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**FRENCH, SPANISH AND GERMAN TERMINOLOGY IN LEGAL
DISCOURSE –PROBLEMATIC ASPECTS IN TRANSLATION**

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Abstract

This article studies the problems of translating French, Spanish and German terms in legal discourse texts. To master the legal translation technique, one needs a good knowledge of legal terminology and the text structure of various styles. The main element of a legal text is a term that attracts special attention as legal translations serve to convey the meaning of a given text in the original language by creating a text in the target language. The main difficulty of translating terms in legal discourse is that it is a translation from one legal system to another. The authors of this research paper examine the difficulties in translating legal terminology, the legal translation peculiarities, as well as the problem of legal terms equivalence, as the specificity of legal translations is primarily due to the legal language special characteristics, as well as the professional communication norms in the field of law. Legal language particularity is determined by its direct connection with a certain state legal system. The vast majority of lawyers work in the field of their national law. Despite some similarities in the legal systems, primarily of European states, each state has its own legal order, its own conceptual and terminological system, its own specific legal norms, forms and procedures of judicial proceedings.

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1. Introduction

Today, in the context of globalization, the demand for specialized translations is growing. The commercial world is characterized by internationalization, and more and more companies are expanding their horizons far beyond their borders. Currently, partnerships between foreign companies are intensively maintained with a certain document flow. Due to this development professional translation of legal texts and documents is becoming increasingly important. Translation of specialized texts is always connected with certain difficulties, especially with regard to the interpretation of highly specialized terms and relationships. Legal texts and documents translation is considered to be one of the most difficult types of translation. It may contain many traps (so-called false friends of a translator) and nuances that only professionals can handle.

Legal translation issues are of interest not only to linguists and translators, but also to lawyers (works by Galdia (2003) and others). Even if it is just a translation of the word "lawyer", many different terms are used in different legal systems. For example: "lawyer", "counsel", "advocate", "attorney", "solicitor", "barrister", and "counselor" in English. In the United States, lawyers are called "lawyer", "attorney", "attorney at Law". In the United Kingdom, as well as in Canada, Australia, and some other common law countries, lawyers are divided into "solicitors" and "barristers". In continental Europe countries, there are different types of lawyers who perform different functions. In Germany and Austria, there is only one legal profession that performs this function, namely Rechtsanwalt / Rechtsanwältin. In France, – juriste, avocat, légiste, and avoué. Avocat is closer to the concept of attorney and lawyer in the US and barrister in England, but is not a perfect equivalent. The term notaire corresponds to a solicitor in England. In many languages, the words corresponding to the English lawyer are similar: in French "avocat", in Portuguese "advogado", in Dutch "advocaat", in Italian "avvocato", in Spanish "abogado" and in Russian "lawyer". The term advocate exists in English, but refers to a person who defends a case, not someone who is engaged in a particular profession, which distinguishes it from the terms avocat, advogado, avvocato, abogado or lawyer. A professional legal translator must also pay attention to the cultural aspect. For example, it will not be difficult for a translator – an expert in the field of law enforcement agencies to translate into Russian such combinations as: stop and search (not "stop and search", but "detention and search (seizure)"), manslaughter (not "homicide", but "manslaughter" (Lebedev & Abrashkina, 2019, p. 53).

2. Problem Statement

The above-mentioned aspects prove the necessity to focus on such a problem as the translation of French, Spanish and German terms in legal discourse texts. Most of the works devoted to this topic consider the difficulties of translating English legal texts (Alimov V.V., Khizhnyak S.P., Ogneva N.V., Staroselskaya N.V., Tolstopyatenko G.P., etc.). However, the specific features of legal translation into other European languages (German, French, Spanish) are studied insufficiently.

3. Research Questions

What are the specific features that distinguish a legal language from other professional languages? What are traps (so-called false friends of a translator) and nuances in translating French, Spanish, and German terms in legal discourse texts? What are the factors that determine the choice of adequate translation strategies and methods?

4. Purpose of the Study

The purpose of the research is to analyze the peculiarities and difficulties of translating French, Spanish and German terms in legal discourse, to study the lexical level distortions in translation process.

5. Research Methods

The problems that a translator faces due to the socio-cultural content of legal terms can be solved through various resources. The first of these is the method of comparison, typical of comparative law. Comparative law is the first step towards legal translation and overcoming the socio-cultural barrier, since loan translation (calquing, tracing paper translation) can provide false information about the original meaning. With the help of comparative law, situations of antinomy and terminological inaccuracies may be avoided.

To solve the given tasks, the following methods have been also used: the continuous sampling method of French, Spanish and German legal terminological units; comparative analysis of terms and their translated equivalents; method of translation interpretation.

