

## CHALLENGES OF LEGAL TRANSLATION: SPECIFIC PROBLEMS AND STRATEGIES IDENTIFIED THROUGH A VIRTUAL WORKSHOP

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**Abstract:** This paper proposes to highlight the challenges encountered by students in Translation studies and/ or (legal) translators in translating legal texts relating to Civil law (Family law) as a direct result of investigating specific problems and strategies. The content focuses on the identification and the analysis of the pragmatic, linguistic, cultural and text-specific problems and their replication in strategies used in an interdisciplinary translation approach through a virtual legal translation workshop. Furthermore, this paper intends to outline the expected findings of the above-mentioned virtual legal translation workshop: the academic and professional validation of theoretical ideas brought in different practices usable in legal translation activities.

**Keywords:** Legal translation, challenges, problems, strategies, virtual workshop.

### 1. Introduction

Investigating the translatability of legal texts involves some specific challenges, starting from the elements which influence the acceptance or refusal of a translation task, subsequently transposed into a list of indications a translator expects from a potential client in order to elaborate strategies consisting of decisions to be taken and their applicability during the translation activity, so that in the end the implementation and validation of these strategies to emphasize the competences achieved and the ability to manage a particular translation project. In this paper I will highlight all these challenges through the three main phases of a translation project, pre-translation, translation and post-translation phase (Dejica & Dejica-Cartis 2020), presenting the expected findings of a virtual legal translation workshop organized as part of my doctoral research.

At the very beginning of the year (January-February 2021), in collaboration with the Applied Modern Languages Department in Cluj-Napoca, I organized a legal translation workshop via Zoom. The topic of the workshop was the investigation and validation of the translatability of legal texts from Romanian into English through the establishment of some contextual aspects (intratextual and extratextual elements) and the identification of specific problems and strategies for particular situations (notary and normative texts related to individuals or familial relationships) in order to reach a common conclusion about a legal translation activity. During the workshop, which reunited 40 participants (BA, MA, PhD students, professors, translators, specialists in law and a notary public) we explored the challenges encountered by students in Translation Studies, but also by translators (specialist, legal, authorised), in translating legal texts relating to Civil law (Family law) as a direct result of investigating specific problems and strategies.

## 2. Translation process. Pre-translation phase. Client–Translator relationship. Guidelines

Analysing a translation project means establishing from the very beginning the main phases: pre-translation, translation and post-translation phase. Each phase implies decisions to be taken under the specificity of the translation task. Starting from this point of view and placing the notion of decision (taken before engaging in a translation task) under the term of strategy, the first challenge of the pre-translation phase resides in establishing a few coordinates on the client-translator relationship through some guidelines. Therefore, the first question through a live poll was about strategies expressed via decisions, more exactly: what elements influence the pre-translation phase, namely the acceptance or refusal of a translation project? As can be seen in Figure 1, the answers were multiple and different, the first place belonging to 93% of respondents who chose the deadline as the element which influences the acceptance or the refusal of a (legal) translation project. 81% of subjects of this experiment opted for the field of a text (in this particular context, the legal field and all elements associated with it, legal-cultural-linguistic knowledge and competences, influence the translator's decision); 71% for client's indications/ instructions connected to textual and extratextual elements and in this case, of translation activity, and therefore a legal translation activity, Christiane Nord (1991, p. 39-130) points out two categories, extratextual factors (sender's intention, recipient, medium or channel, place and time of communication, motive, text function) and intratextual factors (content, text composition, non-verbal elements, lexis, sentence structure); and 68% for specific problems and/ or difficulties. On the last three positions, the respondents placed text types (38%) perceived as an important element during the investigation of a translation/ legal translation, by scholars as Reiss (1984), Neubert (1992), Bhatia (1997) or Šarčević (2000); translation strategies (17%) viewed as the applicable part of the decisions taken in the pre-translation phase (the methods-techniques-procedures applied to solve the problems identified during the translation phase); and price or client's attitude (6%).

