

STRATEGIES AND TOOLS FOR LEGAL TRANSLATION

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Abstract: The article deals with translation strategies in their relation to translation tools. It reflects the theoretical requirements for professional legal translations in the light of the legal-linguistic equivalence and the skopos-theory. The author stresses that developing translatorial strategies as well as designing and using translation tools are theory-dependent activities. What remains to be developed is the explicit model of hitherto implicitly followed particular translatorial strategies in relation to all types of translation tools. In the institutional setting the relevant translatorial strategies are influenced by guidelines that regulate many issues that are subject to choices made by individual translators. These guidelines often also determine the use of translation tools. As of now, on-line translation tools widen considerably the traditional lexicographical notions and they contribute to work rationalization in that they offer the translator a survey of already existing translation alternatives. However, available translation tools, traditional and digital, tend towards solving problems of translatorial routine. Their multitude corresponds with the number of dynamic problems in legal translation that cannot be rigidly determined. Therefore, creative legal translation remains an essentially human activity. Meanwhile, the multitude of existing approaches might lead in future to the emergence of a legal-linguistic thesaurus that would display the totality of legal speech acts that constitute the legal discourse. The legal-linguistic thesaurus, that would constitute the main translation tool, does not preclude developing of other goal-oriented translation tools of limited scope. Therefore, notwithstanding the on-going changes, strategically responsible choice of translatorial strategies and the corresponding informed choice of translatorial tools are essential techniques for daily translation work.

STRATEGIE I NARZĘDZIA TŁUMACZENIA PRAWNICZEGO

Abstrakt: W artykule omówione zostają problemy wynikające w relacji pomiędzy strategiami translatorskimi i narzędziami wspomagającymi tłumaczenie. Punkt wyjściowy stanowią teoretyczne wymagania dla profesjonalnych tłumaczeń tekstów prawnych wynikające z pojęcia ekwiwalencji legilingwistycznej oraz teorii skoposu. Autor podkreśla, że planowanie strategii translatorskich, jak również stosowanie narzędzi wspomagających tłumaczenie są działaniami zależnymi od wyboru teorii. W tym kontekście koniecznym wydaje się rozwinięcie eksplicitnego modelu strategii translatorskich związanych z wyborem narzędzi wspomagających tłumaczenie, które dotychczas są jedynie domyślne w praktyce translatorskiej. Ponadto, w instytucjach w których wykonywane są przekłady mają zastosowanie dyrektywy dla tłumaczy, które regulują kwestie związane z wyborem i zastosowaniem narzędzi wspomagających tłumaczenie. Cyfrowe narzędzia wspomagające przekład rozszerzyły dotychczasowe pojęcia leksykograficzne i przyczyniły się do racjonalizacji trybu pracy udostępniając tłumaczowi do wyboru przegląd ekwiwalentów tłumaczeniowych. Jednakowoż, tradycyjne i cyfrowe narzędzia wspomagające są pomocne głównie przy rozwiązywaniu rutynowych problemów przekładów. Ich znaczna liczba odpowiada ilości problemów przekładu prawnego o charakterze dynamicznym, które nie mogą

być rozwiązane w sposób sztywny. Z tego powodu kreatywne tłumaczenie prawne pozostaje działalnością wykonywaną przez ludzi. Jednakże istniejąca mnogość podejść do identyfikacji strategii translacyjnych mogłaby w przyszłości doprowadzić do stworzenia tezaursu języka prawa dokumentującego całokształt prawnych aktów mowy, które tworzą dyskurs prawny. Tezaurus języka prawa, który mógłby stać się głównym narzędziem wspomagającym, nie wyklucza jednak rozwoju innych narzędzi mniejszego pokroju wspomagających przykład. Dlatego, pomimo zachodzących zmian, odpowiedzialny wybór strategii translatorskich i narzędzi wspomagających przykład pozostaje jedną z podstawowych umiejętności zawodowych tłumacza w jego codziennej pracy.

Strategies and tools in the theory of legal translation

The theory of legal translation has set up numerous requirements that must be considered when translator's practical work shall lead to satisfying results. More precisely, taking these theoretical requirements into consideration is necessary in order to provide a professional legal translation and not only a work that may satisfy some urgent daily needs. The translation theory that structures all professionally relevant activities starts with the most salient point in translation that is rooted in the concept of linguistic equivalence. The equivalent transfer of meaning between the source language and the target language is its fundamental postulate. Based on this fundamental postulate particular theories were developed in order to determine the conditions under which equivalent semantic transfer may take place in the translation process. Within the theory of legal translation they can be positioned on a scale between two extremes, ranging from the principal impossibility to reach equivalence to 'everything goes'-approaches (Galdia 2009, 226). Moderate theories of equivalence which give the tone in the contemporary translation debate expect from the translator the accomplishment of the semantic transfer along skopos-theoretical determinations (Matulewska 2013, 15). The skopos-theory developed by Reiss and Vermeer (1984) helps determine the equivalence in translation. It demands from the translator the determination of the goal that should be achieved with the envisaged translation (cf. Šarčević 2012, 190). Yet, the translation of legal texts includes not only terminological problems but also the necessity to comply with a multitude of instructions and guidelines which are issued by institutions that commission translations. Translators have to develop specific professional strategies in order to integrate such formal requirements into their working habits. Therefore, translating means making strategic choices about language use that are goal-oriented; translation is not a downright "derivative of language competence" (Ramos Prieto 2011, 18). Thus, theory steers practice. In fact, since the skopos-theoretical re-orientation of translation studies translators are not lost in translation any more as the translation process has been clearly characterized in epistemological terms. As a result of the epistemological clarification of the translation process the translation has been liberated from previously dominating 'traduttore-traditore'-myths and it became a rational linguistic practice that can be taught and learned. In the past, education regarding legal translation was limited to abstract methodology as no sufficient experience was there to set up translatorial strategies. Equally, translation tools were scarce or not available for many languages. Nowadays, legal translation as a professional practice develops more than ever in interrelation between translatorial strategies and the choice of translation tools.

