
ПРОБЛЕМИ ВИЩОЇ ШКОЛИ

УДК 811.111

S.V. RADETSKA

Kherson National Technical University

TRANSLATION OF LEGAL TERMINOLOGY AS A PROBLEM IN THE STUDYING PROCESS

In this article the most typical lexical features of legal documents were investigated and analyzed. The article defined the main problems of translation of various legal documents and analyzed the general regularities of translation activities in the legal sphere. The analysis substantiates the view that any translator working with a legal text has to consider usage requirements, the language habits of native speakers of the target language, without breaking the habitual perception of a legal document.

Keywords: legal document, translation of legal text, legal language, communicative equivalence, adequacy.

С. В. РАДЕЦЬКА

Херсонський національний технічний університет

ПЕРЕКЛАД ЮРИДИЧНОЇ ТЕРМІНОЛОГІЇ ЯК ПРОБЛЕМА У НАВЧАЛЬНОМУ ПРОЦЕСІ

У статті були розглянуті та проаналізовані найбільш типові лексичні риси юридичних документів. У статті визначені головні проблеми перекладу юридичних документів різних видів, а також проаналізовані загальні закономірності щодо перекладацької діяльності в сфері юриспруденції. Даний аналіз підтверджує точку зору, що будь-який перекладач, який працює з юридичним документом, повинен брати до уваги вимоги слововживання і мовні навички носіїв цільової мови, не порушуючи звичного сприйняття юридичного документа.

Ключові слова: юридичний документ, переклад юридичного тексту, юридична мова, комунікативна еквівалентність, адекватність.

С. В. РАДЕЦКАЯ

Херсонский национальный технический университет

ПЕРЕВОД ЮРИДИЧЕСКОЙ ТЕРМИНОЛОГИИ КАК ПРОБЛЕМА В УЧЕБНОМ ПРОЦЕССЕ

В статье были рассмотрены и проанализированы наиболее типичные лексические черты юридических документов. В статье определены главные проблемы перевода юридических документов различных видов, а также проанализированы общие закономерности относительно переводческой деятельности в сфере юриспруденции. Данный анализ подтверждает точку зрения, что любой переводчик, работающий с юридическим документом, должен принимать во внимание требования словоупотребления и языковые навыки носителей целевого языка, не нарушая привычного восприятия юридического документа.

Ключевые слова: юридический документ, перевод юридического текста, юридический язык, коммуникативная эквивалентность, адекватность.

Relevance of the study and formulation of the problem

In recent decades interest of linguists in problems of the terminological systems of particular areas has sharply increased. It is explained by growing flow of the scientific and technical information, integration processes, strengthening of the process of term formation. Scientific and technical texts reveal a number of lexical and grammatical special aspects. The most typical lexical features of the scientific and technical literature (STL) are the richness of the text terms and terminological phrases, and also the existence of lexical constructions, acronyms, abbreviations. This is especially true for legal documents, since a high-quality text content of any document is an imperative for avoiding disputes in the future. Therefore, the main task of scientific, technical and legal translation is the accurate delivery to the reader of the information reported.

Analysis of the recent researches and publications

Research problems and peculiarities of legal terminological system and translation of legal texts are tackled by Anisimova J.A., Apt L.F., Artemyuk N.D., Hubayeva T.V., Lebedev N.E., Miloslavskaya D.R., Pradid U.F., Ushakov A.L., Khyzhnyak S.P., and many other researchers.

The problem of the translation of legal documents of various types is currently very topical.

The purpose and objectives of the article

The object of this article is the analysis of the general regularities of translation activities in the legal sphere.

Substantiated exposition of the basic material and received results

Different countries have different legal systems. For example, English serves legal systems of the USA, Great Britain, and German does the same in Germany, Switzerland and Austria. Linguistic equivalence of legal concepts is often unattainable. Today "A Charter of Human Rights" is unified for Europeans, as well as the documents, provisions and decisions of this international organization for the member states of the European community. As a result of it there is a row of approximate equivalents in their languages.

Legal language is a kind of official language. This rule is very important, it cannot be violated. The issues of legal language are pursued by the subdiscipline of science called "legal linguistics". The legal linguistics is the set of all the methods and results of the studies concerning issues of relation between language and the rules of law and meeting the requirements of the modern linguistics. The modern understanding of legal linguistics has been considerably extended as the requirements of the modern linguistics, which passed a long way of development, have changed. In this regard, the ratio between law and linguistics concerning language issues in the legal field changed, and the role of linguistic research in this area significantly increased.