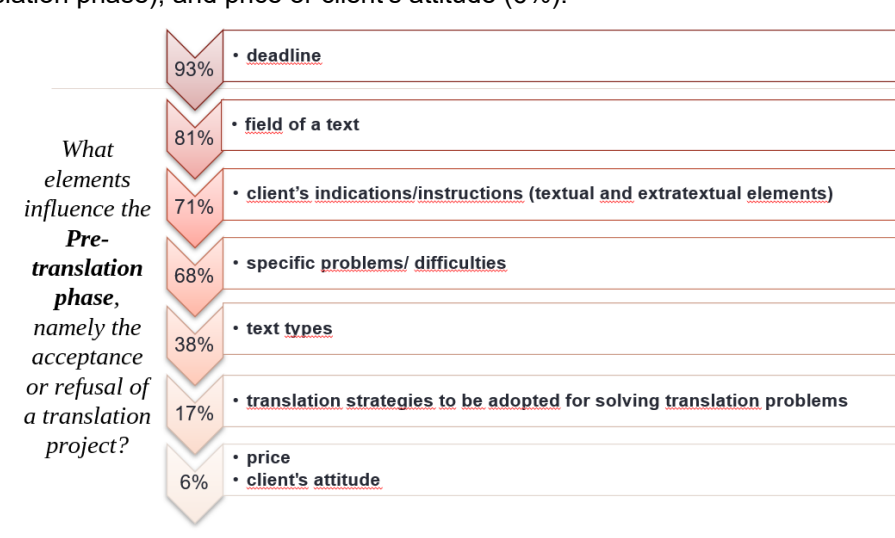


Figure 1. Pre-translation phase guidelines

As a first conclusion, the acceptance or the refusal of a (legal) translation project implies decision(s) to be taken, so a strategy to be adopted, before the translation phase. Among these pre-translation decisions or strategies, the respondents chose client's indications/instructions, and a second question concerned the indications a translator expects from a potential client, more exactly: what indications does a translator expect from a potential client in order to be able to make the transition from the Pre-translation phase to the Translation phase? This time, the respondents emphasized the need to clearly establishing the target language (e.g. I proposed an inverse translation, from Romanian into English, therefore further information about the English language, British-American-Continental, was necessary to be included in the list of indications) and the target culture; translation purpose; text format; some guidelines for terminological requirements and additional procedures (if necessary, because the texts proposed were notary and normative documents); deadlines and prices, as can be seen, being mentioned again two elements from the first question regarding the acceptance or the refusal of a translation task. If we take a closer look at answers like target language, target culture, translation purpose, specific terminology, we will be able to see a replication of the two main translation strategies proposed by scholars as Vinay and Darbelnet (1958), Nida (1964), Newmark (1988), Baker (1992), Chesterman (1997), Venuti (1998): the 'foreignization' (in the current terminology) or the source-text oriented, word for word, direct or literal translation strategy and the 'domestication' (in the current terminology) or the target text-oriented, message for message, oblique or free translation strategy.

*What indications does a translator expect from a potential client in order to be able to make the transition from the Pre-translation phase to the Translation phase?*



Figure 2. Client's indications

### 3. Translation phase (I). Equivalence. Conventionality. Functionality

The transition from the pre-translation phase to the translation phase comes with a second challenge which belongs to find a balance regarding the applicability of three main principles which represent the 'headstone' for the translation strategies:

equivalence – conventionality – functionality. In Translation studies literature, *equivalence* is associated with rendering terminological elements from the source language through other terminological elements in the target language that correspond to the same reality; *conventionality* involves rendering normative or even conservative elements, specific to a culture (Dejica 2013) or a communicative situation; and *functionality* corresponding to the connection of the target text's purpose and the fidelity to the source text. Referring to these three principles, the third question arisen was: *what percentage of applicability would you give to each principle?* Figure 3 presents three results obtained after the answers given: 40% of respondents opted for equivalence; 37% for functionality and 23% for conventionality. Analysing these answers in detail, even if the translator is a novice (current students or graduates) or a professional, particular attention is paid to terminology and its challenges, the desire to render as contextually as possible the terminology of the source text being present at the moment of decision. The communicative purpose, the connection between the messages transferred from the source text to the target one occupies a second place when the translator faces the decision of using the appropriate strategies for his or her work while respecting the norms, standards, tradition through specific formats and requirements takes the last place. Once again, the same decisions applied through strategies implemented for short or long terms to overcome the challenges of translating (legal) texts.

