

WHAT DOES IT MEAN TO SEE LEGAL TRANSLATION AS KNOWLEDGE COMMUNICATION? – CONCEPTUALISATION AND QUALITY STANDARDS

Abstract

In an insightful article, Obenaus (1995) argues that the legal translator has to be seen as an 'information broker' and not merely as an expert in the field of documenting in a strict manner legal texts written in one (source) language in the form of texts written in a different (target) language. Hence the necessity of creativity in legal translation depending on the needs of the receivers in the target situation (Pommer 2008). Based upon the idea to understand domain-specific communication (like communication in law) as Knowledge Communication (Engberg 2011, Kastberg 2010) I will take the idea from Obenaus a step further. Focusing on knowledge instead of on mere information especially means to take the process of the translated text being understood by someone into consideration.

INTRODUCTION: LEGAL TRANSLATORS AS PURPOSEFUL AND CONSCIENT AGENTS

One of the most basic challenges for legal translators is the fact that legal systems are inherently national. An important consequence of this is that the conceptual systems underlying expert communication in the field of law are not identical across national borders. There is even today, in the era of the European Union and its super-national legal system, a certain urge when developing legal concepts at national level not to take possible overlaps into consideration as an asset, but rather to opt for a national version that meets exactly the perceived needs of the national legal system despite its difference to similar concepts from other legal systems. As an example, let me mention the discussions documented in a report from January 2015 by a committee at the Danish Ministry of Children, Gender Equality, Integration and Social Affairs investigating the necessity of reforming the Danish system of matrimonial property regimes. The committee has reached the conclusion that it is necessary to suggest a reform overcoming the problem that it seems unfair to share all property of husband and wife (= property introduced into the marriage as well as property generated during the marriage) equally, especially in case of divorce after short marriages, as the existing statutory property regime indicates. As a solution, a minority of the members of the committee suggest a regulation following the German regime of *Zugewinnngemeinschaft* ('statutory matrimonial property regime of the community of surplus'). However, the majority of the members opt for a different solution, allowing the spouses to extract a diminishing portion of their own property from the property to be shared, until after seven years they have to share all parts of their property in case of divorce. The details in the suggestions of the committee are not important here, the majority of the committee members have a number of sensible arguments for their suggestion (Retsvirkningslovsudvalget 2015: 222-271). Instead, the interesting thing is that the majority in the committee, given the chance to reach some degree of harmonisation in the field of family law, a branch of law where international contacts are not unimportant, still opt for a special national regulation. The argument explicitly given is that it is not sensible to copy the matrimonial property regimes of another country directly, due to sociological, social, economic and cultural aspects. Especially, such regimes may not be seen in isolation, but have to be seen in the context of other parts of national family law (Retsvirkningslovsudvalget 2015: 245). I.e., the committee sees it as sensible to be inspired by the regulations in other countries (and in international fora), but still to suggest a new regime that preserves the specialities of the Danish system. The argument of harmonisation plays no role at all here. On the contrary, it is discarded with recourse to the special cultural situation in Denmark.

The case is a good example of why legal translators will presumably have to cope with the fact of non-overlapping conceptual systems in the foreseeable future: To have a special legal system reflecting the special cultural characteristics of country is a very powerful argument in developing the law. This means that legal translation will also in the future have as a major challenge to translate non-overlapping concepts. This situation has been described lucidly by Šarčević (1997: 241):

While some functional equivalents are always acceptable (near equivalence) or never acceptable (non-equivalence), **most functional equivalents fall into the category of partial equivalence**. Accordingly, the question of **acceptability** arises primarily when a functional equivalent and its source term are only partially equivalent. In such cases, the acceptability of a functional equivalent usually depends on context, thus **requiring the translator to analyze each textual situation** before deciding whether a functional equivalent is acceptable in that particular context (emphasis added, JE)

Importantly, Šarčević here states that the most frequent relations between concepts from different national legal systems calls for assessing the acceptability of solutions to the translation problem and that the acceptability depends on characteristics of the concrete textual situation, which the translator has to analyse and to take into consideration. In other words, this calls for active and consciously acting translators to make decisions on the basis of their insights in order to express relevant parts of a concept in their translations. In this paper, I would like to flesh out some criteria and background assumptions that are relevant for this process from the point of view of Knowledge Communication.

The term Knowledge Communication may be defined by the following description of the main aims of studying it:

The study of Knowledge Communication aims at investigating the intentional and decision-based communication of specialised knowledge in professional settings (among experts as well as between experts and non-experts) with a focus upon the interplay between knowledge and expertise of individuals, on the one hand, and knowledge as a social phenomenon, on the other, as well as the coping with knowledge asymmetries, i.e., the communicative consequences of differences between individual knowledge in depth as well as breadth (Engberg 2015b).

Central is thus the communication of knowledge of experts in different settings. Importantly, talking about the communication of knowledge, focus is upon the interactive exchange of knowledge and insights held by individuals and acquired under social conditions. The Knowledge Communication approach emphasises the importance of human minds being involved in the process of communication also in the field of specialised communication. As will be visible, this has implications especially for two aspects that will be at the centre of the deliberations in this paper: firstly, for the conceptualisation of legal translation; and secondly for the quality standards applied in assessing active and conscious decisions of translators.

In the following section, I will focus upon the difference between seeing translators as brokers of information vs. seeing them as brokers of knowledge. On the basis of these elaborations, I will suggest a tentative definition of the process of translating legal concepts in the subsequent section. Finally, the theoretical deliberations will be applied upon a concrete example of translation decisions, focusing on the characteristic that a knowledge communication approach renders testable criteria for assessing translations.

TRANSLATORS - INFORMATIONS BROKERS VS. KNOWLEDGE BROKERS

Legal translators are text specialists creating new texts based on existing texts. What makes this activity legal is not mainly the type of text being translated. Instead, the fact that the translation is to be used for legal purposes is decisive. In prototypical cases like the translation of court decisions or contracts, the two characteristics mentioned often come together, but this need not be the case. For example, a court decision may be translated as part of a literary novel. In this case, it is more important to render the aspects of the court decision with importance for the plot of the novel in the translation in a way that is accessible to the reader of the target text; and it is less important to be very precise in rendering every detail of the original text, as will normally be required from a court decision being translated in an official legal setting. On the other hand, in a court case in which the case is about the interpretation of, e.g., an advertisement text in a foreign language, this text should be translated in the detailed way typical of official legal translation due to the requirements of the legal situation. It is thus clear that legal translation is mainly translation for legal purposes and only in a second step, prototypically the translation of source texts that have emerged from a legal situation. Consequently, legal translation is a type of translation, a set of reproductive or imitating communicative actions (Obenaus 1995: 249) that are adjusted to the needs of the legal situation, in which the target text is to applied.

This state of affairs means that the basic ideas on translation as being a purposeful activity, normally subsumed under the heading of Functional Translation (Nord 1997, Reiß & Vermeer 1984), is also valid for the field of legal translation: The translator is not bound by the form of the source text, but by the requirements of the target situation. This insight is not at all a new one, although it is still somewhat difficult to overcome traditional ideas especially among non-translators about legal translation as something quite mechanical where the translators do not interpret, but only render the exact meaning of the source text faithfully. In the following, however, I will look into some of the concrete consequences of accepting the functional approach, based on considerations presented by other researchers. Eventually, I will suggest a further development of these ideas as a consequence of applying the Knowledge Communication approach presented above to the description of legal translation.