Complexity of legal translation processes as networks of skills, strategies and tools

Despite all mentioned improvements, legal translation remains a professionally demanding task because it includes the necessity of strategic choices in an area where professional language is used. All too often it is still perceived as demanding mainly because it would require excellent knowledge of the translation languages that clearly is also the case. Uncompromisingly, therefore, also the legal translation theory requires from translators the most advanced level of proficiency in both translation languages. This requirement comes close to bilingual competence. Yet, bilingual competence is regularly of functional type; it is limited to certain circumstances of language use. Some models of legal translation rely therefore more realistically on continuous improvement and monitoring of translator's linguistic skills (Gortych 2009, 192). Evidently, proficiency in at least two languages is a tacit prerequisite for becoming a translator. Yet, translation is a profession that goes beyond this formal and undeniably also fundamental practical condition. Translational competences include the language proficiency as main logical requirement, as well as other pragmatic and technical skills. Essential in terms of linguistic pragmatics are the intercultural competence, the thematic competence, and last but not least, the translation service provision competence (Prieto Ramos 2011, 10) that enable the translator to cope with his/her task practically. Practically essential is also the awareness of auxiliary sources called sometimes "instrumental competence" or "information mining competence" (Prieto Ramos 2011, 13). It enables the translator to choose the appropriate sort of documents or tools that will facilitate the translation process. Translational practice is therefore best characterized as a process in which strategical decisions based on professional competences are taken towards the background of solid yet always vulnerable translator's linguistic proficiency. In addition to the linguistic requirement, legal knowledge is indispensable in order to exercise this profession in a responsible manner. In order to cope with this problem some researchers proposed to introduce a module comprising systematic legal training into the model of legal-linguistic translation (Prieto Ramos 2011, 12). Structural complexity of legal texts, especially of international conventions and longer statutory texts such as codes, excludes the possibility of translation that would be based solely on translator's linguistic proficiency and basic legal knowledge. In the search for textual continuity and cohesion in complex translation projects language proficiency and legal knowledge become effective when strategies are defined and developed and when translation tools are aptly selected. Legal translation is therefore an area where auxiliary tools play a decisive role because only relatively simple legal texts can be translated without recourse to traditional or on-line translation tools.

Multitude of translation tools

Different needs and different work conditions led to the emergence of a multitude of translation tools. Roughly speaking, every translation strategy requires specific translation tools. It is expedient to construe the notion of a 'translation tool' broadly and perceive all auxiliary (external) materials as translation tools. However, it also goes without saying that traditional and on-line databases that represent the legal language or at least the legal terminology usually dominate the translational practice. Professional discussion would be impoverished if the notion of translation tools would be reduced to

computer programmes and databases that are accessible on-line. The translatorial practice is complex and translatorial strategies may include different types of translation tools. A deceptive approach is sometimes adopted by experienced translators who cherish the conviction that they find more or less automatically the appropriate access to their texts. They will at best provide acceptable translations by chance. Meanwhile, professional practice cannot be based on coincidence. In fact, coincidental translations are particularly discouraged in institutional settings where textual stability guarantees the proper understanding of legal texts. Depending on the level of institutionalization of the translation process, the translator will have to consult more or less thoroughly institutional guidelines that authoritatively determine the translatorial usages in a particular institution. A perusal of auxiliary materials for legal translators, such as the NCSC Guide to Translation of Legal Materials (NCSC 2011), shows that the tendency towards standardization in the area of legal translation is growing. This holds true notwithstanding the disclaimers often used in such materials which correctly stress that the guidelines are not legally binding upon freelance translators. In practice, however, it is difficult to avoid compliance with the standards set in such documents. Freelance translators may also benefit from such guidelines because they often state best translation practices within an institution. In the institutional setting, the translation guidelines will determine most strategic decisions and the choice of appropriate translation tools. In fact, particular terminological databases and glossaries are used in practice mostly according to applicable institutional translation guidelines. Other frequently used materials include the information on domestic and foreign law involved in the translation, court decisions and scholarly writings about relevant legal issues as well as preparatory materials published by parliaments that explain the motives of the enacted legislation. In recent years, on-line translation tools gained increasing popularity and computer-assisted translation became more attractive especially in the area of full-text search and text editing. The electronic tools comprise spelling and grammar check programmes as well as terminology databanks. In institutions where considerable amount of legal texts is translated this sort of programmes aims at avoiding double work and helps identify analogous texts that can be used in further translation. Furthermore, digital databases such as the Talking Law Dictionary (2008) include pronunciation of legal terms by native speakers; this tool is particularly interesting for languages such as English where the pronunciation of legal terms may surprise even accomplished interpreters or translators. Electronic translation tools include also programmes for automated translation such as SYSTRAN used within the EU institutions. Generally, such programmes are less frequently used for legal translations as until now no programme enables a complete legal translation that would make human control of the target text obsolete. In fact, translation software facilitates the translation process with regard to terminological routine (Bogucki 2009, 19). Yet, classical translation problems remain unresolved in all approaches that aim at developing automated translation tools. With this in mind, Professor Heikki E.S. Mattila (2013, 22) concluded that “legal translation will remain an essentially human activity, at least in the near future.” Further technological developments may be expected in this sector of industry as it can be assumed the interaction between humans and machines within the translation process will grow. Electronic translation tools are not only of practical importance. On-line translation tools and other IT innovations benefit from and

contribute to the development of legal informatics that enables new insights into the structure of law and its language. After all, the source and the target legal texts are embedded in a complex textual structure. Their high degree of intertextuality makes them properly understandable only towards the background of all types of translation tools that were named above.