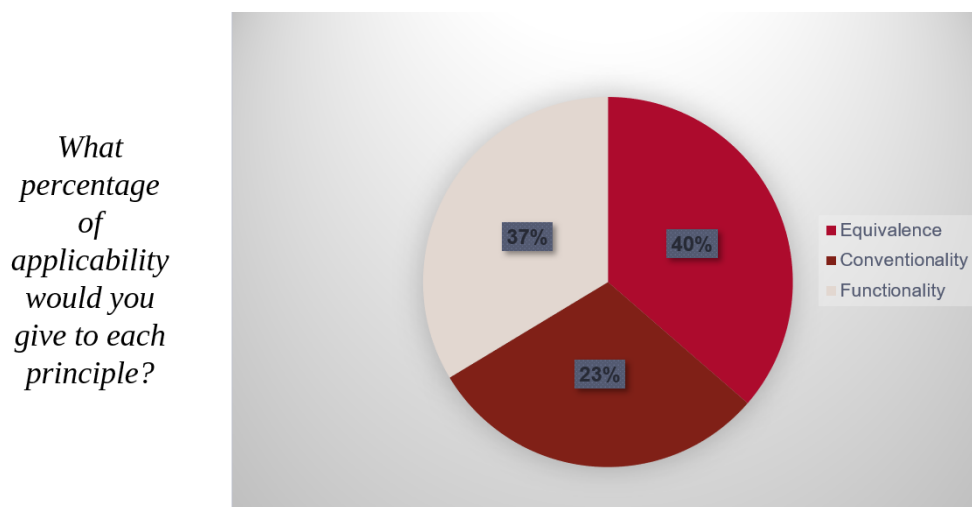


Figure 3. Translation phase (I)

#### 4. Translation phase (II). Specific problems and strategies

Once all those pre-translation decisions taken, a new challenge arose from the need to identify the translation strategies which targeted the legal texts from Civil Law (family law), and in order to identify them correctly, the specific problems were reviewed and

analysed. This exercise was done in mixed teams (students-professors-translators) and was validated by a specialist in the legal field (notary public/ legal translator).

The notion of *problem*, in a broad sense, is defined as something that causes trouble or difficulty. From a more specific point of view, regarding the translation field, the (translation) problem is clearly defined by Christiane Nord (2011), who points out the difference between the two concepts, problem and difficulty. Translation problems are considered to be objective, and they "have to be solved in order to produce a target text which fulfils the intended function(s)" (Nord 2011), while translation difficulties are viewed as subjective, and their overcoming depends "on their [translators] competence with regard to language, culture, general and specific knowledge etc" (Nord 2011). As can be deduced, translation problems are in a direct connection with the client/market's requirements and they will always appear during a translation process, while translation difficulties belong to the translator's competences and continuous professional development and, as Nord (2011) mentioned, only constant and good documentation will overcome them.

Starting from Nord's classification of translation difficulties (pragmatic, translator-dependent, text-specific and technical) and problems (pragmatic, linguistic, cultural and text-specific translation problems), the teams' proposals supposed a first nominal categorization of these problems. As can be seen in Figure 4, among the translation problems are listed: two different legal systems (Romanian versus English, civil versus common law); a different target language, English (e.g., a non-native language, different English dialects), thus terminological and cultural problems; the impossibility to render equivalent meanings; morphological and syntactic problems (e.g., verb forms, sentence structure); synonymy; text formats. All these problems were validated by the specialist, agreeing to teams' proposals and reconfirming the presence of these problems in translating legal texts, but also adding new possible problems (e.g., legality elements, audience acceptability, pragmatic problems as titles, acronyms or denominations, macro-cultural factors).



