

LEGAL TRANSLATION: SCIENCE OR ART?

В.А. ВЕРНИГорова,

преподаватель английского языка,
кафедра английского языка при факультете права,
Научный исследовательский университет Высшая школа экономики

Desiderius Erasmus Roterodamus, a Dutch humanist, philologist, social and religious thinker, and translator wrote in his "Letter to William Warham," dated 1506: "To turn excellent Greek into excellent Latin you need an exceptional craftsman who has greatly enriched his knowledge of the two languages by accumulating an abundance of material. He must also possess a piercing eye that is always wakeful, and that is why for many centuries nobody in this field has been voted unanimously into this position" [6]. Five centuries later this seemingly outdated opinion is more topical than ever and holds deep meaning.

The growth of translation studies which brings together work in a wide variety of fields (including linguistics, literary study, history, law, and economics), as a separate discipline has started in the 1980s. Nowadays translation – the act of communicating the meaning of a text in another language - has come to be regarded as "a complex linguistic process carried out by a professional practitioner who has to maintain a delicate balance when bridging languages and cultures" [5]. And the translation of legal texts and documents – the so-called "legal translation" – is considered to be one of the most difficult and problematic areas of translation studies.

As it turns out, most judges and lawyers find the meaning of legal texts (especially those written in a foreign language) quite incomprehensible. It is not surprising: there is such a variety of languages and dialects, that it is a miracle that people can convey meaning to each other in every day life, let alone in specialised fields of knowledge. That is why translation is such an important activity for people speaking different languages.

The transfer of words, sentences and ideas from one language to another is not a straightforward task. A language, not least the English language, is full of idioms, figures of speech and metaphors that are difficult to translate exactly into other languages. Sometimes it is even impossible to do so without further clarification. And there is hardly any need to emphasize the importance of accurate translation when it comes to legal documents and statements, isn't it?

The last fifty years, partly thanks to the remarkable growth of telecommunications and the invention of the Internet, have seen a huge increase in international travel and communication to a degree that would have seemed astonishing in the middle of the twentieth century. Thus, the need for translating words in a legal context expanded far beyond a courtroom into the global economy, the international world of treaties and agreements and the dealings of different communities and individuals.

At the present moment English is the main language of scientific press, business negotiations and documents. Moreover it would be quite impossible to use computer and Internet technologies if you do not know this universal language. However despite the obvious necessity for professionals to learn English, many graduates in Russia still demonstrate a very poor command of this language. One of the main reasons for such unfortunate circumstance is the lack of motivation to study a foreign language, as well as limited educational resources.

The world of regional and global commerce and culture will obviously continue to expand, which implies the constant need for bridges of language, and law has played a vital part in the communication between nations and is playing an even more important role in our increasingly globalised world. Building the international rule of law is an important challenge for the 21st

century. To achieve this major goal we must cross the barriers of language, and for that we need expert translators. This fact, unfortunately, is often overlooked, in particular in the development of law and legal studies.

It is a truth universally acknowledged that English is the dominant language in translations of law. In the case of many bilateral agreements even when the official languages of the two countries concerned do not include English, the English text is often included as an authentic text. English is also the language used in most international trade documents; it is the language of the Common Law. So, it would be quite impossible for a lawyer who does not know this language to work with numerous legal papers which can now be found on the Internet.

World Wide Web opens for its users the universe of unlimited opportunities. A lawyer who has a good command of the English language will always be able to contact his foreign colleagues promptly, to find a required statute in a foreign legislative data base (at <http://portal.unesco.org/> for example) or to take part in an international teleconference. At the present moment the legal Internet of the United States of America is considered to be the most developed on the Web. It means that any lawyer who has Internet access has an opportunity to work with the data in the American legislative data base, search by-laws, general legal news and information on government services. It is not necessary to mention the importance of such resources for the students specialising on the legal system of the United States of America. In American e-libraries students can find reports on almost all trials which have taken place in the USA since 1990. For example Legal Information Institute: Supreme Court Collection features a collection of nearly all opinions issued since May 1990, as well as a current schedule, a gallery of justices, and a glossary (<http://supct.law.cornell.edu/supct/>). Besides some basic information on trials and judiciary panel, such web-sites also feature different background and reference materials, concise dictionaries of law, information on non-governmental and nonprofit organizations dealing with legal issues, et cetera. Therefore the importance of a modern lawyer having a good command of the English language and an ability to use international legal resources effectively is almost vital.

