

METHODS IN LEGAL TRANSLATION

Legal translation is a challenging process. Legal translation, as institutional, culture dependent translation, requires of a translator to be fully linguistically proficient in the source and target languages, as well as to be perfectly familiar with the cultures and legal systems of the source and target countries. One of the challenges of legal translation lies in the fact that legal terminology is very system and country specific. Many times the legal terminology in the source language cannot be translated directly, or literally.

When it comes to concrete translation of a text, we should be aware of the legal background, either in common law or in criminal law. However, any text is also rooted in a specific field of law, such as criminal or civil or international or contract law, etc. A special legal terminology is relevant in these fields, dependent on the social function of such texts, both as originals and as translations. There are some typical cases of practical translation: 1. Personal administrative documents are being used to create or establish a right in another country: Birth certificate and/or divorce decree or affidavit for marriage, education certificate or diploma for studies abroad, work testimonial for a new employer, medical certificate about an illness during holidays abroad, police report of theft abroad for the domestic insurance, medical certificate of foreigners for their home pension scheme, and other similar things. The difference of conceptual meanings and the equivalence of terms have to be checked. Sometimes, the acceptance of such documents depends on inter-state agreements. 2. In penal proceedings, there is often the need to translate court sentences or investigation documents for the request of international judicial assistance. Summons, office texts and statements of charge may be translated for foreigners. The difference between criminal and civil proceedings is important here, e.g., we have to distinguish between (public prosecutor / accused / counsel for the defense) and (petitioner, claimant / defendant / counsel for the plaintiff). 3. Foreign court decisions with included articles of code (criminal and civil proceedings) have to be translated. Among others, the linguistic style is a problem here, but it is more or less relevant in all cases. 4. Trade contracts are signed in order to sell goods or transmit licenses. They will be written in one valid language copy with a translation for convenience. 5. New law texts from the European Council, directives, etc. have to be translated into a local language in order to display their effect in the national legal system. The EU law uses a common social terminology, and its conformance or difference to national terminology is important. Some countries have long since had several languages in which their law is expressed, e.g., Switzerland, Canada, or South Tyrol. Here, translations are parallel texts, and certificates often are issued in two languages. Identity of conceptual meaning is vital. 6. After political changes, it can be necessary to translate a whole national body of legal texts from the former main language into other local languages, which occurs as an example with the cases of Hong Kong (Chinese), South Africa (Kwa Zulu, Xhosa), or in the former Yugoslavia (and others). Sometimes, words for legal concepts have to be created anew. 7. International treaties are formulated in a general way, open to interpretation following the political agreements, and then we have their formulation in a language coherent in both bilateral and multilateral conventions. The divergence of conceptual meanings from national legislation is important. It has to be checked which kind of translation is relevant in each individual translation commission. The most frequent case, of course, is translation of a national document so that it may deploy its legal effect in another country. In such a case, translation is between two different legal systems. Thus the translator's main task is to produce a text that will lead to the same legal effects in practice." This means that even if the translation is not the legal document as such, it should be precise enough to be accepted with its intended legal effect, which is based in the legal system of the issuing state. The translation does not replace the original text with its legal status, especially in document translation. But translations as secondary texts should be transparent enough to produce the same legal effects in practice. The German translation of an Italian article of statute law, for instance, will give precise information, but it is no German law. Likewise, the English translation of a German school certificate should be clear enough to enable one to study abroad, but it will never be a British certificate. This is different in the case of EU law, where the legal equivalence of texts is top priority.

References

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2. George Steiner. After Babel. Aspects of Language and Translation, 3rd ed. Oxford: University Press, 1998, 298.