Figure 4. Translation phase (II). Specific problems

In a second phase, a reconsideration of the categories mentioned was made. For example, all these problems were reclassified as fully-pragmatic, fully-linguistic, fully-cultural, fully-specific (according to Nord's classification) or as pragmatic-cultural, pragmatic-linguistic, cultural-specific, cultural-linguistic (according to the specific context or the purpose of the translation, taking into account the extratextual elements/ factors abovementioned). The first reclassification (Figure 5) includes titles, acronyms, denominations as fully-pragmatic problems; legality elements (legalization, super legalization, copies of notarial documents or authentic documents) or documents categories as fully-cultural problems; specific terminology or words and sentences structures as fully-linguistic problems.

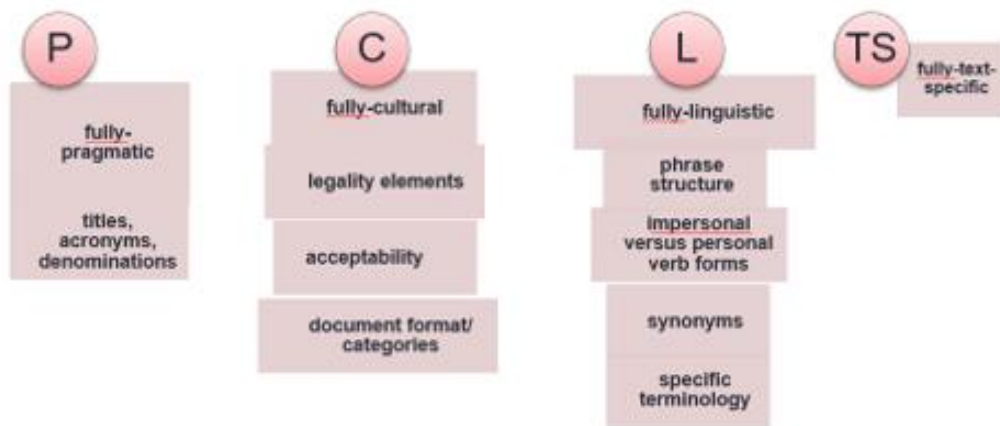


Figure 5. Translation problems reclassification (I)

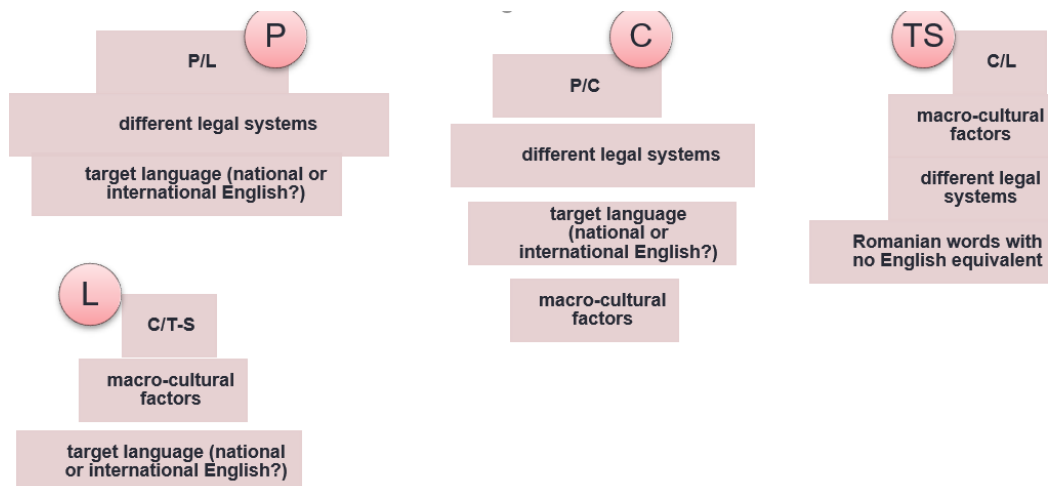


Figure 6. Translation problems reclassification (II)

The second reclassification (Figure 6) includes different legal systems (adaptation according to the translation purpose and function) and target language (different English dialects) as pragmatic-cultural due to the updated legislation at the national and

international level, as pragmatic-linguistic due to the main changes and effects at a terminological level nowadays (e.g. the current discussions at EU level about gender forms usage that can be transferred to the translation field regarding the translation of terms such as wife/ husband or spouses in notarial or normative documents), but also as cultural-linguistic due to the translator's preference, client's requirements or specific contexts to render cultural elements instead of terminological ones (e.g. translating articles about civil law versus translating authentic documents) or as cultural- specific problems according to client's or institutionally usage.

