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MAIN ASPECTS OF INTERCULTURAL BUSINESS AND LEGAL COMMUNICATION

У статті розглядаються основні аспекти міжкультурної ділової комунікації в контексті створення сприятливих умов для її успішного здійснення. Аналізуються розбіжності між континентальною системою права та системою загального права. Наводяться лінгвістичні та культурні імплікації використання англійської мови як наднаціональної мови.

Ключові слова: правова комунікація, лінгва франка, переклад, теорія Скопос, континентальне право, загальне право.

В статье рассматриваются основные аспекты межкультурной деловой коммуникации в контексте создания благоприятных условий для ее успешного осуществления. Анализируются расхождения между континентальной правовой системой и системой общего права. Представлены лингвистические и культурные импликации использования английского языка как наднационального языка.

Ключевые слова: правовая коммуникация, лингва франка, перевод, теория Скопос, континентальное право, общее право.

The article deals with the main aspects of intercultural business communication in the context of favourable conditions. Differences between continental and common law legal systems are analysed. Certain linguistic and cultural implications of the use of English as a international language are presented.

Key words: legal communication, lingua franca, translation, Skopos theory, continental law, common law.

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In the contemporary business world partners belonging to different nations, and hence different cultures, conduct business operations in either the language of one of the parties involved or in a third, neutral language, serving as *lingua franca*. Thus, language skills, as an essential component of the communicative competence, imply a certain extent of implicit or explicit translating and interpreting. The functionalist approaches in translation science, and most of all the Skopos theory by J. H. Vermeer, view translation as an intercultural transfer, which inevitably entails taking into account intercultural differences. As intercultural business communication is directly affected by the legal systems of the cultures involved, the communicating parties need to be acquainted with both the source and target legal systems. This is especially the case with English, as the Anglo-American legal system, based essentially on common law, differs substantially from continental law, to which most of the European countries belong. English as the world's most commonly used *lingua franca* will have to be adapted to its new function by adopting terms and concepts from other cultures and, within the EU, take into consideration the existing discrepancies between the continental and the Anglo-American legal systems.

Within intercultural business communication translating is viewed as a communicative activity occurring between a source and a target language, culture by using verbal (texts) and non-verbal signs. The purpose of this activity is to enable communication across culture and language barriers, and due to this fact it has to take into account cultural differences.

Translation science – especially the so-called functionalist approaches – places special emphasis on purpose, i. e. function and cultural embeddedness as essential features of the source/target texts, and thus seems to provide an adequate theoretical basis for translation in a business environment. By taking up concepts from communication and action theory the functionalist approaches in translation science define translation as a purpose-driven communicative action [1: 7ss] involving not only the traditional functions of a sender and a receiver, but also a series of other roles and players: *the initiator*: the company or individual who needs the translation; *the commissioner*: the individual who contacts the translator; *the source-text producer*: the individual who composes the source-text; *the target text producer*: the translator; *the target text user*: the person(s) by whom the target-text is used; *the target text receiver(s)*: the final recipient(s) of the target-text.

In certain situations some of these roles may overlap, e. g. the source-text producer may at the same time be the initiator and/or commissioner or even the translator.

Translation as a communicative activity pursues a certain purpose or goal, which the German scholar H. Vermeer terms Skopos (Greek for 'aim' or 'purpose'). This purpose determines the translation method and strategies to be used in order to produce a functionally adequate translation. Moreover, translation takes place in concrete definable situations, limited in time and space, and involve members of different cultures. These situations can be said to be embedded in given cultures, which, in turn, stipulate the situations [2]. Within a cultural community the situations of a sender and a receiver generally overlap enough for communication to take place, whereas in cases when they belong to different cultures, an intermediary, i.e. a translator, might be needed to enable communication. In some situations the sender will act as a translator as well. So translation is an intercultural transfer, within which communicative verbal and non-verbal signs are transferred from one language into another. In order to enable this kind of transfer, especially with relation to its non-verbal aspects, a good knowledge of the source and

target culture is needed, and the translator, i. e. participant in intercultural communication, has to act as an intercultural expert. According to Christiane Nord [3: 34] translating means comparing cultures, interpreting source-culture phenomena in the light of one's own knowledge of that culture, from either inside or outside, depending on whether one translates from or into one's native language and culture. Language is an essential means of communication, but it has to be used in the context of corresponding culture.

Besides a good command of the language, participants in intercultural business communication need to have a thorough knowledge of other aspects of the cultures involved, which have to be taken into consideration in order to prevent communication problems or even communication breakdowns.

Some of these aspects can be deduced from the following definition of culture by Vermeer [4]: culture is 'the entire setting of norms and conventions an individual as a member of his society must know in order to be "like everybody" – or to be able to be different from everybody.'

In international business communication, norms affecting communicative situations certainly include the legal system. In order to avoid communication problems, participants require a good knowledge of the legal systems of both the source and the target culture.

The legal systems of the parties involved directly affect communicative situations through the legal provisions and regulations applying to concrete business transactions and business relations in general. Accordingly, participants have to agree which legal system will be adopted as the communication framework. Within this communication framework legal concepts have to be translated (culturally transferred) from one language/culture/legal system into another.

