

FUNCTIONALISM IN LEGAL TRANSLATION: ANOTHER QUEST FOR ITS UNIVERSALITY

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Abstract

The global world is constantly broadening the horizons of activities thus formulating the needs for competent translations. Translation in legal sphere is of prime importance as it is involved in governing and regulating all kinds of cooperation among nations. Despite the fact, that legal translation is traditionally included into the general translation studies, a good number of translators have been arguing the feasibility of such approach. The matter has become critical with further development of linguistic theories looking at translation through cross-cultural, cognitive, pragmatic and other aspects of communication. The present research focuses on functional approach in legal translation. Its aim is to prove or disprove its feasibility and universality in terms of types and genres within the legal domain, where both the semantic scope of the text, its structure, organization and conventions within a culture, are of crucial importance. Quality of translation will only benefit if it is oriented on the needs of the final reader with their very particular cultures. The practical part of this work also confirms the main concept of functionalism and statistically proves the efficacy of the approach, which takes addressee's legal and linguistic expectations into consideration. The outcome of the research can contribute to translation studies and is relevant to both practical and educational purposes

Keywords: functional approach, legal translation, target audience, legal context, legal culture.

INTRODUCTION

Legal discourse on a world-wide basis has a long history, leaving a particularly extensive trail behind. As nations are deemed to be in the constant flow of transactions, maintaining numerous and various contacts with each other, social and cultural mediators, involved in translation and interpreting, became a social phenomenon. This glaring evidence of the kind, finally found its way from the material spheres into the cultural strata with its inseparable elements including religious and mystical dogmas, law codes, literary works and philosophical manuscripts to be translated into other languages. That is how the importance of translation and interpretation, including translation in the sphere of law, was established.

RESEARCH OBJECTIVES AND METHODOLOGY

The research is focused on functionalist theory of translation as one of the most efficient and well established techniques in legal translation where various aspects of the source and target texts along with the role of the mediator/translator and expectations of the final reader are to be considered. Recognition of this approach has greatly contributed to the development of translation studies in general and legal translation in particular. Introduction of communication studies and other disciplinary perspectives such as legal cultures of both languages involved in translation process dramatically expanded the scope of translation research which goes well beyond linguistic factors [Palumbo: 2].

The methodology of the present paper is determined by meta-analysis, allowing to study the impact of different functional theories on the hypothesis, and empirical quantitative- and qualitative-based approach to the research with the elements of statistical analysis.

RESULTS AND DISCUSSION

The existing definitions of translation involve a considerable degree of ambiguity but most often scholars look at the following features building up the general understanding of translation as a process: expressing the things by the means of another language [Fedorov: 15], creating a text in another language by keeping the invariance of content, qualities of the original and author's authenticity [Lilova: 33], transmitting a message doubling the components of communication in those cases, where there is a discrepancy between codes [Minyar-Beloruchev: 226], specific correlative functioning between languages (Komissarov: 37), transmitting of socially necessary information by means of text equivalency [Vinogradov: 11].

There are also definitions highlighting translation as activity, thus laying emphasis on the role of the mediator: translation is converting the text in one language into the text in another language realized by a translator, who creatively chooses variants depending on varied language resources, text type, translation tasks, and personal individuality [Alekseeva: 7].

Other definitions indicate the importance of text/context analysis, cross-cultural equivalence, and target audience with their expectation of coherence, readability and clear understanding. All those are relevant for legal translation which in the most generalized form is viewed upon as translation of a special purpose text, serving a certain function (Halliday, Reiss, Sarcevic, Newmark, Sager, Cao and others).

Close examination of translations in different parts of the world throughout history allows to assert that the word-for-word translation has been the milestone in translation tradition up to these days. However, at a certain period of development the considerations for the source- and target-oriented methods began taking shape. Translators tried to observe the basic syntax rules of the target language, yet following the source text as closely as possible.

New ideas and approaches to translation included paraphrase (sense-for-sense translation) and imitation (free translation) evolving from metaphrase or word-for-word translation [Dryden in Venuti: 38] and the issues of translatability/untranslatability, thus expanding the focus on the target text.

The concept of idiomatic translation was yet another phase in shaping the Translation Studies. The Rubicon was crossed with the translation of the Swiss Civil Code from German into French and Italian; it launched the 'letter and spirit' debate also known as "Cesana vs Rossel". This debate brought to life the idea of conveying the sense of the source text but not words in isolation. As a result, translators gained the freedom to render the source text in the spirit of the target language.

