

## Manipulation through Legal and Judicial Translation Process

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**Abstract:** *In the context of the general translating as a process, that today in the consecutive epoch of globalizing processes who had involved the modern society, the legal and justice translation has been done and he as well as an essential and common; however is clearly visible how little importance and attention, to say the least, is devoted from the criticism or contemporary literature. In translator's environments, often we listen the Italian expression "trattatore, traditore" that means "translator, traitor". Many translators have had their experiences, good or bad, encountered during the translation process. Legal texts and judicial, legally regarded as "original" and not as translated; we really never used the term translation, otherwise it will be affected very important principle of authenticity, which would mean that each of the texts been translated depend on the interpretation of the courts. One of the more used practices of translations of the legal texts is the method of translation with the same view of language in which is translated. Pierre Pescatore says that "The ideal translation of the EU legislation is that can be read as it was originally drafted in this language." The requirements of translations in the courtroom are legally and complex interpretations that aimed to achieved the inter-language and inter-cultural equivalence. As above, and not only, will be the subject of this paper!*

**Keywords:** *The mission; code of ethic; dilemmas and problems that arise before the legal translator during this process; some suggestions that can help this process.*

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### 1. Introduction

In general context of translation process, in which modern society has been involved today in the era of consecutive globalizing processes the legal and judiciary translation has become as ordinary as indispensable; even so, it is clear and evident how criticism and contemporaneous literature gives to it little consideration or no attention at all. In the premises of translators, we often hear the Italian expression "translator, traitor". Many translators have their good and bad experiences and the difficulties they have encountered during translation.

Legal translators and interpreters operate in special legal conditions different from the most part of translators. They constantly have to be under pressure and rigid rules of Ethic Code, and at the same time to be faced with conflicts and communication dilemmas. This paperwork aims to explore some of basic rules of legal and judicial translation, accompanied with a few real cases and at the same time establish new standards and continuous training for legal and judicial translators of the future.

### 2. A quick overview on "legal" translator

In principle, generally in everyday life, we call legal translators all those persons who have completed the university studies and are graduated in a foreign language. But, practically, we often need to make a selection in the market of translators so that we can individuate the perfect one. It is already known the fact about graduation, even it is to maximum of grades, is not enough to work in profession of translator or interpreter.

Recently, submitting also the international rules and standards, and especially the European ones, because of application as an EU candidate, several basic norms for legal translators have been started even in Albania, maybe a little late, but anyway very positive. The initiative of Ministry of Justice in organizing the competition with its product a list of legal and judicial translators in disposal of public and private authorities, who are considered to be the most professionals on market, is a serious step that has influenced to the quality of this sort of translation too. But is it enough? I think that the reply needs a deepened analysis of the issue.

### 3. What is the legal or judicial text?

First, I would like to stop a while on understanding a legal or a judicial text. Legal and judicial texts, are legally considered to be "original" and not translated ones; in fact the term translation is never used, otherwise the very significant

authenticity principle would be threatened, the one that in legal practice means that each of translated texts depends on interpretation of courts. One of the most ordinary practices of translating legal texts is the method of translation with the same spirit of language in which it is compiled. Here I want to underline one of the main features of legal or judicial texts; these texts are compiled and neither written or created. When we say compiled we must know that they are texts that summarize and aim a lot of characteristics within, like the interpretation, summary, ordering, legal norms and the last comes writing or composing.

Pierre Pescatore emphasizes that the ideal translation of EU legislation, is the one that is read as if that was the first language in which it was compiled (Corpus of Community Laws 2011:11). The demands for court translations are legal and complex interpretations that aim to reach the inter-lingual and inter-cultural equivalence.

The legal and judicial translation in itself is a term that refers to all sorts of translations, commencing from that of various legal acts, like conventions, laws, government decisions, instructions up to the most ordinary acts like statements, power of attorneys and various documents; but it also refers to the translations in courtrooms, in police departments, in jails, in the border immigration ticket-offices, etc.

There are fields like the literary creativity where the translator must have a poetic talent, but in others like in this case of legal and judicial one, that translation is abusively and unfairly is considered to be simple arguing that you just have to stay faithful to the text. Of course it is a true argument, but in most cases here it is the main mistake of legal and judicial translators and interpreters, or better saying of who pretend to do this job. Translation of a legal or judicial text is a process that implies not simply the translation but the recreation as the original of an interpreting – prescriptive text.

