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Law Education: Language and Legal Translation Perspectives

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Abstract

The development of law education in many countries goes along with the reforms in higher education, social processes and the development of national legislations. The main goals of training law specialists have been developing professional competences with the view to effective granting of rights to citizens and acquiring transferable skills necessary in future employment. One of the challenges in the European law education concerns learning effective legal communication in which problems are not rare due to different legal cultures. The role of foreign languages and translation related to communicative aspect of education is significant and requires analysis and discussion in educational communities. The need to train law specialists and judges in foreign languages poses the problem of integration language courses into law education.

Keywords: law education; legal communication challenges; foreign language; legal concepts; translation

1. Introduction

Law educational systems undergo changes set up by Bologna declaration, by institutional problems and by globalization processes in the world. The Bologna process started reforms that have changed higher education in the countries within and beyond the European Union. The main problem areas have been mobility of students and staff, the social dimension, lifelong learning, quality assurance of higher education and others.

Reforming law education has been an issue of controversial debates in the European countries as national law study programmes vary and pose problems of students’ mobility and recognition in academic area and labour market.

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The experience of European countries in the field of legal education could be beneficial in respect to understanding problems of various law educational systems and finding ways of solving current and probable challenges in the future. As there is an urgent necessity for education to respond to institutional, social and global needs, the comprehensive studies of law education development are important to elaborate best strategies, pedagogical methods and approaches to be applied where and when appropriate.

2. European law education challenges

The analysis of law education in the European Union, carried out within the Menu for Justice Project and provided in Legal Education and Judicial Training in Europe (Piana et al, 2013), outlined the most important aspect of law education as the effective granting of rights to European citizens within legal jurisdictions. Here the problems appear due to different legal traditions and heritage pertinent to the different national systems European citizens come from. The main problems have been found in legal communication, particularly in procedural law, often communicative failures were due to lawyers or other law specialists not quite competent in peculiarities of national laws. Hence one of the most important aspects of the improvement of law education has been said to relate to development of communicative skills.

Effective communication requires not only deep knowledge of law and language skills or fluency in foreign languages, but awareness that European citizens live in different legal cultures. One of the recommendations provided as the result of the analysis was acquiring analytical and communicative skills by law students. Pedagogical methods to develop skills of legal communication have been outlined such as participation in academic discourses, the development of clinical legal education, institutional exchange of students, multi-disciplinary approach, the use of electronic environment and some others.

The need to train specialists in a particular country specialization, having some competence in another jurisdiction and to train judges in foreign languages has been discussed; another important aspect of law education concerns the introduction of non-legal and interdisciplinary courses.

Taking into account the importance of learning different legal cultures in law education and the fact that learning foreign languages has been integrated practically in all law programs the question of effective use of language courses in developing legal communication skills seem to be appropriate and requires consideration.

Language and legal culture have a particular importance in the programmes of International and Comparative Law. These programmes engage in research of developments and contemporary practice in international and foreign law, and international relations, there skills in foreign language are a must, students also have to develop translation skills.

Considering the skills important to law specialists mentioned above it can be seen that skills in legal communication, legal culture, foreign languages and legal translation are closely related and interdependent. Translation and Comparative law studies show a particular type of interrelation, representing mutually complementary methods: translation as a way of studying foreign or international law and comparative law as a translation method, comparing various legislative systems to identify differences or similarities in the word or term meanings.

3. Legal language and legal translation studies in law education

Learning languages for specific purposes (LSP) is an approach to language learning in different professional environments, which first presumes studying terminology and special discourse genres. LSP in law education focuses on communication in legal sphere and various types of translation. Speaking about learning a foreign legal language, legal terminology and legal translation, language educators often emphasize that it means learning legal culture as well (Khromov & Udina, 2015). Learning foreign languages in law education presupposes learning basics of legal translation. Lawyers need knowledge of foreign language to communicate in legal environment beyond national legislation or to use other country’s legislation in their work; they have to explain or to communicate the subtleties of foreign law. Law is language, as David Melinkoff (1963) put it, the law is a profession of words. It is a well-known fact that translation has been one of effective methods of learning and teaching foreign languages for centuries and now the interest in this method has been revived. The role of legal translation in the domain of law has
gained importance and established as a profession. The requirements, that lawyers and judges have to be trained in foreign languages and should not rely heavily on translators or somebody else’s knowledge of second language, have been widely accepted and it means acquiring translation skills. So law students have to be taught some aspects of legal translation or legal translation courses.