But it is not enough.

Understanding written texts is one thing. Rendering or even properly translating these texts into another language is an absolutely different matter. Many people doubt that translation is a science and believe that translating is easy, that actually any person can take a dictionary and translate any text into his native tongue. In the modern world this task has become even easier: one does not even have to buy a dictionary, because it can be found online, notwithstanding the existence of special devices and software – the so-called electronic translators and interpreters.

For truth's sake I now put it on record that such prompt machine (or electronic) translation might work – in case of a simple text. And though it might not be 100 % accurate and the text will need post-editing, at least one will be able to understand the basic meaning of this text. But no software programme, as well as no device can translate a complex text (a newspaper article, a book or an agreement) properly. And in this respect translators must agree with those who do not consider translation to be a science. Indeed, it is not a science, but more of an art.

Over the centuries translators have carried out the tasks of translation in a scientific and artful manner, as translation is a complex and delicate process that involves both scientific and artful efforts. The one who says that there can be nothing artful about translating a business contract or a vacuum cleaner manual is wrong. Translating technical, medical, scientific, legal and other types of specialised texts is to a certain extent more difficult than translating social essays or fiction, and therefore it is an art.

A good illustration of the increasing role that legal translation plays in the modern world is found in the European Union (EU). The European Parliament makes laws that become national laws and are translated and published in its Member States' official languages. Thus, the functioning of the European Parliament is impossible without the assistance of translators. And in bilingual and multilingual countries such as Switzerland and Canada there is the constant demand for bilingual and multilingual translation. Due to the ongoing globalisation the demand for legal translation has also increased in monolingual countries.

In other words, legal translation plays an important role in the economic, intellectual and institutional development of the today's world and it most definitely deserves close attention. It requires special skills, knowledge and experience on the part of the translator to carry out legal translation. No wonder that some legal scholars describe legal translation as 'the ultimate linguistic challenge, combining the inventiveness of literary translation with the terminological precision of technical translation' [8].

But it is necessary to understand that though the legal translator's skills and tasks are different from the lawyer's and therefore the legal translator does not have to be educated in law, the lawyer, however, is required to possess at least basic skills of legal translation. The lawyer's job is not only to solve legal problems, provide legal advice and interpret the law, but also to understand and to be able to translate legal texts.

Legal translation is a human process conditional on the law itself, on its nature. The translator should take into account different situational, verbal and social linguistic factors and peculiarities, otherwise errors are inevitable. Translation scholars love telling the story of a great diplomatic scandal which was caused by the translation mistake committed by the interpreter during the official meeting of Nikita Khrushchev and Richard Nixon in 1959. In his speech addressing the President of the United States of America Nikita Khrushchev boasted of the Soviet Union's grandeur and promised "to show the United States Kuzka's mother" (a popular Russian idiomatic expression which means "to teach someone a lesson, to punish someone in a brutal way"). The interpreter got confused and said something incomprehensible about "the mother of Kuzma". Many Americans then believed that Khrushchev was talking about the new Soviet nuclear weapon. This incident most definitely did not help to ease Cold War tensions.

And if a translation mistake in a fiction book is to some extent pardonable, an error in translation of a political speech or a legal text can be critical and even fatal.

According to most scholars legal translation falls under the category of technical translation, which involves the use of the language for special - legal - purpose, and can be classified into the following categories: translation of legal scholarly papers (articles and textbooks), translation of legislative texts (treaties, conventions, statutes, codes, regulations and other normative texts – both domestic and international), translation of private documents (agreements, contracts, testaments, donatives, et cetera), and, finally, translation of case law (briefs, petitions, requests and other judicial texts).

