



Matej Bel University, Banská Bystrica, Slovakia
Has been issued since 2014
ISSN 1339-6773
E-ISSN 1339-875X

Reflections on a Defective Source Text

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Abstract

In this article the author discusses translation of defective source legal texts and offers solution proposals. The study deals with an authentic legal text which is to be translated into German. It proceeds from an analysis and classification of errors in the selected text and makes an effort to generalise the translation strategy used in translation of a defective text based on a comparison with other texts, while it relies on the translation methods offered by the translation theory. The study deals with legal translation in particular, therefore a specific solution is needed. The article has been developed under the APVV-0226-12 TranSius – From Conventions to Norms of Translations in the Legal Discourse project. It presents results of our own research, which is an integral part of the above mentioned project. On one hand, the presented results reflect the translation theory and on the other hand, they reflect the conventions in legal translation. The aim of the article is to propose a way of implementing the recommended results as a standard approach in translation of legal texts.

Keywords: source text, defective text, analysis of errors, specific features of legal translation.

Introduction

Legal documents represent a specific type of text, characterised by certain typical features and peculiarities. The use and form of communication employed by these texts are equally specific. Due to these facts, a specific approach to the legal texts in the interlingual and intercultural communication, as well as translation is required. In translation of legal text, the translator is confronted with specific translation problems. The translation theory therefore comments on the need of creation of an independent on category of translation for legal texts, or even a specific branch of translation theory which would deal with them.*

The aim of the research based on taking into account the specific features of the legal text, the problems regarding translation of legal texts, as well as the opinions of the translation scholars on legal translation, is to answer the question whether it is necessary to maintain the marker of defective source text in the target text. The article can be considered a case study and its results are possibly applicable to translation of defective legal source texts.

The classification of the source text errors in the translation theory and the opinions of translation scholars on the translating methods and practices along with the solution for the translation problems constitute the theoretical basis for the reflections on the defective legal text in the process of translation, and the search for the answer to the aforementioned question.

Methods and material

The methods used for the research are: theoretical and descriptive, empirical, analytical, and comparative.

* Cf. Weyers (1999, p. 151), Wiesmann (1999, p. 156), Pommer (2006, p. 63).

An authentic text from our own translation experience – a written statement of a person accused in a criminal matter*, and more specifically to the request for additional consent to prosecution – has been selected as the primary working material. The Zvolen district court has requested the translation of this Slovak text into German. However, further working material was needed to verify the results of the analysis and the possible application of the conclusions we have formulated. At this stage, we drew from other authentic texts which had been submitted for translation, but also our personal translating experience. Besides the analytical method, the comparative method was also used.

Defective text

The scholarly literature contains different views on the errors in the source text and proposes different attitudes towards their translation, transfer or correction.

In this context, we agree with Schmitt's (1999, 147) reflection on defects in the source text and his views on the analysis of errors[†] and their classification, as well as his definition of text[‡] and its defects. The discussion on the criteria of what constitutes a defective text has led him to this formulation: "*Ein Text ist defekt, wenn er suboptimal ist, also in irgendeiner Hinsicht nicht so gut, wie er idealerweise sein könnte*" (Schmitt, 1999, 147). In addition to the typical errors, he points out the typical solutions such as the possibility to correct the text based on context, need for consultation with the client for the translator to verify and validate the accuracy of their interpretation, as well as inevitable corrections if an obviously wrong formulation was used in the source text. It is important to translate the actual idea of the author instead of its incorrect realization. Schreiber (2004, 271) is also a defender of such corrections in translation. According to him, the legitimacy of corrections depends on the specific type of the text. Corrections in technical texts are not only legitimate, but even obligatory. However, there are certain types of documents to which this does not apply. According to Koller (2004, 195) every "improvement" of the source text in translation ceases to be its reproduction and becomes production. He asks himself the question, whether the translator has the right or the obligation to correct the source text. Kußmaul (2007, 173) also points out the existence of defective source texts and puts the good translators in the position of text experts, that are competent to eliminate the errors. He emphasises that suggested corrections have to be in the right tone.

