

TEACHING TRANSLATION IN LEGALESE

Corina DOBROTĂ

"Dunărea de Jos" University of Galați, Romania

Abstract: The present paper focuses on the main translation mistakes that Romanian students in Law make when faced with original texts in legalese. Taking into account all the features that characterize legal English in comparison to plain English (apud Tiersma 2008), i.e. specific vocabulary, verbosity, lengthy convoluted structures, complex syntax, conjoined phrases, redundancy and repetition, negation, impersonal constructions, vagueness, ritualization, etc, the subject of our analysis bears on how these difficulties are usually tackled in specialized translation seminars. The paper also proposes various repair work strategies materialized in different types of exercises specifically aimed at the study of legalese.

Keywords: legal English, adaptation, communicative competence, methods, analysis

1. Introduction

The so-called specialized translation has always been the corner stone of English for Specialized Purposes, giving both students and teachers a hard time because of the numerous difficulties it raises in various areas, such as vocabulary, syntax, morphology, pragmatic value, functional objectives, etc. In this respect legal English is even more demanding, as it distinguishes itself among other "technical jargons" by unique features that only increase the level of difficulty in appropriating and accurately using it in various professional settings and communication situations. The need for specialists in the field is on the increase, and in the present-day context of globalization, it is imperative that the training of Law students requires a solid background in legal studies, as well as in the command of foreign languages, among which English is in the greatest demand within and outside the European Union.

2. Definition and characteristics of legalese

Commonly defined as "the specialized language of the legal profession"ⁱ or "the formal and technical language of legal documents"ⁱⁱ, legalese is nevertheless perceived as inherently causing inherent comprehension difficulties due to its special nature, so that it is no rare occurrence to define it as "the sort of language used in legal documents that is difficult to understand"ⁱⁱⁱ or "formal language used by lawyers and in legal documents that ordinary people find difficult to understand"^{iv}.

The features of legalese have been best explored by Peter Tiersma (1999, 2008), who explores its multiple facets, viz. the linguistic dimension, the quest for precision and the specific lexicon. When tackling the linguistic aspects, he focuses on the following:

- Lengthy and complex sentences;
- Wordiness and redundancy;
- Conjoined phrases, verging on pleonasm;
- Unusual sentence structure, intricate word-order;

- Excessive and most often confusing use of negation;
- Impersonal Constructions (pronouns, passives).

In regard to the issue of precision, he remarks that the style of legal texts may be characterized by the following:

- Avoiding Pronouns: "Player Promises That Player Will Play...";
- Undermining Precision: "The Masculine Shall Include the Feminine";
- Strategic Imprecision: obscuring the Actor Through Passives and Nominalizations ;
- Flexible, general, or vague language;
- The Tension between flexibility and precision.

As far as the legal lexicon is concerned, Tiersma focuses on the following elements which inherently create a certain "unfriendly" appearance of the legal text, proving hard to decode for specialists and lay persons alike:

- Legal Archaisms;
- Linguistic Creativity: New Wine in New Bottles: zoning, palimony;
- Gap-filling coinages: Asylees, Escapees and Tippees;
- Constant oscillation between conservatism and innovation;
- Formal and Ritualistic Terminology;
- Performative use of DO and SHALL;
- Jargon, argot and technical terms;
- Relationships among words: polysemy, synonymy and antonymy.

All these may pose huge problems in the adequate decoding and interpretation of the Source Text (ST) and it is the teachers' responsibility to draw their students' attention to the pitfalls occasioned by legal texts in general.

In addition, "in every culture, legal language presents a high degree of institutionalisation, as it is deeply entrenched in the societal practices that characterise the organisation and structure of a cultural group or civilisation. Therefore, legal language presents specific features in every social, political, economic and historical setting" (Moneva. 2013:77), i.e. learners should be aware of all these constraints on both L1 and L2, so that to integrate them in the final translation product.