In an inspiring early article, Obenaus (1995) rejects the traditional idea that legal translation is about creating equivalence at the level of individual words and concepts. Instead he states: "To be sure, precision and accuracy are essential in legal translation, not in finding equivalents but in achieving the intended function of the translation" (Obenaus 1995: 250). This leads him on to suggesting that central skills to be acquired are what he calls information brokering skills. "Information brokers act as intermediaries between information sources and people who need information" (Obenaus 1995: 250). The idea behind this suggestion is to say that translation also in the field of law is not predominantly a textual and linguistic activity. Instead, it is mainly an activity aiming at making information from a source not directly accessible to a group of receivers linguistically and textually accessible to them. Introducing information brokering as the centre of legal translation Obenaus sees as one way of enabling legal translators to assess the functional adequacy of their translations (Obenaus 1995: 250). He may be said to offer a set of criteria different from equivalence at linguistic (formal and semantic) level. As an example, he shows how the information needs of two different situations influence the strategies to be adopted by the translator. In the first situation, a US company commissions the translation of a warranty statement for use in connection with sales in a German context; in the second situation, a German company commissions a translation of the same warranty statement, but in order to know how warranties function in the US legal system. The two different situations emphasise different parts of the information presented in the source text. Due to the strong links between legal systems and legal texts, the translator will have to be able to filter out the relevant information. Thus, legal translation is about performing textual and other linguistic activities in order to fulfil underlying and decisive functions. The criteria of success are based not on the merely linguistic, but on the functional requirements.

In our context, the idea of brokerage and the ensuing idea of the active translator choosing what elements from the source text are to be focused in the target text situation are important. The idea of the active information-brokering translator leaves room for creativity in the field of legal translation, not in the form of expressing the personality of the translator, but in the form of expressing the specific choice of information rendered on the basis of the translator's insight into the needs of the target situation. Pommer (2008) develops her ideas along the same lines. Her main idea is that translation is basically a problem-solving activity (solving transfer problems when transporting legal information from one legal system and legal language to another) and that creativity is a necessary skill in solving problems of the open-ended kind that are often encountered in legal translation (Pommer 2008: 359-360). Open-ended problems are problems where there is no automated solution, but where the translator has to create the solution on the basis of assessing the concrete situation and making argued rather than automated decisions. This creative process is carried out based primarily upon expert knowledge of the legal field and of the possible translational operations allowed in the concrete translational situation (Pommer 2008: 363). The last aspect, the constraints upon creativity from the legal characteristics of the translational situation, is important as a limitation on the relevant types of creativity. Pommer (2008: 365) thus states that "(t)hese many important constraints make a more 'focused creativity' necessary ...". But still she shows that creativity in the brokering of information, i.e., in the choice of what information from the source text to convey in the target situation, plays a central part.

Both of these approaches (Obenaus and Pommer) have a focus on the concept of translators as information brokers: Persons who present pieces of information in a textual format based on their understanding of the source text, according to what they think is most relevant in the situation. This is very valuable and a good rendering of what actually decides whether a legal translation is seen as being a good translation or not. Thus, from a scientific point of view it brings us closer to an adequate description of the processes of professional legal translators; and from a didactic

point of view it gives translator students a set of criteria to work with when finding their way into good legal translation skills based on the assessment of information needs. However, I suggest to take this idea one step further, shifting from seeing translators as information brokers on to seeing them as *knowledge brokers*. In a previous work (Engberg 2013b), I have worked with the distinction between information and knowledge underlying this suggestion based on work from the field of Knowledge Management. This distinction is relevant here, too. Information is in this field seen as “a message, usually in the form of a document or an audible or visible communication” (Davenport & Prusak 2000). Knowledge, on the other hand, is described as “a fluid mix of framed experience, values, contextual information and expert insight that provides a framework for evaluating and incorporating experiences and information” (Davenport & Prusak 2000). The differences lay in the distinction between merely a message and the inclusion and incorporation of the message in the cognitive stock of human actors.

In the present case, the distinction enables us to refine our description of the task of a creative translator-agent. When talking about the task of the translator as information broker, focus is still mainly upon the (textual) message: The task of the information broker is to produce a message that receivers may use in order to gain new insights relevant for them. From this perspective, the task of the information broker ends with the formulation of a target text with a specific information profile. In actual fact, however, that is not exactly what is expected of the translator by the person commissioning the translation. The task of the translator is only fulfilled when the target text is actually understood the way the translator intended it. This is naturally a somewhat more challenging task to adopt theoretically, as it widens the scope of responsibility of the translators. Probably some professional translators will be reluctant to accept this idea for that reason. But actually I think it is necessary to realise that this is actually what the translator is expected to deliver. Taking this step is consequently as necessary from the point of view of descriptive adequacy as the move suggested by Obenaus. In his article, he argues that despite what is traditionally believed and often stated by commissioners of translation it is actually not relevant to translate a text without introducing some kind of purpose filter (Obenaus 1995: 252). Similarly, I would suggest that adopting the idea of the translator as not only information, but as knowledge broker may help us to better understand, why it is nonsensical to ask a translator to ‘just translate what the source text says’. Not only can translators not translate without knowing which function the target text is expected to have. It is also necessary to know, to what target group with which presumed stock of previous knowledge the translation has to be directed. Thus, adopting the idea of translators as knowledge brokers also helps us understand and describe why it is equally nonsensical to ask translators to just translate the text into English. For this can only be done adequately, if translators know which English-speaking audience they are targeting. The reason is that texts do not mean anything specific, until they are being read – and what they mean is dependent upon whether they are read by a Canadian, and Australian or someone just using English as a lingua franca. In this way, the Knowledge Communication approach renders us a supplementary set of criteria for assessing alternative solutions to translation problems: not only the information profile of the texts, but also the potential capacity of the alternatives concerning enabling the intended knowledge construction process on the part of the receiver.

Thus, I have shown that a distinction between information and knowledge is relevant for refining our conceptualisation of the task of the translator as a text producing problem solver. However, distinguishing between information and knowledge may also help us refine our conceptualisation of the processes preceding the actual text production. As indicated by Pommer above, one of the prerequisites for solving problems adequately is expertise, legal as well as translational. This entails knowledge in a different perspective, i.e., knowledge on the part of the translator as the basis for functioning as a knowledge broker. A method to help translation students to construct such knowledge in a relevant way has recently been presented by Holl & Elena (2013). The method is case oriented in the way that the students are faced with the task of translating a specific text (a prenuptial agreement) from Spanish into German. The students work with this case and carry out all relevant investigations in order to prepare them for translating the text. On the basis of their deliberations, it becomes clear what types of knowledge are especially relevant in this context. The authors divide the method in four steps:

1. Confrontation with the case and diagnosis of previous knowledge
 2. Determination of the investigation method
 3. Acquisition of information on the object of study
 4. Demonstration of the practical application of the results of the translation
- (Holl & Elena 2013: 311-312; my translation)

In all of the steps, focus is upon the previous knowledge of the students on the legal topic of the case (relevant parts of family law) as well as on the genre to which the text belongs (prenuptial agreements in the Spanish and German legal system). The knowledge is acquired based on information collected by the students using a comparative methodology. The aim of the process of investigating the information is to help them construct cognitive schemata concerning structure and content of the legal field and of the genres, guided by the perspective of comparing the Spanish and the German situation (Holl & Elena 2013: 329). Here, the distinction mentioned above between information as external input and knowledge as internalised and contextualised input reoccurs: The students study information sources in order to construct their own internalised meaning structures that are geared towards their specific needs and pre-existing stocks of knowledge. Thus, focusing upon knowledge and the difference between knowledge and information enables us to describe in more detail what the prerequisites are for carrying out the sorting tasks that are basic in the brokering function.

