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Translatable Untranslatability? Translating EU Law into Hungarian beyond Terminology

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Abstract

The European Union has elaborated a unique legal language so that the discrepancies among Member State legal systems may become less and less apparent under the auspices of unification. Though achieving multilingualism is one of the EU's major objectives, multilingual legislation first takes place in one of the EU working languages, and only following this step will it be translated into all official languages. The resulting target language legal texts are meant to trigger the same legal effects across the European Union. EU official languages, however, do not belong in the same linguistic family. All of the EU working languages (mostly English, and to a lesser extent, French and German) are part of the Indo-European linguistic family, behaving more or less in the same way during translation between them. If, however, the target language is found in a different linguistic family, such as the Hungarian language, which is part of the Finno-Ugric family, the encounter of these two legal languages mobilise certain legal language and legal language use differences and therefore determine the translational behaviour of the two legal languages. This study is an attempt at examining these differences when translating EU legal English into Hungarian and also a potential revelation of the problems that may arise during such translation, which, ultimately, may be felt in the legal effects produced by the resulting target language legal texts as well.

Keywords

legal translation, translatability, EU legal language, multilingualism, legal language translational behaviour, Hungarian legal language

Introduction

Law and language are mirror images of one another in many respects. In fact, they are so closely related that studying them in each other's relation has brought forth an interdisciplinary field which now has a long-standing tradition linking linguists and legal theorists. Admittedly, law may only become manifest through linguistic means. Reversing this statement, one might find that linguistic terms can determine the law itself. This is usually the case with legal discourse in one language. If, however, legal discourse is introduced into the translation process including two languages, the translator's role as an intermediary redoubles in significance, meaning that the translator's choices in translation will have an effect on determining the very meaning the law in the target language. This could lead to discrepancies and potential disputes concerning language versions, or it may help those at the receiving end of legislation with better understanding legal provisions if by translation they become more comprehensible and less obscure, thereby facilitating the recipients' access to justice.

This paper's focus is on the interrelation, intersection and the impact area of the following fields: translation studies, the law and language movement and the plain language movement set in the European Union's multilingual environment in which the Hungarian language with its distinct features has been ranked an official language since the country's accession to the EU in 2004. Using theoretical assumptions related to the above fields and revealing practical aspects of legal translation of EU legislation, mostly in English, into Hungarian through the analysis of parallel legal texts, translational strategies will become apparent that help grasp the meaning in the relation between law and language and the functioning of the Hungarian target language legal discourse. Legal terminology in translation is outside the scope of this paper as the focal points will be determined at a broader level: that of the sentence and the legal text. In turn, by understanding the linguistic mechanisms behind the translated legal text might facilitate rendering the law more comprehensible for non-professional recipients of the law.

1. EU multilingualism as a basis for studying the relation between the EU legal language and the Hungarian national legal language

The multilingual and multicultural aspects of the European Union are widely recognised as a determining factors when EU law is drafted. One of the characteristics of this drafting process is that EU law is initially formed in one of the 24 official languages, out of which English, French and German are traditionally given more scope as working languages of the drafting process. Of these working languages, English is overwhelming considered to rule the process.

Once a legal text is drafted in English, it is then translated into all other official languages with the consequence that all these language versions will be authentic in the European Union legal order. The resulting EU legal language has its own characteristics distinct from those typical of the Member States forming part of the Union. These features can most easily be revealed in the specialised legal terminology stripped of any national specificities. To a lesser extent but no less importantly, it can also be traced in the legislative style adopted by the EU legislative bodies. Consequently, one may argue that if the EU legislative language is so hermetically devoid of national attributes, Member States will longer regard EU law as compatible with their own legal systems. Fortunately, this is not the case. EU legal language is replete with traces of various national drafting styles and drafting traditions in terms of structure and terminology, which is aided by the fact that the drafters themselves are usually non-native speakers of English, whose production is then translated into one of the official languages.

