

LEGAL TRANSLATION AS A SUBJECT OF TRANSLATION STUDIES AND COMPARATIVE LAW. LINGUISTIC PECULIARITIES AND PROBLEMS OF TRANSLATION

Konobayeva K.K. Email: Konobayeva 17102@scientifictext.ru

*Konobayeva Kamazhay Kairovna – Master in Arts,
DEPARTMENT OF POSTGRADUATE PROGRAMS AND INTERNATIONAL RELATIONS,
KAZAKH UNIVERSITY OF HUMANITIES AND LAW, ASTANA, REPUBLIC OF KAZAKHSTAN*

Abstract: *the article is devoted to one of the topical problems of legal translation – written interpretation of legal terms. It briefly observes the development of Legal Translation and its formation as an interdisciplinary issue at the interface of Legal Translation and Comparative Law, considers traditional and pragmatic approaches to the concept of “term”, gives various classifications of terms of law, describes linguistic peculiarities of legal English, and studies problems of legal texts translation.*

Keywords: *legal translation, legal terms, approaches to terminology, concept, problems of translation.*

ЮРИДИЧЕСКИЙ ПЕРЕВОД КАК ПРЕДМЕТ ИЗУЧЕНИЯ ПЕРЕВОДЧЕСКОГО ДЕЛА И СРАВНИТЕЛЬНОГО ПРАВА. ЛИНГВИСТИЧЕСКИЕ ОСОБЕННОСТИ И ПРОБЛЕМЫ ПЕРЕВОДА

Конобаева К.К.

*Конобаева Камажай Каировна – магистр гуманитарных наук,
Институт послевузовского образования и международных связей,
Казахский гуманитарно-юридический университет, г. Астана, Республика Казахстан*

Аннотация: *статья посвящается одной из актуальных проблем юридического перевода – письменному переводу юридических терминов. В статье дается краткий обзор развития юридического перевода и его становления как междисциплинарного вопроса, находящегося на стыке юридического перевода и сравнительного права, рассматриваются традиционный и прагматичный подходы к понятию «термин», приводятся различные классификации терминов права, описываются лингвистические особенности юридического английского языка и изучаются проблемы перевода юридических текстов.*

Ключевые слова: *юридический перевод, термины права, подходы к терминологии, понятие, проблемы перевода.*

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Legal translation is a complex task as it comes along with plenty of difficulties of both linguistic and extra linguistic nature. The Language of the Law was one of the first published books on Legal English in 1963 where Professor Mellinkoff explained challenges of the language of the Law to lawyers and the lay public. The theoretical basis of relations between different legal systems and languages lies in the field of applied Comparative Law. The interdisciplinary approach to the investigations in the field of legal translation is a logical solution to analyze issues encountered. This fact gave a reason to the occurrence of a number of English works on Comparative law enlighten the questions of legal translation. Legal English text contains many concepts and terms missing or different from those that exist in another legal system [1].

Alimov V. refers to legal translation as military, scientific and technical and others to variety of special translation in the field of professional communication with its features [2, с. 3].

Gamzatov M. gives his own view of legal translation. He deems legal translation is the basis of Comparative Law and criticizes the descriptive technique of translation terms as its only attempt to “dress up” terminology of certain legal system in a suit of another one [3].

Three main approaches to translation theory were formed in Kazakh linguistics. Initially in 60’s it was considered as a subsection of literary studies (N. Sagandykova, J. Dadebaev). Then while theory and practice of translation have been developing it moved to the field of philology (O. Aitbaev, A. Tarakov, S. Abdrakhmanov). At dawn of XXI century it was deemed a phenomenon of culture, a result of cultural activity (A. Kulsarierova). The Kazakhstan’s translation studies are at early stage of development. The subject of theory of translation is not yet defined; the theoretical and practical basis of oral and written translation is forming, dictionaries are drawing out [4].