Legal philosophers agree that legal language is a normative language which is related to norm creation, norm production and norm expression [9]. This notion is conditional on the fact that law performs the basic and positively one of the most important functions in society. It regulates human relationships on all levels of communication, governs human behaviour and de-

fines norms and standards of everyday life.

However there have been some debates if it is scientifically correct to speak of the legal language as of the language of law. Some scholars believe that there is no such thing as legal language and that the language of legal texts is no more than a specialised form of ordinary language. In any case such discussion is just a formality and it does not affect the vital importance of accurate translation of legal texts from one language to another.

In its essence legal language is different from other specialised languages - for example, the language of medicine or the language of mathematics - which may be considered to be universal technical languages. Legal language cannot be universal because it is "tied to a national legal system" [13], and written laws and customary norms are different in different countries and societies. Therefore legal translation does not only presume translating a legal text from one language to another, but also translating this text from one independent legal system to another.

According to David and Brierley's classification of world legal systems or families, there are the Romano-Germanic Law (Continental Civil Law), the Common Law, Socialist Law, Hindu Law, Islamic Law, African Law and Far East Law [4]. Approximately 80 % of the countries belong to the systems of Common Law (England and Wales and some of the former colonies of England, the United States of America, Australia, New Zealand and Canada) and Civil Law (Austria, Germany, France, Switzerland, Italy, Japan and some others). There are also countries with the influence from both the Common Law and the Civil Law (such as Israel and Greece) and countries of mixed jurisdiction (China, for example, with the influence from the traditional Chinese Law, the Civil Law and Socialist Law). It means that translating a German legal text into French will be easier than translating an English text into Chinese, but it is a cold comfort for the translator.

Sylvia A. Smith believes that there are three suppositions for successful translation of legal texts: the legal translator must acquire a basic knowledge of the legal systems, both in the source language and the target language; the legal translator must possess familiarity with the relevant terminology; the legal translator must be competent in the specific legal writing style of the target language [11]. In other words, to translate a legal text accurately into the target language a competent legal translator must fully understand all the peculiarities of the source language, let alone be educated and literate enough to convey the meaning of the text in a proper style.

One of the major difficulties of the legal translation is the translation of legal terminology, as it is necessary for the legal translator not only to know the terms themselves, but to understand all the unique features of such terms in the source language and in the target language. In some cases, for example, it will be very difficult or even impossible to find equivalents in one language for the words which are quite generally used in another. For instance, in the United States of America legal professionals are usually referred to as "lawyers" or "attorneys", whereas in the United Kingdom, Canada, Australia and some other Common Law countries there are "solicitors" and "barristers". However, there are no solicitors and barristers in Russia, and therefore there are no ready equivalents for such words in the Russian language. Russian dictionaries give the transliterated variants of the words "solicitor" and "barrister" and accompany such dictionary entries with corresponding commentaries in which it is explained that in Britain a solicitor is a lawyer who advises clients on matters of law, draws up legal documents, prepares cases for barristers and who may represent clients in certain courts, and a barrister is a lawyer who has been called to the bar and is qualified to plead in the higher courts.

Another terminological problem is the existence in different languages of the so-called "legal synonyms" – legal terms that have several synonyms which may resemble one another in meaning, but differ in law. In English there are, for example, many words related to "law": statute, regulation, legislation, rule, and some others. And an ex facte common English word "condi-

tion" is considered to be one of the most ambiguous and difficult words in contract law. This word may refer to an event the occurrence or non-occurrence of which has been agreed by the parties to have a particular result. The second meaning describes any term of the contract, and a third meaning an important term (promise), the breach of which gives rise to a right to terminate the performance of the contract [2].

Both translators and legal scholars agree that there are "simple" languages and those which present a dilemma and a challenge. Among them are Russian and Chinese. In 1913 Yan Fu (1854 - 1921), one of the most influential legal translators in China, wrote about legal synonyms that in the Chinese language the law of nature is called "li", and prohibitions and decrees are called "fa". "However, Western people call both of these "law". Scholars should take careful note" [12]. And in the Russian language, for example, there is only one word for three English legal terms "pledge", "charge" and "lien" – "залог" ("zalog"). Obviously, it will be quite difficult to translate (or just understand) such words accurately without knowing the realia and specifications of both the source language and the target language.

