

THEORETICAL AND PRACTICAL ISSUES OF LEGAL TRANSLATION (ON EXAMPLE OF DOCUMENTS OF THE ASTANA INTERNATIONAL FINANCIAL CENTER COURT (THE AIFC COURT))

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Abstract. This article is devoted to the analysis of the accuracy, adequacy and acceptability of the translation of legal documents based on the decisions, orders, rules and orders of the International Financial Court of Astana, which administers justice in English and based on the legislation of the United Kingdom, and not the national legislation of Kazakhstan. The work examines the linguistic, legal and cultural aspects of legal translation, the relationship between different legal systems, languages and cultures.

Keywords. Legal discourse, legal translation, court, the AIFC, law, culture, language

Introduction

Legal translation is the study that united two complex professional spheres – Translation and Legal studies. People who studied them know that the main problems inside these studies conclude the following points:

- massive numbers of theoretical and practical issues which well structured and studied, but they are not working in practical translation or applying laws and governmental acts;
- the ongoing movement of developing countries to prestigious international organisations and Kazakhstan is not an exception. Legislation is developed rapidly, and it covers all spheres of our daily life. Therefore, demand for high-quality and high-professional translation of legal texts will increase continuously;
- the last theories of Translation studies show a new approach and rethinking of previous theories – translator works as a mediator between two sides (sender and receiver) to achieve a better version of the text into one language to another according to situation, conditions and other requirements.

That is an essential dilemma - finding a correct method for translation of legal documents or legal speeches. The second dilemma is to comprehend if the translator knows the law (primary grounds) or excessive requirement. An additional problem is the proper preparation and education of legal translators – which new approaches can we use for that?

This is not a simple question and raises concern for translators because Kazakhstan continuously joins international governmental organisations, develops its external foreign policy, governance, and the national economy, and attracts direct foreign investments for more competitiveness. Kazakhstan has a long way to the economic prosperity and well-being of a population; thus, many political and

economic process, new institutions require adequate translation into different languages into Russian and Kazakh as the two main languages in our country.

One of such institutions is the AIFC Court which was established as an integral part of the International Finance Centre Astana in 2017. The critical nuance is the next – this Court uses the Anglo-Saxon legal system (the Common law) despite this a national legal system of Kazakhstan based on the Roman-Germanic legal system (the Civil law). It is a challenge for translators because they have all three aspects – linguistic (different languages – English and Russian), legal (different legal systems) and cultural aspects (judges are Britains, and their decisions are mandatory here, in Kazakhstan).

Doctrinal theories of legal translation

Legal translation is a well-studied branch of translation science. The five last decades ensured the explosion of interest in legal activities around the world. International organisations activated their influence on global and regional levels. The world economy endured colossal transformations after 80's the last century. Globalisation was a driver of legal translation because business and legal support required everywhere as well as good governance and effective implementation of international obligations, the rule of law, etc. Leon Wolff considers three principal doctrines of legal translation – (1) doctrine of textual fidelity, (2) doctrine of equivalent effects, and (3) doctrine of ethical intervention. Wolff examines “the rationale for legal translation throughout doctrinal approaches (the “stretch and snap” theme)” [1, p. 1].

The author agrees that legal translation admits more free actions during interpreting legal texts from translators than other types of translation studies. Wolff writes, “it can stretch to accommodate a degree of freedom by the legal translator. However, should it go too far, it snaps back to the default position of linguistic fidelity. This “stretch and snap” gives legal translation a unique place in general translation theory. In the general debate over the “degree of freedom” the translation enjoys in conveying the meaning of the text, legal translation theory has reached its own settlement” [1, p. 1]

The author highlights that in legal translation, passivity is the default; creativity, the “qualified” exception. [1, p. 1]. According to Wolff, legal translation takes a special place and status in general translation theory because modern political, social, cultural and economic processes are standardised and widespread now as globalisation impact and input activities of international organisations. Wolff emphasises “the appetite for the law is now transnational” [1, p. 3]. Other authors agree with him. “There has never been a time,” adds Bermann & Wood “when issues of nation, language and translation have been more critical than they are today.” [2, p. 12]

“Law without translation has become “inconceivable” Wolff adds that for achievement broaden the vision; legal translators cannot be anchored to an acontextual reading of legal texts [1, p. 5].

