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THE LANGUAGE OF THE LAW - SOME CHARACTERISTICS

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ABSTRACT

The world we live in today is not how it used to be. It is obvious that we live in a world that is much globalized, which places human interaction in a high priority. International relations nowadays are much more active than ever. Accordingly the international law, which regulates the relations between organizations and states, has gained importance as well. Considering this development, it can be said that international law (as a result of this legal language) became crucial. We cannot think of close contacts among states, societies, people and businesses without the mediation of legal language facilitated through translation process.

The field of legal language in Kosovo is not so much developed. There is a limited work and study done in this regard. This paper attempts to make a modest contribution in this regard and the description and discussion of the legal language and solutions offered herein may be taken as a basis for further research.

This paper discusses the legal language, issues that make it difficult, its linguistic characteristics, some features of English and Albanian legal languages, the nature of the legal language and offers some suggestions to translators for handling translations of the legal language.

Key words: language, legal language, document, law, translation.

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INTRODUCTION

The focus of this paper is the language of the law. Initially, it will discuss the legal language, then it will explain what makes the legal language difficult and then set out linguistic characteristics of the legal language. Then it will also discuss the nature of the legal language and some features of English and Albanian legal languages. The literature used to discuss this paper includes references made to books and concrete examples used to illustrate the discussion.

**The Language of the Law (The Legal Language)**

The language of the law or the legal language refers to the language of and related to law and legal process. It is a type of register, that is, a variety of language appropriate to different occasions and situations of use, and in this case, a variety of language appropriate to the legal situations of use.

As Tiersma suggests, "legal language has been called an argot, a dialect, a register, a style and even a separate language. In fact, it is best described with the relatively new term sublanguage, a sublanguage that has its own specialized grammar, a limited subject matter, contains lexical, syntactic and semantic restrictions

and allows deviant rules of grammar that are not acceptable in the standard language. However we describe it, legal language is a complex collection of linguistic habits that have developed over many centuries and that jurists have learned to use quite strategically” (1999, p.142).

#### **What makes the language of the law difficult?**

Linguistic difficulties in legal languages arise from the differences found in the different legal cultures and legal systems. Legal language has developed its characteristics to meet the demands of the legal system in which it is expressed. Legal language is distinguished from other types of technical languages that convey universal information. In this sense, legal language is *sui generis*. Each legal language is the product of a special history and culture.

One of the main reasons why the language of the law is difficult to understand is that it is often very different from ordinary language. In legal language writing conventions are different, like: sentences often have peculiar structures, punctuation is used insufficiently, foreign phrases are sometimes used instead of ordinary phrases (e.g. *inter alia* instead of among others), unusual pronouns are employed (the same, the aforesaid, etc.), unusual set phrases are to be found (null and void, all and sundry), technical vocabulary, unusual and archaic words, impersonal constructions, use of modal like shall, multiple negation, long and complex sentences, and poor organization are all problematic.

#### **Linguistic characteristics of the language of the law**

Because of the nature and function of law, the legal language has developed particular linguistic features like: lexical, syntactical and pragmatic to fulfill the demands of the law. Such linguistic characteristics of the language of the law have profound implications for legal translation. If we examine legal language as a whole, common and singular linguistic features can be identified across different legal languages. They are manifested with respect to lexicon, syntax, pragmatics and style.

Legal lexicon is full of archaic words, formal and ritualistic usage, word strings, common words with uncommon meanings and words of over-precision.

A common feature of the syntax of legal language is the formal and impersonal written style joined with considerable complexity and length. Complex structures, passive voice, multiple negations and prepositional phrases are extensively used in legal language.

Another pragmatic consideration in legal texts is ambiguity, vagueness and other uncertainties found mainly in statutes and contracts. Legal writing is characterized by an impersonal style, with the extensive use of declarative sentences pronouncing rights and obligations.

#### **Some features of English and Albanian Legal Languages**

In both languages legal vocabulary is different from everyday vocabulary and is generally archaic. In English, there is abundant number of terms originating from Latin; accordingly in Albanian, there are several legal terms borrowed from Serbian and Turkish.

The prominent feature of legal style is very long sentences. This tendency for lengthy sentences both in Albanian and in English is due to the need to place all information on a particular topic in one complete unit in order to reduce the ambiguity that may arise if the conditions of a provision are placed in separate sentences.

The law is always phrased in an impersonal manner so as to address several audiences at once. For example a lawyer typically starts with “*May it Please the Court*” addressing the judge or judges in the third person while in Kosovo the announcement of a court judgment begins with “*Në Emër të Popullit*” (In the name of the people) when a court sentences somebody to a certain penalty.

Another feature is the flexible or vague language. Lawyers both try to be as precise as possible and use general, vague and flexible language. As Tiersma notes, “flexible and abstract language is typical of constitutions which are ideally written to endure over time” (1999, p.176).

Historical factors and stylistic tradition explain the character of present-day English and Albanian legal languages. Many old phrases and words can be traced back to Anglo-Saxon, old French, and Medieval Latin, while in Albanian they can be traced back to the old Albanian and Ottoman language.

In both legal languages there are many words that have a legal meaning very different from their ordinary meanings. Tiersma calls the legal vocabulary that looks like ordinary language but which has a different meaning peculiar to law as legal homonyms. For instance, Action: is not only a physical movement but legally it is also a lawsuit; Aggravation: not merely something that annoys you but also a reason to sentence someone to death according to death penalty law; Ankesë (complaint/appeal): is not only a simple complaint but also an appeal against a Court Decision; Bashkëpunimi (cooperation): is not only an act of cooperation on certain issue but also assistance in the act of commission of a criminal offence. Though expressions as presented above that have a legal meaning different from their ordinary meanings are problematic for translation of legal texts, a good translator equipped with necessary knowledge, skills and experience can translate such expressions in an appropriate way.