Strategically dominated access to translation tools

What remains to be developed nowadays in the theory of legal translation is the explicit model of hitherto implicitly followed particular translatorial strategies in relation to all types of translation tools. Translation strategies that have to be construed as singular yet intertwined steps in the translation process are grounded in the main skopos-relevant translatorial choices. They are however also more complex than the basic goal determinations of the envisaged translation because they involve numerous particular strategies and also the regular recourse to external tools. The explicitly stated strategies within the translation process would enable the translator to be always perfectly aware of what part of the translation process (s)he is involved in and what other decisions and external tools are appropriate at this particular stage. The skopos-theory solves also the equivalence problem in the legal translation in that it introduces a dynamic skopos-determined equivalence between the legal source language and the legal target language (Galdia 2003b, 2). While in general translation studies the skopos-theoretical determinations were accommodated rather favourably, in the legal translation theory the skopos-based approach has not always been perceived as the last word on legal equivalence. The reason for this skeptical attitude is the dynamic solution that the skopos-theory has to offer instead of a more 'algorithmically' devised model that would be preferred by many legal translators. Legal translators who are duly concerned with the quality of their work used to look for tools that provide certainty. Both the general and the particular legal translation theories offer dynamic approaches that stress translator's responsibility for the strategic choice that functions as the starting point for professional translation. The dynamic equivalence of legal terms that belong to different legal systems is also the key to legal translation. The lack of any reliable systems of conceptual reference for legal translation makes this challenging strategy unavoidable. As far as systems of reference are concerned, L. Beaudoin (2002, 119) underlined the "absence of universal operational referents," while F. Prieto Ramos (2011, 12) stressed the "asymmetry between legal notions and structures in different legal traditions." To illustrate, when the translator of a chemical text has to translate 'water' into whatever other target language she will have no problems with it as chemistry provides her an unambiguous system of reference. The translator will, as a rule, find without unexpected obstacles the corresponding Chinese term 'shui' that is verifiable within the system of chemical elements as H₂O. Meanwhile, when the common law legal terms 'promissory estoppel' or 'domestic abuse' have to be translated into Chinese the result is less evident. The lack of any system of notional reference in micro- or macroperspective makes choices of translatorial strategies much more difficult than in the case of general translation or the translation of texts belonging to natural sciences. This concerns also the design and use of translation tools, both traditional and digital, that are expected by translators to be able to cope with problems of legal equivalence in a reliable way. One may doubt that static equivalents could be developed in the Chinese language that could

be authoritatively included in an English-Chinese on-line law dictionary as sole correct equivalents of the above named two English legal terms. This fact has consequences for the choice of translation strategies and professional tools for the accomplishment of legal translations because the certainty that many legal translators are looking for cannot be offered by the multiple existing legal translation tools. Legal language differs in its conceptual shape from one jurisdiction to another and this state of affairs is regular and understandable. It reflects the legal diversity all over the world. Legal diversity cannot be overcome but in a process of globalization of law that as of now remains a distant although realistic future.

Institutional guidelines and standardization

Translators who work in specialized international organizations or governmental agencies follow institutional guidelines that delimit their linguistic creativity. For instance, an international organization may commission a translator to translate a statute. This organization imposes in its guidelines for translators the numerical and semantical mirror image between the source and the target text. One may assume that in such a case the syntax of the target language may suffer to a certain extent under the instruction that the translator would have to apply. From the point of view of the commissioning institution such structural guidelines have advantages: they ensure reciprocal and mechanical reference between the source and the target text. Meanwhile, it is difficult to accept a translating strategy based on such guidelines from the linguistic point of view because it regularly leads to syntactic inaccuracies in the target language. However, the above example is instrumental in making plain the implications of translatorial decision making processes that take place under the requirements of the skopos-theory. Translatorial strategies and translation tools make sense only when they reflect the main postulates of this theory. In our case, it would be necessary to rethink and reformulate the guidelines imposed upon the translator. As mentioned above, such guidelines practically govern also institutionally non-organized legal translators. Within European institutions, the 'Interinstitutional Style Guide' (includes acronyms and abbreviations), the 'English Style Guide', the 'Joint Practical Guide of the European Parliament', that are accessible on-line, are examples of such documents. Such institutional guidelines will, for example, determine that in preambles to legal documents the term 'acknowledging' should be used instead of the possible 'affirming', 'adopted' instead of 'approved', 'accepts' instead of 'endorses', or 'expresses its appreciation' instead of 'expresses its thanks'. They may allow in certain cases to use legal terms in the language of their origin. The guidelines may furthermore impose upon translators of statutory texts the obligation to render the statutory provision in the target text with the number of phrases that corresponds exactly with the number of phrases in the source text. Often, plain language guidelines will be applicable, especially in English-speaking countries. In addition to international institutions, translation guidelines are particularly important in countries with several official languages such as Switzerland, Canada, Belgium or Finland. Under the conditions of official bi- or multilingualism the translation problems remain basically unchanged, the only modification being the disappearance of the problem of conceptual intersystemic incompatibility. The translator who works in a bi- or multilingual country acts within