3. Legalese and the need for translation

In the process of teaching and learning, several difficulties arise when trying to use the newly-acquired vocabulary in translation assignments, but there are many methods that today's teachers can rely on when dealing with texts in legalese. In any case, it is essential that the teachers should always be aware of the interests and needs of the learners in order to be successful in their endeavour, and provide their students with the necessary practical tools to make sure they acquire competency in professional communication. The present paper focuses on concrete teaching practices, mainly centred on teaching tasks that revolve around translation as a communicative activity.

As mentioned by numerous theorists, the methodology of teaching English as a foreign language traditionally does not necessarily tackle the problem of translation. This may be partly accounted for by the dominance of the communicative approach in the past couple of decades, not to mention the general backgrounding of the English non-native speaker from the teaching context.

As pointed out by Dendrinos, even though "having the skills to mediate between the L1 and English [...] constitutes a basic need for the learners or EFL users, [...] the

mainstream politics of English didactics [...] for many years kept the L1 out of the EFL classroom” (2011: 13). An explanation may reside in the fact that the role of the native speaker has constantly been overvalued, while that of the non-native speaker tends to be seen as unimportant.

In case of English for legal purposes, the situation is slightly different. It goes without saying that the need for legal translation has traditionally been felt much more strongly, in order to ensure the adequate content transfer and lack of ambiguity. The tendency of locally produced materials is to regularly put more focus on specialized translation, as it has definitely proved beneficial in the students’ professional training.

4. Student Needs Analysis in Legalese

It is common knowledge that needs analysis refers to a family of procedures employed in gathering information about learners and communication tasks intended for use in syllabus design. It is “concerned with identifying general and specific language needs that can be addressed in developing goals, objectives and content in a language program” (Richards & Rodgers, 1986).

Although it was originally designed for areas other than English education, the so-called “communicative needs analysis” has proved to be very suitable to application in ESL due to trends towards non-traditional English such as English for Special Purposes (ESP), among which legalese stands out as a special case.

The reasons for performing needs analysis were best summarized by M.H. Long (1996):

- (1) Relevance – to determine the relevance of the material to the learners’ situations;
- (2) Accountability – to justify the material in terms of relevance for all parties concerned (teacher, learner, administration, parents);
- (3) Diversity of learners – to account for differences in learner needs and styles;
- (4) Efficiency – to create a syllabus which will meet the needs of the learners as fully as possible within the context of the communication situation.

In this light, students should be presented with a wide range of authentic legal texts in L1 and L2 that they are likely to encounter in their future professional career, in a variety of forms, graded from easiest to most difficult, to the purpose of increasing their translation competence.

The specific needs of the Law students in the present case (full-time day-study, 2nd year with a previous background of at least B1 knowledge of English) are the following:

- appropriating, recognizing and integrating specific terminology, all the time being aware of the difference in the legal systems of Romania and English-speaking countries;
- ability to adequately decode and use translated English materials in performing individual study and research (e.g. bibliography or corpus for the diploma paper, scientific sessions and conferences, etc.).

Since they may already be considered adult learners, the teacher may well make them aware of the specific difficulties to look out for and overcome in their translation endeavours. Likewise, they may be involved in choosing the various learning methods that they deem the most effective on a personal level, increasing their degree of learning autonomy and individual study, in accordance with their own learning style.

Acceptable translation from the target language to the students’ native language

definitely involves comprehension, thus helping students get a clear grasp on the professional jargon they are expected to master in both languages, focusing on the comparison and contrast of terminology, register and style.

5. Assignments emphasizing translation

5.1. Parallel texts

In practising legal English it is essential that students experience on their own the specific difficulties occurring in translation tasks. As a rule, the teacher asks them to tackle authentic texts in English, which they are supposed to render into Romanian as accurately as possible, following the translation-oriented text analysis and terminology clarification performed with the whole group.

