Interference in legal translation: addressing challenges

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Abstract
The relevance of this research is determined by the worldwide multi-media communication, which puts the issues of clear and reliable translation at the forefront of any activities. Translation in the legal sphere occupies a special place due to possible legal consequences in case of translation default. The research is focused on the issues of interference in legal translation as part of the language and translation studies. The critical methods applied are contrastive and contextual analysis allowing to identify language interference on different levels (cognitive/semantic, grammatical/structural, phraseological, syntactic and pragmatical). Among the channels of interference are also an incorrect understanding of legal context and culture of the source language (SL) and target language (TL). Interference results in language misuse, an obscure and unintelligible translation that hampers the information flow in the target text (TT). The results of the research confirm that language interference is a broad phenomenon that occurs due to linguistic, temporal and conceptual rupture of the sent message, which is not recognized by the addressee. The research investigates the most common types of interference in translations into Russian, English, and French within the legal domain and suggests recommendations for their correction. The materials of the research contribute to linguistics and translation studies. They can also be used in training legal translators and may be interesting to lawyers involved in comparative law studies.
Key words: language interference, types of interference, translation strategies, legal context, legal culture

Introduction

The dynamics of modern life with various media communication, expanding economic, cultural, educational and other types of cooperation among peoples put the tasks of clear, accurate and reliable translation at the forefront of everyday activities. Translation in the legal sphere, supporting and governing other activities, are in the focus of specialists of different professions such as linguists, lawyers, editors, university instructors, etc. The last several decades witnessed great progress in translation studies that look at translation as a multi-faceted process embracing the knowledge of two languages, awareness of two legal systems and translation skills that take time to form. The communication theory adds to this formula a target reader with their specific culture and expectations and pragmatics of translation, i.e., intent.

A considerable literature has grown up around cross-cultural approach to translation. From this point of view, translation is not limited to language parallels but understood as a cross-cultural phenomenon, so-called third space or interlanguage. The third space is the transition territory between cultures where their encounter shapes up a hybrid of discourses. It arises when there is a message, a sender and a receiver of this message. The linguistic, temporal and conceptual rupture of the sent message determines its different understanding by the addressee. Thus it cannot be recognized as authentic. Translator's mission is to seek for common concepts to create sense clear to both parties. In the third space, the source language penetrates into the target language through channels it commonly uses with the help of syntactical, lexical, morphological, stylistic and other patterns.

Modern linguistics suggest a vast scope of instruments to scrutinize translation process and its outcome. It seems to get the answers to numerous questions; however,

one issue still needs clarification and close investigation. It refers to the decision-making process in search of the right strategy in rendering the text from one language (source text) to the text in the other language (target text). Looking for the parallel terminology, sentence structure and trying to be most loyal to the source text (ST) the legal translators often resort to literal rendering, which most often signals about certain difficulties in ensuring the text clear to the target audience. The reasons may rest in fundamental differences of legal systems and languages involved. Indeed, the legal systems are based on the socio-cultural development of the nation. Thus they are country-specific (Gémar, 1979: 48). A legal term or notion cannot be blindly transported from one legal system into another; it might not be recognized because it may reflect a cognate partially presented or even nonexistent in the other system.

Similarly, the languages belonging to different families vary in their categorization of the world and form unique systems that determine the mode of thinking and expressing ideas. English, being an analytical language, attaches greater role to a verb, whereas Russian, being a synthetic language, has a developed noun paradigm. French represents still another language family (Romance languages) and is characterized both by the developed verb and noun systems. Some scholars classify it as synthetic tending towards analytic. The differences spread to sentence structures, semantics, word forming, phrases and many other language aspects that build up numerous pitfalls in translation.

Literature Review

Language interference or transfer is relatively well studied (Baker & Sandahna, 2009; Gémar, 1979; Newmark, 1988; Newmark, 1991; Hopkinson, 2007; Venuti, 1997), although there is no comprehensive up to date definition so far. It is still not clear where exactly the boundary between language transfer and precise and accurate translation rests. According to Ureal Weinreich (1953: 1-7), the condition for linguistic interference is a language contact, that is, verbal (or written) communication between two language collectives or individuals; it is a deviation from the norm in L2 due to a violation of its rules (Rosenzwejg, 1972: 80).

The definition of language transfer that best suits the purposes of this research belongs to Franco Aixelá (2009). He argues that "language interference includes the importation, whether intentional or not, or literal or modified foreign words and phrases (lexical interference), forms (syntactic interference), specific cultural items (cultural interference, proper nouns included), or genre conventions (structural or pragmatic interference)" (Franko Aixelá, 2009: 75). This definition embraces most of the cases relevant for legal translation. Thus, under the focus of this research are the cases when the translation sounds unnatural, clumsy or weird, which is the major criterion of interferences in the translated text. "This is one of the potential signs signaling the occurrence of interference in translation. In many cases, an experienced reader of English literature would be able to 'see the original behind the lines of the translation' because of the trace that interference leaves in the TL" (Thorovský, 2009: 86).

