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Issues of ESP in Kosova and the Challenges in the Teaching and Translation of the Criminal Law to University Students

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Abstract

This Presentation makes an analysis of the translation of the criminal laws for teaching purposes, i.e. Criminal and Criminal Procedure Codes of Kosovo, which constitute the most important pieces of legislation until now. The ultimate objective of the Presentation is to propose a set of principles designed to facilitate English & Albanian legal translation which will enable future ESP teachers to understand and apply it in an educational context. The research for this Presentation involved, mainly, desk research on (a) the criminal codes of Kosovo, both their English and Albanian-translated versions, and (b) general literature and web resources on legal systems, linguistic issues and approaches to legal translation world-wide with the purpose to fill the research gap regarding the ESP teaching. The Presentation adopts a qualitative corpus approach. The English version of the codes serves as the corpus of the original text, and the other corpus is comprised of their Albanian- translated versions for a comparison and contrast of English and Albanian semantic and grammatical relations employed in the translation of these legal texts. The Presentation provides a set of findings, and draws conclusions in the final section in regard to the teaching aspects and teaching methodology. The conclusions are based on an in-depth analysis of the translation of the criminal codes, and an assessment of the available options and suggestions intended to serve as useful reference for legal translators and ESP instructors.

Keywords: *ESP Teaching, Kosovo Education, Criminal Law, Translation*

Introduction

The new political system and situation in Kosovo after 1999, when UNMIK was established in Kosovo, brought about the issuance and adoption of a completely new type of legislation. Furthermore, this legislation during UNMIK time was drafted by English-speaking foreigners. As

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such, it introduced new legal terms and terminology, which had to be rendered into Albanian by Kosovo legal translators. This created a major problem in the area of designing legal translator training courses and syllabi in formal education at graduate level. The main issues to be addressed in these courses concerned grammatical, lexical and cultural equivalence.

English is different from Albanian because it is an analytical language. As such, word order is very important. On the other hand, Albanian is a synthetic language, with a free word-order but a lot of word endings. For this reason, I will focus my attention on these two research problems.

The literature on legal translation covers translation of laws in bilingual countries, that is, countries where two or more languages have been considered as native and official languages. Such countries include but are not limited to Canada, Switzerland, etc. However, in the period between 2000 and 2008, when Kosovo was under the administration of United Nations Mission in Kosovo (UNMIK), the legislation was drafted and adopted in English and translated into Albanian. Although Albanian is the native tongue in Kosovo, the English version prevailed in cases of discrepancies. This context of legal translation had not been subject of study in Kosovo and it is precisely this issue that I focused on in my ESP teaching classroom.

Teaching Methodology

The main literature I used in teaching legal English / Albanian translation consisted of the Provisional Criminal Procedure Code of Kosovo (PCPCK) and Provisional Criminal Code of Kosovo (PCK). As such, I took the opportunity to teach students not only the main issues involved in legal translation, but also how to do research, particularly desk research, that would enable them to identify and assess any discrepancies in the translation of the said Codes from English into Albanian. I also used general literature and web resources on legal systems, linguistic issues and approaches to legal translation world-wide. In assessing the quality of the translation of the PCPCK and PCK, students were instructed to rely on the principles outlined in the seminal work of Katharina Reiss, translated into English by Errol F. Rhodes, *Translation Criticism – The Potentials & Limitations, Categories and Criteria Translation Quality Assessment*.

In addition, in order to fill the research gap regarding the E \leftrightarrow A translation of legal texts, the legal translation course also adopted a qualitative corpus approach. The English version of the PCPCK and PCK, the most important pieces of legislation, served as the corpus (a representative sample of legal language) of the original text and its Albanian-translated version for the comparison and contrast of English and Albanian semantic and grammatical relations employed in the translation of legal texts. Although this corpus is apparently limited in its coverage, the cases and examples of legal translation problems covered a wide-ranging scope of issues related to the theory and practice of legal translation.