The question, whether legal language is specific and internally uniform, makes one of the traditional areas of legal linguistics research. The relations of language and the law are object of legal linguistics and linguistic law: the relation of language to the law is studied by legal linguistics, and this of the law to language is dealt by linguistic law. Thus, the legal aspect of language is the subject of legal linguistics, language aspects of the law make the subject of linguistic law [3, p.11]. Legal aspects of language are natural language manifestations, which contain the elements of law "in themselves", it is possible to see certain potentialities of lawyer linguistics in each of them. Speaking about manifestations of lawyer linguistics in a natural language, we first of all mean language norms, spontaneous as well as, in particular, codified. In a sense their approximation to the legal sphere means the need for a rather high level of the canonization of the natural "rights" of language and native speakers. In the anthropolinguistic (social) sense it is necessary to mention here the rights of native speakers for the convenient (non-discriminatory) using of language. But the understanding of the language as the object of legal protection also has an indisputable right for existence. Within the scope of legal linguistics fall those regularities of a natural language which are the cornerstones of the law text, in many aspects they define both its creation and application in legal practice. The first aspect encompasses language, native speakers, the subjects and objects of the law, in the second aspect, the language is represented as the means, on the one hand, of the creation and understanding of the law (legislative and interpretative functions of a natural language in the legal sphere) and, on the other hand, as the means of law application, where the language is a subject (or means) of an expert examination (linguo-expert function of the practical knowledge of language and the theoretical knowledge of the language, that requires addressing special linguistic competence). Thus, we see two fundamental and interdependent problems which are cornerstones of all the legal linguistics studies. Due to that, the language of the law is not only a semiotic system, but also an integral part of the legal system with its traditions, logic, functions, the features of this language naturally follow from the features of the law itself among which the following are distinguished in the first place:

1. A high level of legal concepts abstraction.

Unlike specialized fields, such as engineering or science, where terms define specific subjects and can be depicted at least graphically, that allows to figure out the content of a concept rather easily and to associate it with the linguistic meaning, the language of the law expresses abstract concepts and links between them. The second feature is connected with it:

2. A close connection of language and law.

Legal concepts and norms can be expressed only by means of words. The language is the only "working tool" of a lawyer, the tool which should be well adjusted to operate "a working material", that is the system of legal relations to provide its functioning [5, p. 8].

Thus, the language of the law should be, on the one hand, uniform to provide the internal unity of legal system. On the other hand, there is a need of its application for different purposes, that means in different spheres of legal activities [5, p. 21].

The thoughts, as to what extent the language of the law can be considered uniform, differ. The fact that lawyers, who are the main speakers of this language, get an equal education based on a uniform language, testifies in favor of this assumption. Besides, the language of legal practice relies on a uniform legal sublanguage [4, p.63]. As an argument against this statement the different criteria by which the language of the law can be structured can serve. There are disagreements between legal institutes, at which a communication medium is the language of the law, and the different levels of knowledge and competence of the participants of this communication (however it should be remembered about that fact that the boundary between the scope of legal knowledge of a lawyer and a non-lawyer can be dim), and a plenty of communication options (for example, oral or written communication) and other aspects.

A lot of research papers in recent years are based on the following classification of the "layers" of legal language, i.e. the internal structure:

- 1) The language laws: general and abstract legal rules are designed both for law experts and non-lawyers;
- 2) The language of judgments;
- 3) The language of legal science and expertise: comments and discussion of special issues by experts and for experts;
- 4) The institutional language of written communication: forms, instructions, challenges, etc.;
- 5) The administrative slang: the informal discussion of special and semispecial issues by experts [3, p. 11].

These "language layers" differ one in a degree of need for the exact, detailed and concise expression of concepts in language. Despite all the features of the substyles connected with the specifics of the domain, the legal language as a unit possesses a number of major and valuable qualities. First of all, the language of laws as a language style is characterized by its own style norms. Among all its features and qualities the precision, the clarity in the use of words and terms in a distinct way that eliminates possible uncertainty or ambiguity are the most important. This feature is determined both by the nature of the language and specifics of the law as the regulator of the public relations. In doing so the legal language is very different, for example, from the language of literary works, where the "blurring" of words and definitions is one of the acceptable methods of artistic expression. Such quality of the language of laws as the accessibility is equally important. The specified qualities define also other features of acts and legislative style, in particular, its formalization. Language of the law abstracts from specific language features, which causes its stereotype and commonality, its use of steady language constructions with the accurately fixed rules of interpretation.

