

The Idea of Europe and Challenges in Legal Translation.
Introduction to the Topic of the 3rd Edition
of the International Conference *Legal Translations*

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Abstract: The analysis and research of legal translation within the European Union not only aims at identifying translation problems and strategies in order to improve this process which is intrinsic to European communication, but also tries to see much more in translation: a dynamo of the evolution of societies, of cultures, of the idea and construct of Europe and the European Union. This linguistic and cultural process is dynamic in overcoming challenges of different natures – terminological, ideological, political, economic, and even in terms of resources, be they human or technological. The diachronic or synchronic analysis focuses not only on circulant translations, meant to be enforced on various territories, but also on translations for informative purposes, and aims at providing insight into specific challenges related to legal translation in past and present times.

Keywords: legal translation, European Union, challenges

The translation of legal texts in the European Union is only one of the examples in history of attempting to overcome the *Babylonian confusion*, which ultimately could endanger the idea of a multinational state or union. From a pragmatic perspective, translation comes as a response to the modern need for communication between nations and is ultimately an instrument for the realisation of unity at various levels, such as European unity. According to this vision of unity, translators are building bridges between nations, languages and cultures for the sake of the social and economic development of Europe, in a pursuit of positioning itself in the configuration of dominant powers. But translation is more than an instrument of the union or of unity, it is a part of the cultural diversity dynamism and a characteristic of the equality of rights of various nations.

The idea of a united Europe is not new and flourished in the Romanian thinking starting with the 19th century, as Romanian intellectuals came in contact with Western European ideas and began developing a strategy of affirming their right to a united nation and state, in the struggle to overcome the Ottoman, Russian and Habsburg political dominance in Eastern Europe. They looked for support abroad, and received it, by profiting from political interests of the great powers, thus gaining their independence and later founding Greater Romania.

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Nevertheless, this newly constituted state had to aspire to a European idea in order to defend its sovereignty – in all of its modern history, since its unification and up to the present moment. The national ideal is intertwined with the European one³ and this includes keeping pace with European development and civilisation or, as the philosopher Constantin Rădulescu-Motru stated in the programmatic article of the interwar magazine *Ideea Europeană* [*The Idea of Europe*]: “The Romanian people can exist only in close connexion with the European entity.”⁴ So it is no wonder that Romanian intellectuals have been studying abroad, whenever possible, that translation is a means and a part of the cultural dialogue, that learning foreign (European) languages is vital for this communication process in which we want to position ourselves as equal partners.

The present volume, a result of the authors’ contribution to the 3rd edition of the international conference *Legal translations – past and present challenges in Europe* (13th-14th of May 2021, Iași) and of mutual dialogue, not only aims at identifying translation problems and strategies in order to improve this process which is intrinsic to European communication, but also tries to see much more in translation: a dynamo of the evolution of societies, of cultures, of the idea and construct of Europe and the European Union. This linguistic and cultural process is dynamic in overcoming challenges of different natures – terminological, ideological, political, economic, and even in terms of resources, be they human or technological. Thus, the question our volume tries to answer is not only *how* translation is carried out and what it involves, but also *what* it represents to modern society and the building of the Union, of our so young unionist history. Therefore, the volume is also conceived as a reflection on cultural and social factors, which, according to Michaela Wolf, condition the selection, production and reception of translation as a social practice in which the actors – translators, lawyer-linguists and other cultural mediators – play an important role.⁵

Legal translation is, first of all, a product needed in order to enforce specific legal documents in various countries (circulant translation): “In most cases, law is translated because a legal situation arises, an act or a deed requires it.”⁶ Secondly, it may also be used by legal scholars for information purposes (non-circulant translation): it is the case of legal practitioners who want to resort to case law pertaining to different legal systems and of comparatists who examine similarities

³ S. Costea, *Ideea europeană în cultura românească interbelică*, in *Buletinul Cercetărilor Științifice Studentești Arheologie-Istorie*, no. 1/1995, p. 226.

⁴ „Poporul român nu poate trăi decât în atârnare de ființa Europei.” (Our translation.) See C. Rădulescu-Motru, *Ideea Europeană*, in *Ideea Europeană*, no. 1/1919, p. 1.

⁵ See M. Wolf, *The implications of a sociological turn – methodological and disciplinary questions*, in A. Pym, A. Perekrestenko (eds.), *Translation Research Projects 2*, Intercultural Studies Group, Tarragona, 2009, pp. 73-79.