Gérard-René de Groot (Professor of Comparative and Private International Law at Maastricht University, the Netherlands) points out that the crucial issue to be taken into consideration when translating legal concepts is the fact that 'the language of the law is very much a system-bound language, i.e. a language related to a specific legal system. Translators of legal terminology are obliged therefore to practice comparative law.' [5: 21ss]. Legal systems differ from one state to another, and so far no standardised international legal terminology has come into existence. Every state (sometimes even regions within a state) has developed independent legal terminologies, whereas a multilingual international legal terminology is being only gradually created within supranational legal systems, such as the law of the European Union, and is being introduced in single areas of the European law as they undergo harmonisation.

When translating from one legal system into another the differences existing between them have to be considered. Sandrini points out that in essence the translatability of legal texts depends directly on the relatedness of the legal systems involved in the translation [6: 17]. Legal systems exist independently from the legal languages they use and are created through social and political circumstances. There is no direct correlation between legal language and legal systems. One legal system may use different legal languages (Canada, Switzerland, Italy, Austria, Belgium, etc.), while one language area may be divided into different legal systems, as is the case in the United Kingdom.

If the legal systems are analysed as to their sources, their historical background, the extent of codification and specific legal institutes applied within them, some legal families show a greater relatedness than others. The legal systems pertaining to the so-called civil (i. e. continental) law, which includes the Romanic, the German and the Nordic legal systems, are relatively related. They have common foundations in the Roman legal tradition and are character-

ised by codification – the most important rules and regulations are set out in written sources of law. In the case of the continental legal systems, a considerable closeness with respect to the legal concepts applied can be expected. On the other hand, the legal systems of other countries and cultures, derived from different traditions, are difficult to compare – such as the Far-Eastern, the Islamic, the Hindu, and finally the so-called Anglo-American legal family, based on common law, equity and statute law. Within the Anglo-American legal family, common law is the legal system in force in England, Wales and with some differences in the USA, whereas Scotland and Ireland have substantially different legal systems related to the continental law, similarly to the legal system of Louisiana, which has its foundations in the French law.

The distinctions mentioned above certainly affect the translatability of terms from/into different legal languages, as there is no complete equivalence between the legal concepts. According to de Groot, the first stage in translating legal concepts involves studying the meaning of the source-language legal term to be translated. Then, after having compared the legal systems involved, a term with the same content must be sought in the target-language legal system, i. e. equivalents for the source-language legal terms have to be found in the target legal language. If no acceptable equivalents can be found due to non-relatedness of the legal systems, one of the following subsidiary solutions can be applied: using the source-language term in its original or transcribed version, using a paraphrase or creating a neologism, i. e. using a term in the target-language that does not form part of the existing target-language terminology, if necessary with an explanatory footnote [5: 25].

The level of equivalence of the terms depends on the extent of relatedness of the legal systems (and not of the languages) involved. The relatedness of languages may, in some cases, even cause the creation of so-called false friends, such as the German *Direktor* versus the English *director*. When deciding on the solution to be reached, the context of the translation, its purpose (*skopos*) and the character of the text play an important role. A wide range of *skopos* is possible – from a mere information on the source text for a receiver who does not speak the target language to a translation, which will have the status of an authentic text parallel to the source text (as is the case with international contracts made in two or even more equivalent language versions).

In the case of legal translation explicit or implicit information about the intended target text should indicate, among others, the legal system to be observed as communication framework.

In comparative law, the dichotomy civil (i. e. continental) versus common law (case-law), which is not based on written, codified legal sources, is widely discussed.

The fundamental sources of the Anglo-American legal system are common law, equity and statute law. Common law is often described as judgemade law, which is not based on written codes but on precedents, i. e. decisions of judges taken in previous legal cases. Equity, on the other hand, is a term referring to a system of rules, which are applied in addition to common law and have no equivalent in the continental legal system. Finally, the term statute law applies to written law (e. g. the Acts of Parliament), those legal sources, which exist in written form in the Anglo-American legal system.

The discrepancies between common and continental law are reflected in the frequent lack of equivalence between the terms and concepts used in the two legal systems.

The legal representative authorized to act in court, for example, who is called *Rechtsanwalt* in German, *avvocato* in Italian, *адвокат* in Ukrainian, and has a basic role in every continental

legal system, has no direct equivalent in the Anglo-Saxon system, as its corresponding translation may either be barrister (authorized to appear in a superior court) or solicitor (who may only appear in an inferior court) in the United Kingdom, or attorney-at-law in the USA.

Within the scope of international business and legal communication the lack of equivalence in the field of company law is especially relevant. The Anglo-American company law does not distinguish between the categories of *Kapitalgesellschaften* / *società di capitali* / *корпорація* and *Personengesellschaften* / *società di persone* / *партнерство*, but merely between incorporated companies, which have the status of legal persons, and unincorporated ones, which have no legal personality.

