LEGAL REGULATION OF THE RELIABILITY AND QUALITY OF TRANSLATIONS OF OFFICIAL DOCUMENTS AND TEXTS

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ABSTRACT

Objective: Given that law is a subject area associated with the socio-political and cultural specifics of the given country, the translation of documents and texts of official nature poses a challenging task. Among translators, it is considered one of the most difficult types of translation, as the target language must be particularly precise, clear, and reliable to adequately convey the presented information. The goal of the study is to identify problems in legal regulation of the reliability and quality of translation of official documents and texts and to offer recommendations on their elimination.

Methods: The established research goal is achieved through the methods of document analysis and expert survey.

Results: The paper identifies the linguistic problems that arise in the process of translation of legal texts and official documents, existing gaps and shortcomings in legal regulation, and measures to improve the process and quality of the translation of legal texts and official documents.

Conclusion: Gaps and shortcomings in the legal regulation of translations of legal texts and official documents, especially as applied to Russia, include insufficient legal regulation over the notarization of translations of official documents, the lack of certification or special legal status for translators, and legal regulation of disputable situations.

Keywords: translator, legal translation, reliability of translations, quality of translations, notarization, court proceedings, sworn translator.
RESUMO

Objectivo: Dado que o direito é uma área temática associada às especificidades sociopolíticas e culturais de um determinado país, a tradução de documentos e textos de caráter oficial representa uma tarefa desafiante. Entre os tradutores, é considerada um dos tipos de tradução mais difíceis, pois a língua-alvo deve ser particularmente precisa, clara e confiável para transmitir adequadamente as informações apresentadas. O objetivo do estudo é identificar problemas na regulamentação legal da confiabilidade e qualidade da tradução de documentos e textos oficiais e oferecer recomendações sobre a sua eliminação.

Métodos: O objetivo de pesquisa estabelecido é alcançado através dos métodos de análise documental e perícia.

Resultados: O artigo identifica os problemas linguísticos que surgem no processo de tradução de textos jurídicos e documentos oficiais, as lacunas e deficiências existentes na regulamentação jurídica e medidas para melhorar o processo e a qualidade da tradução de textos jurídicos e documentos oficiais.

Conclusão: As lacunas e deficiências na regulamentação jurídica das traduções de textos jurídicos e documentos oficiais, especialmente quando aplicados à Rússia, incluem regulamentação jurídica insuficiente sobre a notarização de traduções de documentos oficiais, a falta de certificação ou estatuto jurídico especial para tradutores, e a falta de certificação ou estatuto jurídico especial para tradutores, e regulação de situações controversas.

Palavras-chave: tradutor, tradução jurídica, confiabilidade das traduções, qualidade das traduções, reconhecimento de firma, processos judiciais, tradutor juramentado.

1 INTRODUCTION

Examining the issue of regulating the reliability and quality of translation of documents and official texts, it is first important to focus on relevant regulation of translation activities in different jurisdictions. In the USA, the American Translators Association offers a translation certification that can improve employment prospects. The certification exam tests translation skills and understanding of the ethics and business practices of professional translation. Regardless of certification, if a translator is employed by the court, they are an employee of the court and, upon taking the oath, are in the service of the court and must meet the requirements under the Standards for Performance and Professional Responsibility for Contract Court Interpreters in the Federal Courts of the USA (Framer, 2005; Hale, 2003; Gonzales-Quispe et al., 2023).
Western European countries use the concept of a sworn translator – a person authorized by the judiciary or the Ministry of Justice to officially translate legal documents within the jurisdiction of a particular court or the country as a whole (Larin & Obidina, 2016). The concept of a sworn translator can be considered broader compared to a court interpreter since it implies not only the right to participate in court proceedings but to perform official translations of legal documents and verify the accuracy of translations from one language to another (Larin & Obidina, 2020).

In Germany, translators are granted the right to interpret in court by the respective state supreme courts. The prerequisite for being granted sworn translator status by the court is either a translator's diploma issued by a German university or a certificate of passing the state examination for translators (usually at the Chamber of Commerce and Industry). The right to become a sworn translator is also granted exceptionally to persons who have a thorough knowledge and many years of experience in the field. All translators who have successfully passed the exams are listed in a special catalog with an indication of their specialty (Bajčić & Dobrić Basaneže, 2016).

In France, the work of translation agencies is subject to compulsory state licensing, and sworn translators are employed by appellate courts. As specified by the French Code of Criminal Procedure, a court translator is a person of legal age who has taken an oath before translating in court, and in certain cases, a person from the age of 21 is allowed to act as a translator. In Belgium, the function of appointing and supervising sworn translators is performed by the district court, and in the UK – by a translators' organization (Ertl & Pöllabauer, 2010).