6. Findings

The differences between legal institutions make it difficult to find equivalents, so it can lead to descriptive translation (Muñoz, 2002). For example, the French terms Tribunal du contentieux de l'incapacité (Court of Incapacity for Work), Conseil de prud'hommes (Prudential Council), and Tribunal paritaire des baux ruraux (Joint Court of Agricultural Lease Disputes) do not have a direct institutional equivalent, since in Russia their powers are carried out by various public order bodies depending on their competence. In this case, the translation is done by calquing (loan translation) from the original language to overcome the socio-cultural barrier and false information.

Due to the absence of relevant positions in the Russian judicial system, the terms "juge de l'expropriation" (judge who determines the amount of compensation for the property expropriation), "juge des loyers" (judge in cases of premises rent), "juge de l'exécution" (judge for court decisions on the property foreclosure) cannot be translated literally. The knowledge of legal institutions functions allows a translator to find an equivalent term in another legal system (le tribunal d'instance – trial court in civil cases) (Nombela, 1996). As for the onymic components (names of institutions, organizations, state bodies), there are ways of borrowing or calquing (exoticism), that is, using the term in the original language with subsequent explanation or literal translation (Le conseil de prud'hommes-Council of Prudhommes).

In Spanish legal discourse, the use of specialized phraseological units is observed (Macías Otón, 2016), which are not easily recognized by non-specialists. For example, phraseological syntagmas (juridicamente vinculante); phraseological statements (A todos los que la presente vieren y entendieren); syntactic schemes (todas las personas tienen derecho a...) and paremias (Gouvernement du peuple, par le peuple et pour le peuple). The identification of legal phraseological units in the discourse, their syntactic variations, and terminological equivalence definition are some of the difficulties of legal phraseology in translation. As a solution, certain so-called parallel texts, official translations, literal translations, and various methods of cultural transfer can be offered.

Semantic ambiguity refers to difficulties of the semantic order and occurs in cases of synonymy, polysemy, and hyperonymy-hyponymy. Ambiguity is rather problematic for a translator when there are ambiguous terms that have different meanings in the common language or are not highly specialized.

On the one hand, understanding ambiguous semantic relations requires the use of specialized dictionaries. On the other hand, text translation is simplified by developing semantic or thematic “trees” (Muñoz & Macías Otón, 2010) that reflect semantic relationships between the terms of the text and arrange them according to different criteria, such as hierarchy or part-whole. The characteristics of various levels in text organization, starting from the lexical level (terms) to the textual level (text as a whole), and the terms function in it, outline and define their semantic content (Muñoz, 2006).

Semantic analysis is a good starting point for translating ambiguous terms: 1) find out whether the term belongs to the general or legal language; 2) check the language register depending on the communication situation; 3) look for the term definition in general and in specialized dictionary; 4) examine matching meanings (sense) in the corresponding dictionaries; 5) note the use of the term in parallel texts; 6) give the term so that it reflects the nuances of the initial context.

The reasons for synonymic variation are diverse and can be caused by several reasons: stylistic (the text coherence), dialectical (geographical, time and social variants), functional, sociolinguistic (contacts between languages), or cognitive.

For example, in Spanish, “arras” has several meanings in the standard register and one in legal; “mora” has several specialized meanings (in the field of law and phonology); “consejo” has several meanings in the standard register and in the specialized field (public international law, commercial law, administrative law, etc.).

The semantic hierarchy in legal text translation can serve as a starting point for the branches of law organization and types of legal institutions. For example, there is a hyperonymy-hyponymy relationship between the terms “ley” (hyperonym) and “ley ordinaria” and “ley organica” (hyponyms of the hyperonym “ley”). “Ley ordinaria”, in turn, is a hyperonym for leyes ordinarias especiales por el contenido; Ley de Presupuestos Generales del Estado; ley de transferencia; ley de armonización; ley de delegación; ley marco.

It is not always easy to find complete terminological equivalent translating legal terms. To overcome the translation ambiguity, Lerat (1995) offers two formulas:

a) functional equivalence, which implies an approximate translation (for example, hypothèque (a guarantee that encumbers real estate in civil law) and mortgage (a guarantee that encumbers property as a whole in common law), both terms are translated using the functional equivalence “mortgage”).

b) partial equivalence analyzes the semantic characteristics of terms, semantic relations between them (polysemy, synonymy, hyperonymy), and the so-called equivalence by intersection or by inclusion (Šarcevic, 1997).

Zero equivalence can be also added to these types, which occurs when concepts represented by terms from another language do not exist in the recipient language. In this case, we can only use an explanatory paraphrase, explain or quote a non-translated term, create a neologism, or a combination of them (Galdia, 2003).

German legal texts are usually characterized by the following features: a combination of a high degree detailed legal prescriptions and system principles; a developed conceptual apparatus; a detailed system of mandatory prescriptions recorded in written sources (Galushka, 2018).