In the context of great differences in legal and language systems, the accurate translation is not an easy task (Cornu, 2005: 7). That is where the translation strategies join in. Translation tools allow interpreting the content of the original text word for word thus distancing from the responsibility or, on the contrary, rendering the idea in the manner recognized by the reader belonging to another culture but at the expense of the fidelity to the source text. It is hard to say what is better. The translator has to make a conscious choice of the methodology paying attention not only to the syntax, style, terminology, and punctuation but also to conventions, culture, and aspirations of the target audience. In case they fail to establish equivalence between languages and legal systems, the result may cause certain legal consequences, such as a legal action.

Materials and Methods

This research aims to study most typical errors connected with language interference or transfer in the legal domain. The material for analysis represents the legal discourse in three languages (Russian, English, and French) and involves different legal systems. The task is challenging as the material in English is within common law system whereas Russian and French texts are based on a Romano-Germanic system with numerous country-specific divergences. To reach the stated aim, the following methodology has been employed: contrastive and comparative methods, the method of contextual analysis, the method of statistics processing, deductive methods of analysis and the method of a logical syllogism.

Contrastive analysis is applied to study systemic differences and similarities in a pair of languages; the greater the structural differences between the languages are, the more negative transfer can be expected (Lennon, 2008: 55-60). Contrastive analysis can also contribute to outline the semantic scope of legal terms/phrases to estimate the chosen strategy of translation. Statistical processing is the subordinate but very effective methodology that helps to gain a clear picture of the frequency of an error thus allowing focusing on quantitative characteristics of language misuse and forming relevant recommendations. Contextual analysis suggests studying the context of a certain term or phrase within the minimal stretch of text; it helps to avoid any misunderstanding of the source text leading to ambiguity and confusion in its interpretation. Comparative methods assist in a broad pair-of-languages analysis concerning sentence structure, semantics, grammar, word building, etc. They are most helpful regarding identifying language misuse at the semantic level. Logical syllogism as a form of deductive reasoning regulates the logical flow of the research and conclusion deducted from the analysis of the material under study.

Results and Discussion

Translation as a process is a complex activity, which is not limited only to transcoding, i.e., translating a string of words from one language into another (Šarčević, 2000: 5). Neither it is an interpretation of certain specific terminology in another language. It is a complicated process involving analysis of the source text from its content, identifying parallels between languages regarding syntax, wording, and pragmatics and choosing the best translation strategy regarding terminology, context, function and culture of the target readership. That is why the focus of recent studies has been shifted into the sphere of the third space or interlanguage. Interlanguage as a kind of system lies somewhere between SL and TL and reflects the processes of disrupture of previous ties within one language and culture and emergence of new ties between languages and cultures resulting in translation. Interference can be caused by the presence of interlanguage To apply this thesis to our study when dealing with two different languages, legal systems, and cultures. Interlanguage and interference have several things in common. First, in both phenomena, the target text is influenced by the source (Toury 1978: 223). Interference is present in most translations and interlanguage forms that “are likely to occur whenever and wherever one language is used in some contact with another” (Toury, 1978: 224). It is this interlanguage, which, when occurred in translation, is sometimes known as translationese (Hopkinson 2007: 13).

In 1978, Toury claimed that interference (interlanguage) was very likely a universal in translation and that analyzing errors in translation he recognized simplification because in many instances interference was preferred to pure TL forms. Language interference or language transfer manifests itself in errors, inaccuracy and unjustified loans in translations from the source text into the target text. Very often, it can be explained by strong translator’s dependence on the source text. Anyway, in many cases of faulty translation, we can also speak about language interference.

Interference can be traced on different language levels: cognitive, lexical (false friends, semantic lacunas, the different semantic scope of terms between languages, etc.), phraseological (collocations, fixed expressions, etc.), syntactic, and pragmatical. Analysis of context set up in the ST and cultures of both languages can also contribute to identifying a misuse.

One of the examples of cognitive interference is the Russian terms 'arbitrazhnyj sud' (court of economic disputes settlement) and 'Vysshij Arbitrazhnyj Sud' (Supreme court of economic disputes settlement) of the Russian Federation. Their names, inherited from the Soviet era, used to denote the state judicial and administrative body dealing with administering justice in the sphere of entrepreneurial and other economic activities of institutions, enterprises, and organizations of the public sector. It did not invite any terminological confusion, as there was no international commercial arbitration at that time; the country was not open for foreign investment and joint businesses of any kind. However, things changed in the 90s when the big country dissolved into some independent states that started to reform their economies towards the open market. This involved all the spheres of activities including legal.