one legal system that is expressed in different, often genetically unrelated languages. This legal system has to be rendered in several languages that have the same notional frame of reference. Many problems that are typical for bi- or multilingual countries can be avoided through parallel drafting in several languages, mostly bilingual drafting. Meanwhile, for some bilingual jurisdictions, such as Hong Kong, appropriate common law terminology must be developed to enable meaningful translations from English into Chinese (Wu 2003, 221, Cao 2005, 170). For Hong Kong, Zhao (2001, 3) stressed the necessity to avoid Anglicized Chinese in legal translations there. Furthermore, due to the number of translations in bi- or multilingual jurisdictions and the necessity to assure terminological coherence, legal translation will be inevitably exposed to institutionally determined guidelines. Particularly important for legal translators in such jurisdictions is the access to databases that are perceived as authoritative within bi- or multilingual legal systems. It is however important to bear in mind that all named types of guidelines are purely conventional and their scientific status varies. They aim at standardization of language use in the public sphere where originality and inventiveness are only reluctantly accepted. After all, statutory provisions must be understood and applied by persons other than their authors. The intersubjective element in text constitution imposes under such circumstances the choice of language use strategies that favour standardized expression.

Thesaurus of legal language and legal discourses

In order to facilitate the daily work of translators a thesaurus of legal discourses would be helpful. Such a universal translation tool would reflect the totality of the legal language, i.e. the legal speech acts that form the legal discourse (Galdia 2009, 137). Legal text types that determine legal discourses are well known. They also prefigure the translation strategies and the appropriate choice of tools for legal translation. Research into the structure of specialized discourses is already very advanced (cf. Gotti 2008) and could be used to form a thesaurus of legal discourses. In a pragmatically oriented approach to legal translation the multilingual thesaurus of legal discourses would be the main tool for any theoretical and practical translatorial activity in areas related to law. A thesaurus of this type would describe the legal discourse in a multidimensional perspective and canvass its lexis as well as the morpho-syntactic structure. It would furthermore include all textual conventions that are characteristic for the text types in question. Such a translation tool has not been accomplished yet. Instead, the available terminology databases display some characteristic features of the legal discourse, mostly in the indirect way, through the characterization of its lexical units. Available for numerous languages are law dictionaries, bi- or multilingual, legal glossaries and legal encyclopedias, in paper and in digital versions. Traditionally, the main criterion used for distinguishing dictionaries from encyclopedias is the difference made between 'term' and 'concept'. It is generally maintained (Mattila 2013, 140) that dictionaries are developed around terms and that encyclopedias focus on concepts. In lexicographical practice both forms often intertwine so that legal dictionaries provide also some conceptual information and legal encyclopedias show terms in their contexts of use. T. Lundmark (1999, 2006) favours rather legal encyclopedias than bilingual law dictionaries due to unsolved and also largely unsolvable problems in translation between (at least partly) incompatible legal systems such as the common law and the civil law. As methods grounded on comparative law may bring only case oriented

approximation, translation equivalents that result from the application of these methods cannot be generalized or engender more rigidly formed equivalents. Therefore, a bilingual legal dictionary may appear as a theoretically unthinkable enterprise in the sense described by T. Lundmark. Heikki E.S. Mattila (2013, 23) referred in an analogous context to differences and similarities between law dictionaries and legal encyclopedias. He also showed the procedure that enables to add value to a legal encyclopedia through developing of indices that function as dictionary entries within the textual structure of legal encyclopedias such as the *Encyclopaedia Iuridica Fennica* (1994-1999). Nowadays, on-line translation tools widen considerably the traditional lexicographical notions. In the area of legal translation they contribute primarily to work rationalization in that they offer translators a survey of already existing translation alternatives. The main structural distinctive feature between the thesaurus of legal language or legal discourse and the digital translation tools is the circumstance that the thesaurus is integrative and descriptive. It does not promise the translator to provide automatically the terms that fit his/her immediate needs. Instead, it includes sufficient linguistic data that enable the conceptual analysis which leads the translator to the choice or to the creation of an appropriate legal term or legal text type. In so doing, it reflects another type of work rationalization than most digital translation tools which aim at approximation to automatic translation.

General and special dictionaries

Already existing general and special dictionaries shed light on lexicographical and lexicological problems that should be solved within the debate about the translation tools. In some broadly designed dictionaries linguistic terminology is introduced as belonging to the special register of a language (Galdia 2003a, 120). Such dictionaries are solidly founded in the view that an ambitious dictionary of a language has to cover different areas of use and include also professional language belonging to law, astronomy, or agriculture. Such a lexicographical approach is well protected against criticism. Meanwhile, general dictionaries provide the legal translator with terms such as 'law' or 'crime', 'penal' etc. These terms doubtless make part of the legal language. Yet professional translators are perfectly familiar with them. This notwithstanding, general dictionaries that include special registers are welcome because they witness to the reality of language use. Bilingual law dictionaries oscillate between complex dictionaries that cover the context of use and illustrate it with phraseological and other examples to hands-on glossaries and terminology lists (cf. Mattila 2012, 37). As far as bilingual law dictionaries are concerned, one might question - in the way of analogy to the problem of legal equivalence or as a result of it - the possibility to develop a law dictionary that provides stable equivalents. For instance, in a specific case concerning the German-English legal-linguistic transfer doubts have been expressed about such a lexicographical conception (Lundmark 1999). Other researchers, such as Gérard Cornu tried to respond to the theoretical challenge with reductionist means. Cornu isolated strictly legal terminology and determined circa 250-400 words as belonging to the area of exclusive use in legal contexts in the French language. He determined lexical units such as 'emphytéose', 'préciput', 'protêt', or 'sursurestaire' as exclusively legal vocabulary (Cornu 2005, 62-65). When applied upon the English language this method

