

What causes a headache to Slovak teachers of legal English?

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Abstract:

Legal language and legal terminology are characterized by semantic precision, clarity, consistency, briefness and non-expressivity. However, legal practice and translation work point to the fact that in practice this characteristics does not apply, especially in the translation of legal terms from the source to the target language. This problem is more acute if a conflict of legal systems occurs - such as the Roman-Germanic and Anglo-American ones, which differ not only in their bases but also in spirit. The study attempts to clarify this fact by providing translation solution. The problem with translation of legal lexemes is not caused only by characteristics of the terms, but also by non - equivalency of terms or by the transition of legal branches, change of the term due to lapse of time and finally by the culture differences and the language itself. The paper deals with the concept of the term with which Legal English operates as well as with its characteristics that legal English breaks.

Since the late 20th century, people speak of the teaching as an expert profession. All the above mentioned facts about Legal English require from a teacher of legal English to be not only a language teacher but also a translator as well as professional in the field of law.

Key words: legal English, term, legal system, translation, lexeme

When writing contributions on topic of language of specific documents, we deal with the notions "concept and term". The concept is an abstract category. In Slovakia, we usually define the term according to the Slovak "earlier" authors and thus we rely on the accuracy of their definition of the 'term'. It is expressed by them as follows: "The legal terms name legal facts and their meanings can be precisely defined" (Tomášek, 1998, p. 25).

The basic features of the term by the above mentioned authors are:

- semantic accuracy
- clarity
- briefness

- comprehensibility
- determinateness.

Let us compare the features of term with legal language. The first features of the term in accordance with the above definitions are clarity and accuracy. Let's have a look at the word "vehicle". The English word "vehicle" means in translation even in the definition of this word in the English vocabulary vehicle, respectively, means of transport. Right. However, it is not right, if we take into account the generally binding regulation of towns and villages saying: "No vehicles in the park!" This means that the enter into the park will be forbidden also to a garbage truck, police car, ambulance, mother with stroller or a child on a bike? Moreover, can a tank, as a monument recalling the horrors and might fighters in the First, Second World Wars, be placed there?

Another example of clarity, in our case, can be a basic concept of law - "civil law". In the Anglo-American legal system, this word means continental law, but also a civil law.

When we want to mention other examples that are contrary to the stated properties of the term we may mention e.g. the issue of the word "accused". It can be translated into Slovak language as the accused or to be in charge of - in Slovak language these are 2 completely different meanings - obžalovaný a obvinený). How can we talk about accuracy or clarity when we mean 2 different stages of criminal proceedings?

We would like to mention also the term "government". We translate this word in state law as a government, even a power, but in criminal law as a party in criminal proceedings- i.e. representative of the State - the prosecutor.

Another feature of the term is "determinateness". Even by the experience gained by our existence we can support the falsity of this term's property. The law that changes and evolves with the dynamics of social development has nothing to do with this property. We are referring to the words as "Law of European Communities", which was earlier understood as European law. They were basically synonymous. Today, however, we must strictly distinguish the term "European law" that is an umbrella term and Law of European Communities and Law of European Union that are its components.

The last disputed property of the term, in our opinion, represents the "briefness". Translation of the English word "child support" to the Slovak is expressed as follows: "maintenance obligation to a child after divorce proceedings realized as a part of a property settlement." = („vyživovacia povinnosť na dieťa, realizovaná po rozvodovom konaní ako súčasť majetkového vysporiadania“). As you can see, it is not short in

Slovak language at all. This is probably the result of non-equivalence of terms as well as the contents of the terms because of 2 different legal systems.

The translator and the teacher, therefore, must deal with the partial equivalence of terms in both languages - that is, part of the content and the scope of the legal expression overlaps in both languages - in the source and also in the target language. We could provide another example - the highest legislative body of the country: in the Slovak Republic and in the UK, it is a Parliament, but in the US it is the Congress.

The problem with translation of legal lexemes is not caused only by characteristics of the terms, but also by non - equivalency of terms or by the transition of legal branches, change of the term due to lapse of time and finally by the culture differences and the language itself.

In English, the term "law" can deter even a soulful interpreter - beginner as it hides in itself two key concepts: law and the law. Uncountable "some law" translator must translate as law (právo), but countable "the law" as the act (zákon). A very interesting example is the word "damage" which means damage, injury but in the plural form, the word "damages" means the exact negation- i.e. compensation (odškodné).

Another problem may be for the translator the typing error (e.g. leaving of a letter "s") or in other words ignorance of two completely different terms - and i.e. a multiple sentence or cumulative sentence (in Slovak language it is more obvious - súhrnný a úhrnný trest). When speaking about the ignorance, we can speak about the ignorance of terms arising not from legal content but from history and literature. Tomášek speaks about "Enoch Arden Laws" (Tomášek, 1995, p. 85) - these are the laws that come from Tennyson's poem. Enoch Arden hides his existence from his wife. She considers him being dead and therefore she gets married again. The US laws that allow conclusion of a new marriage, if one of the couple made him/herself not known for a certain period of time, follow from this poem - (e.g. in State of New York this period is five years). This is a special pronunciation for being dead. If the translator does not know the historical - literary context, he can skip (leave) this fact or even s/he may believe that it is the law that are associated with a certain local name.