DEFINITION: TRANSLATION AS KNOWLEDGE COMMUNICATION

Based on the above considerations, I venture to formulate a definition of what characterises translation especially of terms in a legal context conceptualised as knowledge communication:

*Translating terms in legal documents consists in strategically choosing relevant parts of the complex conceptual knowledge represented in the source text in order to present the aspects exactly relevant for this text in the target text situation **in order to enable a receiver to construct the intended cognitive structure.***

This definition is a development of a definition I have presented in previous work (e.g., Engberg 2013b: 25). The development is important in stating the difference between the translator as information broker and as knowledge broker. The development consists in adding the bold face part of the sentence. In this way, the task of the translator goes from creating a textual presentation with a specific profile (= information broker) to having it as the goal of the translated text to enable knowledge construction on the part of the receiver(s) of the target text (knowledge broker), in continuation of the argumentation in the previous section. Central positions in the definition are thus held by the aspects of choice (i.e., allowing an element of creativity), of knowledge as the basis for the choice and as the goal in the target situation (taking the role of the human translator and receiver seriously), and of focus upon rendering textually profiled meaning rather than full conceptual knowledge. In the following, I will elaborate upon these three aspects.

To start with the last aspect, a basic assumption for the definition is to make a distinction between concepts realised in texts and concepts as part of the (collective) knowledge of a field. This distinction also underlies the idea of Obenaus to see translation as information brokering. He uses this distinction to clarify the distinction between the quest for equivalence at word level and the quest for a functionally adequate target text (Obenaus 1995: 248-249). I have in previous work used the distinction to demonstrate the distinction between the work of a legal translator and that of a legal terminologist (Engberg 2013a). The idea is that at the level of the concepts as part of the knowledge of a field focus is upon all facets of a concept, so to speak upon the concept in its full complexity. At the textual level, on the other hand, concepts are never present in their full form (apart from encyclopaedic texts presenting the facets of a concept – but even here not all facets are present in all sentences). Instead, terms in texts are profiled representations of relevant parts of a concept. For example, when the sentencing court is mentioned in a Danish court decision the concept of 'court' is represented in a profiled way in the sense that mainly the fact that the court is competent from a geographical point of view (i.e., is located at the relevant place) and that it has the authority to issue the decision in the case (i.e., belongs to the relevant level of the court hierarchy) is important. It is not important, for example, how many judges have participated in the adjudication, and it is not important whether the court is part of three-tier hierarchy, like in Denmark, or of a four-tier hierarchy, like in England, to mention just a few examples. This means, that already the fact that the term is part of text means that the concept has been subject to a profiling process, resulting in parts of the full concept being more or less relevant.

Knowledge as an aspect acquires importance in this context. For it is on the basis of their knowledge of the field that translators understand the foregrounding and backgrounding of the full concept in the source text. And this knowledge has to be sufficiently specialized for them to understand texts in a way similar to that of the legal experts (Jermol 2012, Engberg 2009).

Furthermore, as stated in the explanation of the phrase highlighted in the definition, the construction of knowledge and not merely the presentation of information is the real task for the translator, with all the consequences that I have mentioned above concerning quality criteria and the possibility of checking the quality of a translation.

Finally, creative actions by purposeful translators are at the core of the process: Translators have to understand the selection among the possible facets of a concept underlying the specific textual formulation; they have to make a choice concerning what parts of the facets relevant in the source text situation are also relevant in the target text situation; this creative choice has to be made based upon legal knowledge. Based upon knowledge about the intended reader(s) and the target text situation, translators have to choose how to render the relevant parts from the profiled presentation of the concept from the source legal system. In this context, as the aim of the translators is to enable the reader(s) to construct a relevant chunk of knowledge, they must also creatively choose whether it is necessary to include facets of the source concept, which are not part of the rendering in the source text, but which are necessary background elements for the correct construction on the part of the receiver(s).

I hope to have demonstrated above, how a knowledge communication approach may help us grasp better the actual complexity of legal translation. In the last section of this article, I will give an example of what quality criteria for assessing translational decisions in the terminological field I can deduct from the above description of legal translation.

EXAMPLE: KNOWLEDGE-ORIENTED DECISION MAKING

As an example of what the assessment of possible translations may look like under the assumptions and conceptualisations presented above, I will in this section present two solutions to a translation assignment given in my course on legal translation at Aarhus University. As an example, focus will be upon solutions to the translation of two concepts in a sentence in a German court decision and assess these in the context of the source and target text situation. For additional to the consequences listed in the previous section, an important consequence of adopting the knowledge broker idea is that it makes it relevant to check the creative solutions of the translators empirically through surveys of the actual understanding (Engberg 2015a). The background for this consequence is that the goal is to enable a specific intended knowledge construction on the part of the receiver. This makes it relevant to present the translation to the intended readers, check what knowledge they construct from the target text and compare this to the translators' intention. Although the aim here is different, the procedure is similar to and inspired by what is traditionally done in modern approaches to the investigation of intelligibility. As an example, in her *Rechtslinguistisches Verständlichkeitsmodell* (Legal Linguistic Model of Intelligibility) used for assessing the intelligibility of statutes, Luttermann elicits a so-called *Theoriemuster* (theoretical pattern), i.e., the knowledge which legal experts relate to a specific part of a statute. This pattern is compared to the *Ergebnismuster* (result pattern), which is the aggregated result of empirically testing how non-experts relate to the same part of a statute, i.e., what knowledge they construct. The two patterns are compared in order to know how intelligible the part of the statute is (Luttermann 2010: 151). In my case, the potential difference does not lie between experts and non-experts, but between sender and intended receivers in a more general sense. However, the basic rationale for the procedure is similar.

In order not to make the practical work of translators completely impossible, however, it is important to state that I am naturally aware that it is not always practically feasible to empirically check the knowledge construction process of the intended receiver. The important thing is, however, that the knowledge communication approach to legal translation renders relevance to the construction process. As an alternative to the actual empirical testing, I suggest and present here the tool of hypothetical constructions based on experience with the intended readers. In other words, instead of an actual empirical test, I suggest that the translators carry out the last step before the test, i.e., set up an argument for why the receivers will probably construct knowledge in a specific way on the basis of the information rendered through the chosen formulation of the target text.