The stylistic characteristics of the norms of legislative language find expression in its structural levels. The greatest specificity distinguishes the legislation vocabulary which must be terminological and unified. One of the important qualities of legal language is its emotional neutrality. Even the absolutely extraordinary from the moral point of view events and facts should be described by a lawyer by means of neutral expressions, without putting emotional pressure and without revealing the legal assessment. Thereby legal language sharply differs, for example, from the language of journalism, for which, on the contrary, the "emotional loading" of the vocabulary articulating the author's attitude, is characteristic. Words are used mainly in their attributive-standard meaning. So characteristic for the word stock of a national language and available in art polysemy cannot exist in legislative language [6, p. 25]. The morphological structure of the legislative language is characterized by the indicative verbal coloring, which does not address a person directly, though its content embodies the same imperative modality [4, p. 86].

The syntax of the language of the law is to a great extent determined by the logic of legislative thinking. The aspiration of the legislator to state concrete vital processes in a generalized form demands developed syntactic structures. He/she is obliged not only to state the facts, but also to give them evaluation by the consistent expression of the complex system of legal concepts with the clear and various connections between them. It leads to the fact that in legislative syntax complex sentences prevail over compound sentences, composite sentences over simple sentences, full sentences prevail over incomplete sentences. Hence the intentional rationalism in making proposals, their evident standardization, and the frequent repetition of the same words and turns of speech. This quality is due to a legal norm by its nature is an order. It is clear that an order if it is expressed in inaccurate or ambiguous language, will not be perceived and followed as the legislator wants it.

The close connection between the logic of the law and the syntax is due to they belong to the circle of normative systems, besides that the law is a normative system, which is, as a rule, reflected in the so-called deontic sentences with the words "due", "must" and their synonyms. A characteristic feature of legislative syntax consists also in the availability of normative sentences and indicative sentences in future tense. Most legal norms have a logical verbal form, which can be reduced to a simple implication, like the connection of two sentences where the first member is an expression, and the second, as a rule, is a normative sentence [2, p. 23].

Looking into a historical retrospective, it should be noted that the centuries-old practice of creation, interpretation and application of legal norms led to the formation of legal language, the special language style. Professional lawyers understand that legal language is not only the instrument of their daily activity, but also a great cultural value, which needs a laborious treatment and protection.

The range of the themes of legal linguistics research that deserve a detailed examination is wide enough. So, speaking about features of the language of the law, most of the researchers consider an issue of correlation between the language of the law and the natural language [5, p. 115]. One of the most interesting themes is legal semantics, which absorbed on the way of its development the modern ideas of philosophy, and then the new directions and methods of linguistics. The large interest is aroused also by the issues of communication in trial, communication of lawyers and laymen, and the issues of judicial linguistics and didactics in the legal sphere. However, it is not possible to present all these themes in the context of this work. Therefore we will elaborate only one issue, namely specifics of the use and translation of legal terminology in the FEA (foreign-economic activity) agreements (contracts) of agriculture sphere.

The relevance of the problems of the contrast analysis of languages in the legal sphere, and also of the methodology and technique of legal texts translation is determined by considerable changes in the political and economic international relations sphere in the last decades, first of all in member states of the EU. For this reason the theme draws increasing attention of researchers. To present the concrete methods of the translation problems solution, first of all it is necessary to determine the range of issues discussed in this regard, namely: what are the difficulties and which has to be the specifics of the translation of texts, belonging to different legal branches, who and for what purpose translates these texts, what quality is necessary for the translation [1, p. 87].

The difficulties of translation arise more often, when the text belongs to the sphere in which national and regional features of legal system are expressed more brightly (for example, procedural law, family law, administrative division). On the contrary, texts from the legal branches, based on international exchange and commonwealth, are easier to translate (for example, commercial law, bank law, the sphere of consumers rights protection). The same can be said about some branches of law, developing and forming equally in the states, which are approximately on the same level of social-economic development (for example, environment law).

As for the purpose, necessary for translating the texts, in comparative jurisprudence it is necessary for information purposes mostly, in other spheres translations directly influence the implementation of justice and the enforcement of law and order. So, on the interstate level translations are needed generally for the conclusion of international agreements. In the translation of the international contracts the extent of adequate content transfer has to be high, because of the possibility of essential complications when conducting the international activity.