would identify ‘promissory estoppel’ or ‘habeas corpus’ as belonging exclusively to the legal register as their use in other registers would be rather metaphorical or ironical. Other terms, such as ‘defeasible’ or ‘partnership’ that are used in non-legal contexts as well would not count as distinctive elements of the legal English. In contrast to the restrictive semantical approaches, Jaakko Husa (2007, 311-370) created a comprehensive corpus of legally relevant vocabulary in the legal Greek. It includes among others also the Greek equivalents of English terms such as ‘mother-in-law’, ‘buyer’, ‘sister’ or ‘inappropriate’. As a result of Husa’s attempt to define the legal-linguistic vocabulary that would be relevant for a legal dictionary, it became apparent that whatever term may become relevant for law. The context of use of a term finally determines whether a term is relevant for law. This context of use cannot be predetermined because linguistic communication is a dynamic social process. In theoretical terms, only the legal thesaurus in the sense proposed above can cope with such a definition of legal language because it portrays the totality of the legal language in the legal discourse. Meanwhile, semantically restrictive approaches are popular among legal translators as they reflect “words that are difficult to grasp or to remember.” In spite of this understandable preference, the semantically restrictive approaches remain poorly founded in the linguistic theory because they underestimate the complexity of the legal language. Practically, however, the translator’s problem is that most terms belonging to the legal language or potentially belonging to it can be assumed as being mastered by a professional. It can therefore appear as obsolete to state them in translation tools that are designed for practical purposes. The mentioned thesaurus of the legal language that is unavoidable for any solid legal-linguistic research may therefore prove to be cumbersome in use for translators who require much less information. However, the conflict between theory and practice is apparent because the theory acknowledges the multiplicity of translatorial strategies and the multitude of corresponding translation tools. The problem is solvable in that the translator makes the appropriate choice between the practicable strategies and the available translation tools.

Multilingual Terminology Databases

In recent years on-line databases of legal terminology (term banks) emerged as a response to practical criticism on printed legal dictionaries. Their almost unlimited storage capacities and limited costs make them look like an attractive alternative to dictionaries published on paper. For instance, the United Nations made accessible on-line its UNTERM (United Nations Multilingual Terminology Database) that was primarily designed for its Secretariat and that previously could be accessed via intranet only. It includes both terminology and nomenclature necessary for the standardization of multilingual practice in UN-related documents. The International Monetary Fund set up a multilingual directory including IMF-relevant terminology without definitions. The International Labour Organization made accessible two databases, ILO Thesaurus and ILOTERM covering the area of social and labour law. Several terminology databases developed for European institutions are publicly accessible: IATE (Inter-Active Terminology for Europe) is the European Union’s main terminology base within the Translation Centre for the Bodies of the European Union. Furthermore, one can mention the EUROVOC Thesaurus, the JRC-Acquis Multilingual Parallel Corpus within the Joint Research Center, the TAIEX-CCVista-translation database, and the EuroTermBank,

a consolidated interface for EU terminology developed mainly for the needs of new EU member states. Multiple bilingual terminological databases exist in the EU member states for their particular languages (Berger 2009). Among valuable initiatives, one may also mention the Japanese-English on-line database Legal Terms Standard Dictionary (cf. Working Group - Cabinet Secretariat 2006). Meanwhile, no terminology database is perfect; for instance UNTERM's Spanish language terminology corpus has been criticized as largely following the linguistic usages of Spain and therefore being less helpful for translators in Latin America. Practically oriented guides for translators such as the NSCS Guide to Translations of Legal Materials (2011, 14) recommend therefore the use of on-line terminology databases as a starting point for translatorial searches. The results obtained should be further verified and aligned with the specific terminology of the translated text; translators must be aware of that on-line translation tools "may compromise meaning" as stated in the NSCS guide (2011, 14).

On-line databases providing legal information

Also legal information is available on-line, and it is often proposed by non-academic bodies. Many governments and supreme courts provide basic yet reliable legal information on-line. For instance, Finnish law can be consulted at finlex.fi. For France, the database legifrance.gouv.fr and for Monaco the legimonaco.gouv.mc allow access to the domestic legislation of these countries and sometimes also the translation of legal acts into English. In the institutions of the European Union, the glossary 'EUROPA: Summaries of EU Legislation' explains EU legal terms. The database 'Eurojargon' and many subject glossaries, e.g. for agriculture or taxation and customs in EU law cover particular areas of the EU legislation and its diverse policies. The EU-website N-lex.europa.eu which defines itself as a "common gateway to national law" of the EU countries provides updated texts of domestic legislation of EU countries. The site Thomas.loc.gov informs about the law of the USA. Furthermore, the legal systems of the USA, Canada and Mexico are covered by lawsources.com that includes links to databases that provide information about the state law of fifty US states. Legislation relevant for international taxation is accessible under tax-news.com. Some legal databases include quotations from legal literature and legal definitions in (printed) dictionaries: 1. the original legal term; 2. its translation; 3. definition(s); 4. explanatory notes; 5. translation of the definition(s); 6. translation of explanatory notes (cf. Working Group, 2001, 31). This very general structure is rather conventional and it allows for creativeness within a formally defined pattern. Filling this pattern with appropriate content is methodologically less consensual. The digital technology frees lexicographers from the constraints of paper-era dictionaries. Meanwhile, it also puts in jeopardy many digital lexicographical undertakings that overestimate this newly acquired liberty and aim at unlimited storage of data. In brief, the problem of on-line databases is that they may provide too much data to be efficient; especially unreflected accumulation of text samples has to be avoided. The methodology that would address this issue is urgently needed. Otherwise digital translation tools will provide more and more text samples that are added to the explanation of legal terms. The practical problem with this type of information is that jurists who work as legal translators will be aware of the information and non-jurists will regularly have problems with understanding it because the use of