Analysed Source Text in the Context of Translation Studies

During the observation of the stated objectives and before the detailed analysis of the defects in the researched source text is carried out, a general characteristics of the text are required to be determined. For this purpose, we decided to employ the translation analysis as the method recommended in translation theory.

The translation analysis is based on the pattern of the communication theory developed by Lasswell. It has also been widely used by other translation scholars.[§] In 1998 it was systematically elaborated in detail for the purpose of the translation process by Christiane Nord. In translation analysis, we rely on the detailed scheme of questions created by Nord (2003) which allows us to determine relevant intratextual and extratextual factors^{**}.

The author^{††} of the text is an accused person prosecuted in a criminal matter in the competent district court. The author of the text is signed below, however we can assume that

*The mentioned working material will be hereinafter referred to as the source text or defective source text.

[†] Schmitt (1999, 148) considers as a typical defects formal mistakes, incorrect numbers and units of measurement, typing errors which change the meaning, discrepancy between the verbal text and the image, discrepancy between the text and the reality, expression mistakes, comprehension mistakes. Schmitt (1994, 267) considers the defective text as a translation problem.

[‡] According to Schmitt (1999, 147) the following definition applies for the text: "Ein Text ist ein semantisch und/oder funktional orientierter, kohärenter Komplex aus verbalen und/oder nonverbalen Zeichen, der eine für den Adressaten erkennbare kommunikative Funktion erfüllt und eine inhaltlich und funktional abgeschlossene Einheit bildet."

[§] Cf. e.g. Reiss (1991), Hönl (1994).

^{**} Cf. also Nord (1999, 350 -354) and Nord (2003).

^{††} In Slovak legal language in the referring to persons masculine nouns prevail, which is why in this article we use this form.

during the drafting of the text he collaborated with a lawyer. The author of the text is not identical to its sender. The text, along with the statement to the court, was sent to the competent court by the lawyer of the accused. An important fact is that the author of the analysed legal document is not a legal expert*. The text was created based on a request made by the Zvolen district court and delivered to the accused via the competent court in Germany. The text responds to this request and its author expresses that he does not give their additional approval to the prosecution in the matter conducted by the above mentioned court. The addressees of the text are the Zvolen district court and the Higher Regional Court in Stuttgart. The recipient of the requested translation is the latter authority. The text takes the form of an official document, handwritten with neat and legible handwriting. Despite the fact that the author of the text is not a legal expert, the text uses the law terminology. In cases when the language devices are used incorrectly, the textual criterion of cohesion disrupted. The simple way of expressing the author's ideas results in a number of errors. At first sight it is apparent, that the text in question is defective and suboptimal†.

Results

Classification of Errors in the Analysed Source Text

The errors present in the examined source text were mostly of orthographic and grammatical nature.

Orthographic Errors

Capitalisation rules (1), rules for the use of diacritics (2), punctuation (3), and rules for the correct use of "y" and "i" (4) were broken by spelling errors. Writing the preposition together with the following word (5) and missing letters in words (6) represent examples of orthographic errors.

Examples:

(1)

Lower-case letters were used instead of upper-case letters in

- proper names, e.g. okrasný súd Zvolen (correct: Okrasný súd Zvolen),
- using the polite form of addressing someone, e.g. ... na vašu žiadosť (correct: ... na Vašu žiadosť).

On the contrary, in some instances an upper-case letter was used without a reason, e.g. ...okrasný súd Zvolen Vzhľadom na... (correct: Okrasný súd Zvolen vzhľadom na ...) § 31 ods. 1 Zákona ..., (correct § 31 ods. 1 zákona ...), Ďakujem (correct: ďakujem).

(2)

In many instances

- the acute accent was missing entirely, e.g. zasadu (correct: zásadu), pisali (correct: písali), vysluchu (correct: výsluchu),
- the acute accent was placed on an incorrect syllable, e.g. vydána (correct: vydaná), vyplyvá (correct: vyplýva),
- the acute accent was placed on a syllable where it should not be, e.g. súdcu (correct: sudcu),
- the caron mark was missing, e.g. so žiadosťov (correct so žiadosťou).