⁶ S. Monjean-Decaudin, J. Popineau, *How to apply comparative law to legal translation: A new juritraductological approach to the translation of legal texts*, in L. Biel et al. (eds.), *Research methods in legal translation and interpreting*, Routledge, 2019, p. 3.

and discrepancies between different legal cultures.⁷ From a diachronic perspective, legal translation has been practiced since ancient times: one such example is the Egyptian-Hittite peace treaty of 1259 B.C., also known as the Treaty of Kadesh. *Corpus Juris Civilis*, an important work of jurisprudence, also known as the *Code of Justinian*, was also translated in the 19th century in various European languages. As one can notice, the former was a circulant translation, meant to be enforced on various territories, while the latter was carried out only for informative purposes, given the difference in time between the period when the text was drafted and the years when it was translated.

The first section of our volume is thus dedicated to legal translation challenges seen in diachrony. In the past, such challenges were related to the lack of legal specialists, lack of terminology standardization, and difficulty in accessing original documents. As international law as well as multilingual organizations such as UN, OTAN or the EU were born in the 20th century, legal translation was usually performed in the past by lawyers or specialized scholars who were interested in other legal cultures or who intended to fight for an ideal: it is the case of Damaschin Bojincă or Ștefan Berechet, who emphasized, through their work, the Romanist foundation of Romanian law. Sometimes, such translations were meant to provide unified legal norms in a multilingual territory: it is the case of the Habsburg Empire in 19th century and at the turn of the 20th century and of Greater Romania in the interwar period. As we approach modern times, we notice that legal translation is more frequently circulant, having not only informative, but also performative purposes. Meanwhile, non-circulant translations are reserved for legal scholars and comparatists.

Translation practices and legal terminology have clearly evolved in present times through standardization, uniformization, and the creation of specialised resources. From a synchronic perspective, as we now live in a globalized world, legal translation has become a necessity and specific standards should be met in order to ensure quality. The second section of our volume is thus dedicated to translation strategies and techniques resorted to in present times, in particular in Europe. Legal translation is indeed a challenging process. Terminological challenges have two sides, taking into consideration the fact that EU legal language differs from national legal languages, as Colin Robertson points out⁸, and that it has a special identity among other LSP languages, besides the fact that legal (translated) texts regulate our life in the society. Even if, nowadays, the standardization of terminology and multiple multilingual resources (dictionaries, databases, glossaries) contribute to higher quality in translation, one should not forget that accurate legal translation stems from good command of the source and target legal cultures. In other words, besides his/her knowledge of the source and

⁷ *Idem*, p. 5.

⁸ C. Robertson, *LSP and EU Legal Language*, in C. Heine, J. Engberg (eds.), *Reconceptualizing LSP. Online proceedings of the XVII European LSP Symposium 2009*, Aarhus, 2010.

target languages, the translator should also be specialized in law and, sometimes, he/she should carry out the work of a comparatist.

In order to evaluate the complexity of the legal text he/she has to translate (called by Sylvie Monjean-Decaudin “le degré de juridicité”), the translator should firstly take into account “the scope of the legal knowledge which is required to understand and translate the text and/or legal concepts”. Then, the translator should be able to identify “the resulting legal consequences when the translation is done”⁹. According to the skopos theory, which takes into account the function and the effect that the translated text produces to its receivers, the target text should become the functional equivalent of the source text in the target milieu. Susan Šarcevic states in fact that “the translation of legal texts is (or ought to be) receiver-oriented”¹⁰. These are fundamental requirements ensuring quality in legal translation and, from this perspective, it seems that legal translation competencies are rare and possessed by few.

The challenges related to the translation of legal texts are therefore manifold: on one hand, unlike other specialized discourse, legal texts are linked to a specific culture and involve vocabulary that belongs only to a legal area or jurisdiction. These are known as culture-bound legal terms. Such terms bear cultural and monolingual information, which is autonomous from the perspective of their translation. In this respect, culture-bound legal terms (or “culturèmes”) usually “resist” intercultural translation, according to Georgiana I. Badea.¹¹

Taking into account the fact that legalese is difficult and involves specialised vocabulary, the third part of the volume deals with specific terminology issues in legal translation. Nevertheless, beyond the terminology, which is usually cryptic to non-specialists, translating legal texts requires the use of a specific style in order for the translation to create the same effect in the target milieu and to meet the *skopos* criterion we have mentioned above.