But what if no equivalent is found in the target language? In answer to this question famous Russian translation scholars Sergej Vlahov and Sider Florin in their book "The Untranslatable in Translation" ("Neperevodimoe v perevode") wrote that if there is no equivalent in the target language for the term used in a scientific text, the translator must adopt such a term (via transliteration), create a new term or add a corresponding terminological meaning to a common lexical unit already existing in the target language. "In any case a term must always be translated by a term" [2].

So it is absolutely obvious that only highly competent pro-

fessionals should be charged with translating legal texts. Unfortunately, there are few translation professionals specialising in legal translation. The problem here is that translators are usually classical scholars who first of all study literary translation and very rarely undergo training in specialist translation, a fortiori get specialist education. Lawyers and legal professionals in turn dedicate themselves to law studies and in many cases do not have necessary knowledge, skills and talents to carry out translations of legal texts.

That is why it is crucially important for law students and legal professionals to study not only the Law and English (having become the lingua franca) as separate subjects, but take legal translation courses and practice in Legal English. All Russian educational institutions, specialising in law or having faculties of law, which wish to graduate professional lawyers, should certainly develop and implement such courses. Knowing the theory is clearly not enough in our rapidly changing world. In order to work successfully – and internationally – any lawyer must not only have a good command of the English language (both general and legal), but also possess – at the very least – basic skills of legal translation.

Robert Frost, one of the greatest American poets of the 20th century, once said that "poetry is what gets lost in translation". I will take the liberty of paraphrasing this quote and assume that legal texts are poetry of law, which is why it is so important not to "lose" them in translation. Even an unemotional scientific text can seem poetic to a true scholar. When you see a defence attorney pronouncing his closing statement at a trial, does not he look like an elocutionist reciting an ode? I think he does. And who can deny then that translation of legal texts is a science and not an art? ■

СПИСОК ЛИТЕРАТУРЫ

1. Баландин А., Свиридов В., Шлапак Ю., Шевченко Д. Юрист и Интернет. // Самара: «Project Harmony Inc.», 2000.
2. Влахов С., Флорин С. Непереводимое в переводе. // Москва: «Международные отношения», 1980.
3. Cao D. Translating Law. // Clevedon / Buffalo / Toronto: Multilingual Matters Ltd., MPG Books Ltd., 2007.
4. Carter J.W., Harland, D.J. Cases and Materials on Contract Law in Australia. // Sydney: Butterworths, 1993.
5. Crossing Barriers and Bridging Cultures. The Challenges of Multilingual Translation for the European Union. Edited by Arturo Tosi. // Clevedon / Buffalo / Toronto / Sydney: Multilingual Matters Ltd., 2003.
6. David R., Brierley J. Major Legal Systems in the World Today. // London: Stevens, 1985.
7. Davies M.G. Multiple Voices in the Translation Classroom. // Amsterdam / Philadelphia: John Benjamins Publishing company, 2004.
8. Erasmus, Desiderius. Opera Omnia. Amsterdam: Gregg Press, n.d.
9. Kress G. Literacy in the new media age. // London: Routledge, 2003.
10. Harvey M. What's so Special About Legal Translation? // Meta, XLVII (2), 2002.
11. Jori M., 1994, 'Legal Performative', The Encyclopedia of Language and Linguistics, Volume 4. // Oxford: Pergamon Press, 1994.
12. Pritchard A. Effective Teaching with Internet Technology. Pedagogy and Practice. // London: Paul Chapman Publishing, 2007.
13. Smith S. A. Cultural Clash: Anglo-American Case Law and German Civil Law in Translation, Translation and the Law. // Amsterdam: John Benjamins, 1995.
14. Yan, Fu. Fayi (De l'esprit de lois by Montesquieu). // Beijing: Commercial Press, 1913 / 1981.
15. Weisflog W.E. Problems of Legal Translation. Swiss Reports presented at the XIIth International Congress of Comparative Law. // Zurich: Schulthess, 1987.