2 THEORETICAL FRAMEWORK

Thus, the issue of reliability and quality of translations is directly associated with international legislation regulating the participation of a translator in legal proceedings. Provisions on the interpreter are also included in the Body of Principles for the Protection of All Persons Detained or Imprisoned in Any Form, approved by the Resolution of the UN General Assembly on December 9, 1988. Principle 14 stipulates that “A person who does not adequately understand or speak the language used by the authorities responsible for his arrest, detention or imprisonment is entitled to receive promptly in a language which he understands the information referred to in principle 10, principle 11, paragraph 2, principle 12, paragraph 1, and principle 13 and to have the assistance, free of charge,
if necessary, of an interpreter in connection with legal proceedings subsequent to his arrest” (United Nations General Assembly, 1988; Zhatkanbayeva et al., 2017).

The right to bring in interpreters and translators, if necessary, without additional costs for interested parties using a regional or minority language to translate procedural documents in proceedings is enshrined in the European Charter for Regional or Minority Languages (Article 9), adopted in Strasbourg on November 5, 1992 (Member States of the Council of Europe, 1992).

The issue of ensuring and controlling the quality of translation shifted from the theoretical to the applied plane when the EU issued the EN-15038 European Quality Standard for Translation Services, which in 2006 was approved by the European Committee for Standardization (CEN) for implementation as a national standard in EU countries that are members of the Committee. The standard is intended to unify the terminology used in the field of translation and to define the basic requirements for language service providers, as well as the rights and obligations of translation consumers and providers (Shemetov, 2010).


Nevertheless, legal translation is considered one of the most sophisticated types of translation for a reason (Levitan, 2011). This is largely due to the fact that when translating legal texts both from Russian into a foreign language and vice versa, the usual skills of a translator are not enough. Legal translation cannot be performed correctly without special knowledge in the field of law and awareness of the specifics of a particular type of legal relations (Kinderknekht, 2015). It is essential for the translator to be versed in current legislation, as well as to possess a special vocabulary and know the peculiarities of the use of foreign terminology in a particular context (Oziumenko, 2015). Legal translation is always associated with certain challenges, in particular, it is impossible to translate normative acts, contracts, and other documents without understanding the subtleties of using foreign legal terminology (Bushev, 2011).
Translation of documents and official texts needs to be performed with a high level of professionalism, which is why translators are expected to meet a number of additional requirements. The most critical among these is the translation (special) competence, which consists of a set of linguistic knowledge, skills, and abilities that reflect a high proficiency in the main language and the target language, as well as in subject terminology, enabling the translator to equivalently and adequately convey the content of the source text through the means of the target language with due regard for linguistic and cultural differences (Annushkin et al., 2021; Gamzatov, 2004).

In this connection, the purpose of the present study is to analyze the problems of legal regulation of the reliability and quality of translation of documents and official texts and offer recommendations on their elimination.

3 METHODOLOGY

Due to the novelty of the studied phenomenon and the research nature of the set goal, the study adopted a qualitative approach to research. In this paper, we strive to answer the following research questions: (1) What translation problems exist in the process of translating documents and texts of official nature? (2) What problems and shortcomings exist in the legal regulation of translation of documents and official texts? (3) What measures could be taken to improve the process and quality of translation of documents and official texts?

The study utilized two primary research methods – analysis of sources and an expert survey.

The first research stage involved the analysis of relevant normative legal acts, which was conducted on the ConsultantPlus information and legal database, as well as scientific sources using the keywords “translator”, “legal document”, “legal text”, “legal translation”, “official text”, and “official translation”.

The second stage of the study consisted of an expert survey. A total of 54 experts in the field of law (28 people) and translation (26 people) were emailed invitations to participate in the study. The criterion for the sampling of experts in law and translation was at least 10 years of working experience in the respective sphere. Agreement to take part in the survey was expressed by 49 experts (26 lawyers and 23 translators), after which they were sent emails with research questions: expert translators were asked question 1,
and expert lawyers – questions 2 and 3. The letters also asked respondents to justify their answers in free form.

To enhance the objectivity of the analysis of the obtained survey data, the consistency of expert opinions was assessed as part of mathematical data processing via Kendall’s coefficient of concordance (W).

4 RESULTS AND DISCUSSION

The results of the survey of expert translators point to the following linguistic problems arising in the translation of documents and official texts (Table 1).