Other cases of non-equivalence derive from the fact that two opposite governance systems are applied in public limited companies, the Anglo-Saxon one-tier and the continental European two-tier systems. Namely, the one-tier system has only one governing body, the board of directors, whereas in the two-tier system there are two governing bodies, the management board (*Vorstand* / *consiglio d'amministrazione* / *правління*) and the supervisory board (*Aufsichtsrat* / *collegio sindacale* / *наглядова рада*). The terms *management board* and *supervisory board* do not exist in the Anglo-American legal language and can be classified as neologisms according to de Groot. In practice, the executive (inside) directors have a function similar to the role of the members of the management board in the continental system and the non-executive directors - to that of the members of the supervisory board.

The problems deriving from the discrepancy between common law and continental law are also felt within the European Union where English is most often used as a *lingua franca* [7: 72]. Namely, when English is used to describe specific aspects and concepts of the European Law or of national legal systems belonging to the continental legal family within the EU, there are terms used with the meaning attributed to them within the Anglo-American legal system. Such terms, being influenced by national law, often cause problems in interpreting international or supranational legal texts [8: 283].

English will certainly remain the most widely used *lingua franca* in international business communication. English is also the most commonly taught second language in Europe [9]. According to Eurostat data in upper secondary education, for instance, some 94.6 % of all EU-27 students at ISCED level 3 were studying English as a foreign language in 2009 [10]. The member-states of the European Union use a wide variety of languages and presently there are 23 different official languages. Due to the language policy of the European Union, which promotes the importance of the languages of its member-states, other languages will certainly gain ground, besides English, in the future. On the other hand, although the EU attempts to provide equal treatment for all member-state languages, this generally requires large amounts of time and money and therefore the need for a common language that could be used by every member to communicate with everyone else is strongly felt. The ELFE (English as a *lingua franca* for Europe) project will therefore have to be developed more intensely in order to establish feasible standards applying to this prospective common European language. In order to function as a proper *lingua franca*, ELFE will have to include so-called Euro-English terms, i. e. English translations of European concepts that are not native to English-speaking countries. Due to the United Kingdom's involvement in the European Union these terms will have to be adopted by and included into the vocabulary of the native-speakers of English as well. Accordingly, English as a *lingua franca* and its terms will certainly have an impact on the native-speakers' varieties of English worldwide, in

that not only will new words enter their vocabulary, but as a consequence, new concepts will be transferred into the corresponding cultures. An example of such cultural and linguistic interference was provided by the Prime Minister of the United Kingdom, Tony Blair, as in his speech delivered at the European Parliament on June, 23, 2005, he used the French term *delocalisation* (companies moving operations abroad), a word that did not previously exist in English [11]. With the ongoing harmonization of the legal systems of the EU member states, a sort of supranational language, legal Euro-English, is being created, which includes terms, which are neologisms with respect to the Anglo-American legal language.

This language, however, lacks a wider cultural dimension and is only linked to the legal and political system of the EU. It is a somehow impoverished, deculturised language, which has little in common with the languages of the British, American and other English speaking cultural communities. It is therefore suitable to be used as a language of communication, but not as a language for identification. On the other hand, while becoming acquainted with the concepts and terms of this *lingua franca*, native speakers of English will be able to effectively communicate with other citizens of the EU, expand and enrich their vocabulary and thus adopt new cultural concepts.

It is therefore to be expected that English as a common language used for communication within the EU will contribute to creating a common cultural basis, or elements of a common European culture, which will be shared by all its speakers.

In the field of business and legal communication, where a particular language (e.g. English) is used as a language for specific purposes, the parties interacting in an international environment should be aware of the fact that, if linked consistently to the Anglo-American legal system, the English language offers no suitable equivalent for many terms and notions existing in legal systems belonging to the so-called continental legal family and that often, when referring to concepts from continental law, neologisms (such as many Euro-English terms) should be used. The discrepancy between common and continental law requires the parties involved to be acquainted with and consistently observe the legal systems underlying the business relation. The principle of the socio-cultural embeddedness of a language will thus have to be applied very carefully, while taking into account the potential problems deriving from the use of English as a *lingua franca*.

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РОЛЬ СТЕРЕОТИПОВ В МЕЖКУЛЬТУРНОЙ КОММУНИКАЦИИ

Стаття присвячена розгляду місця і ролі стереотипів як конвенціональних способів поведінки в процесі міжкультурної комунікації. Здійснюється аналіз вербальної поведінки крізь призму мовних і комунікативних стереотипів як моделей культури.

Ключові слова: культура, стереотип, мовна поведінка, міжкультурна комунікація.

Статья посвящена рассмотрению места и роли стереотипов как конвенциональных способов поведения в процессе межкультурной коммуникации. Проводится анализ вербального поведения сквозь призму языковых и коммуникативных стереотипов как моделей культуры.

Ключевые слова: культура, стереотип, речевое поведение, межкультурная коммуникация.

The article deals with the role and place of stereotypes as conventional constituents of behavior in the process of intercultural communication. The speech behavior is analyzed in terms of language and communicative stereotypes viewed as models of culture.

Key words: culture, stereotype, speech behavior, intercultural communication.

Постоянно усиливающиеся и расширяющиеся процессы глобализации и интеграции в различных областях человеческой жизни, увеличение мобильности населения, снятие