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"Error in Context, Context of Error"

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Equivalence in Translation – Errors Occurring in Search of the Right Equivalent

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Abstract: Equivalence in translation may refer to the transfer of a message from the source language to the target language or the decoding of the SL text, just to encode it again in the TL. Despite various theoretical approaches establishing several types of equivalence (grammatical, textual, functional, pragmatic, etc.) and proposing solutions for those in search of the right equivalent, practice remains the real and constant challenge. The challenge is even greater as far as legal translation is concerned, since it involves the transfer of a message not only from one language to another, but from one legal culture to another. Legal cultures have been shaped by an amalgam of factors depending on the historical evolution of each society, with its own law system. The contact of languages and cultures determines mutual influences and interactions and from this perspective, the translation process should be facilitated. Yet, legal notions and concepts have evolved in different directions from one society to another, therefore finding the right equivalent in legal translation is a difficult and creative task. In this framework, the paper also analyzes some errors that law students make while attempting to use translation as a tool meant to build a bridge between two legal cultures.

Keywords: *equivalence, legal translation, legal culture, errors, law students.*

1. Introduction

Language is the heart within the body of culture, and the interaction between the two results in the continuation of life-energy (Bassnett-McGuire, 1991: 14). On that basis, we can say that legal language is the heart within the body of legal culture and the relation between language and law proves inseparable.

Legal cultures have always been shaped by an amalgam of factors depending on the historical evolution of each society, with its own law system. Although the contact of languages and cultures has determined mutual influences and interactions, legal notions and concepts have evolved in different directions from one society to another. Translation has played an essential role in establishing and maintaining linguistic relationships with other legal traditions and cultures.

2. Equivalence in translation

Equivalence in translation may refer to the adequate transfer of a message from the source language to the target language or the decoding of the SL text, just to encode it again in the TL.

From another perspective, translation equivalence concerns the degree to which linguistic units (e.g. words, syntactic structures) can be translated into another language without loss of meaning (Richards and Schmidt, 2002: 563). Two items with the same meaning in two languages are said to be translation equivalents.

Some linguists argue that no full equivalence can be achieved through translation because each unit to be translated contains within itself a set of non-transferable associations and connotations. Some theorists – Jakobson among them – claim that equivalence is impossible, since it is just an adequate interpretation of an alien code unit (Bassnett-McGuire, 1991: 15), but just as the relation between language and law proves inseparable, so is the relation between translation and equivalence. According to Emery, "a definition of equivalence will have a direct bearing on a definition of translation." (2004: 143)

All levels of a text – lexical units, phrases, sentences, paragraphs and the text as a whole are subject to analysis in terms of equivalence, but the real issue is "whether the translator may seek, and can reach equivalence and equivalent effect at a higher level, such as discourse." (Chromá, 2014: 155)

2.1. Types of equivalence

Nida (Bassnett-McGuire, 1991: 26), distinguishes two types of equivalence – formal and dynamic, where formal equivalence "focuses attention on the message itself in both form and content. In such a translation one is concerned with such correspondences as poetry to poetry, sentence to sentence, concept to concept." Dynamic equivalence is based on the principle of equivalent effect, i.e. the relationship between the receiver and message should aim at being the same as that between the original receivers and the SL message.

Various theoretical approaches have established several types of equivalence, but some of them have been preponderantly analyzed (Lungu-Badea, 2005: 106-117): *dynamic equivalence, functional equivalence, linguistic equivalence, paradigmatic equivalence, pragmatic equivalence, referential equivalence, semantic equivalence* and *stylistic equivalence*.

Dynamic equivalence relies on the principle of equivalent response, differing from equivalent effect, which denotes the intention assigned to the source text and rendered as accurately as possible in the target text. The

equivalent response is situated in the physical sphere of attitudes, gestures, positions. In the case of dynamic equivalence, the equivalent effect refers to the act of accurately rendering the intention of the source text into the target text so that the effects (especially gestures, attitudes) produced by the target text on target readers will be similar to that produced on source readers.

Functional equivalence involves the translator's attempt to identify in the target language certain linguistic, cultural and contextual elements which can contribute to the restitution of a functional text in the target culture and language, namely a text that is able to reproduce the speech acts of the source text – locutionary, illocutionary and perlocutionary.

