IMPLICATIONS OF TRANSLATION COMPETENCE IN THE LEGAL CONTEXT: A DIDACTIC PERSPECTIVE

Ewa KOŚCIAŁKOWSKA-OKOŃSKA, PhD
Department of English, Nicolaus Copernicus University
ul. W.Bojarskiego 1, 87-100 Toruń (Poland)
Ewa.Koscialkowska-Okonska@umk.pl

Abstract: The paper addresses the existing models of translation competence that are relevant for didactics of legal translation. Translation competence is generally perceived as a theoretical construct embracing such areas as knowledge, skills and aptitudes that are vital for the performance of translation tasks. The paper shall start from concise presentation of most didactically relevant – in the author's view – approaches to translation competence. This shall be followed by attempts aimed at the incorporation and integration of findings of competence research presented as well as practical solutions into the teaching and learning process with a view to legal translation competence.

Key words: translation competence, legal translation, competence models, legal translation competence

IMPLIKACJE KOMPETENCJI TŁUMACZENIOWEJ W KONTEKŚCIE PRAWNYM: PERSPEKTYWA DYDAKTYCZNA

Abstrakt w języku polskim: W artykule omówiono istniejące modele kompetencji tłumaczeniowej istotne z punktu widzenia dydaktyki przekładu prawniczego. Kompetencja tłumaczeniowa postrzegana jest jako konstrukt teoretyczny obejmujący takie obszary jak wiedza, zdolności i umiejętności, które są niezbędne do wykonywania zadań tłumaczeniowych. W pierwszej części artykułu zaprezentowane zostaną najbardziej relewantne z perspektywy dydaktycznej – w ocenie autorki – podejścia do kompetencji tłumaczeniowej, które poprzedzają – w części drugiej artykułu – próbę włączenia i integracji wyników przedstawionych badań w obszarze kompetencji tłumaczeniowej oraz rozwiązań praktycznych w procesie dydaktycznym ze szczególnym uwzględnieniem kompetencji tłumaczeniowej w tłumaczeniu tekstów prawniczych.

Słowa-klucze: kompetencja tłumaczeniowa, tłumaczenie tekstów prawnych i prawniczych, modele kompetencji, kompetencja tłumaczy tekstów prawnych i prawniczych

Introduction

The development of translation skills and competence in students requires the integration of a variety of mechanisms in the didactic process. From the point of view of translation teaching, translation competence is viewed as a theoretical construct that embraces such areas as knowledge, skills and aptitudes that are, as Kelly (2005: 162) underlines, essential for the realisation of translation tasks. The most difficult problem in discussing translation competence and its development is the number of definitions that have been generated by scholars and researchers so far. This lack of consensus as to the number and nature of components, the necessity to multiply sub-components, categorisation of types of competence according to research interests of scholars and to the fields in which a specific type of competence is to operate, yield a never-ending list of properties that a definition of translation competence has to cover. In the didactic process, those objectives must take into account the gradual development of skills, accrual of knowledge and experience as well as

some space for assessment on the part of the teacher and of the students (in the form of peer-assessment and self-assessment) to get the students involved. Attempts aimed at developing models for the operation of translation competence – to make it more effective and reliable – have been numerous, yet not always successful, feasible and practical.

Approaches to translation competence in the educational context

Propositions and definitions of translation competence have been given an impetus in the early 1990s., mostly due to an increasing number of university programmes and degrees in translation (see also Prieto Ramos 2011) resulting from globalisation trends. In this paper we are not going to analyse approaches and definitions of translation competence in the order of their emergence on the translation studies 'scene' as many of them have been discussed elsewhere (see e.g. Kościałkowska-Okońska 2012a, 2012b), yet the focus shall be laid on those ideas and solutions that are of relevance for the university didactic context. In this section, the expert system approach, PACTE and TransComp findings, the didactic approach as well as the EMT competence framework shall be very briefly discussed.

The expert system approach (cf. Bell 1991:40-41) covers various types of knowledge (of both the source and target language, text-type knowledge, contrastive knowledge, domain knowledge and inferential knowledge) necessary for the translator to perform a given task, as well as procedures combined with a targeted four-tier model of communicative competence including grammatical, sociolinguistic, strategic and discourse sub-competences (1991: 43).