The teaching objectives are best met if the texts selected for this task are short and to the point, so that to evince the main difficulties students should recognize and adequately solve, either in pairs, or individually. In the present case, 2nd year Law students deal with translations from English into Romanian (roughly 2/3), and in rarer occurrences (1/3) from Romanian into English. The reason is that in our university Law students only start studying Legal English in the 2nd year, so they are just getting accustomed to using specialized terminology, and it is the teacher's task to expose them to authentic materials and increase their legal lexicon. This is best achieved by studying terms in context, so that students may grasp the finer nuances of meaning which may prove crucial in a legal text, and sometimes even make the difference between an acceptable and a flawed translation. The initial stage during seminar translation work is performed frontally, and students, guided by the teacher, discuss and debate the significant characteristics of the text (background, register, technical features). The analysis operates on various levels, taking into account the elements in Tiersma's classification, and the students work in groups or pairs in order to discuss how certain terms or collocations have been translated, offer further suggestions, provide reasons for their choices, debate the suitability of their selection with their groupmates. Originally it is the teacher who provides the list of issues to be addressed, and later it is the students who take control after familiarizing themselves with the main points of the analysis. At this point, each pair or group of students has the chance to present their version, insisting upon the aspects they deem challenging or those for which they have been unable to find a suitable translation. The other students can intervene whenever they consider it appropriate. Students are consequently at ease when noticing that they are not the only ones who have encountered difficulties in translation activities, and similarly they feel encouraged to individually reflect on, and frontally discuss, means of finding the best solution for the issues they need to tackle.

Here are some samples of authentic L1 texts that 2nd year Law students in the `Dunarea de Jos` University were asked to translate as part of their seminar assignments. Prior to performing the task proper, they are instructed to make observations on the aspects that appear as problematic, subjecting them to the attention of the whole group and suggesting possible solutions. In some cases it is the teacher who supplies the analysis outline, but students are also required to perform their own translation-oriented analysis and thus identify the main aspects they will have to focus on.

Translation Sample 1

ST: An odd number of judges is maintained in order to allow the full court to sit and to reach a majority decision. All decisions of the court are signed by all the judges whether they were in the minority or the majority, so it is impossible to know whether the decision was reached by a bare majority or by unanimity.

TT: Se menține un număr impar de judecători pentru a permite curții să se întrunească în plen și a ajunge la o hotărâre majoritară. Toate hotărârile curții sunt semnate de toți judecătorii, indiferent dacă au fost pro sau contra, astfel că nu se poate ști dacă decizia a fost luată cu majoritate simplă sau în unanimitate.

The first sentence of the ST poses problems in point of syntax and word-order: the fixed Subject-Verb topic and the passive proved quite difficult to render into L2, as 62% of the students stuck to the unnatural literal translation *Un număr impar de judecători este menținut/ se menține [...]*. Most students (55%) still have to internalize the passive-reflexive in Romanian as the most suitable equivalent for the English passive. In any case, the collocations *majority decision*, *bare majority*, *to reach a decision* were quite easily recognized and adequately rendered into L2 by all the students involved. On the other hand, the verb *to sit* was not acknowledged as a *se întruni* by any student, despite the teacher's helpful hints at its polysemous nature. However, the main difficulty is by far the structure *in the minority or the majority*, whose decoding requires logical thinking and explicitation; the students managed to arrive at the suitable equivalence via a course of carefully guided questions from the teacher's part.

Translation Sample 2

ST: To be appointed to one of these offices a person has to either possess the qualifications required for appointment to the highest judicial offices in his or her respective countries or be jurisconsults of recognized competence.

TT: Pentru a fi numită într-una dintre aceste funcții, o persoană trebuie fie să aibă competențele necesare pentru numirea într-una dintre cele mai înalte funcții juridice din țara de origine, fie să fie jurisconsult de competență recunoscută.