The text to be translated by the students is an excerpt from a court decision by the German Federal Supreme Court (*Bundesgerichtshof*) issued in 2012 (*BGH, Beschluss vom 10.1.2012 – 4 StR 632/11*). The decision treats a number of situations in which a person had driven away from

petrol stations without paying for petrol. The legal framework was that of a *Revision*, i.e., of an appeal to the supreme court solely concerning points of (interpretation of) law. The court had to decide what kind of offence it is to drive away without paying: theft (*Diebstahl*), fraud (*Betrug*) or misappropriation (*Unterschlagung*).

The translation brief that the students were given for the assignment was to produce a target text for a Danish lawyer, who is writing an article on the legal status of driving away without paying for petrol. Thus, the idea is to write a translation where the interest of the receiver in the target text situation is on understanding the framework and the argumentation of the German court and the basic legal concepts involved in the case. However, the receiver is not very interested in the concrete details of, for example, how the court decision is formulated. Furthermore, the brief leaves room for the translator to decide what level of detail is relevant in the rendering of the German original. From the point of view of the conditions for the knowledge communication process, the reader has a considerable level of specialized knowledge on relevant Danish law and is well acquainted with the situation underlying the genre of court decisions, at least the Danish version of it.

Let us have a look at one sentence from this decision and at the way two students have rendered it in Danish within the framework of the translation brief. The German sentence from the original text is the following:

*Gegen das Urteil richtete sich die auf **eine Verfahrens- und Sachrüge** gestützte **Revision** des Angeklagten* (emphasis added)

[Against the court decision was directed the on **a procedural and material law objection** based **appeal** of the defendant]

I have emphasised two elements and will concentrate upon how the students render these in their translation. The first emphasised words are *Verfahrens- und Sachrüge*, which cover two different subconcepts rendered together here. Both subconcepts are types of objections that a party may base an appeal upon. *Verfahrensrüge* is an objection concerning legal procedure. *Sachrüge* is an objection concerning the (interpretation of) the material law treated in the decision against which the appeal is directed. In this case, the two subconcepts are used to designate an objection combining both aspects. The distinction is known in Danish law, too (*processuel* vs. *materiel*), and a term exist for the basic word in the two subconcepts in Danish (*Rüge* → *indsigelse*). Conventionalised terms for the two subconcepts in Danish are not known to me. Thus, the expert reader may be hypothesised to possess the background knowledge to understand what is meant in German, but there is no conventionalised term with which the translator may elicit the exact concept in the mind of the reader. The second emphasised word is *Revision*. The underlying concept is a special kind of appeal that may only be directed towards points of law (wrong procedure or errors in the interpretation), where appeals may in general be directed towards decisions of previous courts in general and in their entirety. In the present case, the objection by the appealing party concerns the interpretation. *Revision* is only possible as the last appeal, regularly in third instance and always to the Federal Supreme Court (*Bundesgerichtshof*) or to the Highest Regional Courts (*Oberlandesgericht*). Danish law does not have a similar concept covering a special type of appeal, although the basic aspects of the concept are known in Danish legal theory. Furthermore, the German legal system is sometimes the subject of discussion in Danish legal contexts, too. The term normally used in Danish in such cases is *revisionsanke*.

I will now present the suggested translation by two students and assess what knowledge construction process is to be expected based on their formulations.

*Tiltalte rettede **revisionsanke** mod dommen støttet på **klagepunkter om rettergangsfejl og materielle klagepunkter***. (Student 1, Aarhus University, Spring 2014)

[Defendant directed **revising appeal** against the decision based upon **items of complaint on procedural errors and material items of complaint**]

*Den tiltalte **gjorde krænkelse af den processuelle og materielle retssikkerhed gældende til støtte for sin anke af landsrettens dom*** (Student 2, Aarhus University, Spring 2014)

[The defendant **claimed infringement of the procedural and material rule of law** as support of his **appeal** against the decision of the 'landsret']

The first step of the analysis will be to study the solutions to the German formulation *Verfahrens- und Sachrüge*. As can be seen from the examples, none of the students have chosen to use the Danish equivalent term to *Rüge* (*indsigelse*). This would probably have been the easiest way to elicit the intended process of knowledge construction. Instead, they have chosen two different strategies, which I will investigate in the following:

- Student 1 uses the non-terminological formulation *klagepunkter* for *Rüge*, which is a good semantical rendering of the source language concept, despite not being the Danish term. The distinction between the two subtypes is rendered by specifying the type of *klagepunkter*. In the first case, the student uses the term *rettergangsfejl* and thus uses a relevant and specific specialized term. The student may be said to have chosen a strategy of concretisation: Instead of attributing *klagepunkter* with the adjective generally used in the dichotomy between procedural and material law (*processuel*), a relevant type of error is used to indicate this side of the dichotomy (*rettergangsfejl*). The other side of the dichotomy is indicated by the generally used term (*materiel*). Thus, from the point of view of the knowledge communication approach the receiver is expected to find in his background knowledge the idea of complaints supporting an appeal (although the receiver is not told that it is necessarily the specific type of complaint called 'Rüge' in German); and the receiver is told to elicit the distinction between procedural and material law, although the distinction is only indirectly introduced, as the two parts are represented asymmetrically (by a concrete type of error and by an abstract attribute).
- Student 2 uses a different strategy to render the subconcepts and the distinction between them. Instead of using the term *indsigelse* and thus sticking to the nominalised form of the German original, student 2 renders the verbal content of *Rüge* also contained in *indsigelse* by verbally expressing the process of claiming something in court (*gjorde gældende*). What is claimed is that the previous decision infringes the rule of law. This may also be said to be a kind of explicitation of aspects that are contained, but not expressed directly in the German formulation, as was done with the verbal aspect. Finally, the distinction between the two subconcepts is here indicated symmetrically through the attributes *processuelle* and *materielle*, which are the accepted terms. Thus, from the point of view of the knowledge communication approach, the receiver is also here expected to be able to construct the relevant knowledge structure, enabling him or her to know the type of objections being brought up in the case, albeit on the basis of a more explicit formulation than probably absolutely necessary.

To sum up, it would in this case have been possible to render the content of the German concept of *Rüge* directly using the Danish term *indsigelse*. This would have been the most direct and probably most efficient way of eliciting the intended knowledge construction on the part of the receiver. The equivalence relation between *Rüge* and *indsigelse* was seemingly not part of the students' background knowledge. Instead they have rendered their own understanding of the concepts underlying the sentence. Despite their differences, I reckon that both solutions would give rise to the construction of the important knowledge on the part of the receiver, i.e., that both subconcepts (procedural law and material law) are relevant for the argumentation in the case. When comparing the two, I would reckon that the solution by student 2 is the most efficient one, as it symmetrically indicates the distinction and thus gives the receiver the most direct way to constructing knowledge about the case reported here in the intended way.

Secondly, I will assess the solutions to the rendering of the German concept *Revision*, which is a concept that does not exist as such in the Danish context.

- Student 1 renders *Revision* by *revisionsanke*. As indicated above, this is the term traditionally used when talking about the special type of appeal in the German legal system. I reckon that it will lead directly to the construction of the intended knowledge on the part of the receiver.
- Student 2 renders *Revision* by *anke*. The strategy here seems to be to consider the distinction between a regular appeal and an appeal only considering points of (interpretation of) law not relevant for the receiver. Student 2 does not elicit this distinction, but only wants the receiver to construct the knowledge that the decision is part of an appeal case and not a case of first instance.