The PACTE research group has been working on ways of incorporating research results into studies on competence development (see PACTE 2000, 2003, 2009; early attempts were propounded by such researchers as Bell (1991), Pym (1992), Kiraly (1995), Hansen (1997), and later by Risku (1998), Neubert (2000), Kelly (2005), Shreve (2006), Alves and Gonçalves (2007)). The PACTE's translation competence consists of five interrelated sub-competences and psycho-physiological components, i.e., the bilingual

sub-competence, extra-linguistic sub-competence, translation knowledge sub-competence, instrumental sub-competence (the knowledge how to use documentation resources, communication and information technologies), and, finally, the strategic sub-competence as the most essential one ensuring the efficiency of the translation process.

The psycho-physiological components encompass a variety of cognitive and attitudinal components as well as psychomotor mechanisms which include e.g., memory, perception, intellectual curiosity, perseverance, knowledge of and confidence in one's own abilities, motivation, creativity, logical reasoning, analysis and synthesis, etc. (cf. PACTE 2003: 93).

The TransComp model was developed by Göpferich (2009); she (2009: 21–23) categorises competence in six sub-categories: communicative competence (in at least two languages), domain competence (general and specific knowledge), tools and research competence, psychomotor competence (abilities necessary for reading and writing with electronic tools), translation routine activation competence, and strategic competence (ccordinates the application of other sub-competences and "sets priorities and defines hierarchies between the individual sub-competences, leads to the development of a macro-strategy in the sense of Hönig (1995), and ideally subjects all decisions to this macro-strategy" (Göpferich 2009: 22) The objective of this model is – what is relevant for the didactic process – to view the development of translation competence as it is progressing on a continual basis.

The didactic approach was developed by Kelly (2005) who sees translation competence as a macrocompetence consisting of communicative and textual competence, thematic competence, cultural competence, instrumental competence, psychophysiological competence, interpersonal competence, and strategic competence. The last one is placed by Kelly, similarly as by the PACTE group, as the priority competence in her pyramid model (cf. Kelly 2005). What is interesting in Kelly's view is adding a new sub-competence, an interpersonal one, to her list of components. This particular type of competence is vital for the translator in their professional interactions (with other translators, professionals, or clients).

The attempt to systematise the described activities that are performed and subsequently analysed (see also e.g. Kelly 2005) is

well reflected in the European Master's in Translation (EMT; a joint project of the European Commission, Directorate General for Translation and European universities that are approved to become partners in the programme) reference framework aimed to propose quality requirements for a given professional profile. This particular framework defines competence as "the combination of aptitudes, knowledge, behaviour and know-how necessary to carry out a given task under given conditions". With the aim of specifying these aspects, six interdependent competences have been identified (EMT 2009:4-7):
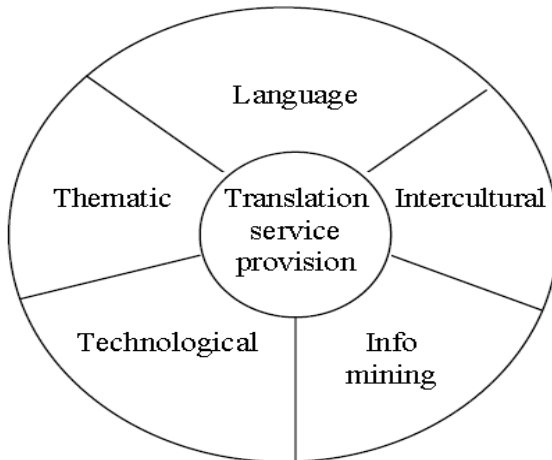

Figure 1. EMT model of translation competence (EMT 2009: ibid.)

1)   Translation service provision (embracing the awareness of the social role of the translator, knowledge of market requirements and specific job profiles, marketing, negotiating with clients, time and stress management, etc.)
2)   Language competence
3)   Intercultural competence (covering sociolinguistic and textual dimensions)
4)   Information mining competence (denoting the ability to find relevant information using tools and search engines, and to critically evaluate the reliability of resources).

5) Thematic competence (covering the knowledge of seeking relevant information to better understand issues related to a given document).

6) Technological competence (knowledge to use effectively "a range of software to assist in correction, translation, terminology, layout, documentary research" (EMT Expert Group 2009:7))..

What can be observed at a first glance is the central role played by translation service provision competence (itself quite closely corresponding to PACTE's concept of strategic competence; see also Ramos 2011). Another aspect worth considering in the context of this paper is the possibility of identifying features inherent to legal translation competence and its components that are required for this competence to develop and operate effectively. The EMT, PACTE and TransComp models help to specify those skills that are essential for any type of specialist translation, including legal translation. The prerequisites for their efficacy assume a) that they are "enriched with the specific interdisciplinary elements of each branch of translation (in the case of legal translation, with particular attention to legal thematic competence)" (Prieto Ramos 2011: 11), and b) that they are incorporated into a wider methodological framework based on competence development.