In what follows, we will briefly present the contributions to our volume. As we have mentioned, the first section is dedicated to the history of legal translation and to translation challenges seen in diachrony. In this respect, **Michaela Wolf** analyses the status of legal translation and interpreting in the late stage of the Habsburg Empire. The author states that this specialised field emerged on the occasion of the 1848 revolutions that shook the entire continent, which led to the creation of specific institutions, such as the “Terminology Commission” and the “Editorial Office of the *Imperial Law Gazette*”. At the same time, sworn translators and interpreters were recruited and trained. One of the challenges of those times

⁹ S. Monjean-Decaudin, J. Popineau, *How to apply comparative law to legal translation: A new juritraductological approach to the translation of legal texts*, in L. Biel et al. (eds.), *Research methods in legal translation and interpreting*, Routledge, 2019, p. 5.

¹⁰ S. Šarcevic, *Legal Translation and Translation Theory: a Receiver-oriented Approach*, in *La Traduction Juridique: Histoire, théorie(s) et pratique/Legal Translation: History, Theory/ies, Practice*, ASTTI/ETI, Geneva, 2000, p. 329.

¹¹ G. Badea, *Despre traducerea culturemelor. După douăzeci de ani*, in *Philologica Banatica*, no. 2/2020, Editura Mirton, Timișoara, p. 77.

was represented by the fact that it was not always easy to find people specialized in law and mastering the various languages of the Habsburg Empire. Nevertheless, there are multiple attempts at institutionalising translation and interpreting activities, which also contributed to what the author calls “the construction of a Habsburg culture”.

Dan Constantin Măță examines the work of Professor Ștefan Berechet of the “Alexandru Ioan Cuza” University in Iași, who was also the translator of Leon Casso’s books into Romanian. The latter was considered the most important exponent of the Moldovan nobility in Bessarabia, in a period when this province was part of the Russian Empire. He held a PhD in civil law from the University of Berlin and became professor in various Russian universities of those times. Leon Casso is the author of various works presenting the status of law in Bessarabia after the annexation of this territory in 1812. Other works deal with the preservation of the Romanist foundations of the legal system in this province.

Iulia Elena Zup shows in her paper that legal translations played an important role in Greater Romania, maintaining the German language and identity in provinces such as Bukovina and Transylvania. Legal texts were translated not only from German into Romanian, but also from Romanian into German in order to ensure a homogenous legislation and the integration of the German minority into the newly constituted state. Thus, legal translation became a means of cultural dialogue, contributing to the development of an interwar modern society.

Another important personality of the Romanian space in the 19th century is Damaschin Bojincă. In her paper, **Alina Bruckner** analyses the activity of this prominent Romanian figure as a translator. Being guided by the principles of the Transylvanian school, Damaschin Bojincă is known as a historian, linguist, and legal scholar. In several of his historical writings he acted in fact as a translator, fully assuming the role of an enlightened scholar serving his nation.

Mihai Floroia approaches in his paper the judicial discourse used by the Inquisition. During the Middle Age, the Inquisition acted in several Catholic states as a tribunal, aiming to punish what its members considered to be “heretic teachings”. The sources of the judicial discourse used by the Inquisition comprise collections of laws and decrees, papal bulls, church canons, council acts, monastic annals, histories of local communities and abbeys, minutes of trials, sentences, biographies of bishops and popes, as well as various eulogies. The legal vocabulary used by the members of this organisation can also be found in various codes of criminal procedure, guides and manuals for the use of inquisitors, legislation applicable in case of heresies that were contrary to the teachings of the Western Church. In other words, the documents drafted by the Inquisition contain a legal discourse in its own right.

The second part of our volume is dedicated to specific practices and strategies identified in legal translation nowadays. In his paper, **Colin D. Robertson** presents twelve viewpoints on EU multilingual law-making. The author reflects on the link between EU legal language, translation and terminology and states that EU legislative acts aim for singularity, are standardised and have a

performative nature, meaning that they are intended to have consequences within the national legal systems. At the same time, EU legislative acts are translated in all the official languages of the Union, a process requiring a coordinated effort from translators, terminologists and lawyer-linguists.