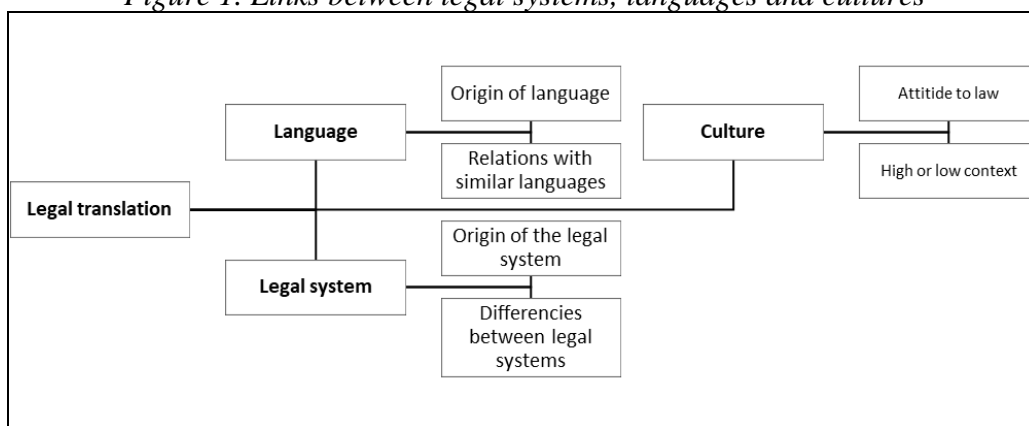
Further, it is interestingly to comprehend the meaning of “special status” of legal texts. It will be strange to compare a restaurant bill and an agreement. Many

researchers find that “legal text operates as a “special-purpose communication between specialists” [3, p. 415].

Languages, legal systems and cultural aspects of legal translation

Wagner et.all emphasise that “legal norms are expressed in words, and words must be capable of expressing law in a clear and understandable manner using different disciplines” [4, p. 32]. The legal discourse should be understood by everyone, but in reality, language, legal system and differences in culture are obstacles to that.

Figure 1. Links between legal systems, languages and cultures

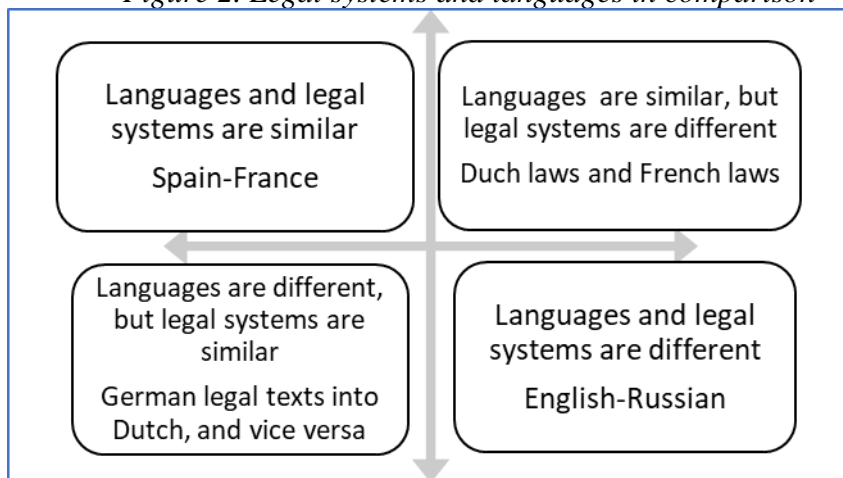


Languages of the source text (ST) and the target text (TT) can be similar and non-similar. English and German languages have belonged to one family, and they have similar roots, many similar words, grammatical structure and connotations, rules and phraseological units, but in the United Kingdom and Germany, legal systems are different.