Such approach was characterized by the strive to reach "linguistic purity" instead of verbal and grammatical parallelism and put forward the notion of legal equivalence. The latter suggests that translator/interpreter has the right to make linguistic decisions taking legal criteria into account. However, being extremely vague, the equivalence criteria was heavily criticized as "a static absolute which cannot be attained in practice" [Snell-Hornby, 2006: 15].

Anyhow, the concept of equivalence found its way into legal translation not only as a linguistic notion and quality criteria but as describing the relationship between the source and target texts. In accordance with the principle of equal authenticity, each of the authenticated texts of a single instrument has the force of law and can be used by courts for the purpose of interpretation. Accordingly, legal equivalence is achieved if the parallel texts lead to the same legal effects [Sarcevic: 50]. The evolution of legal translation theory and practice is best described by Sarcevic's pattern of: strict literal → literal → moderately literal → near idiomatic → idiomatic → co-drafting [ibid: 14].

Examining the functional approach to legal translation, we inevitably face the problem, outlined by E. Nida as the actual absence of 'one generally accepted theory of translation in the technical sense of a coherent set of general propositions'. In such situation translators are bound to rely on "a set of specific principles", theories in the broad sense, which are "helpful in understanding the nature of translating or establishing criteria for evaluating a particular translated text" [Nida: 180]. Among such theories, functional theories occupy their own niche; their employment is becoming a common routine, if not one of the major translator's rules in all the spheres of translation, including legal.

The gradual development of ideas and methods in legal translation, from literal to co-drafting, fits the development stages of the general translation theory up to the twentieth century when the concept of equivalence signaled the forthcoming changes and prepared the ground for the criteria of adequacy with its respect for cultural norms of both the source and target texts thus highlighting the social dimension in translation. To follow this paradigm and comply with the new standards there comes a number of theories, mainly referred to as functional.

Among them it is worth mentioning the theory of translational action by J. Holz-Manttari which served as the starting point for further evolution and the skopos theory by H.J. Vermeer. Supported by H. Goehring who applied the basics of intercultural communication all the three scholars viewed translation as purposeful communicative interactions, for which action theory provides a theoretical framework.

The theory was engaged with by the group of German linguists involved in translation degree programmes who focused on translation methodology, translation-oriented text-analysis and translation quality assessment. The issues of criticism and cultural considerations in translation soon came to the forefront, thus giving way to the formation of translation techniques applied in technical translation.

Two general rules were worded within the skopos theory; they were termed “coherence” and “fidelity” in translation. Coherence is directed at full comprehension of the target text by the intended audience; it can only be reached through the awareness of the culture, knowledge of the relevant sphere and situational circumstances. Translator takes the text as “a part of the world continuum, written in the source language”; it has to be translated “into a target language in such a way that it becomes part of a world continuum which can be interpreted by the recipients as coherent with their situation” [Baker: 236]. Fidelity contributes to the coherence rule in terms of intertextual relationship.

Though not perfect, the skopos theory gave rise to further development of functional approach in the face of K. Reiss (the co-author of H.J. Vermeer). The scholar argued that translator’s priority should be given to maintaining functional equivalence between the source and target texts. Her text typology model suggested a global-oriented approach dominated by a shift from specific occurrences in the process of translation to a much broader approach, embracing the global function of any source text reproduction and transformation into any target text. The necessary steps to be followed should include the text type analysis, establishing textual genre and the final analysis of style, allowing to choose the relevant translation technique. Actually, this idea was acutely innovative as it highlighted the importance of decision making, which takes place in the process of any transition. The proposed theory serves as a guide for the translator looking for situationally correct techniques, overall method and strategy. The choice never occurs automatically but is marked with a considerable degree of causality during the translation process; it manifests itself due to the function of the source text which is transformed into the text in the target language.

Another serious contribution to the functionalism was made by J. Holz-Mänttari who claimed that translator’s actions are not limited by the stylistic, lexical and syntactical dimensions of the source text. The existing and accepted by the community translation techniques and approaches involve a considerable work with a good number of sources providing for full understanding of informational units of the source text; such work is absolutely necessary for reproducing the text in the target language. The whole process is guided by the translator’s ability to process the referential material and render the source text in accordance with the general principles of the quality assessment. The ideas of J. Holz-Mänttari obtain a totally new perspective in terms of translation methodology with the focus shifted onto specific material studies, audience orientation studies, definition and description of translation competence, teaching methods and curriculum design.