On the other side, there are fields of sciences, especially of human or social ones, that require a wide and profound culture, first to know that field and then to try to reproduce it in the same forms and of the same effect to the other language which it is presumed to be known well.

#### 4. The basic principles of legal translation process

When a translation who wants to work in this field of translations, has realized what a legal translation is, must understand the significance of basic principles that saying the truth are basic not only for translation process but even for legal –judicial one. These principles are important not only to be known but even to be executed and respected indispensably otherwise it would be with irreversible social and legal consequences for the whole society. Below there is an order of some of the most important ones.

##### 4.1 *The mission and cultural skill of legal interpretation*

Legal and judicial translators on purpose to provide an accurate communication between the parties, to guarantee a reciprocal exchange and as a result the success of legal processes, first of all must know that they have to face not only with the simply linguistic problems, but first with individuals who come from various cultures, from various social groups of a certain status and especially of a diverse intellectual level. Thus they need not only general knowledge of various cultural elements but even legal ones and also to have wide vocabulary knowledge and linguistic uses starting from formal legal language up to slangs and conversational language. We say not cultural but even legal because in modern world (although the main systems are common law and civil law) there are various legal systems which differ not only in their perceiving but even in terminology and dealing.

In the instruction of Albanian Government for translation of Community Laws (Acquis Communautaire) it is expressively underlined for the qualities of legal translator that: "It is not indispensable for translators to be experts of *acquis communautaire*, although it is very important to be recognized with basic knowledge about European Union, its institutions and above all its legal texts (goals, objectives, circle of persons to whom they are addressed and normative effects) (Corpus of Community Laws 2011:11).

##### 4.2 *Ethic Code*

Except the skills necessary to make the interpreter and translator capable to overcome all the linguistic and cultural shortcomings in order to meet all the requirements to reach the success of legal and judicial process, the translator must prove to understand the legal procedures and be impartial and confidential. This because first of all, a correct interpretation does not include only the articulation of clients' requests, but even in conformity with specific ethic standards to ensure the integrity of judicial process. These ethic principles include reliability, confidentiality, impartiality and professional conduct (Mikkelson 2000:49-55).

"If the trial is a battle this is a battle won with words, and through oratory strategies, everything becomes important to reach the superiority" (qtd. In Hale 1997b:201). In case of interpretation in the court, which in real is more evident and reachable from the public, legal battles have been fought by people who can not speak and understand the proper legal language, therefore the presence of a translator is considered crucial as a necessary mediator and contributor to overcome the linguistic barriers and to ensure the communication.

#### 4.2.1 The reliability principle (authenticity's)

The interpretation in such contexts is related to ethic standards and considerations that every translator holds so that he can operate effectively to avoid and risk the result of a case. Holy Mikkelson underlines that translators have even a professional moral, not to mention the legal engagement, to forward the full message of the speaker (2000:49). Legal and judicial translators and interpreters having the duty of ensuring the links between the legislator (either designer or executive or judicial applicant) and the simple public, in the role of free individual in the everyday life or in the courtroom, they have an extreme power therefore they must be very careful. Their duty does not include message deciphering and decoding, but first it must ensure and guarantee the equivalence of message from the source language, trying at the same time to keep the original words, without adding or cancelling anything. What's more, it is necessary to keep all the non verbal elements in verbal and judicial translations, like tone of the voice or pauses between the words, on purpose to avoid the deviation of legal process, ensuring the forward of original message. So, the goal of legal translator will be to reproduce translated texts of same legal effects in practice. If we talked in legal terms, the final goal is to provide translations that guarantee a uniform interpretation and the same application of law and of *Acquis Communautaire*.

#### 4.2.2. Principle of confidentiality

Confidentiality is a very important principle. "Interpreters will respect confidentiality at any time and will not try to profit from the information they are acquainted with during their job". This is a principle defined in Article 4 of "Ethic and professional issues" of National Register of Public Service of Interpreters in the Ethic Code of United Kingdom (Mikkelson 2000:50).