It is most productive in the translation of legal texts. Thus, in the legal field, functional equivalence is fulfilled if the translator can understand the legal concept in the source language and the corresponding concept in the target language, as well as the legal consequences these concepts have in both legal cultures. The success of functional equivalence is illustrated by the degree of correspondence of referents in the two cultures, since there are sometimes considerable differences. This obviously requires serious documentation, conceptual analysis and research or thematic and terminological competence of the translator.

Functional equivalence works out in the translation of document titles, institution names etc. (e.g. NATO). The translation procedure used to fulfil functional equivalence is adaptation, which refers to the replacement of a socio-cultural reality of the source language with one specific to the socio-culture of the target language (a cultural adaptation of the source text in terms of content and form to the intention of the TL community). This is an effective way of dealing with culture – or system – bound terms, the translator resorts to rewriting the SLT according to the characteristics of the TLT. Adaptation, often used in legal translation, is based on cultural substitution, paraphrase and omission. In general, if the translator cannot find an expression which can substitute the legal term or expression of the SL, he should resort to paraphrase as a means of surpassing the barriers imposed by the differences in legal cultures. This procedure is based on explanations, additions and change in word order. (cf. Zakhir, 2008)

The functional method of translation, as a "problem-solution approach" (Brand, 2009: 31) establishes a functional equivalence relation between texts integrated in two different legal cultures, and tends to disregard differences in doctrinal construction and legal concept and focus on the practical consequences that the translated text has. For instance, according to this method, the Romanian term *sinalagmatic*, the use of which is limited to contract law, would be translated as *bilateral* in English. Therefore, *contract sinalagmatic* would become *bilateral contract*, which

everybody understands in English, since the common law equivalent of the civil law term *sinalagmatic* is *bilateral.*

Linguistic/formal/textual/syntagmatic/structural equivalence concerns the literal expression of the content and form of the source text, and it uses the following procedures: word-by-word translation, loan translation, correspondence, transcodation. The notion of *correspondence* is commonly used in contrastive linguistics, being exploited in language learning, lexicology, terminology.

A method of translation which establishes such an equivalence relation would lead to the translation of *sinalagmatic* as *synallagmatic* which, although with little impact in English, since it is specific to legal systems originating in Roman law, would preserve the cultural and legal significance that this term bears within the context of the Romanian legal system, thus facilitating and encouraging the construction of intercultural discourse.

Paradigmatic equivalence is mainly achieved by transposition, which consists in the establishment of equivalence by changing the grammatical category (e.g. *human rights* translated into Romanian as "drepturile omului").

Pragmatic equivalence, close to dynamic equivalence, arises out of the intention to create symmetrical relations in the sense that the effect on readers should be identical with that caused by the source text on source readers and the relations ST – source-readers and TT – target-readers should be symmetrical. It entails ambiguity resulting from the interpretation of the legal text by lawyers.

In the case of referential equivalence, the translator approaches in the target text the same reality as that in the source text. He avoids a possibly analogous reality.

Semantic equivalence characterizes the relation between the source text and the target text when they have the same semantic or semiotic content. A word from the ST is assigned the same semantic field as is its semantic equivalent or lexical correspondent from the TT.

Stylistic equivalence describes a functional relation between the stylistic elements of the ST and those of the TT for the purpose of obtaining an expressive or emotional identity between the ST and the TT, without any alterations of meaning. In legal translation, the style of the TT should meet the requirements of the norms of the TL culture and law system.

2.2. Errors occurring in search of the right equivalent

Finding the right equivalent in legal translation is a difficult and creative task requiring a lot of research. Many English legal terms of art (with a special legal meaning) have no equivalent in civil law systems (e.g.

deed, trust, consideration, registered office, equity). There are also terms that can only be translated as broad approximations despite their Norman French or Latin origin, and there are terms developed by courts, not in academic environments. (Triebel, 2009: 150)

Even where a legal term has an equivalent in another legal system, the borders of their meanings do not overlap. Common law terms with a counterpart in civil law terminology are 'dangerous', because they often have a different reach, ambit and content in detail. Thus the recurrent question arising is whether a common law term should be understood as under common law or it should be given the meaning under civil law. (Triebel, 2009: 150)

In general, where there is no equivalent in the TL, the solutions that translators make use of are: importing terms, creating new terms or using semantic expansion. (Künnecke, 2013: 256)

In this framework, the paper also provides a practical analysis of some errors that law students make while attempting to use translation as a tool meant to build a bridge between two legal cultures.