Correct understanding of the text can also be reached by a thorough text analysis, whose principles were introduced by C. Nord. She succeeded not only in describing the basics of those principles but indicated how exactly such analysis should be performed. A translation-oriented text analysis is meant to ensure complete and correct understanding and interpretation of the informative message; it also provides a reliable foundation for the decision-making strategy chosen in the process of translation. Remarkably, she refers to the semantic and syntactic structural features of the source text only as important means of analyzing its meaning both in the sense of denotation and connotation [Nord: 16]. Strict orientation towards the addressees brings the translator’s responsibility to a new level: “Their command of the source culture must enable them to reconstruct the possible reactions of a source text receiver...whereas their command of the target culture allows them to anticipate the possible reactions of a target text receiver and thereby verify the functional adequacy of the translation they produce” [Nord: 12-13].

The integrated approach by M. Snell-Hornby addresses the call for presenting new recently developed theories and methods. It is the quintessence of the theoretical foundations, practical applications and analysis in the field of translation. She views Translation Studies as an independent discipline, a culturally oriented subject, drawing on “a number of disciplines, including psychology, ethnology and philosophy, without being a subdivision of any of them”. She also utilizes a number of relevant concepts, originated in the field of language studies, adopting linguistic methods and theoretical constructs wholesale” [Snell-Hornby, 1988: 2].

The text itself evades a static structure in the language body (the idea prevailing in translation classes),

being rather an expression of the author's intentions organized as a verbal unit to be later on decoded and reorganized for another reader with a different cultural background. This dynamic approach proclaimed and applied by M. Snell-Hornby serves a theoretical and practical basis for complete and final rejection of the nonsensical idea, calling for the perfect translation and criteria search. She rejects the term "equivalence" which "presents an illusion of symmetry between languages ... and distorts the basic problems of translation" [Snell-Hornby, 1988: 22]. The only exclusion in the row is the area of technical terminology, where the notion of equivalence can still find its place. However, that statement was heavily criticized stating that notions of equivalence had been strategically useful against theories of untranslatability and were born to overcome the word-sense debate [Pym].

The brief overview of translation and functionalist theories allows to assert that evolution of translation techniques and approaches was slowly moving from literal translation to considerations of other perspectives that dramatically expand the scope of translation research. Information and communication theories introduced the social dimension that suggests a greater number of participants whose interests must be concerned (initiators, clients and readers). The assessment parameters of accuracy, adequacy and acceptability, the issues of translatability and suitability of target text to its communicative purpose or norms of text production also contributed to formation of functional approach that extends far beyond purely linguistic aspects.

Similarly, the role of translator undergoes through great changes from a person who has a good command of two languages, to a mediator between cultures, an expert in relevant field of studies apart from linguistic to the co-author of the source text and an author of the final product. Thus, the epoch of the source-text reign has come to the end giving rise to interpretation involving knowledge and skills in a number of spheres.

With this regard, the responsibility of translator has also raised to another level. This is most evident in case of translating legal texts where mistakes can lead to vast legal consequences. The matter of concern is whether functional theories with their considerations for addressee-oriented approach are fully legitimate in terms of legal translation. To which extent can translator digress from the letter of the legal source text to meet the expectations of the final audience rather sophisticated in the matters under the focus?

The heated discussion revealed various opinions on these issues. Some scholars express great doubts about the possibility of employing functionalist approach in legal translation [H.R. Fluck, M. Soffritti, D. Madsen, A. Trosborg, E. Didier and others]. They speak about more detailed source-text comprehension mechanisms to be introduced into the general schemes of functional theories, advocate traditional principles of the source-text fidelity incorporated into the structure of the culturally-oriented approach, proclaim strictly literal translation in case of normative texts, especially in the field of national and international legislature, attach great importance to identifying a text-type for choosing the right translation strategy, etc. It is not so difficult to realize that most of their criticism is connected with addressee-oriented principle which is a core in functionalism.

Another matter to be highlighted is connected with the unconditional adherence to thematically- and genre-oriented theories, excluding the texts for special purposes from general translation approaches. A good number of generalizations limited the possibility of tailoring the above theories in compliance with the existed requirements to Translation Studies. Thus, as a result of the conflict of ideas concerning legal translation and strategies the translation community faced a potential threat of the flashback to literal translation with minor innovative techniques introduced. That is where the distinctive properties of legal discourse come into action.