Historically, legal translation followed mainly the source-oriented translation strategy or a literal translation, rather than the target oriented translation strategy. After the so-called “cultural turn” in the 1980s not only linguistic factors began to be taken into account, the translation strategy shifted taking into account the purpose of the translation (Vermeer, 1996).

Legal translation is not only a translation between languages, but also a translation of various legislation systems, having different sources of law and legal terminology, as well as differing social and cultural aspects. All these elements lead to a lack of equivalent terminology across legal languages; these systemic differences are the major source of difficulty in translating legal terminology or law texts (Cruz, 2007).

The separate developments of various law and legal terminology systems account for differences between the conceptual frameworks, which create still more complicated translation problems. Many of them can be identified and solved by referring to cognitive approaches to translation and the findings of comparative law, treated as the systematic study of particular legal traditions and legal rules on a comparative basis.

Legal and culture-bound terms refer to concepts and institutions specific to national law system and culture, a translator needs to reflect the cultural and other features of a source text (ST) in a target text (TT) accordingly. Awareness of socio-cultural context constitutes cognitive aspect of translation, so some theoretical ground of relationship between linguistics and translation, the impact of cognitive linguistics on translation studies have to be outlined in teaching legal translation.

Cognitive linguistics provides the insight into cognitive processes involved into language use and theoretical ground on which the cognitive approach to translation is based. The semantic-cognitive approach (Popova & Sternin, 2010) studies the correlation of semantic and cognitive processes, the semantic of language units, which represent concepts in language. Every term in a specialized language indicates some concept and is the linguistic representation of a concept.

A legal concept is an abstract general notion or idea which serves as a category of legal thought or classification, the title given to a set of facts and circumstances which satisfies certain legal requirements and has certain legal consequences. Compare the direct meaning of a term ‘marriage’ and its meaning as a legal concept with certain legal consequences when it is used in the court.

Correspondingly, legal terms may be viewed as points of access to concepts, they stimulate conceptual operations activating relevant knowledge. In order to characterize a legal concept it is necessary to refer to other cognitive domains which are presupposed by and incorporated in such a concept (Kjær, 2000).

The translation of legal concepts from English into Russian represents one of three categories. The concept can have an identical equivalent in the target language, such as “theft” / “кража”, “contract” / “договор”; “bankruptcy” / “банкротство”. In the second category, the legal concept may have no easily identifiable equivalent, but a roughly similar concept can be found, such as “limited liability company” / “общество с ограниченной ответственностью” (a society with limited liability). The third category is legal concepts with no near or rough equivalents in the target legal system. Words of the second and third categories require the translator to be careful when choosing terms to avoid distorting the message.

Considering legal concepts, it is necessary to be aware of basic differences between the legislation systems involved in the respective language pair, that is, special knowledge of a lawyer and of a translator has to be used. Lawyers often adopt legalistic point of view, while translational thinking will help them take into account not only the legal content, but also linguistic features of a concept. A lawyer trained in legal translation will be able to solve the tough translation problem of bringing these two aspects together: considering both the content of legal background and the language level. Comparative studies of different legislation systems can be considered as a cognitive approach to translation providing an effective method of finding the right equivalent to a legal concept.

Analysis of translation of legal terms and legal concepts shows that there are expert concepts with various levels of abstraction presented in lexemes of a standard language. The following levels of abstraction can be distinguished: subject (specified concept in standard lexemes), conditions (vague legal terms), actions and relations (specific legal
terms), legalistic ideas (abstract terms of jurisprudence), concepts of European law (multilingual terms) (Stolze, 2013).

Using the cognitive approach to translation of a legal text, it has to be considered within a particular legal system and culture. It is necessary to keep in mind the characteristics of the relevant background and its difference from the target situation, as we observe the special forms on the text level regarding terminology, text genre and formulaic style. These characteristics include law type (European, Anglo-Saxon, etc.), form of legislation (case law, supranational law and others), field of law (civil, administrative, etc.), level of abstraction (subject, conditions, etc.), comparison (ST and TT), comprehension (understanding of compared legal concepts), text genre, legal style, text function, terminology, language information (official, phraseology, speech acts) and some others. These characteristics create a system of orientation for a translator and could be represented in the form of a table for convenience of its use in translation of legal texts and concepts.

Using this system of orientation the functional analysis of concepts within their legal environment should provide an insight into the purpose of concepts (and their terms) within the framework of a rule and a system of laws. To describe the function of a legal concept, we have to consider each concept as a structural part of a legal setting, which originates from the need to regulate a certain aspect of social life, commercial process or others.