Legal translation competence

Apart from the aforementioned components inherent to any type of domain-specialised competence, competence required in legal translation also assumes having good writing skills (that are reflected in texts being communicative), developing legal reference resources and the awareness of the target and source legal systems (cf. Sofer 2006), as well as information mining skills (cf. Obenaus 1995). Another issue indispensable for this competence to operate is the knowledge of the field of law, which is obviously not that broad as that of professional lawyers. As Cao (2007:5) says:

"The legal translator's skills and tasks are very different from the lawyer's. The legal translator does not read and interpret the law the way a lawyer does. The legal translator does not write the law either. However, the legal translator needs to know how lawyers,

including judges and lawmakers, think and write and how they write the way they do, and at the same time, to be sensitive to the intricacy, diversity and creativity of language, as well as its limits and power".

In other words, a legal translator should know how lawyers interpret the law, and the relevant domain-specific knowledge would undoubtedly enhance the overall translation performance viewed as generating good-quality competent translation. Therefore, a combination of two 'sensitivities' – of the lawyer and of the linguist – would result in a competent legal translator who is a professional capitalising on linguistic skills, with the knowledge of the law and ability to interpret legal texts, since legal translation – as one of the types encompassed within specialised translation – entails the knowledge of legal terminology. This view is also reflected in Šarčević's words on requirements binding for the process of legal translation: it obviously needs both legal and linguistic competence, and for Šarčević "In addition to a working knowledge of legal terminology, legal competence presupposes an extensive knowledge of both the source and target legal systems, a thorough understanding of the structure and operation of legal texts and legal provisions, drafting practices and even the methods of interpretation" (Šarčević 2001:76). Garre's views go in line with Šarčević as she stresses the need for paying attention not only to linguistic features but also "to the substantial legal content of the text" (Garre 1999: 144). Legal translators should abide by the rules of legal interpretation; they should also recognise and acknowledge the existing and still binding traditions of the legal systems they are currently faced with in processing a given legal translation task. As Garre states "The best way to gain such knowledge is to create a connection with the legal world and confer with legal professionals" (Garre 1999:144)

Apart from the fact that models of translation competence are abundant and legal translation competence *per se* is discussed in many scholarly writings (e.g. Cao 2007), legal translation competence has not been reflected in a plethora of models – one of exceptions here is the one proposed by Prieto Ramos (2011), thus further research in the field of legal translation competence is definitely necessary.

Prieto Ramos (2011) attempted at restructuring the existing models of translation competence (he specifically refers to those of the PACTE group, Kelly and the EMT Expert Group) to enhance the effectiveness of the model and to arrive at the five-component model

of legal translation competence. The ultimate result is another translation competence model which comprises the following types of competence:

1)   Strategic or methodological competence embraces the analysis of translation briefs, macrocontextualisation, work planning, ways of identifying problems and implementing transfer strategies (in the form of translation procedures), decision-making, quality control and self-assessment;

2)   Communicative and textual competence includes linguistic, sociolinguistic and pragmatic knowledge, encompassing the knowledge of linguistic variants, registers, specialist use of legal terminology as well as conventions binding for the legal genres;

3)   Thematic and cultural competence is the knowledge of legal systems, and key legal concepts. It is also the awareness of terminological asymmetry between different legal systems and legal traditions;

4)   Instrumental competence denotes the knowledge of specialist sources, information and terminology management, the ability to use parallel documents, and IT tools in translation;

5)   Interpersonal and professional management competence refers to teamwork, interacting with clients and other professionals, and the knowledge of legal regulations pertaining to professional practice.

This model, similarly to other competence models, stresses the interplay and significance of declarative and procedural knowledge that is necessary to perform 1) any translation task efficiently and 2) to perform a legal translation task efficiently and successfully. Strategic competence seems to resemble the translation knowledge competence of the PACTE group as it specifically addresses procedures, problem solving and decision making processes. This model clearly emphasises the (inevitable) interaction between translation and law that is observed in legal translation. Therefore, thematic competence is a core-characteristic property of legal translation competence and it results in the necessity for translators of legal texts to accumulate knowledge of the law that would be sufficient to contextualise the documents they are to translate, and to analyse and comprehend legal consequences deriving from the source and target texts.