The legal and judicial translators, during their job receive knowledge about legal or judicial processes, for which it would be unforgivable and of inestimable social consequences, in case of leakage of information. Here I am referring to the sensational case of "Cocaine" in Albania in years 1998-2000 where because of information leakage by the side of translators engaged there was a problem with foreign witnesses of non-Albanian citizenship. (Official journal 2005:71).

#### 4.2.3. Principle of impartiality and professional behavior

Of same importance are the last two principles of Ethic Code, the impartiality and professional behavior. Muahamd Gamal argues that impartiality establishes a special obligation to translators during the judicial process who should distance themselves from witnesses (1998:55). Personal opinions and judgments should not be expressed in any way, otherwise they will influence to the jury and the legal result is compromised.

There are some practical instructions about professional behavior of legal and judicial translators concerning the way of behavior in premises like legislator's chambers, courtrooms, halls of meetings and legal conferences, international ones or not, etc. A legal translator absolutely must take a preparatory information and be prepared before any translating process so that he can guarantee his success and integrity as a professional. A significant aspect of professional behavior of translators is even that of relation between colleagues. The Ethic Code of Spain (articles 2.2.7 and 2.2.8) sanctions that "translators help their colleagues, in the present and in the future, and should restrained themselves to speak out their opinion about competences and skills of the other translators" (Mikkelson.2000:54).

### 5. Case

I will refer to a case to illustrate, the one which during the year 2011 provoked an extensive debate and discussion in Albania. This case confirms not only the importance of translation but also how a translation can cause manipulation of a whole legal process with consequences to social, individual, political etc. aspects.

The object of this debate was Law no. 10129 date 11.05.2009 "For Civil Status", in some of its articles, but the ones we are interested in for the case we are dealing with are the articles 6/1 and 8, which define the term "nationality".

The above mentioned law was designed and passed by legislator in May of 2009, after the Framework Convention of European Council for Defense of Minorities was previously ratified. This Convention after been translated to Albanian language was sanctioned by Albanian state in 1999 and started to be applied and change the existing legislation. Since the day it came into force up to the year 2011 this law was applied bringing legal and social effects with changing the nationality of a lot of people, and resulting legally to new configurations in individual and social aspect of Albanian state. Without considering if it was right or not, I want to underline only the fact of social and legal manipulation of Albanian society because of legal change, a fortiori it is directly related with the translation of the term "nationality" from English to Albanian.

But this manipulation goes further; a part of community, for example the most aggressive ones "Black and Red League", then several courts of judicial districts like the court of Saranda, Permet, Shkoder reacted severely and accuse for abuse by legislation and violation of human rights, and for anti constitutionality of this law. The question became a national legal problem and ended to the Supreme Court, where after a legal constitutional assay, with its decision no. 52, date 01.12.2011, through other articles, abrogated the articles 6/1 and 8 which defined the term "Nationality" in Law no. 10129, date 11.05.2009 "For civil status" (Official journal. 2011:8230).

In conclusion, I brought this case to show how legal or judicial translation is important and special in all translations and what attention must be paid to it. An unclear or inaccurate translation, without respecting or referring to certain established standards, does not take only to the manipulation of a legal process but even of social one. There come social and legal reactions like the one mentioned above that may be associated with political or individual consequences.

## 6. Conclusions and suggestions

It is certain that we can speak endlessly about this topic, but hoping to your comprehension, I would like to end this essay here, and mention the urgent need of preparing the legal and judicial translators through training courses or workshops where they can receive a more profound and essential legal culture.

In addition, the education for a skillful legal and judicial interpretation must be improved as soon as possible. The academic institutions must provide courses and training, workshops and seminars.

Lastly, legal and judicial translators must be certified by a special proof for "in a trial to overcome the hedge in the mid of "general" academic training in interpreting with specific standards and with the skills required in the professional world" (Gamal 1998:56).

The future of legal interpretation is unclear. The role of judicial and legal translator, like agents of culture and negotiators of foreign elements and information has been underestimated and has been reduced to that of a translation machine. The shortcomings of legal norms in this field accentuate the need of a formal system that will create well-marked models of behavioral interpretation and will allow legal translator to play a more active role in legal interactions, so that translations can be flexible, the concepts and meanings they mean can be the original ones and so they can attract the attention of foreign speakers.

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