The concept “term” and classifications of legal terminology

There are several approaches to the concept “term”. Wuster and Sager were supporters of a traditional view. They tried to distinguish between “terms” and “words”. Wuster called special words “terms” or “labels” and generally language words “concepts”. His statement about concepts: *A concept ... consists of an aggregate of*

characteristics which we can cognize as being common to a number of individual objects and which we use as means for mental ordering and for communication. The concept is an element of thinking. Another his thought is that a term is unique and refers to only one concept within a given subject field. Sager has following understanding of “terms” and “words”: The items which are characterized by special reference within a discipline are the “terms” of that discipline, and collectively they form its “terminology”; those which function in general reference over a variety of sublanguages are simply called “words” and their totality the “vocabulary”.

Both treated “term” as an exceptional concept as it is applied only in a restricted subject field. It means that when a term has the same reference in a number of subject fields it is no longer be called “term”. Such a consideration poses problems for interdisciplinary.

Opposite to the traditional approach to terminology is pragmatic one. Representatives of this approach (Hoffman, Trimble and Trimble, Herbert, Godman and Payne and others) distinguish between different categories of terms on the basis of their function. The distinction was made by the known/unknown and the subject specific/non-subject specific criteria. The known/unknown criterion was invalid because it is impossible to measure objectively familiarity of words. The subject-specific/non-subject specific distinction is also rejected because there is no objective means to establish actual functioning of terms [5, c. 12-21].

In other words, all concepts of *term* are too ambiguous to specify between terms or words in text.

Linguistic peculiarities of legal texts posing problems for translation

Legal translation is a complex task the solution of which comes along with various challenges both linguistic and extralinguistic nature. It requires from a translator good linguistic preparation, appropriate translating skills and the deep knowledge of domestic and international law as well. The task set concentrates on the one hand on pointing out somewhat typology of general linguistic and translation problems of legal instruments. On the other hand it focuses on revealing special characteristics of these problems depending on from which language translation is carried out: from English into Russian or vice versa. Syntactic and morphological aspects are equivalent in Russian language, while in English, the relations between words are mainly expressed through the order of words which is characteristic of an analytic language, i.e. by syntactic means, since the morphological principle plays a subordinate role. Such priority of the syntax often creates difficulties for translation, which the translator should be able to overcome using grammatical transformations in translation [6, c. 36].

Regularities of the functioning of terms in international contracts and contracts are determined by genre and content signs of documents, belonging to the professional and business sphere of law. Much of the lexical layer of the international contract is the terms of the area on which the contract is concluded (diplomatic, trade, financial, environmental, and industrial). In the text of the document, the terms of other spheres are reconsidered; the term becomes an integral part of the terminology system of this treaty. All terms acquire the status of legal, since they ensure the transfer of legislative information having legal force. For example, "default" – невыполнение обязанностей, "tender" – предложение [7, c. 31-32].

The typical difficulties a translator faces include the usage of clichés and speech stamps and abbreviations; polysemy of legal terms; contextual reasoning of linguistic units; the usage of terms reflecting culture-specific concepts of a foreign law system [8].

According to Kazakh researcher Nam D. there exists an issue of word-for-word translation of legal documents of international judicial proceedings. He points out that they may happen due to distinctions of not only two legal systems

but within a single legal system. For instance, states define their own rules and regulations in the USA thereof translation of certain terms varies from general accepted ones. In the New York state the crime of attacking somebody physically is called *assault*, while all other states employ the term *battery* to name the action [9].

Another Kazakh scholar Primashev N. detaches following problems when interpreting texts of international treaties to Russian and Kazakh languages:

- the lack of unified and universal texts of international instruments;
- multivariance of the notion state and its territory;
- the lack of uniformity in treaties regarding names of states, administrative territorial units, geographical objects as well real estate;
- the usage of numeral enumeration instead of alphabetic;
- the usage of non-existing or absurd word combinations [10].

In general, translators deal with different kinds of issues in the field of legal translation. The challenges for legal translation in some degree are connected with their linguistic peculiarities such as the style of the Language of law, the abundance of speech stamps, the usage of abbreviations and acronyms, the occurrence of Latin words, lexical synonymy and polysemy of legal terminology, linguistic equivalents. To avoid inadequate translation and select proper equivalent experts in law and linguists need jointly draw out methodological guidelines.

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