At the end of the discussions about specific translation problems in the legal field, all the participants listed nominally some specific strategies (Figure 7) to solve the problems identified: consulting a specialist; consulting parallel corpora and dictionaries (good documentation and research); consulting official sources (different national and international official sources as European Institute of Romania, European Court of Human Rights, European Court of Justice, Ministry of Justice, European Commission); using a third language support (e.g. French language because there are many similarities between Romanian and French, Swiss, Canadian civil code or other legal documents); extra-revision (with the extra-option for the novices to pay for a professional revision performed by someone with more experience in this field).

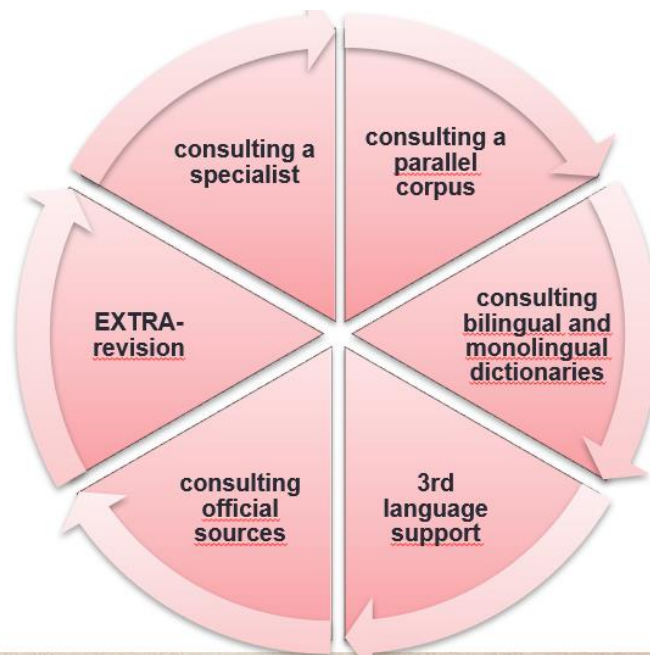


Figure 7. Translation strategies

##### 5. Post-translation phase. Translator and translation competence

Once the first two phases of the translation activity have been assimilated, the pre-translation and the translation phases, a final challenge remains, specific to the last

phase, the post-translation phase, a challenge based on the decision or strategy for the usage and development of the translator and translation competence. The translation competence is defined by many scholars and institutions, the definition proposed by the EMT expert group (2009, p. 3) being representative in this particular context: [the competence is] "the combination of aptitudes, knowledge, behaviour and knowhow necessary to carry out a given task under given conditions". This definition is updated by the EMT Board (2017, p. 3), highlighting elements such as knowledge, skills and personal, social or methodological abilities that a translator needs for a continuing professional development. As was explained in this article, the translation activity is about decisions or strategies, the translator using all the indications about extratextual and intratextual elements, legal-linguistic-cultural knowledge to overcome difficulties and solve problems in order to form and develop his or her aptitudes. Choosing this definition as starting point, the last question addressed via a live poll was about competences: which of the competences do you think are used the most during a (legal) translation process? 80% of subjects of this experiment chose the research competence (information acquisition through specific documentary, terminological and phraseological research, and specific tools and search engines as mentioned by the EMT expert group). Moreover, very close as preferences were chosen the thematic competence (thematic knowledge in legal translation field) by 47%, the transcultural competence (sociolinguistic and textual knowledge) by 45% and the technical competence (mastering the specific tools) by 40%. The last competence chosen was the communicative one by 13% of the respondents. After the exposure of all these preferences, a new question arose: using and developing a competence or more competences does it represent a strategy? A pre-translation, translation or a post-translation decision?