To begin with, legal discourse is a highly specialized use of language, which involves both linguistic and legal issues. Legalese is marked with "an obscure technical lexicon, adoption of ordinary words used in atypical senses as terms of art, archaic and foreign language – derived terminology and complex syntactic structures and conventions" [Ainsworth: 43]. It is described as highly abstract, formalized and difficult to understand. In terms of formality it can be characterized as frozen. Frozen patterns of legal language can be encountered in written or oral instruments such as insurance policies, contracts, wills, marriage ceremonies or witnesses' oaths. Complexity, verbosity and sometimes pompousness are blamed for intentional incomprehensibility of legal texts for lay people and great power of those "admitted to the guild of legal practitioners" [ibid: 43].

Another complication arises from differences in legal systems and, hence, from a culturally mediated legal discourse. It is traditionally viewed as "a certain kind of concept carried by a group of people involved in the laws or regulations. The communication result of these people is the establishment of a legal text, expressed in different speech genres" [Stepanova, et al: 9]. Differences between legal systems are embodied in legal concepts, notions, categories, conventions, traditions and customs, which are often incompatible and hard to

overcome in translation. The term 'transposition' from one jurisprudential system into another implies the risk of misinterpreting in the new culturally bound legal background.

The pragmatics of legal discourse should also be taken into account. It determines the relationship between extra linguistic/contextual and semantic, grammatical, syntactic and lexical aspects of the language in the text. Grammatical and lexical choices are determined by the particular context, represented by the knowledge and cultural background of participants in a particular situation. That is where functional approach in translation cannot be overestimated as every word, phrase, particular grammar pattern, etc. chosen by the translator links different legal and language systems and delivers the message to the target audience. Moreover, any individual choice made during the translation process is determined by the text type and further complicated by the "doctrine of multiplicity" of these text types (according to G. Carcaterra). In practice that means that a legitimate variety of translations of the same word, phrase and sentence can satisfy the initiator's and/or addressee's expectations depending on the type and function of both texts.

EXPERIMENT

Experimental part of the research is devoted to the analysis of translation techniques viewed in the paradigm of the functional approach. It is marked with certain requirements including a strict adherence to the text type and conventions within the genre.

The instrument under study is an Independent Contractor Agreement made by and between a London based Italian-Chinese company and a Russian company, based in Moscow. The agreement is translated from English into Russian at the request of the Russian side. The main requirement to be met is a close to the original text translation, which should be also viable in terms of structure, terminology, and conventions for contract drafting in Russia.

The text type of this Agreement can be defined as informative with a distinctively regulatory nature of prescriptive and normative character. It is worth strengthening that the two versions of this instrument create legal consequences in different legal systems (English common law and Russian civil code).

The functional characteristics of the Agreement provide the ground for the functionally oriented choice of translation strategies. They are of two kinds: literal and oblique translation. The former is common in cases of structural, grammatical, lexical and morphological equivalence whereas the latter is designed to overcome the incongruences between different language and legal systems. The first group of strategies involve word-for-word translation, borrowing, and calque (most often on the earlier stages of language development in terms of specific technical terminology). The second group of strategies is represented by alteration through transposition, inversion and grammaticalization, domestication, functional equivalence, concentration, dissolution, amplification, and concretizing.

For the sake of limited format of this paper it is essential only to outline the general outcome of the experiment. The task was to analyze the frequency of translation techniques expressed in percentage so as to estimate the efficacy of functional approach in translation. The breakdown is as follows: literal translation – 32.23%, borrowing – 4.82%, functional equivalence – 38.25%, domestication – 4.52%, alteration (grammaticalization) – 6.33%, alteration (transposition) – 1.81%, alteration (inversion) – 3.31%, concentration – 0.60%, dissolution – 1.20%, amplification – 6.33%, concretizing – 0.30%, pure grammaticalization – 0.30%.

The statistical analysis demonstrates that functional approach does not contradict the methods, techniques, principles and theories, traditionally outlining legal domain. Moreover, it can be applied in translating agreements as one of the genres of legal discourse. A variety of strategies applied speaks about their universality.

The translator refers to literal translation in full compliance with the traditional approaches to translation of legal documents and initiator's instructions. A number of oblique strategies are employed in attempt to maintain the principle of equivalence in the paradigm of two contrasting legal systems. The ration of word-for-word translation to functional equivalence translation (37.05% to 38.25%) can be estimated as balanced in reaching the goal of clear and coherent translation while maintaining fidelity to the source text at the same time. The method of translation transformation comprising such techniques as alteration, concentration, and dissolution are valuable instruments for adjusting two different language systems, whereas borrowing and calquing are acceptable in rendering non-equivalent legal terms. Domestication contributes to producing the term/phrase which is capacious and comfortable to the culture of the target language [Stepanova et al: 73], whereas amplification is indispensable in aiding comprehension.