Problems in translating legal texts often arise due to the different terms usage in everyday and in the legal language. German civil law uses, for example, separate terms "Zustimmung" – consent (general term), "Einwilligung" – consent (consent before a legal transaction) and "Genehmigung" – approval (subsequent consent), while in everyday language these expressions are used more or less as synonyms.

Schmidt-König distinguishes between external and internal polysemy in German legal language: external polysemy is present due to the already mentioned relationship of the legal language and the common one; most legal terms generally have different meanings in the common language. Thus, there are several meanings of the term in both legal and general language, which can inevitably lead to difficulties (Schmidt-König, 2005). An example of external polysemy is the term "Frucht" bzw. "Früchte" "fruit" or "fruit". In general meaning, fruit is the harvest of land, grain, etc. However, in legal language, this term also means "income" from a thing and a right.

The difficulties in translation may appear when several legal systems share a common legal language and there are terminological or ideological differences. This applies, for example, to German, the legal language of which is used in Germany, Austria, Switzerland, and parts of South Tyrol, Liechtenstein, and Belgium (Schmidt-König, 2005). In these countries, it may happen that the same definition or concept is expressed by another term, or the same term is defined differently. For example, the term "Rente" (pension): Article 35 of Health and Accident Insurance Act by the Austrian Public Service describes it as regular payments from the statutory accident insurance, disability pension, supplementary pension for persons with severe disabilities or insurance contracted privately (Muhr & Peinhopf, 2015). In Germany, the same term according to SGB VI describes ordinary monetary benefits by compulsory pension insurance. For the translation of legal texts, this means that it must be borne in mind that the legal text is never isolated. It is part of the country's legal system (Holzer, 2013).

7. Conclusion

In conclusion, it is necessary to note a certain number of major difficulties in translating legal terminology: the linguistic nature of the term; specific features of the legal concept; discrepancies between the state legal systems, differences in the syntactic structures of legal texts in various languages, the socio-cultural content of legal terms in different languages, subjective difficulties due to the insufficient training of people involved in translation activities.

In addition to the obvious language skills, the ability to study terminology and work on the comparative legal terminology, to analyze the text and determine its typical characteristics, the legal texts a translator must also have extensive knowledge in both legal systems. The lack of such legal knowledge is usually the main accusation, and this often leads to the matter that trustworthy translation is given more often to professional lawyers with the knowledge of language than to the specially-skilled professional translators.

Legal texts translation is not only an important area of translation work, but also a complex one. First of all, the combination of language and legal knowledge, as well as culture understanding, is necessary in understanding the content and translating it into another language – and therefore also into another legal culture – functionally and in accordance with the target group. Comparative legal methods, terminological work, as well as the language skills acquisition and continuous professional development form knowledge and skills basis essential for legal written and oral texts translation.

References

- Galdia, M. (2003). Comparative law and legal translation. In *The European Legal Forum* (pp. 1–4). Publishing House Ltd.
- Galushka, K. (2018). The legal system of Germany as an element of the Romano-Germanic legal family. In *Law, Society, State: problems of theory and history* (pp. 145–147). Moscow.
- Holzer, P. (2013). *Is there a trend towards targeting legal texts? An inventory of Spain and Austria*. A. K. Ende, S. Herold, & A. Weiland (Eds.), *Everything is related to everything. Translatological interdependencies* (pp. 363–375). Festschrift for Peter A. Schmitt. Berlin, Frank & Timme.
- Lebedev, A. V., & Abrashkina, K. S. (2019). Specific features of English-language legal documents and the problem of their translation into Russian. *Philological science. Issues of theory and practice*, 12(3), 53–57.
- Lerat, P. (1995). *Specialized languages*. University Press of France.
- Macías Otón, E. (2016). Linguistic problems in the didactics of legal translation (English / French-Spanish). *Language and law magazine: journal of language and law*, 65, 1–17.
- Muhr, R., & Peinhopf, M. (2015). *Dictionary of legal terminological differences between Austria and Germany* (Vol. 16). Peter Lang Ltd.
- Muñoz, D. M. (2002). *Study of the specialization level of the criminal legal vocabulary in a popular text*. *Bridges*, 2, 83–91.
- Muñoz, M. S. (2006). *Teaching Strategies of terminological translation in communicative and teaching context*. Cervantes Institute.
- Muñoz, M. S., & Macías Otón, E. M. (2010). Use of semantic trees to understand specialized texts based on their terminology. *Annals of French Philology*, 18, 477–493.
- Nombela, G. R. (1996). Translation in the European Community and Legal Language Community. *Jerome Complutensis*, 3, 35–41.
- Šarcevic, S. (1997). *New Approach to Legal Translation*. Kluwer Law International.
- Schmidt-König, C. (2005). *The problem of translating legal terminology. A systematic presentation using the example of German and French legal language*. Lit Publishing House.