EU law in a national legal order has different dimensions depending on the type of legislation created. If no transposition is needed for a Member State, which is always the case with regulations, the authentic target language versions cannot diverge from the structure of the original source text, therefore, one might not reveal much about the operations of the target language in translation. On the other hand, if the legal text is a directive, which requires transposition by the Member State to be part of the national law, one might be given the opportunity to more closely observe the working of the implementing national legislation that transposes the EU directive. The reason for such insight lies within the process of transposition itself. When implementing a directive into national law, the Member State is not bound by the structure and style of the source text. Unlike regulations, the target text implementing the EU directive is created inside the national legal order using its own legal discourse. Assuming that the target legal text is aimed at producing the same result as it is intended by the original source text, there is ample opportunity for studying the differences inherent between Member State law and the EU legal order when contrasting the two and observe the dynamic resulting from the translational link between them. This paper is thus aimed at revealing some of the major challenges facing the relationship of EU law with national legal systems, more precisely, EU law and the Hungarian legal order using the findings of other scientific fields: the law and language movement, translation studies and the plain language movement.

Law and language in the Hungarian legal discourse

This paper is aimed at highlighting the possible overlapping fields of the law and language movement in Hungary. In order to understand the mechanisms of the Hungarian legal discourse,

one must first look into the Hungarian research trends from their humble beginnings in the late 1960s. Similarly to mostly literature in English and German, the focus was first directed to the written legal language as professional language in Hungary, including legislative acts and court rulings. It was the linguist community and not lawyers that showed interest in such research, as lawyers were generally uninterested in the linguistic aspect of the Hungarian legal discourse. [VINNAI] Since the democratic transition of the country in 1989, shedding the yoke of the Communist rule, a gradual shift has been observed to take place in both the linguist and the legal profession in turning their attention to revealing potential interconnections between linguistics and jurisprudence. There has been research into the spoken legal language of courts and court procedures in Hungary since, and their relevance has been widely acknowledged.¹ Prior to such research, however, written legal discourse was placed in the centre of attention. In the 1980s, the legal professional language was studied with objective criteria, pointing out its main characteristics. Pioneering at the forefront of this research, Karcsay created a definition of what exactly a professional language is. He underscores the objective nature of professional language by stating that it is closely associated with social reality, a scientific field, profession or occupation. Therefore, it is not a mere cant, but it is directed at ensuring comprehension in an accurate and unambiguous manner. [KARCSAY] As Karcsay states, “the development level of any professional language is faithfully mirrored in the current state, political, economic, cultural and scientific level and differentiation and linguistic richness of a society.”²

It can be clearly seen from the above definition of the professional language the reason why legal discourse has been a constant target for harsh criticism not only by representative of the plain language movement itself. Legal discourse is fraught with instances of incomprehension by the non-professional public. The underlying reason being that there is a compelling interest for all professionals to attribute the same sense to certain legal terms and expressions under all circumstances, which, after all, is what is primarily needed to ensure the principle of legal certainty. However, the expectations of non-professionals to present legal professional language in the most comprehensible way is also well-founded, since law regulates each citizen’s life and an ever-growing part thereof as a system of norms that plays a vital role in the maintenance of the public order. On the other hand, as law engulfs an ever-greater portion of other professional fields, the complexities of such professional languages further deepen the laboriousness of an already complex legal language. Legal language, therefore, is part of the

¹ See research into the Hungarian legal discourse by Edina Vinnai and Miklós Szabó in Vinnai. *Jog és nyelv határán*. 157–211.

² Karcsay. *Jog és nyelv*. 329.

greater realm of professional languages as apart from everyday language; however, due to its role in society, it is in a special position compared to other professional languages.

Regarding the detrimental features of legal language briefly depicted above, Seregy underlines that “the objectionable phenomena of professional languages are, at the same time, the same objectionable phenomena of the mother tongue itself.”³ [SEREGY] As for legal language, this is exponentially true. Rendering the legal language of legislation plainer cannot be expected, since the spheres of life to be regulated are becoming more and more complex, leading to overregulation.