such databases requires at least basic legal education. Meanwhile, most legal databases do not solve translation problems. For instance, when the British legal term ‘devolution issues’ has to be translated, the translator will find in the legal database only the explanation of this specific British constitutional term. As a rule, foreign language equivalents will not be suggested in a legal database. Methodology would have to be developed that would facilitate the design of legal information for non-jurists and reduce the amount of formally correct yet hermetically closed legal information based on text samples and definitions. The analysis of legal information in the age of technological change is a relatively new area of legal research (Berring 2000, 1675). This is, however, rather a problem to be solved in legal informatics than in the theory of legal translation.

Methodological essentials for on-line databases

Lexicological and lexicographical studies have a critical impact upon the development of a methodology for advanced terminological on-line databases. In fact, linguistic corpora are not only “repositories of authentic language data” as stressed by Onesti (2011, 38). They are also working tools for professionals who act under economical and time constraints. Technically unlimited possibilities of storage in term banks allow for quoting of text samples from specialized literature that regularly are not understandable for non-jurists. As a result, the term banks provide legal information to those who master the subject and do not need it and leave behind all those who need information. Equally, overbroad linguistic databanks include language that is well known to professional translators. Contemporary corpus-analysis projects such as the Italian Corpus Jus Jurium that stress methodological aspects focus on conceptions that are representative and contemporary (Onesti 2011, 39). Even a monolingual corpus such as corpora.unito.it represents a valuable support for translators who deal with a query concerning the Italian legal language. This database, like most others that can be perceived as methodologically advanced, is not limited to terms; it also reflects the structure of legal documents and juridical texts. It comes close to the idea of a legal thesaurus representing the legal discourse that has been mentioned in one of the above paragraphs. The pragmatic approach to legal translation stresses the necessity to broaden the purely conceptual focus of terminological or lexicological studies. Its expanded focus covers legal-linguistic speech acts as a basis for a legal translation concept that is integrated in the structure of the legal discourse. In the light of a pragmatically oriented theory of legal translation not only the legal terminology is to be transferred in the quest for legal equivalence. Every legally relevant utterance that is to be translated makes part of broader meaningful units that constitute legal discourses. Therefore, legal equivalence is achieved in translation when elements of the legal discourses, i.e. its main legal speech acts, have been adequately transferred. Furthermore, linguistically oriented databases should not try to compete with ‘juridical’ databases that provide primarily legal information (cf. Onesti 2011, 38). Next, terminological databases have to be updated regularly in order to reflect contemporary language use. Legal language tends towards conservatism and changes slower than the non-specialized registers. Meanwhile, tolerance towards linguistic archaisms finds its limits on the level of understandability. When legal language becomes unintelligible, it must be adapted to general transformations that occur in the ordinary language.

Databases that also include the diachronic perspective upon language use are therefore valuable for general linguists and philologists. They are less useful for translators who usually are interested in the synchronic aspects of language use.

Ambiguities of the Digital Age

The technological evolution within the sector of translation tools is a process that includes many ambiguities and contradictions. As a result of the technological evolution, the formal difference that is made here between traditional and digital translation tools may disappear in the course of digital transformation of auxiliary materials for translators. This act of disappearance is of ambiguous nature as the theoretically identified problems of legal translation that are rooted in the incompatibility of terms and concepts belonging to different legal systems cannot be solved definitely by neither of them. Also terminological confusion governs this multitude of digital translation tools that call themselves 'dictionaries' while being rather 'glossaries' or 'term lists'. Databases of different sort are accessible on the internet that may encompass between several dozens and several hundred thousand entries. Their reliability is another main concern for translators. The reliability is difficult to test by translators who are not jurists because convincing and coherent explanation of a legal term that may be traced in a database does not necessarily guarantee that the information is correct. Regularly, the legal translator will not have the necessary legal knowledge to assess the quality of information provided on-line. Interestingly, the EU database IATE includes degrees of reliability for the terms proposed, for example the grade 4 means 'very reliable' on its reliability scale. Meanwhile, these degrees of reliability refer to terms in specific contexts and are therefore of relative value. Some of existing on-line databases are well-intentioned, yet this is not a guarantee for reliability either. Others aim at pure commercial promotion of financial investment products or of attorneys' services. Reliability upon this sort of data bases is problematic. Another problem is circularity in information design. The databases refer the translator to already existing texts; they do not help him/her when a new term has to be translated. Notwithstanding their impressive volume they cannot include terms 'of first impression' in a jurisdiction that are a real problem for translators. Moreover, many of the databases are ephemeral; they cannot be used as a stable point of reference by translators. Finally, also the educational character of this sort of material for translators remains problematic. Sporadic consultation of an on-line database or consultation of several databases may lead to the acceptable solution of a particular translation problem but it may also neglect the needs of a translator who tries to improve own skills. Frequently, time-consuming on-line researches lack any further going cognitive and pedagogical effects while the systematic work with a printed dictionary may lead to strengthening translator's overall terminological competence through constant study of one source of reference. Incidentally, as a subcultural phenomenon, 'crowd translation' emerged in social networks where translators ask for assistance of other translators in their search for 'right words'. Future research may show the consequences of such experiments. Thus, the digital age confronted translators with a new problem that is the number of available information sources. Use of selective strategies with respect to the digitally available information may reduce the