In this case, I reckon that the solution by student 1 is probably the optimal one: It renders all parts of the German concept in the Danish target text and thus elicits all relevant parts of the conceptual knowledge. Especially because the receiver is set in the translation brief to be interested in the argumentation, it may be an important aspect for the receiver to include in his

knowledge construction that the court cannot discuss all aspects of the case, but only those connected to the legal interpretation of the preceding court. In favour of the solution by student 2 it could be stated that the receiver knows that it is a case at the BGH, the Federal Supreme Court. This means that the receiver may interpret based on his or her background knowledge that it will most likely be a *Revision*, as this is the case for most cases at BGH. Thus, also in this case, both solutions will probably lead to the intended knowledge construction. Personally, I would prefer the most direct way, using the conventionalised term.

CONCLUDING REMARKS

In the education and in the scientific description of legal translation, the idea of legal translation being a type of functional communication is mainstream. The idea has, however, not fully entered the conceptual world of all users of translation. Here, one may still encounter translation briefs of the kind "just translate what the text says into English" – as this is the need that the commissioner of the translation actually has. In my view, it is difficult to change this approach on the side of the commissioners in other ways than through a slow process of reclaiming relevant information and demonstrating, also through scientific descriptions and explanations of what is going on in actual legal translation situations, that it is not possible to translate what the text says – for it does not say only one thing; and that English is actually not English, but terminologically a number of languages. That may help demonstrating to the commissioners why what they want cannot be delivered by translators, not due to the incompetence of the translators, but due to the nature of the matter. This type of process is ongoing, for example, in the European Union, where it has been suggested to implement quality standards for professional translation like EN 15038:2006 and ISO 17100 in order to emphasise the academic nature of legal translation in an EU context (Strandvik 2015: 161). The present approach to conceptualising legal translation as knowledge communication is an attempt in a similar vein: The approach helps us see, why specific information is needed in order for the translator to perform the task; and it helps us set up criteria for hypothetically (and if need be empirically) assessing the quality and efficiency of concrete translations in accomplishing the goals of the translational process.

REFERENCES

- DAVENPORT, T. H. & PRUSAK, L. (2000). Working knowledge: how organizations manage what they know, Ubiquity [Online], 2000. Available: <http://dl.acm.org/citation.cfm?id=348775&CFID=196210784&CFTOKEN=97282932>.
- ENGBERG, J. (2009). Von der Rolle des institutionellen Verstehens für das professionelle Kommunizieren im Recht, Jahrbuch Deutsch als Fremdsprache 2008: Professionelle Kommunikation, 34, 97-111.
- ENGBERG, J. (2011). Rechtsübersetzung als Wissensvermittlung – Konsequenzen aus der Art rechtlichen Wissens. In: ROISS, S., FORTEA GIL, C., RECIO ARIZA, M. Á., SANTANA LOPEZ, B., ZIMMERMANN GONZALEZ, P. & HOLL, I. (eds) En las vertientes de la traducción/interpretación del/al alemán. Berlin: Frank & Thimme, 393-406.
- ENGBERG, J. (2013a). Comparative law for translation: The key to successful mediation between legal systems. In: BORJA ALBI, A. & PRIETO RAMOS, F. (eds) Legal Translation in Context: Professional Issues and Prospects. Bern et al.: Lang, 9-25.
- ENGBERG, J. (2013b). Why Translators are not Lawyers. On Differences and Similarities of Interest and Knowledge. In: ALONSO ARAGUÁS, I., BAIGORRI JALÓN, J. & CAMPBELL, H. J. L. (eds) Translating the Law. Theoretical and Methodological Issues. Granada: Comares, 23-32.
- ENGBERG, J. (2015a). Autonomous EU Concepts - Fact or Fiction? In: ŠARČEVIĆ, S. (ed.) Language and Culture in EU Law: Multidisciplinary Perspectives. London Ashgate, 169-182.
- ENGBERG, J. (2015b). Conceptualising Corporate Criminal Liability: Legal Linguistics and the Combination of Descriptive Lenses. In: TESSUTO, G. & SPEDDING, S. (eds) Language and Law in Social Practices. Cambridge: Cambridge Scholars, xx-xx.
- HOLL, I. & ELENA, P. (2013). Die Übersetzung eine spanischen notariellen Dokuments: eine Fallstudie, Lebende Sprachen, 58, 310-332.
- JERMOL, A. G. (2012). Übersetzen von Rechtstexten - einige didaktische Hinweise, Lebende Sprachen, 57, 53-73.
- KASTBERG, P. (2010). Knowledge Communication. Formative Ideas and Research Impetus, Pragmatic Perspectives, 2, 59-71.
- LUTTERMANN, K. (2010). Verständliche Semantik in schriftlichen Kommunikationsformen, Fachsprache. International Journal of LSP, 32, 145-162.
- NORD, C. (1997). Translating as a Purposeful Activity, Manchester: St. Jerome Publishing.
- OBENAU, G. (1995). The Legal Translator as Information Broker. In: MORRIS, M. (ed.) Translation and the Law (= American Translators Association Series, VIII). Amsterdam/Philadelphia: Benjamins, 247-259.
- POMMER, S. E. (2008). No creativity in legal translation?, Babel, 54, 355-368.
- REISS, K. & VERMEER, H.-J. (1984). Grundlegung einer allgemeinen Translationstheorie, Tübingen: Niemeyer.

RETSVIRKNINGSLOVSUDVALGET (2015). Ægtefællers økonomiske forhold, København: Ministeriet for børn, ligestilling, integration og sociale forhold.

ŠARČEVIĆ, S. (1997). *New Approach to Legal Translation.*, Amsterdam: Kluwer Law International;

STRANDVIK, I. (2015). On Quality in EU Multilingual Lawmaking. In: ŠARČEVIĆ, S. (ed.) *Language and Culture in EU Law: Multidisciplinary Perspectives.* London Ashgate, 141-165.

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THE COMPLEX CONCEPT OF LEGAL TRANSLATION – EXAMPLES FROM A GERMAN LAWYER'S PROFESSIONAL LIFE

Abstract

By giving examples from the author's professional life where he is confronted with texts/translations primarily in German and Norwegian, the article wants to outline the practical relevance of some problems discussed in translation studies. Distinguishing between intra- and interlingual translation, the article stresses the complex situation when dealing with or even translating legal texts. In order to handle this complex situation, the article concludes with the best practice rules of the law firm the author is working in.

FIRST PROBLEM: INTRALINGUAL TRANSLATION

Every lawyer is, or at least should be, aware of the fact that he is dealing with two different sets of terms – the set of terms that the professionals use and the set of terms that ordinary people use.ⁱ Also translation studies are aware of the problem that the intended receivers of a translated text (TT) might not have insight in its full meaning due to their lack of legal understanding.ⁱⁱ The lawyer's strategy to compensate this lack of legal understanding is to explain. I regard explicitation of a source text's (ST) connotationⁱⁱⁱ as a form of explanation but across language borders. A lawyer's explanation of legal technical terms to his clients is close to intralingual translation as understood by Jakobson (1959: 233). Jakobson distinguishes intralingual, interlingual and intersemiotic translation. He defines intralingual translation as "an interpretation of verbal signs by means of other signs of the same language" and interlingual translation as "an interpretation of verbal signs by means of some other language".