In this particular case, the main difficulties to be addressed are the polysemy of the term *office*, the verbosity of the politically-correct structure *his or her respective countries* (which resists literal translation), the quasi-false friend *qualifications* (although it can be considered that it has come to make its way as a barbarism in L2, alongside the better equivalent *competențe*), and last but not least the length of the sentence, increased by the use of the *either... or* correlative. It is to be remarked that statistically no students were able to provide the right equivalent for the *office*, all of them resorting to *oficiu*, *birou*, but not *funcție*. Similarly, only 23% grasped the awkwardness of the *his or her* construction and tried to replace it by a functional equivalent that would be more in the spirit of L2. Also, it was quite surprising to notice that some students, albeit not too many, misinterpreted the structure *jurisconsults of recognized competence* and provided an erroneous L2 version. On the other hand, it is worth mentioning that all the students were able to recognize the infinitival purpose clause at the beginning of the excerpt and rendered it appropriately in L2.

Translation Sample 3

ST: Article 170: A Member State which considers that another Member State has failed to fulfil an obligation under this Treaty may bring the matter before the Court of Justice. Before a Member State brings an action against another Member State for an alleged infringement of an obligation under this Treaty, it shall bring the matter before the Commission. The Commission shall deliver a reasoned opinion after each of the States concerned has been given the opportunity to submit its own case and its observations

on the other party's case both orally and in writing. If the Commission has not delivered an opinion within three months of the date on which the matter was brought before it, the absence of such opinion shall not prevent the matter from being brought before the Court of Justice.

TT: Articolul 170: Un stat membru care consideră că un alt stat membru nu și-a îndeplinit o obligație conform prezentului tratat, poate aduce problema în fața Curții de Justiție. Înainte ca un stat membru să intenteze proces unui alt stat membru pentru o presupusă încălcare a unei obligații conform prezentului tratat, va aduce problema în fața Comisiei. Comisia va emite o opinie motivată după ce fiecare dintre statele membre implicate a avut ocazia să își susțină propriul caz și observațiile asupra cazului părții adverse atât oral cât și în scris. În cazul în care Comisia nu a emis o opinie în interval de trei luni de la data la care i s-a adus la cunoștință cazul, absența unei astfel de opinii nu va constitui un obstacol în a aduce problema în fața Curții de Justiție.

This is a case in point when students have to mind the style and register of the ST, and adapt the TT to the characteristic features of such a type of official legal discourse in Romanian. Thus, they have to recognize the specific use of the modal *shall* in regulations and not mistake it for the mere auxiliary of the Future Simple Tense. Special attention should also be paid to the collocations *to bring the matter before the court/ commission, to deliver a reasoned opinion, to submit a case, alleged infringement, the member state concerned*, which cannot possibly be translated literally and need dynamic equivalents in L2. Similarly, the syntagm *the other party* could give rise to erroneous versions, and should be logically rendered in L2, taking into account the established counterpart in Romanian legalese. In addition, the verb *to fail* as part of a complex verb should most often be transformed into a negation of that verb.

5.2. Types of translation-oriented tasks

It goes without saying that students cannot just dive into summary translation exercises from the very start; the teacher should make the task easier by means of various types of guided translation exercises focusing on different difficulties that may arise in specialized legal texts. Thus, students are required and subsequently trained to be aware of the overall characteristics and significant topics of the text, and to make informed decisions on how to deal with these issues in the target language text. Furthermore, they should be able to achieve dynamic and not literal equivalence, all the more the legal systems referred to are different. The types of translation-oriented tasks that we propose are, among others, the following: equivalent selection out of a given series, terminology appropriation, translation assessment, proofreading, summary translation.