Modern arbitration courts in Russia are state courts whose jurisdiction most often involves resolving disputes between legal entities; they have nothing to do with what western law defines as arbitration. According to Garner's dictionary of legal usage (2011), arbitration and mediation refer to methods of dispute resolution involving a neutral third party. To differentiate between arbitration/mediation and state court some terms have been introduced: 'state arbitration court,' 'arbitrage court' and 'arbitrazh court' to highlight the specifics of the Russian phenomenon. More confusion adds another Russian term 'treteiskij sud,' a privately formed body to resolve the dispute outside a state judicial body. This notion completely corresponds to the term 'arbitration tribunal.' Arbitration is often confusingly used to denote Russian state courts following the faux-friendly pattern. The semantic conflict of words in the name of the court can be explained by the contradiction between notions of arbitration and state court, i.e., arbitration and litigation Arbitration is not the same as judicial proceedings where one cannot choose the judge. Other differences are time and expenses economy, the non-public character of the award, the opportunity to choose the language of arbitration and the fact that arbitration awards are easier to enforce in other nations than court verdicts. In search of the good decision, prominent western specialists in civil and comparative laws who translated the Russian Civil Code into English - William E. Butler, Christopher Osakwe and Peter B. Maggs jointly with A.V. Zhiglov - suggested the following titles for the Russian state court dealing with dispute resolution in economic sphere: arbitration court, court of private arbitration and arbitration tribunal (or arbitral tribunal) (Tiersma, 2012). However, those variants were also deficient and confused for foreign businessmen understanding. Further discussion concerning correct parallel terminology between Russian reality and its perception by the English speaking society resulted in the collocation of 'commercial court' that seems to be accepted by the interested society of scholars, journalists and practicing lawyers (compare: The Supreme Commercial Court of the Russian Federation).

The example mentioned above is the case when historical heritage started conflicting with the new reality and resulted in language misuse. Functional approach as a translation strategy turned out to be the best tool to resolve the problem of huge misunderstanding and ambiguity.

The semantic interference is caused by an overlap of meanings between the source lexical unit and the target lexical units, which are only partial equivalents (Thorovský, 2009: 86). This happens when the commencing translators rely on the first meaning of the polysemic word or their obscure knowledge of the legal domain and fail to consider the context of the technical text. Other reasons for similar consequences are

due to inadequate reference materials, a generalization from false hypotheses (false cognates, generalization in word-formation) and systemic structural differences between the languages (morphological, syntactic and grammatical). “Translators frequently search for regularity in translation processes where no such regularity exists, and they (probably unconsciously) create hypotheses governing such processes which they apply in unsuitable situations” (Hopkinson, 2007: 17).

This brings us to the issue of texts equivalence. The question is to what extent legal equivalence should spread to produce the same legal effect in the target text while still demonstrating loyalty to the source text. Are there any instruments to avoid interference? There are some, but their choice depends on the legal background that plays a crucial role. Let us look at some examples featuring legal conceptual lacuna or partial equivalents.

The term ‘nuisance’ from common law is semantically close to the private or public offense but has no parallel equivalent in the Russian language. The legal requirement for nuisance is annoyance or disturbance in the enjoyment of property, for example, loud music in an apartment causing inconveniences to neighbors (private nuisance). A ‘public nuisance’ interferes with a communal right: examples include obstructing a highway or allowing trash to accumulate in one’s front yard to the annoyance of the neighborhood (Garner’s Dictionary of Legal Usage). The Russian equivalent to this meaning that comes to mind is ‘narushenie obshchestvennogo poryadka’ (public disturbance), but we cannot think of any term in Russian that describes the first situation of a private nuisance. If translator preserves those terms as they are in the TT (publichnyi/chastnyi n’usns) arises the question of how to deal with tort under Russian laws. To avoid this kind of interference translator should resort to descriptive translation, explaining the meaning of translated terms.

Similarly, a common law lawyer may not know much about the civil law when translating the French term ‘droit civil’ into English. The word for word translation is ineffective in this case as well as for the pair of terms ‘commercial law’ and ‘Droit commercial.’ Commercial law in France is a separate body of laws distinct from civil law. A ‘Conseil des ministres’ translated literally as a ‘council of ministers’ is identified as an error within English domestic law but is relevant in the EU political structure. The translator should be particularly cautious in cases of partial equivalence of the terms: for example, French ‘avocat’ can be rendered as ‘barrister’ or ‘solicitor’ depending on the character of their service. The advised strategies in those cases are formal equivalence to translate an SL term unfamiliar to the TL system, functional equivalence for the terms with a similar meaning in both SL and TL and transcription or calquing in case of non-equivalence, e.g. ‘Sénat’ cannot be translated as the ‘House of Lords' (Jeanpierre, 2010: 147-149).