EXAMPLE: BEWEISMASS

A German term that might be needed to be explained is *Beweismaß*. Its meaning is the degree of likelihood necessary to prove a fact in court. It could be translated into English by 'standard of proof'.^{iv} I am pretty sure that almost no layperson in Germany and just few German lawyers know this word. They simply never think about this as an issue of court because they take the standard of proof as a given. From my point of view a lawyer has to explain the meaning of 'standard of proof' whenever this becomes relevant to the client. By doing so the lawyer interprets verbal signs by signs of the same language – he is using intralingual translation.

EXAMPLE: FIRMA I

Another even more complex problem is that some words exist as terms in legal language and as lexical units in ordinary language but have a different meaning. The standard example to show that German lawyers understand some terms slightly different than non-lawyers is *Firma*. In technical German legal language *Firma* means nothing more than the name of the merchant is registered in the public commercial register [*Handelsregister*]. For non-lawyers *Firma* means the entity which is registered in the commercial register. Sometimes it is understood in an even broader sense. For example I once read an association's statute on graded membership rates. This stated approximately the following:

students: x

individuals: y

Firmen: z

By writing *Firmen* the association meant not only merchants who are registered in the commercial register but every legal entity with the intention of realising profits.

EXAMPLE: KINDERGARTEN I

When regarding the German legal language, it becomes difficult to define the exact meaning of *Kindergarten*. The federal law *Sozialgesetzbuch VIII* (hereafter *SGB VIII*) distinguishes in § 22 I between *Kindertageseinrichtungen* and *Kindertagespflege*, where the former means an institution wherein children stay and are fostered the whole day or part of the day (institutionally based relationship). The latter means personal relation between children and a distinct person where the children stay and are fostered by the distinct person (personally based relationship). The federal legislator does not state age limits for *Kindertageseinrichtungen* or *Kindertagespflege*. The federal legislator does not use the expression *Kindergarten* but leaves it to the federal state's legislator to decide upon the use of the expression.^v So, theoretically there might be different understandings of the word *Kindergarten* in every of the sixteen federal states. For example Art. 2 I 2 Nr. 2 *Bayerisches Kinderbildungs- und -betreuungsgesetz*

(hereafter *BayKiBiG*) defines *Kindergarten* as *Kindertageseinrichtung* for children predominantly used by children between the age of three years and first day at school. For children younger than three years Art. 2 I 2 Nr. 1 *BayKiBiG* states instead the expression *Kinderkrippe*. I have experienced that ordinary German people are not automatically aware of this vast terminological difference. Some use *Kindergarten* for childcare for children aged younger than 3 years^{vi}, some stick to the use of the Bavarian legislature. The only way to judge their exact understanding of *Kindergarten* is to estimate it from the context they use it in or to simply ask them. Serious misunderstandings of using an ambiguous expression might otherwise be the result. So be critical, be cautious and take care of the expression's context and the intended receiver's knowledge.

SECOND PROBLEM: INTERLINGUAL TRANSLATION

A translator usually interprets verbal signs by means of signs from some other language. So according to Jakobson he is translating interlingually. Whether texts are translatable is not a specific problem of translating legal texts but a general problem of translation studies.^{vii} From my point of view texts are generally speaking translatable simply because translation usually works. A lot of authors group the problem around the keyword 'equivalence'.^{viii} Can there be two idioms in two different languages that are fully equivalent? What shades of equivalences do exist?^{ix} I am not a linguist. I cannot provide a scientific answer to these questions. But because I have to explain German law to Norwegian clients in Norway, I also have to deal with these interlingual translation problems in my professional life.

EXAMPLE: RENTE VS. RENTE, PENSION VS. PENSJON

Under the topic "interlingual translation" I also want to mention the "false friends"-category. This category is especially dangerous in related languages – like German and Norwegian. The German word *Rente* ('retirement pension') does not at all correspond to the Norwegian word *rente* ('interests') and the German word *Pension* ('retirement pension for civil servants') does not fully correspond to the Norwegian word *pensjon* ('retirement pension regardless if whether the person who receives it was a civil servant or not'). To avoid this: Be critical and cautious.

EXAMPLE: SCHWÄNGERUNGSPERIODE

It is trivial: Watch out for quality. I once had to work with a translation of a Norwegian judgment containing: *Eine Schwängerung am [...] ergibt eine Schwängerungsperiode von 255 Tagen. Schwängern* means making someone pregnant. That for sure did not last for 255 days. From the context everyone understands the intended meaning as (*Schwangerschaft* = childbearing). Therefore this translation mistake will not lead to serious misunderstandings.

EXAMPLE: GERICHTSVERHANDLUNG GEHOBEN

I am not sure whether the following example belongs to the category "Watch out for quality!" or to the dichotomy verbatim vs. free translation. The translator of the above mentioned judgment translated *retten hevet*, a formula which means that the hearing is closed, with *Gerichtsverhandlung gehoben*. A verbatim word-by-word-translation of *retten hevet* might lead to *Gerichtsverhandlung gehoben*. But *gehoben* will be understood as lifted. How to lift a hearing? Taking into account that the translator was sworn translator (*statsautorisert translator*) and that the translation was made in 1967, when verbatim translation was more common than today,^x it could be that the translator really intended to translate it the way he did. I rather would have translated it differently because – as mentioned above – in the original text it is a formula. This formula has a corresponding formula in the target language. So why not use the target language's formula?

EXAMPLE: FIRMA II

The above mentioned example regarding the different meanings of *Firma* gets even more complex when interlingual translation is considered. Here emerges the problem how a translator should deal with obvious mistakes. Just translate? Garbage in, garbage out? Translate the obviously intended meaning? Or translate and annotate? I typically recommend the latter. By annotating, the translator shares his relevant additional knowledge regarding the translated term. But in this case we face the fact that both Norwegian and German have a word which features the same ambiguity – *firma* is also in Norwegian a word which can mean both the name of an entity and the entity itself.^{xi} In this case I would prefer just translating it.

EXAMPLE: KINDERGARTEN II

In English, for example, *Kindergarten* is a loanword taken from German. Native English speakers have an idea of the meaning of *Kindergarten*. By saying *Kindergarten* a person with background from the United Kingdom, the United States of America, Russia or Sudan^{xii} means probably an institution wherein children, aged three to six, stay and are fostered the whole day or part of the day.^{xiii} The word is the same in English and German but the meaning might^{xiv} differ.

In Norwegian there is the word *barnehage*. It consists of *barn*, Norwegian for *Kind*, and *hage*, Norwegian for *Garten* – the two components are similar but are they equivalent^{xv}? By saying *barnehage* the Norwegian person means probably an institution wherein children, aged three month to six years, stay and are fostered the whole day or part of the day.^{xvi}

As we have seen above, the exact meaning of the word *Kindergarten* is already difficult within the German language. When translating from German to Norwegian or vice versa, a word that is seemingly easy to translate such as *Kindergarten* or *barnehage*, respectively, becomes difficult to translate. Using Jakobson's distinction between intra- and interlingual translation, we operate at the interlingual level. But we have to take (German) intralingual aspects into account.