complexity of work with translation tools. First, professional translators should rather use terminological databases that may be perceived as authoritative via their connection to competent institutions. Second, translators should regularly monitor the development of interesting databases in order to be able to take the right decision when the use of such databases becomes acute for them. Under conditions imposed by the digital age the translator is – like his/her predecessors in times of acute scarcity of auxiliary materials – again referred back to own skills and competences. These skills and competences will help the translator to strike the right balance between the available multitude of sources and his/her real needs.

Translator's search strategies

The multitude of available translation tools forces the translator to select some tools that will prove optimal for his/her work. The translator's professional competence includes the ability to develop a strategy for the efficient search of equivalents to problematic terms (cf. Mattila 2002, 562). Such selection strategies include several constellations. They require also the awareness that a translation problem may exist. A translator confronted with the Italian term 'beni' or the French term 'biens' may simply translate them into English as 'goods'. Better still is to hold on and examine the possibility of a misleading term – a 'faux ami' – as it is frequently the case with general terms (Van Drooghenbroeck 2000, 437). The problem awareness is the controlling strategy in such cases. It is possible to indicate this sort of problems in law dictionaries. Meanwhile, the risk of harmful associations is rarely taken into account by authors of law dictionaries. When in a translation from Chinese into German the translator has to find the equivalent for the Chinese term 'tíngshēn' a dictionary (Köbler 2002, 167, 354) proposes 'Tagsatzung', a term used in Austria and Switzerland yet not in Germany, without marking this specific regional usage. Should the translation based on the equivalent term suggested in the dictionary be used for purposes of a reader in Germany, this reader will not understand it. Use of a legal dictionary will therefore never lead to a mechanistic and correct translation. Likewise, it cannot discharge the translator from terminologically critical analyses. The translator confronted with legal terms that cause problems, i.e. such terms that display potential meaning alternatives in the target language, may also engage in chain translation and use for instance dictionaries of languages related to the target language (Mattila 2002, 562). In a specific case, no equivalence may exist in the Finnish legal language for a French legal term, yet it may exist for a German term. The translator may examine the analogous use of the equivalent coined for the German term. Other legal languages, especially those close to the target language, may be used as a source of inspiration for the translator confronted with an unsolved terminological problem. Many on-line databases favour such searches. Another strategy includes the searches via juridical or doctrinal systematic of legal matters. This strategy requires the competence to understand texts written for jurists. It also includes the use of a simple tool that is a legal textbook. While translating a text on insolvency from Dutch into Finnish the translator could use in parallel a law textbook, an introduction into the Finnish insolvency law. Many translating problems can be solved by parallel reading of such textbooks without time-consuming researches in dictionaries, general and specialized, that due to their unavoidable disconnection from the contexts of use regularly prove more disenchanting than helpful. Most necessary

lexical units can be easily reconstructed within their appropriate semantic fields with the help of this strategy. What is more, the translator who chooses this strategy also increases his/her competence in the area of law, which is only partly the case when a dictionary is consulted. Finally, available translation tools are developed for anonymous users; they cannot be tailored down to reflect specific problems which an individual translator may encounter. For terminological and other linguistic problems the translator should therefore develop a personal database where (s)he would include useful text samples and all problematical terms, expressions, or legal definitions that cause problems. This personal database functions best when it is founded on the associative principle, i.e. when it follows individual associations of terms within the semantic field; it can therefore neglect intersubjective criteria that are typical for dictionaries. While working on such a database the translator should not try to develop a scientific work but rather focus upon subjective problems that reiterate in his/her daily work. Some of her subjective recurrent problems might even be overcome through the work on own databases. Furthermore, work with translation tools has a short-term aim, i.e. solving of a burning translation problem. It is more efficient when also long-term cognitive interests that expand translator's overall professional competences are taken into consideration. The most efficient search strategy that resorts to translation tools unites both short- and long-term goals in the daily translation practice.

Translator's lexicological dilemmas

Available translation tools, traditional and digital, tend towards solving problems of translatorial routine. Yet, in many complicated professional constellations translators are still left alone. Many problems can be solved by using the general translatorial competence that cannot be assisted by existing translation tools. Individual translators will regularly be confronted with lexicological problems, especially in situations where a legal term of the source language does not exist in the target language. When a term such as 'third party spoliation of evidence' shall be translated for the first time it is not sufficient to know that 'evidence destruction' is meant by it. Translators need next to understanding of law also the appropriate words. This standard situation worsens when the source language term is not listed in any available lexicographical resource databases. Such a 'term of first impression' – i.e. a term for which no lexicographical precedent exists – is a challenge to the translator's professional skills. Translators can render such a term with a neologism, they can add an explanatory note to the newly coined word or expression. Also the original term can be added in the explanatory note (Mattila 2002, 564). Yet, translators should not overburden the translation with explanations in footnotes. After all, their task is to translate and not to comment; numerous notes in a translation impede its readability. Occasionally, they may even expose the translator to suspicion by less experienced clients who might assume that the translator is not competent enough and is looking for excuse in form of defensive comments about his/her translation. Another dilemma emerges when the translator is able to trace in auxiliary materials a previously used equivalent that does not convince him/her. Shall (s)he use a term because it has already been introduced by someone into the legal language, even if only marginally, in a situation when (s)he has a better proposal? Likewise, general translatorial competence enables the translator to create