The selected text are analysed quantitatively and qualitatively by studying the specific grammatical and semantic features of language that are predominantly used in the PCPCK and PCK. This is done by undertaking an analysis of the frequency of grammatical properties such as the use of tenses of various verb phrase groups, the use of the passive and active voices, word

order as an instrument of conveying emphasis, and the use of modality in both Albanian and English legal texts.

The analysis starts with the Albanian version, followed by the English version. Translation criticism is fully illustrated by examples taken from the English and Albanian versions of the PCPCK and PCCK. The students are taught on the ways how to handle structural differences between English and Albanian in their translations. This gives them the opportunity to make contrastive analyses of English and Albanian grammars. They adopt a functional approach in the contrastive analysis of English and Albanian in other syntactic respects such as word-order relations, or a functional-morphosyntactic approach for an analysis of the subordinate relations.

Thus, moving from the academic to the practical side, the legal translation course lend lends students a better understanding of the functions of English and Albanian semantic-syntactic relations, strengthening their comprehension and mastery of translation strategies, procedures and techniques. The back-translation and other translation models of actual translation serve as useful means of viewing legal translation from a different perspective, which is observed to greatly enhance the efficiency and accuracy of legal translation in the classroom. In the following I will make an outline of the main issues covered in the legal English translation course.

Main Features of Legalese

General Background

Over the years, the language of the law has been a popular research area among translators and linguists, since it is “a very important phenomenon, because it impinges directly on the lives of those who come in contact with it” (Gibbons, 2004: p. 1). The huge impact of legal language on people’s lives makes legal translation studies deserve greater research efforts for the sake of both social development and linguistic analysis.

Legal language is known to be extensive in length and complicated in syntax. This observation is valid not only in the English language, but also Albanian. The post- conflict Kosovo witnessed a “Europeanized” style of the legislation in Kosovo, including wordiness and lengthiness of the Albanian legal language.

The lengthiness of the language of the law is attributed to the fact that legal sentences generally contain numerous subordinate clauses, with few simple sentences. This is unavoidable as precious information has to be included and no ambiguity is allowed in legal documents (Thorne, 1997: p. 330).

In *The Language of the Law*, J. Gibbons (Ed.) indicates that there is not one legal discourse but a set of related legal discourses. Each has a characteristic flavour, but each differs according to the situation in which it is used.

Students are also made aware that, according to Bhatia (1987: p. 227-234), there are three main types of legal writing: academic legal writing, judicial writing, and legislative writing (legislation, constitutions, and various regulations).

Particular attention is paid to the classification by Šarčević (1997: p. 308), in which legal translation can be classified into the following categories according to the functions of legal texts in the source language (SL)

Features of Legal Vocabulary

The students are taught that, as in any type of discourse, the lexical items found in legislative discourse can be divided into symbolic (representational) items and functional items (E. Alcaraz & B. Hughes, 2002: p. 16). An additional group of words abounding in legalese are those that E. Alcaraz & B. Hughes call technical terms. E. Alcaraz & B. Hughes (2002: p. 16-17) divide such legal terms into purely technical terms (counsel - mbrojtës, defendant – i pandehur, injured party – pala e dëmtuar, legal representative – përfaqësues ligjor, and so on), and semi-technical or mixed terms. A third group of legal vocabulary consists of everyday vocabulary frequently found in legal texts such as person – njeri, police – policia, statement – deklaratë, etc (E. Alcaraz & B. Hughes, 2002: p. 16-17). Obviously this group is the most numerous and it consists of terms in general use that are frequently found in legal texts.

Despite the native origin of many of the most characteristic terms, legal language has not entirely escaped the influence of Roman law and Latin, because many of the present-day legal systems grew out of the systems that evolved in the Middle Ages when Latin was lingua franca throughout Europe for written texts. Therefore, hundreds of Latin words and phrases in universally common legal use are still found as part and parcel of legalese (mutatis mutandis, mens rea, actus rea, sui generis, ex officio, etc.)