5.2.1. Choosing the right equivalent out of a series

This is suitable for the initiation stage, when students are required to focus on punctual issues like terminology rather than the ST in its entirety. Here are some examples which proved successful with the 2nd year Law students in the early stages of legal translation practice:

1. sentence-restricted

The hijacker said he wanted a hefty ... to release the hostages.

a) ransom b) money c) fine d) amount

A person who wilfully gives a false statement while under oath, concerning a material

matter in a judicial proceeding is said to commit
 b) embezzlement b) perjury c) slander d) bribery

2. paragraph-restricted

Employment law governs the relations between the employer and the *employee/employed/employable* and the conditions *under/in/of* which work occurs. In the UK and the US, labour relations are not as *intensely/hardly/heavily* regulated as in, for example, most continental European countries. *Although/Therefore/Hence*, the relationship between the employer and the employee is *conducted/governed/led* to a great extent by the terms of the employment contract which the parties have agreed.

5.2.2. Terminology clarification and fixation

Also suitable as an introductory exercise type, it may include gapped texts, completion drills, choosing the right variant, etc. As a rule, the trick the teacher uses is to include the same term in a variety of exercises, so that the students get used to it in a variety of contexts, almost automatically including it in their active vocabulary. Here is just one example which may be used even for beginners, as it seems “less demanding” at first sight, so students tend to select it over other types of exercises. In the following, students have to select the most suitable equivalent in L2:

ST: Source of criminal law. Crimes are classified in terms of their origin as common-law and statutory crimes. Some offences that are defined by statute are merely declaratory of the common law.

TT: *Sursa/sursele/izvoarele* dreptului penal. *Crimele/Infrațiunile/ Delictetele* sunt clasificate în funcție de originea lor în *infrațiuni de drept comun/ de prevederi legale/ de drept cutumiar și infrațiuni statutare/ ale legii organice/ale dreptului modern/ale legislației actuale*. Unele *delicte/ofense/abateri/infrațiuni* care sunt prevăzute de *lege/ statut/ status pur și simplu declară/ consfințesc/ sunt paralele cu/ reiau* infrațiunile din *dreptul comun/jurisprudență/ precedentele judiciare*.

In this case the students have to heavily rely on their knowledge of Romanian legalese, so that they are able to better grasp the differences between L1 and L2 at the level of legal systems, terminology and concept equivalence, thus learning how to avoid literal translation and making sure to arrive at an accurate version in meaning and form.

5.2.3. Discriminating between different translation versions

The choice between ready-made translation versions may serve as an indicator of the students' awareness of the overall aspects that make for an adequate translation. Comparing and contrasting various TTs further polishes their skills, helping them exercise their critical thinking. This type of exercises may be pair or group work, and the students are always asked to support their choices by commenting on all the versions they are presented with, and bringing pro and cons in each case. Here is a case in point:

ST: The jury, who make the eventual decision in the Crown Court as to whether the defendant is actually guilty or not guilty, is normally composed of 12 people chosen at random from the list of local people who have the right to vote in the area. (Oxford Advanced Learner's Encyclopedic Dictionary)

TT1: Juriul, care ia decizia eventuală în instanța superioară dacă acuzatul e sau nu vinovat, se compune de regulă din 12 oameni aleși aleatoriu din lista de oameni care votează în zonă.

TT2: Curtea cu juri, care ia până la urmă decizia în instanță referitor la vinovăția sau nevinovăția acuzatului, este în mod normal compusă din 12 localnici cu drept de vot aleși la întâmplare.

TT3: Jurații, care iau eventual decizia în Tribunalul Coroanei cu privire la cât de vinovat e acuzatul, sunt de obicei 12 oameni aleși la întâmplare de pe lista cu localnici care au drept de vot în zonă.

The students should be able to discriminate in point of terminology, minding literalness and false friends, syntax, word-order, semantic gain or loss. The version they choose should be adequate both in meaning and in form, and they should provide arguments such as contextual clues when making their selection.

5.2.4. Proofreading

When performing this type of exercise, students are expected to remove the repetitions, eliminate the verbosity of certain phrases/sentences/passages, insert the proper term, cross out the unnecessary word, summarize the L1 text in L2, etc., which more often than not proves quite difficult. Here is an example:

ST: A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law.