The model includes five components, each of which embraces further abilities and skills, finally resulting – as it is a problem shared among multicomponent models – in a long list of properties

necessary for the legal translation competence to operate effectively. Yet effectiveness quite frequently lies in brevity and apparent non-complexity, and certainly in attempts to avoid the multiplication of skills, properties, features, etc. For that reason, a more concise and user-friendly model could be suggested here that would also be more flexible and capable of dynamically adjusting to changing situations and circumstances (also emerging on the translation market) as the changing dynamics is one of primary features of translation in general. It would also be an interactive model as the interaction between three components of the model enables its efficient operation. This model is a tentative proposal; its functioning, underlying mechanisms and the final outcome need further detailed research and analysis but it appears to be one of the options as how to improve the didactic process and make the development of legal translation competence more feasible and attainable in practical terms. This model is more didactically oriented, therefore it is closer to the EMT categorisation, and it is a modification of its structural arrangement. It reflects what students really need and what they are expected of in terms of knowledge, skills and competences. It is more of a start-up model for students and can be further complemented with skills and properties that they deem vital for the translation profession and translation performance; it is also flexible enough to incorporate new items essential for the above.

The interactive legal translation competence model embraces:

1) translation management competence that corresponds to the EMT's translation service provision competence. It embraces practices and operations required to translate in a commercial setting, which is what students aspire and strive for.

2) linguatechnical competence covers skills and tools indispensable to perform a task in legal translation (and covers EMT's technological, thematic, information mining, language and intercultural competences)

3) cognitive-analytical competence pertains to declarative and procedural knowledge used in practice, accompanied by cognitive processes being the foundation for the other two areas, and the operational outcomes are manifested in competent translation. It is the core competence underlying the operation of the other two competences.

The three areas overlap, are mutually dependent and interact as in the diagram below:
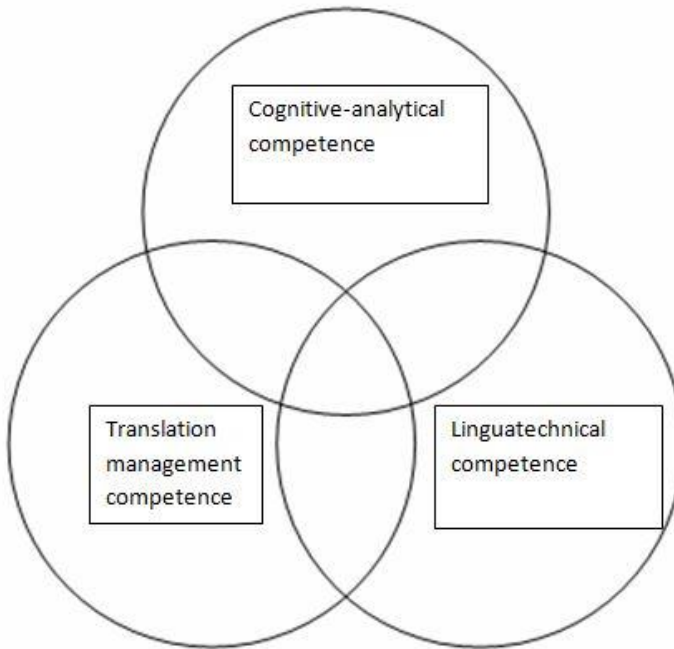

Figure 2. The interactive legal translation competence model

Conclusions

The comparison of translation competence models yields general, or even universal, observations. First, translation competence is almost a utilitarian concept, and it may be applicable in curriculum design, education quality improvement, and skills development. Secondly, it can also be used in the research on the expert-novice paradigm, and in translation quality assessment both in the educational and in the professional contexts. Moreover, those models display a variety of research perspectives and postulates propounded by scholars, and they also demonstrate a set of concepts or properties inherent to the operation of translation competence. This common

ground is shared by language, culture and cognitive components. Irrespective of the nature of those models, be it cognitive, integrating, interactive or education-focused, they are used to draw our attention to certain areas within the field of translation. On the one hand, they have to be general enough to embrace a variety of languages, cultures, text types, situations, strategies, procedures or techniques, but on the other they have to be sufficiently specific so as to facilitate their application and identification of problem areas or relevant components or sub-skills/sub-competences that are vital for translation performance.