Grammatical features of legal language

For the translator, the second major source of difficulty in legal language is the peculiarity of its morphology and syntax. The most significant features of the type covered in the legal translation course are the following

Unusually long sentences

An example of such a long and complex single syntactic structure is this whole paragraph sentence, which consists of 82 words in Article 7(2) of the PCPCK: Subject to the provisions contained in the present Code, the court, the public prosecutor and the police participating in the criminal proceedings have a duty to examine carefully and with maximum professional devotion and to establish with equal attention the facts against the defendant as well as those in his or her favour, and to make available to the defense all the facts and pieces of evidence, which are in favour of the defendant, before the beginning of and during the proceedings.

Albanian version: Sipas dispozitave të parapara me këtë Kod, gjykata, prokurori publik dhe policia që marrin pjesë në procedurë penale detyrohen që me vëmendje dhe me përkushtim maksimal profesional dhe me përkujdesje të njëjtë të vërtetojnë faktet kundër të pandehurit si dhe ato në

favor të tij, dhe para fillimit të procedurës dhe gjatë zhvillimit të saj t'i mundësojnë të pandehurit dhe mbrojtësit të tij shfrytëzimin e të gjitha fakteve dhe provave që janë në favor të mbrojtjes.

Abundant use of restrictive conjunctions and prepositional phrases

More often than not procedural provisions in particular contain a density of restrictive subordination. Such provisions may carry many qualifications, usually because they operate in limited circumstances. Words such as upon, when, if, but not, subject to, having regard to, relating to, pursuant to, provided that, in order to, in accordance with, and the like signal a complex provision, which becomes difficult to read when conditions are numerous or the qualifications are wordy. However, creating a readable complex provision is not an easy task. Consider the following example from Art. 553(4) of the PCPCK:

After the entry into force of the present Code, if on the occasion of an appeal or an extraordinary legal remedy the judgment is annulled in proceedings for a criminal offence which according to the new provisions is prosecuted on a private charge or on a motion, the private charge in the proceedings which have been conducted according to the previous provisions shall be considered as a motion, and if a criminal offence which was prosecuted ex officio is concerned, the time for the submission of the motion shall run from the day when the injured party was informed about the annulment of the judgment of first instance or about the reopening of criminal proceedings.

Nëse pas hyrjes në fuqi të këtij Kodi paraqitet ankesë ose me mjet të jashtëzakonshëm juridik anulohet aktgjykimi i procedurës për vepër penale që sipas dispozitave të reja ndiqet me propozim, padia private në procedurat e zbatuara në bazë të dispozitave të mëparshme do të konsiderohet si propozim dhe, nëse kemi vepër penale që është ndjekur sipas detyrës zyrtare, afati për dorëzimin e propozimit ec nga dita kur i dëmtuari është informuar për anulimin e aktgjykimit të shkallës së parë ose për rishikimin e procedurës penale.

Abundant use of passive voice

One common effect of the passive voice is to suppress the identity of the agent responsible for the performance of the act, this is exactly the point of construction, i.e. then the import of the statement is universal (Art. 119(1), PCPCK)

Decisions are rendered in criminal proceedings in the form of judgments, rulings and orders. Në procedurën penale vendimet merren në formë të aktgjykimit, aktvendimit dhe të urdhrave.

Or when the implied subject is too obvious to need stating:

A decision of a panel of judges shall be rendered after oral deliberation and voting. Vendimi i trupit gjykues merret pas këshillimit gojor dhe votimit.

Or for emphasis:

Jurisdictional disputes between the offices of the public prosecutor shall be resolved by the immediately superior public prosecutor. (Art. 49(2) of the PCPCK)

Konfliktin e kompetencës ndërmjet prokurorive publike e zgjidh drejtpërdrejt prokurori publik më i lartë.

Abundant use of modality

This applies mostly to English legalese. Legal provisions frequently deal with obligations, possibilities, authorisations, and permissions. According to Palmer (2001), modalities in the English language include: “propositional modality” and “event modality”. Propositional modality is classified into two main types, “Epistemic” and “Evidential”. Palmer (2001: p. 8) adds that “the essential difference between these two types is that with epistemic modality speakers express their judgements about the factual status of the proposition, whereas with evidential modality they indicate the evidence they have for its factual status”. On the other hand, event modality is also classified into two main types, “Deontic” and “Dynamic”. Palmer (2001: 9) points out that in the simplest terms the difference between them is that with deontic modality the conditioning factors are external to the relevant individual, whereas with dynamic modality they are internal. Thus deontic modality relates to obligation or permission, emanating from an external source, whereas dynamic modality relates to ability or willingness, which comes from the individual concerned.