In sum, functional approach can be regarded as viable and highly commendable as it provides a firm and

stable ground for working out a set of unified principles, thus, contributing to the process of further advancement in the sphere of legal documents translation.

CONCLUSION

The research can be looked at as yet another attempt to prove feasibility of functional theories in the context of legal (document) translation. This is done not because they are rejected or lack attention in the academic studies but with the purpose to give certain evidence of their right to universality. We are of the opinion that theoretical grounds of functional approach in translation can be applied to all genres of legal domain without prejudice. The practical part of this work also confirms the core concepts of functionalism and statistically proves its efficacy. Translation cannot be looked at as mere transcoding but as the intercultural process going far beyond linguistic issues. This process suggests a combination of dimensions such as communicative, social, pragmatic, cultural, functional, linguistic and legal to produce the product accepted by the final audience as clear, coherent and consistent to norms and traditions of legal drafting.

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REFERENCE LIST

- Ainsworth J. Lost in Translation? Linguistic Diversity and the Elusive Quest for Plain Meaning in the Law. *The Ashgate Handbook of Legal Translation. Law, Language and Communication.* Ed. By Cheng L., Sin K.K., Wagner A. (2014). Farnham – Burlington: Ashgate Publishing. ISBN 9781409469667.
- Alekseeva I.S. (2004). *Vvedenie v perevodovedenie / Introduction into Theory of Translation.* Moscow: Academy Publishing Center. ISBN 5-8465-0101-X; ISBN5-7695-1542-2
- Baker M. (1992). *In Other Words: A Coursebook on Translation.* London: Routledge.
- Fedorov A.V. (2002). *Obshchey Teorii Perevoda (lingvisticheskie problemy) / Introduction into General Theory of Translation (linguistic problems).* St. Petersburg: St. Petersburg State University; Moscow: Filologia Tri. ISBN 5-8465-0019-6; ISBN 5-94545-014-6.
- Komissarov V.N. (1990). *Teoriya Perevoda (lingvisticheskie aspekty) / Translation Theory (linguistic aspects).* Moscow: Vysshaya Shkola. **ISBN:** 5-06-001057-0.
- Lilova A.A. (1985). *Vvedenie v Obshchuyu Teoriyu Perevoda / Introduction into General Theory of Translation.* Moscow: Visshaya Shkola.
- Min'ar-Beloruhev R.K. (1980). *Obshchaya Teoriya Perevoda i Ustnyj Perevod / General Theory of Translation and Oral Translation.* Moscow: Voennizdat. ISBN 0348/БН2-25072017/09.
- Nord C. 2005. *Text Analysis in Translation.* 2nd ed. Rodopi: Amsterdam-New York. ISBN-13: 978-9042018082;
ISBN-10: 9042018089.
- Palumbo G. (2009). *Key Terms in Translation Studies.* London: Continuum International Publishing Group. ISBN 978-0-8264-9824-3; 978-0-8264-9825-0.
- Pym A., “European Translation Studies, une science qui dérange, and Why Equivalence Needn't Be a Dirty Word” (first version published in TTR 8/1, pp. 153-176, 1995).
<http://usuaris.tinet.cat/apym/on-line/translation/deranger.html>
- Sarcevic S. 2000. *New Approach to Legal Translation.* Kluwer Law International: The Hague – London – Boston. ISBN 9041104011, 9789041104014.
- Snell-Hornby M. (1988). *Translation Studies: An Integrated Approach.* Philadelphia: John Benjamin's Publishing Company. ISBN 9789027220561; ISBN 9781556190513.
- Snell-Hornby M. (2006). *The Turns of Translation Studies: New Paradigms of Shifting Viewpoints.* Amsterdam -Philadelphia: John Benjamins Publishing Company. **ISBN** 9789027216731; **ISBN** 9789027216748.

- Stepanova V., Karaulova T., Kiseleva L., Sobolev A. (2015). *Legal Discourse in Translation*. Moscow: RUDN University. ISBN 978-5-7017-2450-9.
- Vinogradov V.S. (2001). *Vvedenie v Perevodovedenie (obshchie i leksicheskie voprosy) / Introduction into Translation (General and Lexical Problems)*. Moscow: Izdatel'stvo Instituta Obshchego Srednego Obrazovaniya RAO. ISBN 5-7552-0041-6.
- Venuti L. (2012). *The Translation Studies Reader*. 3d ed. New York: Routledge. ISBN-10: 0415613485.