For that reason, in the academic context it is difficult to find a model that would be universally and commonly accepted, that would cater for all needs (whether of educational nature or beyond), that would address all expectations and requirements. Attempts aimed at the consolidation of translation competence can be observed in the form of componential models presented above, yet they are in many respects similar as to the list of componential properties of translation competence. The model that can be used effectively in the didactic context should primarily be applied to raise the awareness of students of the (progressing) stage of their competence. Due to the fact that translation competence is an open-end process that is ongoing and does not have the final goal – even experts are learning constantly – students have to be not only sufficiently competent but, additionally, they have to strive for becoming experts in a given set of competences that are demonstrated in their overall translation performance and in a given specific situation. Therefore, the objective of applying a selected translation competence model (or developing a working one out of the achievements of existing models) within the duration of translator training is to make students realise their strong points and deficits, with the former being mastered and the latter – overcome and improved.

Translation competence is perceived as being on a continuum of development through its individual, or even individualised, manifestations. This development depends on the individualised applications of the accumulated knowledge and experience that facilitate the workings of other competences, be it linguistic, cultural, information mining or technical. The above considerations are also fully valid with reference to legal translation competence.

In the reality of a Polish university translation course, students in the legal translation programme (implemented as a part of the university curriculum) are not generally experts in the field and, in contrast to e.g., students in post-graduate programmes, do not have any background in law. Classroom-wise they are very heterogenous and their only background is in humanities as they are involved in language studies. This specific educational experience results (frequently) in excessive concentration on words, and this is combined with the lack of hands-on experience (e.g. buying houses, signing contracts, being in court, etc.): the students possess scarce (or none) accessible knowledge as to which lexical options should be chosen as adequate and relevant. Legal translation practice in the classroom usually involves translating certificates, contracts, agreements, articles of association, etc. What is really worth stressing in coordinating legal translation courses is the fact that the most recommended form of practicing legal translation (and most effective from the didactic point of view) is to expose students to real-life situations (in the form of simulations) and real-life texts in real-life – i.e., market economy – conditions. Proverbial practice makes perfect – or an expert – and through intensive practice students develop cognitive frameworks and procedural schemata that facilitate further effective construction of legal texts, identification of problem areas and finding adequate and relevant solutions to problems.

Another 'working' aspect of legal translation competence development may be tentatively called 'managing the process', i.e.:

(i)   analysing why, where and when a given document (legal text) is generated;

(ii)   analysing why, where and when a given text will be used as translation (a translation brief);

(iii)   analysing regulations (if applicable) and contexts of a translation;

(iv)   analysing parallel texts to see how they function in their 'realities';

(v)   analysing characteristic features of the text;

(vi)   consolidating teamwork that reflects translation market workflow (project manager, researcher, terminologist, translator, proofreader);

(vii)   stress on justifying their choices

Obviously, practical integration of legal translation tasks stimulates the development of legal translation competence. The above presented models underscore the process-oriented dimension, and the central role played by knowledge is further enhanced by relevant skills. This approach enables developing a continuum between translation training and real-life operation on the professional translation market. Implications for the future could also embrace the more interdisciplinary nature of legal translation competence and the need for more comprehensive education of prospective translators.

Bibliography

Alves, Fabio and Jose Luis Gonçalves. 2007. "Modelling Translator's Competence: Relevance and Expertise under Scrutiny. In *Doubts and Directions in Translation Studies: Selected Contributions from the EST Congress, Lisbon 2004, 41-55.* eds. Radegundis Stolze, Miriam Shlesinger and Yves Gambier, 41-55. Amsterdam/ Philadelphia: John Benjamins Publishing Company.

Alves, Fabio. 2005. Bridging the Gap Between Declarative and Procedural Knowledge in the Training of Translators: Meta-Reflection Under Scrutiny. Meta 50(4), http://www.erudit.org/revue/ meta/2005/ v50/ n4/019861ar.pdf.

Bell, Roger. 1991. *Translation and Translating. Theory and Practice*. London and New York: Longman.

Cao, Deborah. 2007. *Translating Law.* Clevedon, New York and Ontario: Multilingual Matters.

EMT Expert Group. 2009. Competences for professional translators, experts in multilingual and multimedia communication. Brussels: European Commission, http://ec.europa.eu/dgs/translation/programmes/emt/ key_documents/ emt_competences_translators_en.pdf.

Garre, Marianne.1999.. *Human rights in translation*. Copenhagen: Copenhagen Business School Press.

Göpferich, Susanne. 2009. "Behind the mind: methods, models and results in translation process research". In *Research Project*

*TransComp: The Development of Trandlation Competenc*e, eds. Susane Göpferich, Arnt Lykke Jakobsen, Inger Mees, 11-38. Copenhagen Studies in Language 37, Samfunds Litteratur.

