 1998.

Künnecke, Martina, *Translation in the EU: Language, and Law in the EU's Judicial Labyrinth*, Maastricht Journal of European and Comparative Law, vol. 20 (2), , pp. 243-260, 2013, available at http://www.maastrichtjournal.eu/pdf_file/ITS/MJ_20_02_0243.pdf/, last accessed 03.05.2014.

Lister, R.; K. Veth, *Dicţionar juridic român-englez, englez-român,* Traducere: Roxana Dinulescu, Bucureşti, Editura Niculescu, 2010.

Lungu-Badea, Georgiana, *Mic dicţionar de termeni utilizaţi în teoria, practica şi didactica traducerii*, Timişoara, Editura Universităţii de Vest, 2008.

Tendinţe în cercetarea traductologică, Timişoara, Editura Universităţii de Vest, 2005.

Radu-Golea, Cristina, *Elements of Logical Analysis Referring to Legal Terms, Phrases and Notions in Current Romanian* in "Studii şi Cercetări de Onomastică şi Lexicologie" *(SCOL)*, year V, no. 1-2, Craiova, Editura Sitech, 2012, pp. 203-206.

The Civil Code, adopted by Law no. 287 of 17 July 2009, in force on 1 October 2011, in accordance with art. 220 of Law no. 71/2011 for the enforcement of Law no. 287/2009 on the Civil Code, published in the *Official Gazette* no. 511 of 24 July 2009.