One of the features of legal language which makes it difficult to understand and translate (for an ordinary translator/reader) of course is its unusual and technical vocabulary. Some of its vocabulary such as tortfeasor, estoppel in English and delikuenca and korniza kushtetuese in Albanian, which do not even suggest a meaning to an ordinary person, is a complete mystery to non-lawyers.

Legal language has many common terms with uncommon meanings. According to Danet, "legal language has an inclination for using familiar words (but) with uncommon meanings" (2005, p.59). For example, the word assignment which is generally known as something assigned - a task or a duty. Students of translation have learnt the word in its general literal meaning and they continue to know it as such until they have to translate an assignment, which is a legal document.

#### **The Nature of Language of the Law**

As it is commonly acknowledged, legal language is complex and difficult. There are many reasons why this is the case. In general, the complexity and difficulty of legal language is attributable to the nature of law and the language that law uses and the associated differences found in inter-cultural and inter-lingual communication in translating legal texts. As Cao (2007, p.142) suggests, "the legal language is identified and linked with the normative, performative and technical nature of language".

#### **The normative nature of legal language**

Legal philosophers agree that legal language is a normative language. It is related to norm creation, norm production and norm expression. This means that the language used from law or legal sources is largely prescriptive. The normative language of law derives from the fact that law has the basic function in society of guiding human behavior and regulating human relations. In short, the language of the law is a normative language. Its predominant function is to direct peoples' behavior in society. It authoritatively posits legal norms.

#### **The performative nature of legal language**

Closely related to the normative nature of law and legal language is the notion that language is performative. Law depends upon language, in particular the normative and performative nature of language. Words are not only something we use to say things, we also use them to do things. The performative use of language is not exclusive to law, but law relies heavily on performative utterances. Legal effects and legal consequences are commonly obtained by uttering certain words, for instance, 'You are guilty!', or 'You are fined with € 100' as normally pronounced in court.

#### **The technical nature of legal language**

Legal language is a technical language and legal translation is technical translation involving special language texts. Charles Caton, a linguistic philosopher, believes that legal language is a technical language, but technical language is always an adjunct of ordinary language. According to Schauer, a legal philosopher, legal language as a technical language often operates in a context that makes legal terms have meanings different from those they bear in non-legal contexts of use. The legal philosopher, Hart argues that owing to the distinctive characteristics of legal language, 'legal language is *sui generis*', 'unique unto itself'. Fundamental to Hart's view is that legal language is distinctive because it presupposes the existence of a legal system.

### **Understanding the meaning of the text in the language of the law**

Legal interpretation differs in several ways from ordinary understanding. In ordinary language, what really matters is what a speaker means by an utterance (speaker's meaning), rather than what a word or utterance means (word or sentence meaning). With statutory interpretation, courts often look to the intent of the speakers (legislative intent). We tend to interpret written texts differently from speech. Someone who writes a text often tries to make it as autonomous as possible, so that any information needed to interpret it is contained in the text itself. This is often necessary, because the reader of a text may be in a very different location, at a very different time and may know little or nothing about the circumstances surrounding the writer. Logically enough, legal documents are written to be very autonomous.

A significant difference between legal and ordinary interpretation derives from the fact that a legal translator must always keep in mind the rules and conventions used by the speaker or writer. There is a symbiotic relationship between encoding and decoding language. Legal writers do indeed use language and drafting conventions that are distinct from ordinary language.

Therefore, one of the tasks for the legal translator is to identify the legal meaning and distinguish it from its ordinary meaning before rendering it appropriately into target language. For instance, in translating English contracts or documents related to contract law, legal terms frequently encountered include *offer*, *consideration*, *performance*, *remedy* and *assignment*. These words in English have an ordinary meaning used in non-legal settings. They are also legal technical terms that carry special legal significance in contract law. In English contract law, *offer* refers to a promise which when accepted constitutes an agreement; *Consideration* refers to the price paid, not *thought* or *thinking* in ordinary usage; *Performance* specifically refers to the doing of that which is required by a contract or condition. A contract is discharged by *performance*. The expression *specific performance* in contract law is not literally what it says. It actually means where damages would be inadequate compensation for the breach of an agreement, the contracting parties may be compelled to perform what was agreed to be done by a decree of specific performance, e.g. the sale, purchase or lease of land, or recovery of unique chattels. The word *remedy* is not just a way of solving a problem but a legal means whereby breach of a right is prevented or redress is given, e.g. damages and/or injunction. *Assignment* in contract law means transfer of property or right.

For the legal translator, the lesson here is that when trying to identify and ascertain the meaning of a particular word with both ordinary and legal meanings or a word with several legal meanings, one can make use of the context in which the word occurs.

### **Conclusion**

In the light of findings of this paper, the following conclusion is provided: Initially, this paper discussed the legal language, some of its characteristics and presented that legal language refers to the language of and related to law and legal process, that it is a variety of language appropriate to different occasions and situations of use, and in this case, a variety of language appropriate to the legal situations of use. It also noted that legal language has its own specialized grammar, a limited subject matter, contains lexical, syntactic and semantic restrictions and allows deviant rules of grammar that are not acceptable in the standard language.

Further, it mentioned that the language of the law is difficult to understand because often it is different from ordinary language like for instance: sentences often have peculiar structures, punctuation is used insufficiently, then unusual and archaic words, impersonal constructions, use of modal like shall, multiple negation, long and complex sentences and poor organization are all problematic.

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