(3)

The failure to comply with the correct use of punctuation led to breaking of the content and formal cohesiveness of the text. The violation of coherence and cohesion was more distinctive in combination with other orthographic errors as well as grammatical errors.

Commas are absent in a lot of places in the text as well as periods and exclamation marks at the end of the sentences, or on the contrary, the comma and the period are used in places where they should not be placed, e.g. so žiadosťou ktorú pisal (correct: so žiadosťou, ktorú písal), Vážení okrasný súd Zvolen. (correct: Vážení Okrasný súd Zvolen!), som si dňa 9.1.2014 uplatnil ... (correct: som si dňa 9.1.2014 uplatnil ...).

* Tuhárska (2015, 117-145) points out the role of legal translators as active agents in the process of translation.

† With the definition by Schmitt (1999, 147) stated above the text is defective if it is suboptimal, that means in certain respect is not like an ideal text.

(4)

In the text there were various combinations of defects in the "-y/-i" distribution, e.g. *zásada špecialiti*, (correct: *zásada špeciality*), *zákonmy*, (correct: *zákonmi*), *Európský zatýkací rozkaz* (correct: *Európsky zatýkací rozkaz*).

(5)

Wrong use of preposition together with the word: *svašou žiadosťou* (correct: *s Vašou žiadosťou*).

(6)

In one instance a letter was missing from the word: *nezákoné* (correct *nezákonné*).

Grammatical Errors

The grammatical errors include incorrect phrases (1), incorrect grammatical forms (2), and syntactic errors at the sentence level or bigger units with illogical repetition of certain phrases (3).

(1)

Wrong phrases in the text disturb the cohesion of the text. Incorrect verb phrase, missing prepositions: e.g. ... *ja sa* svašou žiadosťou ... *nesuhlasim*... (correct: ... *ja s* Vašou žiadosťou ... *nesúhlasím*), ... *v štáte u* obvodu ... (correct: ... *v štáte obvodu* ...), ... *pri* prerokovaní Oberlandesgericht Stuttgart ... (correct: *na* Oberlandesgericht Stuttgart).

(2)

Incorrect grammatical forms resulting from an incorrect declension, e.g. *Okresného súdu v Lučenec* (correct: *Okresného súdu v Lučenci*).

(3)

On the sentence level, the errors included incomplete sentences or accumulation of several types of errors disturbing the compactness and comprehensibility of the sentence, e.g. *Vážený okresný súd Zvolen Vzhľadom na skutočnosť že som si dňa 9.1.2014 uplatnil zásadu špecialiti pri svojom vyluchu na okresnom súde v Lučenci* (correct: *Vážený Okresný súd Zvolen, vzhľadom na skutočnosť, že som si uplatnil zásadu špeciality na Okresnom súde v Lučenci, ...*).

Analysed Source Text and Translation

As we can see, the results of the analysis confirm that the analysed source text is defective and substandard.

Translation of the text into German required coping with the typical feature of the source text – its defectiveness. A translation requires transformation of the typical features and characteristics of the source text into the text of the target language. Most translation scholars are in favour of correcting such errors during the transfer into the target language, many even emphasize the translator's obligation to remove defects as it results from the translator's loyalty to the sender. They recommend the translator to diverge from the superior function of the original text and find a typical way for coping with translation of typical features*. However, the defenders of corrections in translation point out that this translating method does not apply to certain documents. Legal documents are definitely one of them. We define legal documents as a wide range of texts marked as documents in which it is necessary to preserve original errors in translation. Such texts are translated by legally certified translators who enclose the original text to the translation. We use legal documents for communication in the official capacity, in case of translations precisely for communication between domestic and foreign judicial authorities. These texts are of informative nature and possess the communicative function.† Another case in which source text errors are transformed into translation is the documentary type of translation‡ and the related GIGO principle.