The translational behaviour of legal languages

Viewed in the context of Indo-European languages spoken by as many as 3 billion people worldwide, the Hungarian language possesses certain special features that can only be explained using a linguistic approach. In the course of general translation from an Indo-European language such as English, French or German into Hungarian as well as legal translation of such languages into the Hungarian language, the legal-linguist translator is faced with having to accept the following intuitive—albeit systematically common—practical observations:

- a) “Hungarian resorts to using more verbs than Indo-European languages;
- b) Hungarian dislikes passive voice structures;
- c) When translating from Indo-European languages into Hungarian, it is not unwise to begin the translation in a backward direction at the end of the sentence;
- d) Hungarian does not like lengthy adjunct chains before nouns;
- e) Indo-European languages force Hungarian to use lengthy nominal structures;
- f) Indo-European sentences place more emphasis at the beginning than Hungarian ones;
- g) Translation strips Hungarian of her linguistic richness; therefore, measures should be taken to counter that effect.” [KLAUDY 2003a]

Similar thoughts usually occur when one translates a legal text from English into Hungarian or when actually any two languages enter into a translational relation with each other, they tend to “behave” differently. There exists a coined phrase in Translation Studies when examining such relationships between languages in the context of the behavioural pattern of translators. Toury writes about the laws of translational behaviour [TOURY] placing emphasis on the actual

³ Seregy. *Mi a szaknyelv?* 25.

behaviour of the translator. Viewed from a different angle, however, such translational behaviour can take on a new meaning, referring to the *translational behaviour of legal languages*. It can be stated that legal English shows different behavioural patterns when translated into legal Hungarian than into a related (Indo-European) language, such as French or German.

An example should suffice here to demonstrate the above statement. The same legal text can present readers with a different experience based on the end to which such a text is used. Reading it with a skimming technique, the linguistic form becomes irrelevant because the objective is to comprehend the information contained in the legal text. When scanning the text as a legal professional, the linguistic form suddenly takes more prevalence. However, if the objective is to translate the text, that same legal text reveals characteristics which have hitherto gone unnoticed. The legal text which behaved in a friendly way when read for general understanding may prove to be hostile in the attempt of translating it.

Based on the above, a question arises as to the reason why the legal translator's activities revive hidden characteristics of the legal text. When the law and language movement is seen through the lens of Translation Studies, both deal with texts and not linguistic systems. Every text is unique, complete and finite, in other words, a petrified manifestation of the linguistic system. Not until such a text is intended to be used for a specific goal will such a manifestation remain unchanged. Such a specific goal is legal translation. If one wishes to rewrite a legal text in another language, the source language system is revived and it starts to resist. Such resistance should be overcome by the translator.

The resistance of source language form is a relative concept, always depending on the current target language. It is easy to translate related languages into one another because they show less resistance to translation than languages that are not related to each other. These languages are paired up as 'friendly languages'. When languages from different linguistic families are translated into each other, such as Indo-European languages (English) into Finno-Ugric languages (Hungarian), they show rather hostile behaviour towards one another in translation, pushing translator to the height of creativity and the less experienced into utter despair. When translating legal texts, such creativity may not be permissible on account of unfriendly translational behaviour because the target legal text may trigger dissimilar legal consequences to what the source text originally intended to trigger. Therefore, one might ask: What must be done to counter such source language resistance effectively without prejudice to the intended legal consequences in the source text? In order to be able to answer this question, one should

take a look at the features and peculiarities of the contrasted legal languages: Legal English and legal Hungarian.

Transfer operations in legal translation into Hungarian

The term *transfer operations* was first introduced in Hungarian Translation Studies by Klaudy at the beginning of the 1990s. [KLAUDY 2003b] She had been relying on contemporary findings on the international scene. The revelations of Nida had contributed to the development of transfer operations although the term itself had never been used before as such. Current international literature has elaborated two terms regarding the more linguistically related translational operations taken in the strictest sense. If focus is placed on the process, then the terms ‘transposition’ or ‘transformation’ are employed. If, however, the result of the translation is stressed, the term ‘shift’ is usually applied, which in Hungarian would be translated as “translational procedures”.