**Figure 8.** Translator and translation competences



The answer certainly reveals that using and developing translation competences represent a strategy that can lead to pre-translation decisions (research, thematic or transcultural competence), translation decisions (technical competence) or post-translation competence (communicative competence), depending on the translator's ability to overcome difficulties, to solve problems and to master all the competences needed.

## 6. Conclusion

The whole translation process, in this case, legal translation, with all its phases (pre-translation-post), involves making decisions and replicating them in effective strategies for solving particular problems, overcoming actual or constant challenges and developing specific competences. All the above mentioned are related to the translator's knowledge and abilities linked with continuous professional development by detecting the most pressing needs, improving skills and being kept updated to the market requirements.

## References

1. Baker, M. 1992. *In Other Words. A Coursebook on Translation*. London: Routledge.
2. Bhatia, V. K. 1997. Translating legal genres. In A. Trosborg (Ed.), *Text typology and translation*. Amsterdam: John Benjamins.
3. Chesterman, A. 1997. *Memes of Translation: The Spread of Ideas in Translation Theory*. Amsterdam: John Benjamins
4. Dejica, Daniel. 2013. 'Mapping the Translation Process: The Cultural Challenge'. In H. Parlog and L. Frentiu (eds.), *Translating Across Cultures: BAS 21st Annual Conference*. Cambridge Scholars Publishing. pp. 11-28.
5. Dejica, D. & A. Dejica-Carțiș. 2020. 'The Translation Process: Traditional Approaches and Contemporary Challenges' in Antoanela Marta Mardar (ed.) *Encounters across Linguistic, Cultural and Professional Contexts: In Honorem Professor Elena Croitoru*. Cluj-Napoca : Casa cărții de știință. pp. 119-136.
6. EMT expert group. 2009. *Competences for professional translators, experts in multilingual and multimedia communication*, available at: [https://ec.europa.eu/info/sites/info/files/emt\\_competences\\_translators\\_en.pdf](https://ec.europa.eu/info/sites/info/files/emt_competences_translators_en.pdf) [accessed April 2021].
7. EMT Board. (2017). *Competence Framework 2017*, available at: [https://ec.europa.eu/info/sites/info/files/emt\\_competence\\_fw\\_2017\\_en\\_web.pdf](https://ec.europa.eu/info/sites/info/files/emt_competence_fw_2017_en_web.pdf) [accessed April 2021]
8. Neubert, A and Gregory M. Shreve. 1992. *Translation as Text*. Kent, Ohio: The Kent State University Press
9. Newmark, P. 1988. *A Textbook of Translation*. New York: Prentice Hall.
10. Nida, E. A. 1964. *Towards a Science of Translating: With Special Reference to Principles and Procedures Involved in Bible Translating*. Leiden: Brill.
11. Nord, C. 1991. *Text Analysis in Translation: Theory, Methodology and Didactic Application of a Model for Translation-Oriented Text Analysis [M]*. Amsterdam: Rodopi.
12. Nord, C. 2011. *From the "Protective Workshop" to Professional Reality: Grading the Difficulty of Translation Tasks*, available at [http://cms.ewha.ac.kr/user/erits/download/review\\_1/01\\_Christiane%20Nord.pdf](http://cms.ewha.ac.kr/user/erits/download/review_1/01_Christiane%20Nord.pdf) [accessed April 2021].
13. Reiss, K. and Vermeer, H. J. 1984. *General Foundations of Translation Theory [M]*. Tübingen: Niemeyer.

14. Šarčević, S. 2000. *New Approach to Legal Translation*. The Hague: Kluwer Law International
15. Venuti, L. 1998. "Strategies of Translation". In M. Baker (ed.) *Routledge Encyclopaedia of Translation Studies*. London: Routledge, p. 240-244.
16. Vinay, J.P. & Darbelnet, J. 1958. *Stylistique Comparée du Français et de l'Anglais: Méthode de Traduction*. Paris: Didier.