Another example of solving the translation problem can be a problem with the translation of the term "law of property". This is a property law, but the content of this term is different in the Slovak and English legal systems. English property law is concerned only with the real estate.

Language, as such, is therefore a means to convey the objective reality or the exchange of information. In the social sciences, it is an instrument of scientific cognition, by which we define certain terms. As we see, the definitions are not

always accurate, although we would like them to be accurate. Mostly, this is due to the fact that objects and events of which we speak, are not always clear and precise. If we take into consideration just the word "big". How big is big? Can a small business be named as a factory? Does this small business have to have machines in order to be considered a factory? When does the booklet become a book? How many pages does it have to have (Crystal, 1995, p. 169)?

We think that especially in the area of criminal law we all wish, because of our own certainty, everything would be accurate, clear, and would not provide much room for interpretation. Yes, the legal terminology in the opinion of many authors is characterized by accuracy. But this is mostly the view of linguists who perceive language mostly in general terms - I mean the various manuals on stylistics and language, which usually state that the fundamental principle of legal terms is their definition in the Act, and therefore it arises from this the assumption an unambiguous interpretation of legal terms. However, even the students in the 1st year of their studies at the law faculties meet with the view - "as many lawyers, so many legal opinions". It follows from the legal practice that the legal meaning of the term in many cases is not clear, and often only interpretation can reverse the outcome of the legal process.

From Slovak Labour law we can mention the term "regimen". Labour Code, No. 311/2001 Coll, uses the term "regimen", but legally it does not define it. § 81 of this Labour Code assesses an employee an obligations to comply with the treatment regimen. Failure to comply with this obligation, the employee committed a "serious professional misconduct". Not only there was no definition of a treatment regimen, but this provision breached the right to human dignity, honour, reputation and good name by protecting human rights and freedoms enshrined in the Chapter II of the Slovak Constitution - "unjustified interference with the right to the protection of human dignity also relates to violation of professional secrecy, which belongs mainly to health professionals" (Král, 2004, p. 65) - because the employer checked the compliance with the treatment regimen.

We state also the absurdity of the different requirements for evidence in the case of the court proceedings in Criminal law and Civil law that is incomprehensible to the layman. These are two phrases - the plaintiff wins the civil litigation dispute thanks to the preponderance of the evidence; in the Criminal law we have in English the legal term "beyond a reasonable doubt". The prosecutor, in the Anglo-American legal system, "district attorney" must prove that the accused is guilty "above all doubt." This "absurdity" of two different requirements on evidence can be best illustrated by the case of O.J. Simpson, who was accused of murdering his own wife Nicol Brown Simpson and her friend Ron Goldman. The jury determined that he was not guilty,

because standard "beyond a reasonable doubt" was difficult to achieve, but in the civil legal process initiated by parents of Ron Goldman, OJ Simpson had to pay to the surviving family high damages because the standard for the recognition of compensation is lower - it is only the "preponderance of evidence".

In addition to managing legal terms, the Slovak teacher has to know and has to be able to translate phrases and language templates. The phrases may be e.g. enter into force, in accordance with law, in compliance with the law. Language template can be e.g. subject matter of a contract is in accordance with the law, the subject matter of the contract is in accordance with the requirements of the law.

So far we have taken in to consideration only the terms, phrases and templates, but the English legal language comprises also words that come from ancient and medieval English- so called archaisms : "Here words" (hereafter Herein, hereof, herewith) called. "There words" (thereabout, thereafter, Thereby, Therefore), or "Where words" (whereas, whereby). Further it includes Latin phrases (alibi, habeas corpus, force majeure) and finally even words from Old French, which were later taken over by English (demurrer). These are the additional language pitfalls that cause headaches to Slovak translators and teachers of Legal English.

Perhaps these are the reasons why the English legal language is not in a united Europe, neither official nor working language of the European Court of Justice.

In addition, we provide some overall information about the Legal English from the linguistic point of view:

1. Frequent use of common words with uncommon meanings – action (law suit), party (person contracting or litigating).
2. Frequent use of Old and middle English words – whereas, hereby.
3. Frequent use of Latin words and phrases – affidavit, alias, alibi.
4. Use of Old French and Anglo – Norman words – esquire, demurrer.
5. Terms of art – plaintiff, injunction, defendant.
6. Argot – issues of facts and issues of law.
7. Formal words – whereas, before me a notary public.

The above mentioned examples tell us that university teacher of Legal English has to be not only a language teacher but as well as the professional translator into target languages and experts in the fields of Law.