THIRD PROBLEM: COMBINATION OF INTER- AND INTRALINGUAL TRANSLATION

As we have seen above there is a need for intralingual translation whenever the signs of either the source or the target language are ambiguous. Acting on the assumption that the translator has to seek equivalence, it is hard or even impossible to translate an ambiguous expression the "right" way without making the intended meaning explicit (explicitation). The translator might be able to find out/discover the intended meaning of a ST's expression by analysing the ST – especially by taking into account the context, the type of the text and so on. But the translator might probably not be able to find out how a target text's expression will be understood by its receivers – especially when assuming that different receivers will understand the expression differently. Whenever there is doubt about the intended meaning, I favour explicitation very much.

EXAMPLE: KINDERGARTEN III

For example I have experienced that Germans are not automatically aware of the ambiguity regarding the word *Kindergarten*. Some use it like the Norwegians, some stick to the use of the Bavarian legislation, most of them mix it up. The only way to judge their exact understanding of *Kindergarten* is to estimate it from the context or to simply ask them. Serious misunderstandings of using an ambiguous expression which can be understood not quite right might otherwise be the result. So even if almost the whole world limits the use of *Kindergarten* to the age three to six years and both German and Norwegian are Germanic languages and the components of the expression are very similar, the intended receivers could misunderstand the expression. When translating *Kindergarten* from German to Norwegian the translator has to analyse (ask himself) what was meant by the expression in the ST. Did the author of the original text also mean day-care for children aged younger than three years? Then the German expression rather should be *Kindertageseinrichtung*. This could be translated simply by *barnehage*.^{xvii} Otherwise the originally intended meaning has to be made explicit by translating *barnehage for barn mellom tre og seks år* ('Kindergarten for children between three and six years').

EXAMPLE: EIGENTÜMER VS. BESITZER

Another example are the two German expressions *Eigentümer* and *Besitzer*. German legal language means the possessor of a thing when the expression *Besitzer* is used, while *Eigentümer* designates the owner of a thing. But a lot of Germans use *Besitzer* when the correct term would have been *Eigentümer* from a lawyer's point of view. Additionally we face the problem that the Norwegian language uses a similar couple in a similar indistinct way. There is *eier* for *Eigentümer* and *besitter* for *Besitzer*. A lot of Norwegian dictionaries do not even include the word *besitter*.^{xviii} So how to figure out the existence and the use of the word *besitter*? For me it worked with looking it up in (electronic) dictionaries, searching for it on the internet and – most efficiently – looking it up in texts deriving from the legislator. Schirmer suggests in (Schirmer, 2011): 91 *eier*, *innehaver* for *Besitzer*. Also <http://www.heinzelnisse.info> suggests *eier* for both *Besitzer* and *Eigentümer*.^{xix} Simonnæs (1994: 270) suggests *besitter* for *Besitzer*. In lots of documents accessible on <http://lovdata.no> one can find the word *besitter*.^{xx} Here one has to be aware of the grammatical forms since there is also the verb *å besitte* which has the form *besitter* in present tense. Therefore one has to be aware of the word's form. A good example is section 5-9 subsection 2 *tvangsfullbyrdelsesloven* [Act on enforcement], first sentence: [...] *eiendom som saksøkte helt eller delvis eier eller **besitter*** (emphasis added). *besitter* is here used as a verb – in contrast to the verb *å eie*. In the next sentence of the same section: [...] *har saksøkte og besitteren plikt til (ibid.)* is *besitter* used as a noun. By close reading we can find out, that – despite the fact that the word *besitter* is lacking in some dictionaries – it exists. Furthermore we found out that *å besitte* is used in contrast to *å eie*. Moreover it seems that Norwegians have the same couple of words but tend to prefer the other word (*eie*) in colloquial/general language.

How should a translator translate the German sentence "*Ich bin Besitzer des Autos.*" if one knows from the sentence's context that it is not the mere possession that should be stressed but the ownership? Translate the wording? Translate the obviously intended meaning? Or translate and annotate? Here I think it depends on the particular context. If it is absolutely sure that the ownership should be stressed I

would highlight this by translating it this way. An annotation might be a good idea nevertheless. My Norwegian sentence would therefore be "Jeg er bilens eier [NB: egentlig besitter istedenfor eier men fra konteksten går det frem at det er eierforholdet som skulle fremheves]." Please note that we stated above that *Besitzer* in German and *eier* in Norwegian are the words that have become more common even for situations where the opposite would have been correct from a lawyer's point of view.

EXAMPLE: AKSJESELSKAP

Another example is the translation of German and Norwegian terms for particular forms of companies. In Germany there are traditionally two (major) forms of companies – the *Gesellschaft mit beschränkter Haftung* (*GmbH*) and the *Aktiengesellschaft* (*AG*), while in Norway there used to be just one – the *aksjeselskap* (*AS*). Because of EU regulations^{xxi} which are based on the German model with two different forms of companies, the Norwegian legislator also had to introduce two forms of companies. These are nowadays called *aksjeselskap* (*AS*) respectively *allmennaksjeselskap* (*ASA*). So how to translate *GmbH*? Is the Norwegian equivalent to a German *GmbH* really the *AS* as Morck (2007) postulates?^{xxii} On the one hand these are the most common forms for companies in the two countries. Both have a body, *Geschäftsführer/daglig leder*, responsible for the day-to-day operations. Both company forms also require less registered capital than respectively the *AG* and the *ASA*. But from my point of view *GmbH* cannot be translated with *aksjeselskap* – at least not without adding the original designation. The two legal institutions are simply too different. For example the *GmbH* has a body responsible for day-to-day operations and another body supervising it – the meeting of shareholders (*Gesellschafterversammlung*). There is also a meeting of shareholders at the *AS*. But the *AS* has also in addition to that a mandatory organ with competences for business transactions which exceed day-to-day operations – the *styre* 'board'.^{xxiii}

This illustrates that a translator might need to compare the SL's and TL's law. This is a hard task even for lawyers. So take care when using functional equivalents of the TL.^{xxiv} I would solve the above mentioned problem by asking if the nuances between the legal institutions – here *GmbH* and *AG* on the one hand and *AS* and *ASA* on the other hand – are important for the intended receiver. If so I would leave the SL's expression untranslated but annotated. If not I would use a TL-orientated translation.^{xxv}

EXAMPLE: PLIKTDEL

Another word that is only seemingly easy to translate is the Norwegian *pliktdel* – which might be translated into English as 'compulsory share' (of inheritance). It consists of *plikt* and *del*. These nouns can be translated into German as *Pflicht* and *Teil*. There is also a German word for compulsory share called *Pflichtteil*. But the connotation of *Pflichtteil* for a German lawyer is that this has no effect *in rem*. That is to say the person entitled to a *Pflichtteil* becomes not heir to the heritage but has only a claim *in personam* against the heir. In contrast, the person entitled to a compulsory share in Norway becomes (automatically) heir because the testator cannot testate over the compulsory share.^{xxvi} If it is of interest for the intended receiver it is desirable that a translator provides such information. Here the uncommon German word *Mindesterbteil* could be used. This designation stresses that the one who is entitled to a compulsory share directly becomes heir, not just claimant of a claim *in personam*.