A challenging term for Romanian students is the English legal term *consideration,* which they translate as *consideraţie*. The legal meaning of *consideration* is related to contracts, whereas in Romanian, *consideraţie* refers to the act of considering something carefully, when planning or deciding something. In legal English, *consideration* is "the act, forbearance, or promise by one party to a contract that constitutes the price for which he buys the promise of the other" (*Oxford Dictionary of Law*, 1997: 97). There is no valid contract (other than one made by deed) without consideration, such an agreement is not valid. Therefore, it should be translated as *preţ* (*price*), which is a near equivalent.

It is interesting, yet not unexpected, that what characterizes certain Romanian legal terms can be said of their counterparts in most Romance languages, e.g. the Spanish technical words *responsable, Administración* and *legal* (Varó, 2009: 186). There are several English equivalents that dictionaries provide for the Spanish word *responsable*: *answerable*, *accountable, liable* and *responsible*, and for the Romanian term *responsabil*: *liable, responsible, accountable, in charge (with), of sound mind*, etc. Despite common semantic features and apparent isomorphism, these terms carry specific connotations actualized in specific contexts. Romanian law students tend to translate *responsabil* as *responsible* or *in charge (with)*, almost never as *liable*. If *responsible* involves the moral sense first of all and is more general in meaning, *liable* is the legal term occurring in particular legal contexts and implying the failure to perform an obligation, a duty, even denoting a wrongful act. Therefore, a person who is found liable

is responsible before the law and before the people, i.e. both legally and morally. A common mistake is the translation of the syntagm *răspundere penală* as *penal/criminal responsibility* instead of *criminal liability*, or the English *vicarious liability*, which is really puzzling and which should be translated as *răspundere indirectă*.

Speaking of contracts, the English expression *to avoid a contract* is misleading. It means *to terminate a contract*, but the first rendering is *a evita un contract* (a literal translation containing the common meaning of the verb *to avoid*, i.e. *to keep away from smb/sth; to try not to do sth*).

The term *deed* as a legal term is also troublesome. Students know its common meaning, that of act, action. But it actually denotes a "written document that must make it clear on its face that it is intended to be a deed and validly executed as a deed" (*Oxford Dictionary of Law*, 1997: 131). Consequently, it should be translated as *act autentic, act notarial*.

Just like in Spanish, where the expression *Estado de Derecho* can be rendered in two ways: *the rule of law* and *comply(ing) with the rule of law* (in such a context as *a country that complies with the rule of law*), in Romanian as well, the phrase *stat de drept* has most often been translated as *rule of law* or, through expansion, *state governed by the rule of law* (e.g. the Romanian Constitution, Title I, art. 1(3): "Romania is a democratic and social state, governed by the rule of law"). In search of the right equivalent, students provide a literal translation, namely *state of law*, even *state of right*. One should also note that *rule of law* is sometimes translated in Romanian as *supremaţia legii* (i.e. *the supremacy of the law*).

Prepositions represent another source of errors in legal texts, they often acquire metaphorical meanings (such as the preposition *on* which encapsulates the idea of burden, weight (of justice), e.g. *to inflict a punishment **on** somebody, to impose something **on** somebody*).

The Romanian term *raport* in the phrases *raporturi juridice* or *raportul donaţiei,* causes confusion and proves again the importance of solid documentation before translating legal terms of art (this is valid especially in the case of the expression *raportul donaţiei*). These phrases should be translated as *legal relations, not legal reports, and restitution of donation,* respectively, not *report of donation*.

Some students do not understand the difference between *juridic* and *judiciar*, sometimes translating *sistem juridic* as *judicial system* instead of *legal system* or the other way round, *organ judiciar* as *juridical body* instead of *judicial body*. They actually are not familiar with the legal meanings of these terms (in either Romanian or English).

The English equivalent that students find for the Romanian term *competenţă* in *competenţă materială* or *competenţă teritorială* is *competence*,