Since the late 20th century, people speak of the teaching as an expert profession. Professionalization of the teaching profession in the 20th century has brought a shift in the orientation of the minimum competencies of teachers, i.e. the transfer of knowledge to the orientation on the widely open model of the professional teacher. World Pedagogy moves away from an understanding of the teaching as the

technological process, which can be accurately planned and implemented step by step, but understands it as a complex, variable and creative process of personal meetings between teachers and pupils through the curriculum. It treats the teacher as an expert on this meeting, an expert of facilitation of the learning process expert for solving educational (educational and training) situations (Coolahan, Vonk, Shulman, Hustler, Intyre, Perrenoud, Berliner and others in Spilková 2004). The teacher then should be able to control the "expert diagnosing of situations and subjects, decision-making processes and interventions with knowledge of causality, interpersonal strategies, self-reflection on professional base built teaching" (Vašutová, 2004, p. 23). The basic teaching competence is specified from these starting points. If we compare the known classifications, we can find one subject-specific competence and the other 6-7 competencies of pedagogical or of the integrated nature (e.g. Vonk, 1992; Kyriacou, 1996; Švec, 1999; Spilková, 1999; Vašutová, 2001; Walterová, 2002; Kasáčová, 2002 et al.).

The concept of professional knowledge then does not mean narrowed knowledge but a complex structure including the components of knowledge, skills, experience, attitude, and value. For this reason, we start using instead of professional competencies, the concept of value or responsibility (Lukášová, 2003; Vašutová, 2004).

As the teaching profession is a practical and permanent communication between the theoretical and practical, explicit and implicit, objective and subjective knowledge, the integration of theory and practice in a given cycle is specifically reflected in it. On the basis of theoretical inputs, the decision making processes are in progress. Then action, and finally its reflection are a return to the theory at a different level. Atkinson and Claxton state that (in Lukášová, 2003, p. 33) according to the thought processes which are in progress the teacher needs three professional skills: attribution of causes is influenced by theoretical knowledge and results in an ability to plan educational process. Insight (intuitive) is represented by knowledge in action - it is the experiential knowledge gained in practice (not knowledge of the operations, but the immersion of thought in action itself, which sometimes cannot even be described), which results in the ability to implement educational process. Reflection will produce contextual knowledge i.e. knowledge of the connections between theory and practice which will result in the ability to evaluate and improve the educational process. If true professional is known by that he produces knowledge, what new theoretical knowledge actually does a teacher constitute? His professional confidence would significantly increase if we instead reevaluation of professional knowledge showed him that teacher actually creates experiential knowledge in action which could through reflection be converted into a theoretical

form that apart from him no one else knows. If the teacher is able on the professional, methodological basis to realize the reflection of his activities, then he creates "epistemology practical knowledge of the profession" (Stech 1998). He theorizes the practical procedures, rationalizes, verbalizes implicit, intuitive, hidden or concealed (tacit knowledge) assumptions of decisions and acting. He reconstructs his own experience by that he describes them, converts into a language into a form of procedural knowledge. He asks questions what is going on and changes his own actions.

The skilled practitioner possesses own intuitive tacit knowledge, but which ceases by his departure from the profession. This knowledge in action cannot be taught theoretically. However, by reflection one can understand his own actions and hand it over to another, at least as a model one, as one of the hypotheses.

If we sum it up an expert professional teacher should be an expert: 1. on himself (autonomous subject) 2. on the pedagogical relationships (to help individual pupils' progress and solve educational situations) 3. He has to facilitate learning (the widely perceived psycho transformation of educational content) and 4. He should permanently reflect on practical activities and self-reflection.

English for specific purpose - Legal English - is different from general English. The most important difference lies in the learners and their purposes for learning English. ESP students are usually adults who already have some acquaintance with English and are learning the language in order to communicate a set of professional skills and to perform particular job-related functions. An ESP program is therefore built on an assessment of purposes and needs and the functions for which English is required. ESP concentrates more on language in context than on teaching grammar and language structures. An ESP teacher has to play many roles. He has to organise courses, set learning objectives, establish a positive learning environment and evaluate students' progress. The authors of theories on ESP do not mention that s/he must be a specialist on subject s/he teaches or a translator. However, the practice of teaching Legal English in Slovakia and the students require the teacher to be a specialist in a field and a translator of Legal English into Slovak and English languages.

The teacher of legal English as we could see from the analysis of the Legal English must be an expert in the field of law, not only a teacher of English, because he teaches 2 legal systems simultaneously.

Conclusion

In Europe, we work on approximation of law but we still have problems with translation of the legal terms because they merely do not exist in European language as the legal systems of European nations are built on Napoleonic Codex and therefore are different from common law systems. The translator and interpreters have problems, so does the teacher because students want to know what this word means in target or source language. As the Legal English is taught at the faculties of art (for students of translation studies) as well as the faculties of law, students from our experience are not satisfied if they are taught just English legal system, because they want to be prepared to switch from one system to another using the right vocabulary and grammar. If we taught just English legal system and not Legal English, we would be teachers of English for Specific Purpose. In our opinion and on the basis of the above mentioned facts, we are not teachers of ESP anymore.

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