The legal translation course is concerned only with “deontic” modal auxiliaries, which are called in legal discourse the “words of authority”. These words are “shall”, “must”, “may”, “will”, which are widely used in legal English:

The course pays due attention to the fact that in most cases the English word “shall” is not transferred to the legal Albanian text through an equivalent. Instead, its Albanian equivalent is zero, and its sense is transferred through the verb that follows it, which is usually used in the present tense in legal Albanian.

Translation Criticism

Overview of Translation Criticism

Legal translation is one of the specialised fields of translation and it plays an essential role as a means of communication (Wagner, A., 2003: pp. 177-193). As such translation criticism is paid due attention in our university translation courses. It consists mainly in students’ practical translation exercises and their examinations, whether on the elementary or more advanced levels, which are then “corrected” and graded, i.e. criticized and evaluated.

With the advent of commercialization in the literary world, every year thousands of books and technical texts are translated into Albanian by hosts of translators. One might think that greater attention would be devoted to translation criticism. But no such tendency has been observed. On the contrary, the level of literary criticism has generally sunk alarmingly low. The criticism of legal translations in no way constitutes an exception.

Translation criticism requires a comparison of the target and source texts. The translation reviser or evaluator needs to set the translation beside the original and compare the two together. The process of comparison is indispensable for a balanced judgment Reiss (2000: p. 9). However,

that does not imply that where a provision reads smoothly and naturally and its content is rational to professional (legal) common sense, its translation is accurate and flawless. Let's have a look at the following Albanian provision from the PCCK:

Kushdo që kryen vjedhje nga neni 252(1) i këtij Kodi si anëtar i grupit derisa me vete mban ndonjë armë apo mjet të rrezikshëm me qëllim sulmi dënohet me burgim prej një deri në tetë vjet. (Art. 253(3), PCCK; the emphasis in bold and italics is mine)

There is *prima facie* nothing wrong with the provision as it is. The reader runs his/her eyes over the entire provision and does not stumble once. One would never think that the provision is a translation. According to this provision, for the offense of aggravated theft to be punished, two elements must (co)exist. Under the Albanian translation, both membership in a group and carrying a weapon (or dangerous instrument) must be proven to qualify the offence. In a nutshell, this is the case of a both...and type of offense. However, the original reads:

Whoever commits theft, as provided for in Article 252(1) of the present Code, as a member of a group or while carrying a weapon or dangerous instrument shall be punished by imprisonment of one to eight years. (The emphasis in bold and italics is mine)

The omission of the word “or” after the phrase “as a member of a group” in the statute obviously changes the elements of the offence in the Albanian translation. In the English version, if a defendant commits a theft as a member of a group that by itself qualifies the offence under PCCK Article 253(3); it is not necessary to also prove that the defendant also carried a weapon or dangerous instrument. Thus, under the original version, for the offense of aggravated theft to be punished, one of the two elements must exist: 1. either the perpetrator has acted as a member of a group, or 2. the offense has been committed while the perpetrator was carrying a weapon or dangerous instrument. In a nutshell, this is the case of an either...or type of offense.

Translating Titles

As far as translation of titles is concerned, our interest is how best a translator should translate a title so that it entails the same semantic and content-related range in the Albanian version, too. Let us take a few examples.

Use of a generic word in the TL for a term in the SL Disqualification – përjashtimi

Chapter Three of the English version of the Provisional Criminal Procedure Code of Kosovo is entitled “Disqualification”; In the Albanian version, this title is translated as “Përjashtimi”. The English word, term in our legal context, disqualification comes from the verb disqualify. According to the online American Heritage Dictionary, disqualify means to render unqualified or unfit, or to deprive of legal rights, powers, or privileges.