Nida distinguished two types of translation procedures: Technical procedures, referring to source language analysis, target language synthesis, controlling and editing the finished translation; and the other being organisational procedures, such as acquiring translatables or concluding a memorandum of agreement with the publisher. [NIDA 1964] What I would call transfer operation in legal translation, *legal transfer operation* in short, would most adequately be placed among the technical procedures, between source language analysis and target language synthesis.

Generally speaking, the translational procedures in the strictest sense are found in literature as “techniques”, and apart from the typology established by Klaudy in the Hungarian Translation Studies, the realm of legal translation seen from this perspective has never been explored. Using the findings of Translation Studies can greatly contribute to the field of law and language as well as a deeper understanding of the mechanisms of legal discourse when attention is being paid to the translational behaviour of languages, and in this case, that of English and Hungarian when translating the former into the latter.

A definition of legal transfer operations

In the course of analysing the translational behaviour of legal languages, the legal translator must, half-consciously, half-unconsciously, resort to certain transfer operations to produce a target legal text that is suitable for triggering legal consequences. However, above all else, one must provide a definition of what exactly a legal transfer operation is.

Rethinking Klaudy's classification developed for non-professional texts, one may distinguish mandatory and optional legal transfer operations, automated and non-automated legal transfer operations, a classification based on the operation level, scope and underlying causes and according to the method of execution of transfer operations. [KLAUDY 2003b] Without alluding to such classification that would be analogous to legal texts, one must clarify the extent of legal transfer operations. Klaudy interprets transfer operations as "anything and everything the translator does to ensure that a target language text should result from the source language text."⁴

This broad definition should not be applied to the term legal transfer operations, since it would overemphasise linguistic issues to the detriment of legal ones. There exist two restrictive approaches to narrow down the scope of what may be regarded as transfer operation in a legal sense. One only considers operations to be transfer operations which the translator has to perform due to the lexical and grammatical disparities of the two languages. [CATFORD 1965] As for the other view, an even narrower approach should be applied. Under this approach, even operations justified by linguistic system disparities should be excluded from analysis, since they have to be performed mandatorily and translators do perform them automatically. Research must only be conducted in areas where transfer operations become necessary due to differences in stylistic traditions or the expectations of the target language reader. [SEGUINOT 1989] Drawing a parallel to the latter approach, it seems convenient to construe bifurcating stylistic traditions as divergent legal traditions and the expectations of the target language reader as the intended legal consequences of the target language legal text. As it was established above, there are sometimes irreconcilable disparities between the legal traditions embedded in the English and the Hungarian language, which even the neutralised EU legal English may not be deprived of. As for the intended legal consequences, if there are irreconcilable differences emerging during the encounter of the two languages, triggering the same legal consequences might prove even more difficult to achieve. Although differences may be manifested at a lexical and grammatical levels first, they have a direct effect on the textual level, since texts are made up of sentences based on words and expressions having lexical and grammatical structures.

Conclusion

The necessity of a comprehensive compendium of legal dynamic contrasts in English-Hungarian language pairs. The European Union has elaborated a unique legal language so that

⁴ Klaudy, *Bevezetés a fordítás gyakorlataiba*. 23.

the discrepancies among Member State legal systems may become less and less apparent under the auspices of unification. Though achieving multilingualism is one of the EU's major objectives, multilingual legislation first takes place in one of the EU working languages, and only following this step will it be translated into all official languages. The resulting target language legal texts are meant to trigger the same legal effects across the European Union. EU official languages, however, do not belong in the same linguistic family. All of the EU working languages (mostly English, and to a lesser extent, French and German) are part of the Indo-European linguistic family, behaving more or less in the same way during translation between them. If, however, the target language is found in a different linguistic family, such as the Hungarian language, which is part of the Finno-Ugric family, the encounter of these two legal languages mobilise certain legal language and legal language use differences and therefore determine the translational behaviour of the two legal languages. This study is an attempt at examining these differences when translating EU legal English into Hungarian and also a potential revelation of the problems that may arise during such translation, which, ultimately, may be felt in the legal effects produced by the resulting target language legal texts as well.

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