Borrowing as a translation instrument may be justified or even inevitable in case of the following consistency. For example, criminal offenses are divided into ‘misdemeanors’ and ‘felonies.’ They retain their English form in Russian translation and in case this classification is extended with a new type of crime, legal Russian will follow borrowing (Stepanova, 2017: 1332).

There are other pitfalls that may also pose problems of interference in legal translations, among them is polysemy. The same term may have different meanings depending on the branch of law it represents. For example, the French word ‘detention’ in civil law means the same as in criminal law; the term ‘mandate’ has different meanings in civil, constitutional and international law; the term ‘obligation’ in civil law must not be confused with the same term applied to trading companies; the term ‘arbitrage’ is interpreted differently in civil and constitutional law; the term ‘concession’ has several meanings in civil law and is used in different meanings in commercial and international laws. Knowing the source of interference allows the translator to be extra attentive to the context as only one of the meanings of the term can be translated by formally corresponding TL word (Kussmaul, 1995).

There are two types of formally corresponding words: those which always turn out to be false friends and those which can sometimes be good friends (Kussmaul, 1995). Faux amis being graphically familiar can disorient unsophisticated translator who may resort to their literal translation. There is a great number of such terms in legal domain and consequently numerous errors in written translations. Here are some of them in the English-Russian pair of languages: national administration, community property, etc. The literal translation of such terms can mislead the reader, so the right solution is their contextual translation; compare: nacional'noe pravitel'stvo (national government), obshchee imushchestvo suprugov (property owned jointly by both spouses). Several examples of French interference into English include: accord (agreement), affaire (matter, issue), action (lawsuit), société (publicly held company), associé (partner in a law firm), audience (hearing, pleading in court), transaction (settlement of a dispute) and others.

Interference on the syntactic level arises due to differences in the language systems. Following the syntactic structure of the SL is identified as clumsy or incorrect. Very often, such translations violate grammar patterns in TL and shift emphasis to another element in the syntactic structure. When translated from Russian into English the most often interference is realized in nominalization patterns with the proposition *to*, which adds complexity to the TT.

Cultural interference "occurs in the cases when the translator is unable to deal with the cultural difference between the source language culture and the target language culture. In most cases, there is no direct equivalent in the target language". Most of the errors occur when the source text contains a 'cultural icon (a real historical person well known in the source culture but not in the target cultural environment), the name of an institution, etc., which do not have a direct counterpart in the TL (Thorovský, 2009: 86).

Pragmatic level of equivalence can also be disturbed when communicative intention, communicative effect, and assessment of the reader is ignored in translation. In such cases, the TT though formally equivalent with the ST does not manifest an ultimate goal of communication. In other words, pragmatically equivalent translation is not necessarily identical to the original text on semantic and syntactic levels. For example, the phrase 'Handle with care' often used in the Packing and Marking clause of contracts should be translated into Russian as 'Ostorozhno' (be careful/gentle) instead of 'obrashchat'sya s ostorozhnost'yu' (handle with care).

Conclusion

Legal translation is extremely complex and requires expertise that is being gained during a long period. It involves decision making, compromise, and problem-solving" (Malkiel, 2006: 337). It requires a good knowledge of the source and target languages and relevant legal cultures. It is much easier to reach the balance of two texts if the languages and legal systems are similar, which is not the case with English and French or English and Russian pairs of languages.

Language interference may occur on any language level be it cognitive/semantic, structural/grammatical, pragmatical or cultural. Interference results from misunderstanding of ST, legal or cultural context, indefensible choice of the meaning of the polysemic term, mistakably recognized word or phrase as translator's friend, unreasonable transfer of syntactic/grammatical constructions, unjustified loans, and a shift in pragmatics or wrong accent in the sense of the message. Whatever the reason for interference is, it is unacceptable to force the reader to decipher the text. As Javier Franco Aixelá puts it: "receivers do not like having to make an additional reading effort to understand and cope with texts bearing many lexical and stylistic instances that run contrariwise to what is considered to be optimum according to the conventions for that text type in the TL" (Franco Aixelá, 2009: 77).

Most often lexical interferences include blunders as a result of literal translation of language chunks. In this case, the chosen word/phrase does not fit the context, or there is a shift in the legal sense. The translator should bear in mind that lexical interference in legal translation does not only cause serious mistakes but can lead to serious legal consequences.

To avoid unintelligible translation, professionals apply a vast methodology including formal and functional equivalence, descriptive equivalents, calques, borrowing, concretizing, foreignization, domestication, generalization and others. The main aim of the translator should be fidelity to the legal sense of the ST rather than formal equivalence.

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