EXAMPLE: SAMBOER

Difficult to translate is also *samboer*, which means cohabitant in the sense of one person living together with another person like a married couple without being married. Translating this with *nichtehelicher Lebenspartner* one could think of *Lebenspartner* in the sense of the German *Gesetz über eingetragene Lebenspartner* [Act on Registered Life Partnerships] – which are same-sex marriages. Here I would always tend to leave the Norwegian expression untranslated but annotated.

OUR BEST PRACTICE RULES

It is said that learning (foreign) law is learning another language because of legal technical terms and because the meaning of some terms differ in the sets of terms used amongst professionals and ordinary people. This gets even more complex when different languages are concerned. If you have clients from a foreign country, you often have to work in both the foreign legal and the foreign ordinary language. So in fact one has to deal with four languages.

This is one reason why translating legal texts is so complex and because of this complexity it is very difficult. In addition, inaccurate translation of legal texts can have serious effects. Therefore the translator has to be aware of his responsibility for the target text and the people affected by it. Our best practice rules to take this responsibility are therefore to

- be critical
- be cautious
- be aware of the context

- be aware of the intended recipient's skills
- be aware of the TT's and the ST's genre and purpose
- use dictionaries, specialist books and texts which derive from the legislator critically.

REFERENCES

- FRANTZEN, T. et al., (2014). Norges offentlige utredninger 2014:1. Oslo: Justis- og beredskapsdepartementet.
- JAKOBSON, R., (1959). On Linguistic Aspects of Translation. In Brower, R. (ed.) On Translation. Cambridge, Mass.: Harvard University Press, 232-239.
- MATULEWSKA, A., (2013). Legilinguistic translology. A Parametric Approach to Legal Translation. Bern: Lang.
- MORCK, C., (2007) Die norwegische GmbH - eine Aktiengesellschaft? Mitteilungsblatt, DAV 43(1), 52-57.
- PESCATORE, P., (1999) Das Konzipieren übersetzungsgerechter juristischer Dokumente. In De Groot, G.-R. & Schulze R. (eds) Recht und Übersetzen. Baden-Baden: Nomos, 91-99.
- ŠARČEVIĆ, S.,(1997). New Approach to Legal Translation. The Hague etc.: Kluwer Law International.
- SCHIRMER, R. R., (2011). Wörterbuch Deutsch-Norwegisch. Bremen: Hempen.
- SIMONNÆS, I., (1994). Norsk-tysk juridisk ordbok. Bergen: Fagbokforlaget.
- SIMONNÆS, I.,(2012). Rechtskommunikation national und international im Spannungsfeld von Hermeneutik, Kognition und Pragmatik. Berlin: Frank & Timme.
- STENGEL-HAUPTVOGEL, I., (1997). Juristisches Übersetzen Spanisch-Deutsch: Immobilienkaufverträge. Tübingen: Narr.
- WIESNER, R., (2011). SGB VIII. München: Beck.
- WILLIAMS, J., (2013) Theories of translation. Basingstoke: Palgrave Macmillan.

ⁱ For differentiation between legal language and ordinary language cf. for example Stengel-Hauptvogel (1997:22 et seqq.).

ⁱⁱ Cf. for explication Simonnæs (2012: 211 et seqq.).

ⁱⁱⁱ Cf. Simonnæs (2012: 211 et seqq.).

^{iv} <http://dict.leo.org/#/search=beweisma%C3%9F&searchLoc=0&resultOrder=basic&multiwordShowSingle=on> [last accessed Februar 6th 2015]

^v Struck in Wiesner (2011: § 22 sub. Nr. 3.).

^{vi} Cf. e.g. <https://en.wikipedia.org/wiki/Kindergarten#Germany> [last accessed February 6th 2015]

^{vii} Cf. Pescatore (1999: 97 et seq.); Simonnæs (2012: 176 and 222).

^{viii} E.g. Jakobson (1959: 233).

^{ix} Cf. Matulewska (2013: 21 et seqq.) and Williams (2013: 31 et seqq.).

^x For the development from literal to free translation cf. e.g. Šarčević (1997: 23 et seqq.).

^{xi} <http://www.nob-ordbok.uio.no/perl/ordbok.cgi?begg=+&ordbok=bokmaal&s=n&alfabet=n&renset=j&OPP=firma> [last accessed February 6th 2015].

^{xii} List could be extended.

^{xiii} <https://en.wikipedia.org/wiki/Kindergarten> [last accessed February 6th 2015]

^{xiv} For the use of the word *Kindergarten* in German see above.

^{xv} I use the expression equivalence here without further specification. For an overview over the types of equivalence discussed by the year 2013 see Matulewska (2013: 21 et seqq.).

^{xvi} <http://en.wikipedia.org/wiki/Kindergarten#Norway> [last accessed February 6th 2015];

<http://nob-ordbok.uio.no/perl/ordbok.cgi?begge=+&ordbok=bokmaal&s=n&alfabet=n&renset=j&OPP=barnehage> [last accessed February 6th 2015].

^{xvii} This could be solved differently when the text contrasts childcare in general to childcare of children of a special age. Then translating *Kindertageseinrichtung* with *barnehage* and *Kindergarten* with *barnehage for barn mellom tre og seks år* could also lead to confusions.

^{xviii} <http://www.nob-ordbok.uio.no> (hereafter referred to as UiOs online dictionary) suggests as circumscription for the verb *besitte* the verb *eie* [last accessed February 12th 2015].

^{xix} Last accessed February 6th 2015.

^{xx} <http://lovdata.no/sok?q=besitter> results in 146 relevant documents [last accessed February 6th 2015].

^{xxi} The Norwegian legislator had to comply with these EU regulations because of the EFTA treaty.

^{xxii} Christoph Morck postulates (Morck 2007:56) that the German word *GmbH* has to be translated with *aksjeselskap* or *AS* without giving a reason for that.

^{xxiii} There is the possibility that also the *GmbH* has an *Aufsichtsrat* (supervisory board), § 52 GmbHG (Limited Liability Companies Act). If the *GmbH* has more than 500 employees, it has to have an *Aufsichtsrat*, § 1 I Nr. 3 DrittelBG (Gesetz über die Drittelbeteiligung der Arbeitnehmer im Aufsichtsrat). But the great majority of *GmbHs* has no *Aufsichtsrat*.

^{xxiv} See Simonnæs (2012:224) for further reading on strategies about translation of legal institutions.

^{xxv} Since the essential difference between the *AS* and the *ASA* is that the *ASA* is designed to be listed on the stock exchange, I would use *AS* whenever the *GmbH* or *AG* is not listed on the stock exchange. Since one essential difference between the *GmbH* and the *AG* is that the *AG* always has an *Aufsichtsrat*, I would translate both *AS* and *ASA* with *AG*.

^{xxvi} Frantzen et al. (2014) recommend, that the *pliktdel* should be payable in cash (NOU 2014:1 page 146). Because of that there might be legislative actions in the future that lead to a claim *in personam*.