Table 1. Linguistic problems in the translation of documents and official texts

<table>
<thead>
<tr>
<th>Problems</th>
<th>%*</th>
<th>Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>Specifics of legal terminology</td>
<td>78.2%</td>
<td>1</td>
</tr>
<tr>
<td>Polysemy of terms</td>
<td>73.9%</td>
<td>2</td>
</tr>
<tr>
<td>Difference of meanings in legal and everyday lexicon</td>
<td>69.6%</td>
<td>3</td>
</tr>
<tr>
<td>Search for the Russian-language equivalent for conceptual lexicon</td>
<td>65.2%</td>
<td>4</td>
</tr>
<tr>
<td>Metaphorical and idiomatic terms</td>
<td>60.9%</td>
<td>5</td>
</tr>
<tr>
<td>False friends of the translator</td>
<td>56.5%</td>
<td>6</td>
</tr>
</tbody>
</table>

Note: * – percentage of expert mentions; compiled based on the expert survey; concordance coefficient W = 0.70 (p < 0.01), indicating a strong agreement of expert opinions.

Source: compiled by authors

The expert survey suggests that in translating documents and official texts, translators face a number of typical issues (Table 1). The first of these is the specifics of legal terminology. The peculiarity of legal terminology, as explained by the experts, lies in its high universal prevalence. An additional property of judicial language is the invariability of the vocabulary of law with a tremendous influence of Latin on the formation of legal terminology, which greatly distinguishes the legal language from the common literary language.

The expert translators consider as a separate problem the polysemy of legal terms, the meaning of which can only be found based on context and the depth of insight into the topic. An example of this would be the term “passing off” being translated into Russian as “ispolzovanie otdelnymi kompaniiami v nazvanii svoikh tovarnykh znakov elementov tovarnykh znakov populyarnykh brendov” [“certain companies using elements of trademarks of popular brands in the name of their trademarks”]. The Russian-language equivalent is the term “unfair competition”.

Of no less importance is the issue of the difference between the meanings of words in judicial and everyday vocabulary. Jurisprudence frequently uses words and phrases
from colloquial, literary, and neutral vocabulary, but in legal texts, they most often have other meanings. For example, game law – “закон об охране дичи и правилах охоты” [“law on the protection of game and rules of hunting”], good offices – “посредничество” [“mediation”].

Another challenge is the search for a Russian-language equivalent for the conceptual lexicon, which includes words of general literary language often used in the texts of contracts and court decisions, in the language of judges, etc. Since these words retain their common meaning, they can be considered legal terms. Yet, due to their frequent use in any field of law in both languages, they are assigned fixed equivalents. The use of other equivalents by the translator immediately catches the eye of specialists as a violation of the accepted norms of legal language (Vinnikov, 2013).

At times, the translation of legal texts is complicated by the so-called “false friends of the translator”, because English loanwords are not always translated into English as these same words. Some examples are the terms court reporter (sekretar suda [court clerk]) and marshal (USA) (sudebnii ispolnitel [bailiff]).

Another issue in translating court documents, as mentioned by the experts, is associated with metaphorical and idiomatic terms. The challenge in their translation owes to the fact that a literal translation of all components of a word combination (calquing) in such cases typically does not aid in finding out the meaning of such word combinations. One example of this is the term “Christmas tree” (a bill overloaded with amendments).

The conducted survey of legal experts has identified the existing gaps and shortcomings in the legal regulation of translations of documents and official texts (Table 2).

<table>
<thead>
<tr>
<th>Gaps and shortcomings</th>
<th>%</th>
<th>Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insufficient legal regulation of notarization of translated official documents</td>
<td>84.6%</td>
<td>1</td>
</tr>
<tr>
<td>The notary’s liability for inaccurate translation of a document is not established</td>
<td>76.9%</td>
<td>2</td>
</tr>
<tr>
<td>The translator’s liability for inaccurate translation of a document is not established</td>
<td>69.2%</td>
<td>3</td>
</tr>
<tr>
<td>Lack of certification/special legal status for translators participating in court proceedings</td>
<td>65.4%</td>
<td>4</td>
</tr>
<tr>
<td>Lack of legal regulation of debates regarding translators participating in court proceedings</td>
<td>57.7%</td>
<td>5</td>
</tr>
</tbody>
</table>

Note: * – percentage of expert mentions; compiled based on the expert survey; concordance coefficient W = 0.71 (p < 0.01), indicating a strong agreement of expert opinions.

Source: compiled by authors

Speaking on the insufficiency of legal regulation over the notarization of translation of official documents, the experts point out the fact that after the ratification
of the Hague Convention of 5 October 1961 (Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, 1961) in Russia in 1992, which abolished the requirements for consular legalization of foreign official documents, notarial certification became the only legal requirement to give a foreign document legal force on the territory of Russia.