Portuguese and Spanish are similar languages, but the legal systems of Latin America and Spain countries, for example, are different. More comparative example for us: the English and Russian languages are different languages, starting phonology and finishing practical usage in everyday life.

However, if languages are different but legal systems are similar, it is not problematic for legal translators. A much more sophisticated case is when language and legal systems are different; this case is a challenge for legal translators.

Figure 2. Legal systems and languages in comparison



Cultural perspective in legal translation is more feasible in modern life than early. Three components are essential to a better understanding of a cultural aspect

– (1) an attitude of society to the legislation, the law system, and (2) the existence of high or low context in culture. The first is the attitude to the law from individuals and their groups and associations. In the different cultures, its attitude is different because a political structure and economic growth matter, mature of society and civil institutions.

Therefore, some society prefers to using not written laws and rules, complex legal regulations but informal, group arrangements and relations – it is a non-official, informal, attitude to the law. On the other hand, another attitude is to rely upon only and always on law, rules and written regulations – it is an official, formal attitude to the law; it is the system where informal arrangements do not work, they are not practical and unusefulness. Thus, for example, attitude to the law in Germanic and Russian culture differs – in Germany, the law is honoured; in Russian culture, the law is not respected by both - ordinary people, their groups and associations, and all branches of the power.

Another characteristic is the high or low context in cultures [5, pp. 222-223]. In other words, the existence of verbal or non-verbal communications in a given culture. The high context in culture presumes more non-verbal types in communications between people – gesture, body language, etc (Japan, Brazil, Mexico, India and China). The lower context cultural counties are the United States, Australia, Germany, Scandinavian countries. These cultures use many types of verbal communications; this aspect does do the legal translation more predictable. Legrand notes that “law is part of the symbolic apparatus through which entire communities try to understand themselves better” [6, p. 42]. Thus, the goal of translators is to make communities closely using the law, legislation and adequate translation.

Newmark emphasises the importance of “componential analysis, the most accurate translation procedure, which excludes the culture and highlights the message. Componential analysis is based on a component common to the SL and the TL” [7, p. 96]. Using the componential analysis, translators can avoid a cultural gap and achieve to equivalent effect. Kunanbayeva describes the process of translation as “an action of intercultural communications”, and translators are considered as their subjects [8, p. 62]. This approach means that cultures, cultural identity, and the cultural gap are critical for adequate translation.

Legal language

Legal language is a specific type of professional ‘jargon’ which sophisticated for ordinary people but convenient and habitual for lawyers. Legal language is not usual for translators too, because its features are the following:

- complicated and wordy constructions because, according to ancient tradition, lawyers earned depending on the length of legal documents. Today, this habit works too, and legal professionals strive to create and prepare more difficult for comprehension by ordinary people documents and texts;
- many archaic words and Latin legal terms, definitions; their real meaning is known only by lawyers and legal practitioners;
- extensive usage of passive forms and modal verbs for designation of restrictions, prohibition or allowed activities.

Role and functions of translators and legal translation in the activity the Court (the AIFC Court)

AIFC Court Rules (2018) considers the interpretation of court documents as a significant and integral part of the Court activities. The English language is the working language, and the English text is the authoritative text of this judicial institution. All proceeding before the Court shall be conducted in the English language.

Such obligation means that translators play an important role during court hearings and other activities. AIFC Court Rules (2018) includes the requirement for translation of written documents: “When a document to be used in the Court is a translation into the English language of a document, the original of which is in another language, and a dispute arises as to the meaning of the language in the original document, the Court may determine its true meaning has taken such expert advice as it deems fit. The Court’s interpretation shall be determinative of the meaning”.