The Albanian word përjashtim, which is not as close to a term as disqualification, comes from the verb përjashtoj. According to the Fjalori elektronik shpjegues, përjashtoj meanse lë dikë jashtë një pune a një veprimtarie për arsye të ndryshme, e liroj nga një punë a nga një detyrim; nuk e përfshij dikë ose diçka në një grup ose në një kategori të caktuar; lë mënjanë . Words like legal, powers, privileges, are not mentioned in the Albanian explanation, the reason being that përjashtim

is not a one-to-one equivalent of disqualification. It is a generic and as such it is a word rather than a term, because its semantic content does not single out elements like legal rights, powers, or privileges. Therefore, the translator should have narrowed down its meaning in order to bring it closer to a term and thus constitute a summation of the content / subject of the whole chapter in question. If translated one-to-one it would be merely an under-translation. A word-group term like *përjashtimi i gjyqtarit* term would come closer to hinting at the subject of the chapter.

Misplaced adjective in the TL version

Sometimes, an adjective followed by several numbers constitutes another trap for the legal translator and where he / she may make a mistake. This is because in English the adjective precedes the noun(s) it qualifies. In Albanian, the adjective comes after the noun, therefore, it is hard for the translator whether to use the adjective after the first or the second noun. In such cases it is advisable that the translator pauses and thinks over for a while before making a hasty decision.

Removing or Damaging of Official Stamps or Marks - *Heqja apo dëmtimi i vulave zyrtare ose i shenjave* (Art. 322, PCCK)

Here the adjective official is used with reference to both stamps and marks, because the idea is that both stamps and marks are official. However, in the Albanian version, the adjective is only used after the first noun, thus giving the impression that only stamps are meant as official. How about marks? They are official, too. Otherwise, it would not make sense to criminalize removal of (whatever) marks. Therefore, the correct translation would be: *Heqja apo dëmtimi i vulave ose shenjave zyrtare*.

Translating Terminology

The level of terminology secures the exactness of the translation only if there is an appropriate equivalent of the term in the target language. Even though there is a strong notion of exactness, the translator of specialised texts has a certain freedom which enables him to use explanations instead of the terminology, especially when an equivalent is missing in the target language or when the text is translated for a less informed readership. The terminology is otherwise very strict and keeps the translator within its borders.

Two are the main problems in the translation of legal terminology into Albanian:

1. Use of an Albanian (more) generic or even super ordinate term for an English specific term
2. Use of two or more Albanian terms for the same English term;

I have selected individual examples that proved to be most problematic. *Accomplice, accessory, co-perpetrator*.

A translator's primary task is to achieve a mastery of the legal vocabulary in both languages. Some of the legal terms are purely technical. At first sight these should be the easiest to translate as they are monosemic. However, as they are the crucial terms in the context in which they occur; the translator should have no doubt as to their meaning, otherwise he/she might fall into a trap of his/her own devising. Let us take the following provision from the PCCK:

Kur ka arsye për të besuar se ai do të asgjësojë, fshehë, ndryshojë ose falsifikojë provat e veprës penale, ose kur rrethanat e posaçme tregojnë se ai do të pengojë rrjedhën e procedurës penale duke ndikuar në dëshmitarë, në të dëmtuarit a në bashkëpjesëmarrësit ose... (Art. 281 (1) ii))

The translator's choice of the Albanian 'equivalent', bashkëpjesëmarrës (literally, co-participant), in the context in which the term is used creates a lexical ambiguity, in the best case, and a misunderstanding, in the worst case, as to the real meaning of the Albanian word. In criminal cases there are two adversarial parties. In the provision in question, the sequence në dëshmitarë, në të dëmtuarit a në bashkëpjesëmarrësit (witnesses, injured parties or co-participants) is an enumeration, therefore, by association of analogy, the reader might infer that the word bashkëpjesëmarrësit belongs to the same group the previous to words belong to, i.e. the prosecution side, as opposed to the defence.