Importantly, Article 81 of the Fundamentals of the Legislation of the Russian Federation on the Notariate (Supreme Soviet of the Russian Federation, 1993) specifies that a notary can verify the correctness of a translation only if they have mastery of this language. Otherwise, the translation is performed by a translator, and the notary only certifies the authenticity of the latter's signature without checking the accuracy and quality of the translation or comparing it with the original document. In these circumstances, an unscrupulous translator, as pointed out by E.Iu. Chibisova (2009), can significantly expand the company's powers when translating a power of attorney for a transaction abroad. To give another example, during the translation of a certificate received from abroad with objective data on the applicant for the adoption of a Russian child, criminal background details may disappear from the document. Finally, raider and shadow structures armed with fake translated documents can start operating in Russia under the guise of a foreign state or a non-existent company (Pisenko & Botvinnik, 2020).

The conducted study shows that the problems faced by legal translators (Table 1) arise mainly due to the fact that the language of translation lacks the vocabulary constructions to describe the terms of the source language accurately enough. This conclusion aligns with the Regulation of the European Parliament and of the Council “On jurisdiction and the recognition and enforcement of judgments in civil and commercial matters” (The European Parliament and the Council of the European Union, 2012), which indicates that the dependence of a text on its original legal system may result in the content of the source language text not matching the meaning in the target language, even with a completely literal interpretation (Chirkov et al., 2022). For this reason, the translator needs to advance their knowledge by studying the possible lexical equivalents of words and phrases (Afanasev, 2019, 2020). Another challenge in legal translation, much like in other specialized spheres of translation, is the need for the translator to have an in-depth knowledge of the research area and a grasp of detail to connect sentences into a logically coherent text without contradictions or misunderstandings (Kinderknekht, 2015). The industry also demands particular precision in the wording, no phrase can be
translated approximately based on content (Wu et al., 2023). Even minor mistakes and inaccuracies in translation can lead to incorrect interpretation of its content, and thereby encourage any wrongdoing (Levitan, 2011). Finally, it is critical to take into account the differences in state legislation (Avdeev et al., 2023).

The obtained findings also evidence that the translation of documents and official texts must have a particular focus on lexical non-equivalence, which is consistent with the conclusion of M.G. Gamzatov (2004). This owes to the fact that any and all languages have some words and stable word combinations in a foreign language that do not have more or less complete correspondences in the form of lexical units (Babintseva et al., 2023).

These are the reasons why the translation of documents and official texts has to be performed predominantly by professionals with legal education (Korotaeva & Chuksina, 2020; Wagner et al., 2023). The source and target language texts are handled in completely different legal systems, hence they should use different wordings characteristic of each language (Shafazhinskaya et al., 2023). Nevertheless, the wording must be clear to both parties and have the same content. As a result, as argued by A.B. Bushev (2011), the translator needs to understand not only the legal law of their own country but also of the source language country. All these factors together determine the peculiarities of the translation of documents and texts of official nature, proving that their translation requires particular accuracy and deep knowledge from translators and is among the most difficult tasks for them (Adygezalova et al., 2023).

Based on the results of the survey of legal experts, it can be concluded that there are a number of gaps and shortcomings in Russian legal regulation of translations of documents and official texts (Table 2).

A foreign document is translated into Russian and legalized by a notary by putting their signature and official seal on it, after which the document is freely and without restrictions accepted by organizations and institutions, including authorities, courts, and so forth. As a rule, translation of texts belonging to the field of law and used for the exchange of legal information between people speaking different languages refers to the following: translation of passports, employment records, translation of marriage certificates, marriage dissolution certificates, birth certificates, death certificates, marriage contracts, consent to the departure of an underage child, etc.; translation of business documentation – translation of sales agreements, insurance agreements,
insurance policy, rental agreements, leasing agreements, employment agreements, loan agreements and contracts, translation of international agreements and contracts, money orders and guarantees, accounting and financial statements, translation of certificates, licenses, and powers of attorney (Borodina, 2019; Suu et al., 2023).

Herewith, the notary is professionally responsible for the authenticity and identity of the original document and yet is not responsible for the accuracy of the translation and its conformity with the original if it is translated by a hired translator. Thus, neither the translator nor the notary is liable for an inaccurate translation (Vysotskaya et al., 2022).

Apart from notaries, the legalization of translations of foreign documents on issues relevant to their professional practice is independently handled by the prosecutor's office, the Ministry of Justice, the Ministry of Internal Affairs, civil registries, the Ministry of Education, archival services, etc. (Dolgopolov et al., 2023; Zenin et al., 2022). As a result, there is a large number of legalized foreign official documents in circulation, often dubious or even fake (Chibisova, 2009).