This passage means that only the Court gives the correct interpretation in the case of contradictory translation of legal terms and documents or the case when the translation does not transfer the correct meaning of given legal terms or definitions. The role of translators in the Court activities has been considered the following tasks; they are

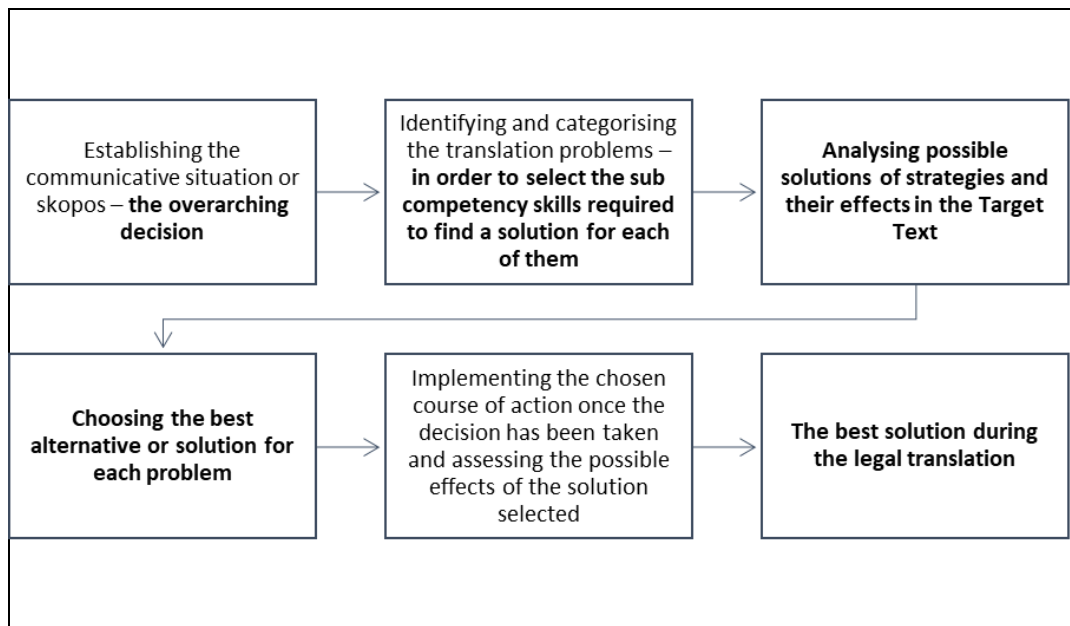
- to translate all documents (claims, applications, rules, etc) from the authoritarian language (English) to another (Russian, Kazakh)
- to interpret courts hearings
- to help the Head of Justice, judges and personnel of this Court in communications.

These tasks suppose the ongoing and permanent process of qualification of translators and special training. Indeed, today legal translators should have appropriate language skills and comprehension of how different legal systems work, which differences and similarities between them. A new approach is the creation of a Legal Translation Decision-Making Framework, based on the decision theory. This approach is suggested by Catherine Way for the preparation and improvement of the law skills of legal translators [9, pp. 140-144].

Way suggests adapting the decision theory for translators’ needs, and “the steps required would be:

- establishing the communicative situation or skopos – the overarching decision
- identifying and categorising the translation problems – in order to select the sub competency skills required to find a solution for each of them
- analysing possible solutions of strategies and their effects in the Target Text
- Choosing the best alternative or solution for each problem
- Implementing the chosen course of action once the decision has been taken and assessing the possible effects of the solution selected” [9, p. 141].

Figure 3. Stages of decision-making process for legal translators by Catherine Way



Comparative analyses of legal documents of the Court AIFC in Kazakhstan (in English and Russian)

The following documents were observed and compared in two versions (in English and Russian):

- AIFC Court regulations (2017) [10]
- AIFC Court rules (2018)
- Case No. 2 of 2021 about the claim by Unicorn crops limited v Zeren Bidai Group LLP [11]
- Case No. 10 of 2020 about the claim Modtech Group Teknoloji Sistemleri LTD v Mosston Engineering LTD and Kaztechnology JSC [12]
- Case No. 3 of 2020 about the claim Star Asian Mining Company LLP v Aurora AG LTD
- Case No. 1 of 2019 about the claim Aurora AG Limited v Star Asian Mining Company LLP [13]

The aim of this analysis is the determination of methods of translation of legal documents of the AIFC Court, especially legal terms and specific definitions, and, additional aim, to suggest more precise and adequate translation according to the Integrative methodological model created by Ramos [14, p.123]. Methodology of the analysis – both versions were observed simultaneously – English and Russian; the types of translation transformations and problems were defined as often used and applied. The translation of all documents in the Russian language is not official and notarised. The normative documents (rules and regulations) are 124 pages, and executive documents (judgements) include 22 pages.