TT: O persoană nu este responsabilă pentru conduita antisocială dacă la momentul unei astfel de conduite ca rezultat al unei boli sau defect mintal îi lipsește capacitatea efectivă de a aprecia caracterul antisocial al conduitei sale sau de a-și conforma conduita la prevederile legale.

revised TT: O persoană nu răspunde penal dacă din cauza unor probleme mentale nu poate să își dea seama de faptul că purtarea sa este antisocială sau nu respectă prevederile legale.

The main actions undertaken here are the considerable reduction of the lengthy, sinuous sentence in the ST, the selection of the appropriate terminological equivalent, as well as the avoidance of literal translation. The final version should sound natural in L2, preserving at the same time the meaning in L1.

5.2.5. Translation proper

Of course, all these guided exercises pave the way for the main point of interest in translation, i.e. independent translation, which combines all the aspects previously discussed and provides learners with the utmost autonomy. In the present case, Law students benefit from the teacher's help, often under the form of lead-in questions and terminological lists to ensure adequacy. Here are some possible examples, graded from the simplest to the most difficult:

FALSE WEIGHT, MEASURES AND LABELS. Cheating, defrauding or misleading the public by the use of false, improper, or inadequate (greutăți)....., measures and labels is a (infracțiune)..... Numerous federal and state (reglementări)..... have been adopted on this subject.

SWINDLES AND CONFIDENCE GAMES. The act of a person who, intending (să înșele sau să fraudeze)....., obtains money or property by trick, deception, fraud or other device, is an offence known as a swindle or confidence game. False or bogus checks and spurious (monede)..... are frequently employed in swindling operations directed toward the man engaged in

(afaceri).....

ST: A fost găsit vinovat de escrocarea partenerului său de afaceri.

TT: He was found guilty of defrauding his business partner.

ST: Manipularea populației prin etichetarea necorespunzătoare constituie infracțiune și se pedepsește conform legii.

TT: Misleading the public by improper labelling is a crime punishable by statute.

It is to be noted that all these applications refer to the same semantic sphere, in this case the topic of stealing and fraud, starting from authentic source texts in English, which facilitate terminology acquisition, and ultimately leading to translation from Romanian into English by making use of the acquired terminology. This exercise is definitely considered as having the highest degree of difficulty, but constant practice under the teacher's supervision leads to visibly improved performance. The ultimate goal is that students achieve complete autonomy, having learnt how to analyze a ST in view of subsequent translation, emphasize the problematic points, search for adequate information and suitable equivalents, select the best equivalent in meaning and form, use their critical thinking, contrast and compare versions, proofread TTs, etc.

6. Conclusions

It goes without saying that translation in legalese is among the most arduous tasks for students and teachers alike, and reaching autonomy in this area requires a lot of effort and constant practice. First and foremost, specific legal terminology acquisition is of the utmost importance, so that vocabulary work should be result-oriented and student-centred, making sure that each seminar is focused on the receptive and productive mastery of various word sets. In addition, students should also be taught how to perform translation-oriented text analysis, focusing on the main difficulties that may arise in legalese, at the lexical and stylistic level.

It is to be noted that students definitely need guidance and a gradual approach when tackling translation in legalese, constantly working towards achieving translation competence, and in the long run complete autonomy. As expected, for the most part they respond well to the various types of exercises, especially the vocabulary-related ones, as these also allow for the most diverse approach. On the other hand, proofreading exercises seem to be more demanding, as they involve language awareness and detailed knowledge of the topic, and last but not least, a certain "linguistic sense" both in L1 and L2.

In any case, dynamic equivalence may be achieved as a result of debates and comparisons, and more often than not the final version of a source text is achieved through the collaborative effort of the entire group.

So, it may well be said that translation competence may be obtained and improved as a result of constant effort and practice. The students should be made aware of their own responsibility in achieving autonomy, and the translation tasks should be tailored to suit their specific learning needs. Similarly, individual and group work are blended to increase team spirit and collaboration, stimulating communication as a subsequent learning objective.

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