It is worth dwelling separately on the problems arising from the participation of translators in court proceedings: arbitration, civil, and criminal (Adygezalova et al., 2023). The existing judicial practice allows using as translators in court proceedings not only persons with specialized education but other citizens on condition of ensuring the adequacy and accuracy of the translation, which is not explicated in the legislation (Gavrilov et al., 2022). The liability of a court translator is limited to liability for a knowingly incorrect translation, i.e. it is treated on a par with liability for perjury (Chibisova, 2009).

The legal regulation on the participation of a translator in court proceedings is mainly formulated in such a way that the settlement of any disputes regarding the translator is assigned to the subject leading the process, at the initiative of the participants in the proceeding (Gurinovich & Petrykina, 2021). That is, the law establishes the most general prescriptions. On the one hand, this presents a certain advantage, as the law a priori cannot foresee all possible scenarios and account for them in regulations, turning it into a detailed instruction. Instead, the law leaves their resolution up to the proper legal understanding, erudition, and high legal consciousness of judges, investigators, prosecutors, and defense lawyers and representatives as professional participants in criminal proceedings (Mukhachev et al., 2023). On the other hand, this can result in the restriction or prevention of the realization of the rights of participants in proceedings who
do not speak the language of legal proceedings, or in the adoption of unfair and unjustified procedural decisions.

Experts suggest ways to solve this problematic situation, for example, through the creation of specialized translation agencies in each region of Russia and a unified State Register of translation agencies and individual translators. This option goes in line with a study by K.M. Levitan (2011), in which it is proposed to establish a special Register of certified court translators within the justice authorities. Translators from the proposed Registry would have an advantage for investigators to engage in investigative (procedural) actions, which, for example, are performed without the participation of persons who do not understand the language of criminal proceedings. As argued by A.B. Bushev (2011), the actual fitness of a person to perform the functions of a translator and their sufficient proficiency in the language of legal proceedings should be assessed not by investigators (on formal grounds), but by particular specialists, with the organizational and methodological participation of the Ministry of Education and the Ministry of Justice.

Another proposal of the experts supported by existing research (Borodina, 2020) is the introduction of the institution of sworn (court-certified) translators – persons authorized by the relevant public authority to perform official translation of legal documents. The institution of sworn translators shall comply with the following requirements:

1. A sworn translator has a legal status different from a regular translator; they take an oath, are entered in the relevant register, and translate legal texts on a formal basis and are thus responsible for the correctness and accuracy of such translation.

2. In addition, a legal document translated by a sworn translator does not need further notarization, which is valuable for those using such translation services and is a major advantage for citizens, since it reduces the amount of administrative paperwork.

3. Acquisition of the status of sworn translator assumes the need for truly high-quality training because it requires the person to pass a special professional qualification exam to confirm their ability to perform legal translation and, therefore, impeccable knowledge and understanding of legal terminology, which is vital for court proceedings. Furthermore, periodic recertification will serve as
an additional impetus and promote the continuous advancement of professional knowledge and skills.

4. The court within whose territorial jurisdiction the sworn translator will act will gain the opportunity to use the services of a certified specialist in interpretation or translation from different languages, which would objectively support the observance of the basics of legal proceedings.

5. A sworn interpreter bears civil and professional liability for the correctness and quality of the translation made and must keep secret the information obtained in the exercise of their professional duties. This responsibility is a great incentive to perform their duties carefully and without prejudice.

6. Special requirements can be imposed on candidates for the position of a sworn translator, such as the presence of citizenship in the country, higher vocational education, and work experience in the sphere of translation.

5 CONCLUSION

Translation of official documents and texts can be characterized as the translation of texts belonging to the legal sphere and used to exchange legal information between people speaking different languages. This type of translation can be considered one of the most challenging.

Among the linguistic problems of translating documents and official texts is the specificity of legal terminology, the polysemous nature of legal terms, the difference of meanings in legal and everyday vocabulary, the need to find a Russian-language equivalent for conceptual vocabulary, the presence of "false friends of the translator", and metaphorical and idiomatic terms. The gaps and shortcomings in the legal regulation of translation of documents and official texts consist in the insufficient legal regulation of notarization of translated official documents, the lack of liability of both the notary and the translator for inaccurate translation of an official document, and the lack of certification/special legal status for translators and legal regulation of disputable situations.

Among the limitations of the study we should note the limited number of experts in the sample, which prevents a complete generalization of research conclusions. Prospective further research may focus on a more detailed analysis of opportunities for introducing the institution of sworn translators into the Russian judicial system.
REFERENCES