Results of the analysis is the following - more than 200 terms and definitions from legal documents of the Court AIFC were analysed in ST (in English) and TT (in Russian). During this process, the following problems were detected and divided into few groups. Detailed analysis, the context of used legal terms are in the tables below. According to detected problems, we suggest paying attention to these legal terms in context (in sentences) and analysing consequences after applying original terms in English and their translation into Russian.

1. Legal terms are translated with different variations in one document. For instance, the power and powers are translated as “компетенция, полномочия, функции, имеет право”; judgements, orders and directions were translated as “судебные решения, распоряжения, приказы и решения, приказы, указания”.

2. Legal terms change their meaning after translation. For example, “procedural fairness” is translated as “процедурная справедливость” but the correct translation - “обоснованные процедуры”. Another example is the legal term “interim order” – “решение о применении обеспечительных мер». The correct translation is «постановление суда, которое вступает в силу во время слушания дела и может быть изменено после вынесения окончательного решения – временный ордер».

3. Legal terms lose their meaning after translation. For instance, the legal term “declaratory relief” is translated as “декларативная защита”. The correct meaning is “постановление, вынесенное в ходе судебного процесса, отражающее права и обязанности сторон по договору или в соответствии с законом, который может решать некоторые вопросы по делу”. Another example is the legal term “authoritative” (in translation – “основной”) but the correct meaning is “авторизованный”.

4. Two different legal terms (ST) have one meaning (TT). “Affirmation” and “affidavit” are translated identically – “показания под присягой”. The correct meaning of “affirmation” is “подтверждение (полномочий или невиновности). The legal term “affidavit” means “письменное заявление (подписка) говорить в суде только правду, используются судом как доказательство».

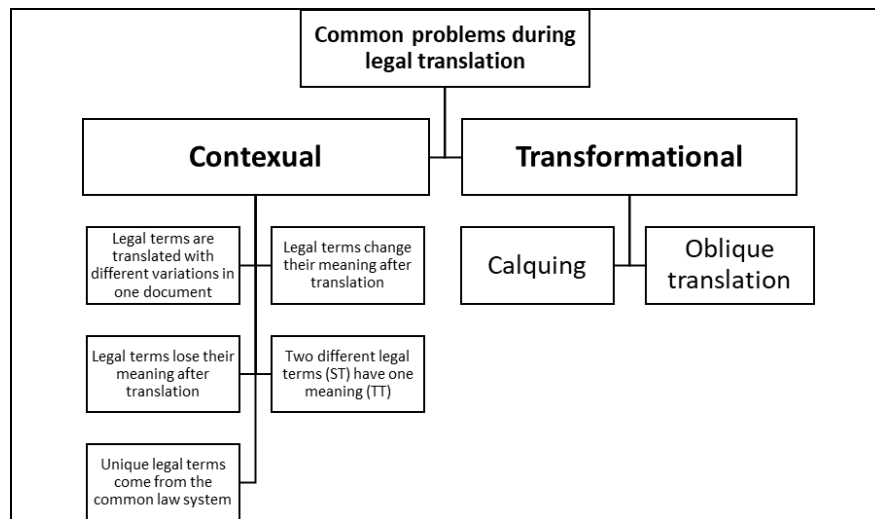
5. Unique legal terms come from the common law system. There are “acknowledgement of service”, “sealing, allotting, inscribing and dating court documents”, “group litigation”, etc. These terms do not use in the civil law system, and their translation can make it difficult for translators.