The described approach to translation of legal concepts includes a semantic (usually dictionary meanings) and cognitive analysis of the concept. The cognitive analysis refers to using special and common knowledge, analytical and comparative processes for evaluating various characteristics of a language unit and background information, and then making choice bearing in mind a particular situation.

The semantic-cognitive analysis of legal concepts translation carried out by Tabunova (2015) a law student of the master programme, showed its effectiveness in translating legal concepts, which have rough or no direct equivalents. One of the concepts an ‘Alternate director’, used in the Articles of Association of a Cyprus Company, was considered in the context of commercial law for the search of a suitable term in Russian.

The semantic content of the term, provided by the definition in the financial dictionary, is presented as: “A temporary delegate for a member of a board of directors who stands in during his/her absence. While laws vary, in most jurisdictions, the alternate director has the same rights and responsibilities as the member he/she represents” (Farlex Financial Dictionary, 2012). This definition concerns only the substitution of the director on the Board of Directors thus limiting his or her powers of replacement. Considering different definitions of the terms in various dictionaries, looking for its interpretations in legal documents such as Articles of Association and in writings by foreign authors defining this term, the core and peripheral characteristics of the concept have been outlined as the following: ‘to act as’ (the core characteristic) and the peripheral ones: ‘in director absence’, ‘to exercise and discharge all the power’, ‘responsibility’. Referring to Russian dictionaries and corresponding Russian legislation, the student made a list of the following characteristics in Russian such as: ‘замещение’ – substitution (the core characteristic) and the peripheral ones: ‘в период отсутствия директора’ – in director’s absence, ‘исполняющий обязанности’ – fulfilling the duties, ‘временно исполняющий обязанности’ – temporarily fulfilling the duties, ‘ответственность’ – responsibility, ‘альтернативный директор’ – alternative director, ‘заместитель директора’ – deputy director.

In the process of conceptual analysis using the system of orientation, the Russian equivalent “исполняющий обязанности директора” (fulfilling the director duties) was offered, which is a most appropriate, correspondent and functionally applicable term in Russian legislation. In the absence or rough equivalents, when the core meanings of compared concepts do not coincide, text corpora can be referred to, in this case comparative analysis of texts as well as source and target legal culture systems can be of great help. Thus a translation of the Russian term “Поручение” (commission, instruction), a type of agreement, into English involved analysis of legal texts apart from various legal dictionaries. The core meanings of this concept in legal setting do not coincide in English and Russian. The peripheral features in Russian have been defined as ‘определенные юридические действия’ – certain juridical actions, ‘доверенность’ (‘authorization’, ‘power of attorney’), ‘от лица и за счет’ (‘in the name of’ and ‘at the expense of’). The peripheral features in English are singled out as ‘to represent’, ‘to act for another’, ‘to delegate authority/power’, ‘power of attorney’, ‘on behalf of and at the expense of’. Phraseological units ‘delegation of authority’ and ‘delegation of powers’ have been also considered. Comparative analysis revealed the absence of such an institute in Common Law. Examination of the Civil Code of the Russian Federation translation, made by the professors of Law and the members of the working group on amendments to the Civil Code (Maggs, 1997),
provided the term ‘Delegation’ which was analysed and compared in the given legal setting with other translation variants and found the most suitable.

Understanding and translating legal concepts is an important aspect of law studies, especially of international and comparative law, and can contribute greatly to effective legal communication. Translation has been characterized as cognitive and communicative activity, which involves the transfer of information across linguistic and cultural boundaries (Tonkin & Frank, 2010). Developing translation and language skills of law students foster other skills important both for academic studies at university and in their career.

4. Conclusion

One of the main challenges lying before law education and outlined as the problem of legal communication is related to law and language relationship. The analysis of European legal education provided in the Menu for Justice Project emphasizes the role of culture in legal communication as lawyers are often not aware of differences in national legal cultures, which may lead to communication failure and create obstacles. One of the effective ways to bridge the gap between law and culture is language. Learning foreign languages and legal translation is necessary to understand other nations’ legislation and legal culture. Translation of legal concepts is a complicated cognitive process and requires linguistic, legal and culture knowledge. The development of EU and other legislations in the global world presupposes the multi-legal, multi-cultural and multilingual approach to their studies; accordingly, there is a need of specialists possessing various skills. Nowadays the functions of foreign languages and translation are getting broader, they are considered as effective tools to acquire various knowledge, special and cultural, and numerous skills, analytical, communicative, mediation, cognitive and others.

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