The question asked in the introduction – whether it is necessary to keep the marker of defectiveness of the analysed source text in the target text – is legitimate. Based on the arguments provided above, the answer should certainly be positive. During the attempt to transfer the errors described in the analysis above into the target text, we inevitably encounter problems. An analysis

* Compare with e.g. Schmitt (1999,148).

† Cf. Stolze (2009, 276).

‡ Nord (e.g. 2010, 88) distinguishes the documentary and instrumental translation. This type of translation during the legal translation defend e.g. Stolze (2009, 276 et seq.), Kadrić / Kaindl / Kaiser-Cooke (2010, 172 – 173).

of the specific types of errors found in the source text has to be carried out in the context of the target language (in this case German) and other aspects have to be taken into consideration.

Based on our analysis of the defects we can conclude that the source text has not been created defective on purpose. Discovered errors do not alter the meaning of the text neither they reduce its readability. Therefore, there is no need to transfer the marker of defectiveness of the source text into the translation. This conclusion is supported by more aspects relevant from the point of view of the translation process – text type, function, purpose, language and culture pair, extra and intratextual factors pertaining to the text.* The above mentioned translation analysis deals with these aspects and in result confirms the idea that there is no need to transfer the defects of the analysed source text into the target text.

The attempt to transfer the defects above into the target text and the comparison of the relevant language means of source (Slovak) and target (German) languages have brought the following result:

The differences between the Slovak and German languages do not allow the transfer of certain types of errors into German. For example:

- the German language uses different diacritics;
- the German language follows different punctuation rules. The language asymmetry often results in the need to use different syntactic structures which also alter the use of punctuation.
- The differences between the Slovak and German languages do not allow for the transfer of the orthographic errors in the use of lower-case letters to the target text. We can see it in the following examples of noun translation between the languages in question: **okresný súd** (=Bezirksgericht) and personal noun **Okresný súd Zvolen** (=Bezirksgericht Zvolen) into German.

Based on the capitalization rules in the German language, it is legitimate to use the form **Bezirksgericht Zvolen** if there is an error in the original text (**okresný súd Zvolen**).

Equally, it is not possible to transfer grammatical errors e.g. wrong declension and forms due to the differences in declension and the lack of direct equivalence for source phrases in the target text (incorrect declension: v Lučenec; correct declension: v Lučenci – German equivalent: in Lučenec).

Conclusion

Based on the analysis of the source legal text defective in its nature, the classification of errors it contained, and taking into consideration the differences between the Slovak and German languages as well as characteristics and specifics of the legal language, function of the text and the purpose of translation, and last but not least, the theoretical solutions proposed by the theory of translation, it can be concluded that the marker of defectiveness of the source legal text is not necessary, and in many cases neither possible, to be transferred into the translation. The errors in the translation would not bear markers equivalent to those in the source text. We recommend to neutralize the translation and notify the text recipient by creating a translator's note, stating that the original text is substandard with a large number of orthographic and grammatical errors. The neutralisation procedure can be possibly generalised as a method applicable in other texts bearing defects of a similar nature.†

Based on our comparison of the defects of the analysed source text with other legal documents we have encountered in our own translation practice, we need to highlight that the method of coping with defective source text discussed in this paper is only applicable to errors whose correction does not result in a discrepancy between the text and reality. In legal translation there is a norm according to which errors regardless of their cause or origin, or the fact that such error results in a discrepancy with the reality have to be transferred into the target text. Correction is possible only if the original is corrected by the sender as requested by the translator. The translator can, in a parenthesis following the error, warn the recipient about the fact, that the error in translation is identical with the error in the original. It is necessary to apply the same procedure in case of missing text or incomplete syntactic constructions.

*Cg. e.g. Reiss (1993), Kupsch-Losereit (1999), Schreiber (1999), Nord (2010, 84 et seq.).

†The above stated restrictions are related for the texts to which are the stated results applying.

The errors in source legal texts are only one of the problems regarding translation. Specific features of translating legal documents represent another part of our research within the "From Conventions to Norms of the Translation in the Legal Discourse" project.

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