6. Calquing. The word “Division” is translated as “дивизион”, but the legal term “appellate division” means “a department of a superior court responsible for hearing appeals” – “инстанция суда”. Another example is “the weight of evidence” - “вес доказательств». The correct meaning is “относимость, допустимость и законность доказательств”.

7. Oblique translation. The definition “...under seal of the Court...” is translated as “пропечатаны судом”. The correct meaning is “заверенные судом (под печатью суда)”. Another example is “overriding” – “главный”, but the correct and more legal meaning of this word is “преимущественный».

As a result, the classification of typical problems can divide the following elements – contextual and transformational.

Figure 4. Classification of problems in legal translation



Conclusion

Legal translation is an integral and specific part of Legal discourse, on the one hand, and Translation studies, on the other hand, because theoretical approaches show definite obstacles during the translation process of legal documents from one language into another. Legal translation has a unique status based on three grounds – (1) the legal system, (2) used languages and (3) cultural identity. All of these components are important to the achievement of the adequacy of translation of legal texts and documents – that is a threefold system of legal translation. This system is based on comprehension specificity of legal translation and the importance of adequate translation.

Additionally, legal language is a specific aspect of legal discourse which defining its nature and the main characteristics – (1) unique and unusual composition – archaic words and Latin legal terms; (2) extensive usage of modal verbs and passive forms; (3) sophisticated structure of sentences and texts.

A typical model legal translation does not ensure an adequate result because the legal systems can be different (the common or civil law), and cultural aspects can be different (high or low context); a new integrative model for legal translation is required.

Future changes are related to complex renovations of the foreign policy of Kazakhstan and the cooperation of our country with international organisations and other countries. Such cooperation is supposed that languages, legal systems, and cultural identity cannot be similar; often, they would be different. This is a reasonable view to using the new approach, the integrative model in the process of translation, and the new legal translation framework for the preparation of translators.

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ҚҰҚЫҚТЫҚ АУДАРМАНЫҢ ТЕОРИЯЛЫҚ ЖӘНЕ ПРАКТИКАЛЫҚ МӘСЕЛЕЛЕРІ («АСТАНА» ХАЛЫҚАРАЛЫҚ ҚАРЖЫЛЫҚ ОРТАЛЫҒЫНЫҢ СОТЫ ҚҰЖАТТАРЫ НЕГІЗІНДЕ)

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Андатпа. Бұл мақала сот төрелігін ағылшын тілінде жүзеге асыратын және Қазақстан Республикасының заңнамасына сүйене отырып, Астана қаласының Халықаралық қаржы сотының шешімдері, бұйрықтары, ережелері мен бұйрықтары негізінде заңды құжаттарды аударудың дәлдігін, сәйкестігі мен қабылдауға болатындығын талдауға арналған. Қазақстанның ұлттық заңнамасына емес, Ұлыбританияға. Жұмыста заңды аударманың лингвистикалық, құқықтық және мәдени аспектілері, әр түрлі құқықтық жүйелер, тілдер мен мәдениеттер арасындағы байланыс зерттелген.

Тірек сөздер: құқықтық дискурс, заңды аударма, сот, АХҚО, құқық, мәдениет, тіл.

ТЕОРЕТИЧЕСКИЕ И ПРАКТИЧЕСКИЕ ВОПРОСЫ ЮРИДИЧЕСКОГО ПЕРЕВОДА (НА ПРИМЕРЕ ДОКУМЕНТОВ СУДА МЕЖДУНАРОДНОГО ФИНАНСОВОГО ЦЕНТРА «АСТАНА»)

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Аннотация. Данная статья посвящена анализу точности, адекватности и приемлемости перевода юридических документов на материале постановлений, распоряжений, правил и Суда Международного финансового центра «Астана», который осуществляет правосудие на английском языке и на основе законодательства Великобритании, а не национального законодательства Казахстана. В работе рассматриваются лингвистические, правовые и культурные аспекты юридического перевода, взаимосвязь между различными правовыми системами, языками и культурами.

Ключевые слова: юридический дискурс, юридический перевод, суд, МФЦА, право, культура, язык.

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