However, The English version of the provision is the following:

There are grounds to believe that he or she will destroy, hide, change or forge evidence of a criminal offence or specific circumstances indicate that he or she will obstruct the progress of the criminal proceedings by influencing witnesses, injured parties or accomplices; or... (Art. 281 (1) ii))

Thus, we find that bashkëpjesëmarrës is the Albanian equivalent for the English term accomplice, whose meaning has no association of analogy but, quite contrary, an association of antonymy?

The situation is made worse by the fact that the English term accomplice has been rendered in Albanian by three words: 1. bashkëkryerës (Art. 33(4), Art. 62(1), PCPCK); 2. ndihmës (Art. 201(1), PCPCK); 3. bashkëpjesëmarrës (Article 281 (1) ii), PCPCK; Art. 111 (3), CCK). On the other hand, the term accessory has been translated as 1. ndihmës (Art. 33(4), PCPCK) and 2. bashkëpjesëmarrës (Art. 272(1) 3), PCPCK). The term co-perpetrator is translated as bashkëkryerës in both codes.

In conclusion, the English word accomplice is also rendered in Albanian as co-perpetrator, which amounts to a translation blatant, unpardonable blunder, accessory, which is a translation error, and co-participant which is a too generic and, as such, obscure version. I would suggest that these terms have the following Albanian equivalents: co-perpetrator – bashkëkryerës, bashkekzekutor, bashkautor; accomplice – bashkëpunëtor, accessory – ndihmës.

Acquit – Release

Read the following extract from Article 4(1) of the PCPCK:

Askush nuk mund të ndiqet dhe të dënohet për vepër penale nëse është liruar ose për të cilën është dënuar me vendim të formës së prerë, përkatësisht nëse

If we back-translate the provision, it would read into English more or less like the following: No one can be prosecuted and punished for a criminal offence, if he or she has been released or of which he has been convicted by a final decision, respectively. We know that a person may be released and still be prosecuted and tried in freedom. So, what is the sense of not prosecuting

and/or punishing someone simply because he/she has been released? A vigilant reader would stumble while reading the provision. To clarify matters, let us read the original version:

No one can be prosecuted and punished for a criminal offence, if he or she has been acquitted or convicted of it by a final decision of a court,...

The translator has tried to use the method of literal translation, or one-to-one equivalence. However, not all one-word terms can, much less, should necessarily be rendered by a one-word equivalent in Albania, same as is often the case vice-versa. I would suggest the following translation of the quoted provision:

Askush nuk mund të ndiqet dhe të dënohet për një vepër penale nëse për këtë vepër tashmë është shpallur i pafajshëm ose është dënuar me vendim gjykate të formës së prerë,...

Conclusion

The new knowledge that I have come to in this research is that the language of the law tends to violate many of the rules of style and syntax that grammar teachers try to instill in their students. In addition, three equally important elements should be borne in mind in teaching legal translation: meaning, intent and effect. Inaccuracy in one level results in inaccuracy in other levels, often with undesired consequences, as a result of which a person's rights could be at stake.

Students should be taught that when translating terms, a translator should look for precision. The legal translator must become adept at terminology research. He/She must be skilled at recognizing that Albanian terminological equivalents of the English legal terms could produce different legal effects (Mikkelsen, Holly).

In the end, students should be cautioned that a legal translator should be fully aware of the responsibility with which he/she is entrusted and, unless he/she is well-informed, well-read and well-rounded in legal translation, he/she should not take upon himself/herself translating such an authoritative document as a criminal procedure code or criminal code.

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Online Resources:

Provisional Criminal Procedure Code of Kosovo: www.unmikonline.org/regulations/2003/RE2003_26_PCPC.pdf

Provisional Criminal Code of Kosovo: www.unmikonline.org/.../RE2003_25_criminal_c...

American Heritage Dictionary: <http://ahdictionary.com/>

Albanian Electronic Explanatory Dictionary, Centre for Education and Progress: www.forumishqiptar.com

Gazeta Zyrtare e Republikës së Kosovës: http://www.gazetazyrtare.com/e-gov/index.php?option=com_content&task=view&id=265&Itemid=28&lang=en West’s Encyclopedia of American Law: <http://www.enotes.com/law/browse/sources/wests-encyclopedia-american-law>