Hansen, Gyde. 1997. "Success in Translation". In *Perspectives: Studies in Translatology,* 5(2), 201-210. London: Routledge.

Hönig, Hans. 1995. *Konstruktives Übersetzen*. (Studien zur Translation 1). Tübingen: Gunther Narr Verlag.

Hurtado Albir, Amparo. 2007. "Competence-based Curriculum Design for Training Translators". In *The Interpreter and Translator Trainer* 1(2), pp. 163-195.

Kelly, Dorothy. 2005. *A Handbook for Translator Trainers.* Manchester: St Jerome.

Kiraly, Donald. 1995. *Pathways to Translation*. Pedagogy and Process. Kent, Ohio: Kent State University Press.

Kościałkowska-Okońska, Ewa. 2012a. „Kompetencja tłumaczeniowa: modele teoretyczne a rzeczywistość". In *Tłumacz: sługa, pośrednik, twórca?,* eds. M. Guławska-Gawkowska, K. Hejwowski, A. Szczęsny, 119-129. Warszawa: Instytut Lingwistyki Stosowanej UW.

Kościałkowska-Okońska, Ewa. 2012b. "Experts or not? An insight into expert vs. non-expert competence". In *Translation Studies: Interdisciplinary Issues in Theory and Didactics,* eds. L.N.Zybatow, A.Petrova, M.Ustaszewski, 71-79. Frankfurt am Main: Peter Lang.

Neubert, Albrecht. 2000. "Competence in language, in languages, and in translation". In *Developing Translation Competence*, eds. Christina Schäffner and Beverly Adab, 3-18. Amsterdam/Philadelphia: John Benjamins Publishing Company.

Obenaus, Gerhard. 1995. "The Legal Translator as Information Broker". In *Translation and the Law,* ed. Marshall Morris, 247-259. Amsterdam/ Philadelphia: John Benjamins Publishing Company.

PACTE. 2000. "Acquiring translation competence: hypotheses and methodological problems of a research project". In *Investigating Translation,* eds. Allison Beeby, Doris Ensinger and Marisa Presas, 99-106. Amsterdam/Philadelphia: John Benjamins Publishing Company.

PACTE. 2003. "Building a Translation Competence Model". In *Triangulating Translation: Perspectives in Process Oriented Research,* ed. Fabio Alves, 43-66. Amsterdam/Philadelphia: John Benjamins Publishing Company.

PACTE. 2005. "Investigating Translation Competence: Conceptual and Methodological Issues". In Meta 50(2): 609-619.

PACTE. 2009. "Results of the Validation of the PACTE Translation Competence Model: Acceptability and Decision Making". In *Across Languages and Cultures*, Vol. 10, No 2, 207-230.

Presas, Maria. 2000. "Bilingual Competence and Translation Competence". In: *Developing Translation Competence,* eds. Christina Schäffner and Beverly Adab, 19-31. Amsterdam/Philadelphia: John Benjamins Publishing Company.

Prieto Ramos, Fernando. 2011. "Developing Legal Translation Competence: an Integrative Process-oriented Approach" In *Comparative Legilinguistics - International Journal for Legal Communication* 5, pp. 7-21.

Pym, Anthony. 1992. *Translation and Text Transfer.* Frankfurt am Main: Peter Lang.

Risku, Hanne. 1998. *Translatorische Kompetenz. Kognitive Grundlagen des Übersetzens als Expertentätigkeit.* Tubingen: Stauffenburg Verlag.

Šarčević, Susan (ed.). 2001. *Legal translation. preparation for accession to the European Union.* Rijeka: Faculty of Law, University of Rijeka.

Schäffner, Christina. 2000. "Running before Walking? Designing a Translation Programme at Undergraduate Level". In *Developing Translation Competence,* eds. Christina Schäffner and Beverly Adab, 143-156. Amsterdam/Philadelphia: John Benjamins Publishing Company.

Shreve, Gregory M. 2002. "Knowing translation: Cognitive and experiential aspects of translation expertise from the perspective of expertise studies". In *Translation Studies: Perspectives on an Emerging Discipline*, ed. Alessandra Riccardi, 150-171. Cambridge: Cambridge University Press.

Shreve, Gregory M. 2006. "The deliberate practice: Translation and expertise. In: *Journal of Translation Studies* 9 (1), pp. 27-42.

Sofer, Morry. 2006. *The Translator's Handbook.* Rockville: Schreiber
   Publishing.