a corresponding French term, e.g. ‘assignation’ to a common law term such as ‘subpoena’. Yet, will this new coinage be generally accepted? The answer to such dilemmas is searched in institutionalized standardization processes. Public institutions provide a remedy in form of standardization of terminological coinage and of terminology use, yet they neglect the ‘better term-problem’. In law, like cases should be solved alike. In the legal translation, like words should be used in like contexts. Usually institutional administrative procedures that regulate the use of terms prevail over individual creativeness. As a result, a deficient yet standardized terminological coinage will have to be used instead of a better yet non-standardized alternative. This disadvantage can be remedied by regular updating of databases by teams of experts. Ultimately, legal translation is not limited to translating of statutory provisions or court decisions. Particularly demanding is the translation of scholarly legal texts because they may deal with doctrinal problems that were previously unexpressed in the target language. Frequently, especially in the area of comparative law, they will deal with terms that are not part of the law in force in a given jurisdiction. For instance, the translation of articles dealing with ‘punitive damages’ into German is cumbersome because the German civil law does not know any ‘punitive damages’ as a legal concept and therefore also lacks a term to express them. The translator can easily coin a neologism such as ‘Strafschadensersatz’. Meanwhile, this new term may be unreadable, i.e. not understandable for German readers who are exposed to it for the first time within their horizon limited by their domestic law. Acceptance of new term coinages and sustainability of their use are problems connected to this particular case.

Creative translation into lesser used languages

Legal translation into lesser used languages is particularly intricate. The translator cannot rely on professional evaluation and liability standards because such standards do not exist for lesser used target languages due to the lack of systematic involvement in this sort of activity. Translation tools for lesser used languages, such as e.g. Mari, Komi, or Maori are rare. Usually only general dictionaries are available for such languages. What is more, coherent legal terminology is frequently missing in these languages. Therefore, translators working with these languages should be foremost interested in language policy issues and they should try to trace guidelines which provide for the direction in which the legal terminology of the target language should be developed. In such linguistic policy guidelines – should they exist for the given language - mostly borrowings from the source language or direct calques will be proposed to translators as basic translation techniques. When, for instance in Nenets (a language spoken in the North of the Russian Federation) there is no domestic term for ‘state’ the translator will use the Russian word ‘государство’ (‘gosudarstvo’) unchanged in the Nenets target text due to the generally accepted translation strategy for Nenets-Russian translations (cf. Nenyang 2001, 37). Translation avoidance may also be perceived as an appropriate strategy when e.g. nomenclature is concerned and equivalents in the target language cannot be determined. Furthermore, the question of understandability of individually coined legal terminology has to be thoroughly considered by the translator in order to avoid falling into the hermeneutic trap with the result that the target language text will remain a formal translation, i.e. a text that is understandable only under recourse to the source text. Therefore, aspects of intertextuality and terminological coherence must be

taken into account by translators who work with languages with less stable legal terminology or where no legal language actually exists, or where it is limited to constitutional texts and the like. Linguistic policy guidelines remain the most important translation tool in such cases.

Conclusions

Professional legal translation is a search for the legal-linguistic equivalence towards the background of translation strategies that steer the choices within the translation process. Due to the complexity of the legal translation process translatorial strategies include also the choice of appropriate translation tools. Unquestionably, knowledge of the relevant languages is the most fundamental 'translation tool', yet due to the complexity of texts that can be classified as 'legal texts' the use of multiple traditional and digital translation tools is unavoidable even for seasoned translators. As a result of this complex professional setting, expanding one's knowledge of the relevant legal languages and the reflection upon specialized language use remain basic tasks for the professional training that never stops. In institutional settings, many of the issues inherent in the process of legal translation are anticipated and determined in translation guidelines. Additionally, legal translators have to incorporate into their own working habits the competence to deal with translation tools. Their choice depends on the goals defined by the translator in a particular translation process. Some translators may wish to avoid complex on-line translation tools and use the traditional law dictionaries. Others may prefer the contemporary digital technology. Some translators may wish to shift their focus of attention from bilingual law dictionaries as main tools for the translatorial practice to other materials that may suit their goals better, such as relevant law textbooks or self-developed thematical databases. Institutionally independent legal translators who enjoy the freedom of choice of translatorial strategies may opt for different approaches that do not contradict the final result. Meanwhile, the use of broadly designed terminological databases is often burdensome due to pressing time limits in the activity of translators. Translation is after all primarily a service and not academic research and therefore the use of some academically ambitious and theoretically well-justified databases may prove less useful for legal translators. Computer-assisted translation provides tools that increase the overall linguistic quality of the final translation, mainly through facilitating of full-text search and final editing of target language texts. Yet the digital tools cannot solve the most complex translation problems that are rooted in the incompatibility of many legal concepts. The multitude of translation tools brought by the digital technology is generally beneficial because it enables the shift from lexis dominated traditional translation tools towards broader thesauruses of legal discourse. It allows a qualitative evolution of translation tools that would go beyond contemporary tendencies towards quantitative increase of available legal-linguistic information. Yet, digital technology causes also problems to translators due to the lack of transparency about authoritativeness and reliability of accumulated data. In sum, professionalism in legal translation means also adequate choice of translation strategies and competent use of translation tools. This choice can be perceived as responsible and efficient when theoretical requirements of the legal translation theory are integrated into translators' daily professional practice.

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