If language and legal systems are related, the translation is easier to do, however even the language relationship does not facilitate the task of the translator if legal systems differ from each other rather strongly. For the preservation of legal sense terms should always be translated from the source language and the translation from an already translated text should be avoided (such cases often occur in translations from the "general" language, for example, English).

As the translation of legal texts demands profound special knowledge, they are often translated by lawyers rather than professional translators. This practice was approved in the EU administration where lawyers check the texts created by the translator and in the EU Court only lawyers work as translators [1, p. 14].

Translation quality consists in its accuracy, availability and model style. However, all these features often exclude one another. The value of availability, accuracy and translation style characteristics depend on the type of a legal text, its function and addressee. So, for example, when translating the legal discussions intended to make a wide range of readers familiar with certain legal issues, availability and style can be more important, than information transfer accuracy. And in the translation of contracts which come in force in different countries and serve as reference points for actions between persons concerned, accuracy is the major requirement.

In international contracts the texts in all official languages, unlike the unofficial ones, have identical validity. In the countries with several state languages law texts, existing in accordance with the constitution in all state languages, have equal validity. It concerns also the EU law. However the interpretation of laws and other legal acts of the EU demands the obligatory comparison of texts in various official languages. Thus, the existence of several official languages is connected with the increase of requirements to the experts in the translation sphere.

The consideration of translation factors for any text under the conditions of cross-cultural communication is based on taking into account the main features of language culture, the type and mechanism of social coding in native and foreign languages. Such approach allows to reveal a new point of view on the solution of the practical tasks connected with the problems of the legal text translation. The predominating role, in this regard, is played not only by the social competence in legal rules, legal language, judicial-procedural systems, but also by the personal qualities of the translator as the translation of any text assumes the interaction of sovereign national languages, and, respectively, cultural concepts. To achieve an adequate translation it is necessary to be familiar with images specifics and the related activity programs of all those culture types, between which communication is conducted.

According to the Czech linguists V. Matezius and V. Prokhazka, the translation is not only a language replacement, but also a functional replacement of culture elements. Such replacement cannot be complete due to the requirement, that the translation is read as the source, is hardly feasible, as it means a full adaptation of the text to the norms of other culture [7, p. 183].

The concept of cultures interaction implies the existence of general and private elements, and discrepancies / coincidences, which allow to distinguish one linguocultural community from another. Any translator working with a legal text has to consider usage requirements, the language habits of native speakers of the target language, without breaking the habitual perception of a legal document. The disagreements of linguo-ethnic character between foreign language native speakers and target language can have a cultural-historical as well as an actual-eventual nature.

Conclusions and prospects for further researches

The communication between multilingual interlocutors occurs at its fullest by the creation of the text in

target language, which is communicatively equivalent to the foreign-language source, that is by its translation. The concept of the communicative equivalence of texts is extremely important for understanding the mechanism of the translation of a foreign-language material. For the interlocutor two texts act as equal forms of existence of the same message, they are equivalent in their functional and structural-semantic identification. To achieve such adequacy in the translation of a legal text is possible only when the translator has legal literacy both in foreign and native languages.

References:

1. Артемюк Н. Д. Пособие по юридическому переводу / Н. Д. Артемюк. М.: Высшая школа, 1998. – 301 с.
2. Артикуца Н. Б. Нові підходи до мовної підготовки майбутніх юристів і викладачів права / Н. Б. Артикуца // Право України. – 1997. – №12. – С. 58–60.
3. Ивакина Н. И. Профессиональная речь юриста: Уч. пос. / Н. И. Ивакина – М.: Высшая школа, 1997. – 234с.
4. Кравченко С. Про стиль законодавства / С. Кравченко // Право України. – Киев, 1998. – № 3. – С. 62-63; 92.
5. Лебедева Н. Е. О метаязыковом сознании юристов и предмете юрислингвистики (к постановке проблемы) / Н. Е. Лебедева // Юрислингвистика – 2: русский язык в его естественном и юридическом бытии: Межвуз. сб. науч. тр. / Под ред. Н. Д. Голева. – Барнаул: АГУ, 2000. – С. 89-20.
6. Рыженкова Т. В. Специфика процесса транслерминологизации в отраслевой терминосистеме (на материале русской и английской терминологии правоведения): Автореф. дис. / Т. В. Рыженкова.– М., 2001. – 21с.
7. Шугрина Е. С. Техника юридического письма / Е. С. Шугрина. – М., 2000. – 86с.