In their paper, **Georgiana I. Badea** and **Lavinia-Maria Tec** approach a subject that is both interesting and topical: political (in)correctness in translation. The authors examine the politically correct concepts recommended or contraindicated in the *Glossary of Sensitive Language for Internal and External Communications* drafted by the European Parliament in 2021. They draw a comparative analysis that takes into account the French and Romanian versions of the abovementioned glossary. One may notice that there are multiple terms lacking equivalence from one language to another, which creates confusion. The two authors wonder whether mere words are guilty for discrimination and conclude that there might be a double standard when speaking about political correctness in translation.

The paper signed by **Daniela Dincă** explores the importance of corpus-based translation studies for the training of legal translators. Based on the use of parallel electronic corpora in the training of Master students, the paper shows that this approach contributes to the acquisition of the know-how and learning skills and to the development of critical thinking. As a part of an inductive approach, the author identifies the features of the legal text, starting with the analysis of various translations and ending with a thorough comprehension of the translation process.

Carmen-Ecaterina Ciobâcă examines in her paper the role of the context and of the cognitive baggage in legal translation. The case study is represented by Common Law sales contracts translated into French and Romanian. In order to ensure accurateness in translation, the translator should possess specific linguistic competencies and encyclopaedic knowledge. The paper is based on the principles of the Interpretive Theory of Translation belonging to Marianne Lederer and Danica Seleskovitch, which may also be applied to specialized translation. According to this theory, translation is a cognitive act. Therefore, translating means interpreting and constantly resorting to the cognitive context and baggage, as the applicative part of the paper shows.

Adrien Bell Mandeng looks into the status of legal translation in Cameroon, a country in which both Common Law and civil law are applied. The author states that intercultural processes should be preserved in translation and that a balance in what concerns the conceptual, epistemic and stylistic representation should be kept. Cameroon is part of the Organization for the Harmonization of Business Law in Africa (OHADA), governed by civil law; nevertheless, Common Law is also enforced in a specific region of Cameroon. In such a context, intercultural dysfunctions emerge in translation as a result of the lack of methodology. The solution proposed by the author is the translaboration, meaning the collaboration between legal translators and legal practitioners, in order to reach a level of compromise.

The third section of the volume presents specific terminology issues in legal translation. For instance, **Carmen Tamara Ungureanu** underlines several inaccuracies in the official translations of the European legislation. As EU law is applied in Romania as a matter of priority, official translations of EU legislation have a direct impact on Romanian citizens. Nevertheless, there are, rarely indeed, inaccuracies in the translation of EU legislative acts, such as: the use of the term “trader” in the consumer protection field, additions in the target text of terms that do not exist in the original text, leading to a narrower scope of EU rules, inconsistencies in the translation of the same concept in all EU regulations and the use of the term “transaction” in various contexts. Such confusions may be avoided through a closer collaboration between translators, terminologists and legal scholars.

Sonia Berbinski, Weiwei Guo and **Corina Veleanu** approach a very topical subject: the legal and medical terminology linked to the Covid-19 pandemic. They draw a multilingual comparison (English, French, Chinese and Romanian) of the words of the pandemic and examine their extra-linguistic consequences in nowadays life. Terms are analysed in various contexts and the authors notice that they change meanings from one language to another. Legal and medical terms acquire new connotations, whereas certain common language concepts are borrowed in the specialised field. The legal and medical areas also acquire a large number of neologisms in order to describe the new reality of the pandemic. Such terms create together a specific “newspeak”, which is sometimes difficult to use or even understand.

Nicoleta Rodica Dominte and **Simona Catrinel Avarvarei** focus on certain translation inaccuracies of the concept “droit de suite”, which stems from French law but has become a universal concept, according to art. 14^{ter} of the Bern Convention on Literary and Artistic Works. This notion is understood as the resale right for the benefit of the author of the original work of art. The authors examine the content of the resale right, as well as the legal implications involved by the translation of this concept.

Mirela Carmen Dobrilă discusses in her paper specific particularities of the concept of personal data needed for the conclusion or implementation of a contract to which the data subject is a party. Some phrases used in GDPR legislation are analysed in context in order to understand their meaning and to examine in depth the notion of personal data needed to conclude or to enforce an agreement.

Through these three perspectives – history of legal translation, legal translation practices and legal terminology – the volume aims to provide insight into specific challenges related to legal translation in past and present times. In spite of current technology advances, legal translation remains a practice reserved to specialised translators, who are receiver-oriented, understand that law is a local rather than a global phenomenon and know what is the impact of the translated text in the target culture.

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