Linguocultural Factors of Legal Terms’ Translation

Summary. The article is devoted to the investigation of linguistic and cultural factors of legal terms’ translation. It was found that the translation of a legal text within two different legal systems requires from the translator: knowledge of the law of the country into/from which the document is translated; fluency in the language of translation and the language of the origin; possession of special legal terminology; understanding of national and cultural differences and features of the country for which the translation is carried out. It is proved that inaccurate, inadequate translation from one language to another creates certain obstacles in the use of a foreign language legal document. Therefore, the translation of a legal text causes many difficulties related to the originality of the legal language, linguistic and cultural differences between the language of origin and the language of translation, differences in legal systems and linguistic traditions of countries, peculiarities of different types of documents.

Keywords: legal terms, linguocultural factors, linguistic and cultural component, legal system, foreign legal reality.

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Formulation of the problem. In each culture, the law represents different ways of thinking, determined by socio-cultural and political contexts in which it is used and reflected through the system of law, linguistics, change in society. Legal systems are formed in different cultural contexts and largely reflect the political history of each country, the legal discourse is determined by the cultural conditions arising from it.

Analysis of recent research and publications. Recently, the study of language in its interaction with culture has become very relevant. Research has shown that certain fragments of reality, connections and relationships are reflected in language as a social phenomenon. An example of this is the language of law. Such scientists as V. Bigun [3], I. Sapovsky [8], S. Snigur [9], N. Shchepotina [11] and others studied this problem.

Selection of previously unsolved parts of the overall problem. Linguists study the structural and semantic features of legal terms, their etymology, formation, classification, offer the first developments in the translation of legal terms, but this phenomenon of language is not yet fully studied in terms of translation from the point of linguoculturology.

The purpose of the article. The main purpose of this work is to investigate the peculiarities of linguocultural factors of legal terms’ translation.
lead to disagreements and confusion related to legal concepts, as they come from different hermeneutic traditions. We can assume that legal language, as a cultural phenomenon, is subject to different interpretations and semantic nuances.

The relationship between language and culture, between the speaker and the sociolinguistic community should be considered in both linguistic and pragmatic analysis of legal texts. Any translator must pay special attention to what constitutes the legal culture of a nation in order to properly understand the linguistic "nuances" arising from legal discourses.

Legal texts, regardless of the language taken into account, follow specific terminology and must meet legal standards, and therefore are characterized by a number of phenomena specific to this type of language. In addition, they are characterized by linguistic phenomena, and even if they belong to legal language, they are, however, language-specific depending on the historical and cultural factors from which they developed.

Legal terminology as a set of names of legal phenomena and concepts that function in the linguistic and legal spheres of legislation, business documentation and legal sciences, is a large and extremely important fragment of the literary dictionary of any national language in terms of its socio-communicative and informative significance.

Attention to the language of law, legal terminology and its functioning – is a sign of the level of development of the constitutional state, nation, its consciousness (or rather – legal consciousness), national, spiritual culture in its various manifestations: legal, political, linguistic, intellectual [1, p. 52].

It is known that legal translation is considered one of the most difficult types of special translation. Texts on jurisprudence and law are created in one legal system, which has its own legal concepts and wording, and the translation of these texts is intended for use in another legal system to their legal concepts and terms. Unlike the terms of technical sciences, legal terms are abstract concepts closely related to the legal system of the state. According to researchers of the features of legal translation, the main difficulty of this type of translation is the lack of corresponding terminological equivalents in languages, or terminological incongruency, which requires constant comparison of the legal system of the target language with the legal system of the language of origin [12; 13].

Terminological inconsistencies and differences of different legal systems pose a "difficult task for the translator to build the necessary equivalents in the minds of Ukrainian readers" [4, p. 149].

Terminological inequivalence of different legal systems may be conditioned by the presence in legal terms of a linguistic and cultural component, as the law apriori reflects the historical events, traditions and culture of the people. Under the linguistic and cultural component we understand a set of national-specific meanings that act as repositories of socio-cultural information. Translators, as intermediaries in interlingual and intercultural communication, must overcome cultural barriers between the target language and the language of translation.

In modern research, special emphasis is placed on the linguistic and cultural aspect of translation, which takes into account the identification of differences between the original text and the translation, due not only to the linguistic form but also to cultural factors. At the turn of the XX and XXI centuries, the scientific paradigm is changing in many linguistic sciences, and in translation theory in particular. Differences not only in languages but also in cultures, including legal, different linguistic and cultural communities, lead to interlingual and intercultural lexical lacunarity, which means "significant lack of nominative means in the linguistic picture of the world" [2, p. 38].

Thus, in the United States, judicial issues are a major part of the mass culture of this country, because the American citizen subconsciously believes in the justice and stability of his law enforcement system. We can achieve the closest and most adequate perception of another's linguistic and cultural community with the help of the relevant legal issues texts-translations. It is translation that plays the role of mediator in the process of cognition and understanding of different cultures, in the implementation of communication between them.

According to Czech linguists V. Matezius and V. Prohazka, text translation is not only a replacement of language, but also a functional replacement of cultural elements. Such a replacement cannot be complete, because the requirement that the translation of the text should be read as the original is hardly realistic, as it implies a full adaptation of the text to the norms of another culture [10, p. 183].

When translating a legal text, achieving such adequacy is possible only if the translator himself has "legal literacy", both in a foreign and native language. The accuracy of the translation of a legal term often depends on knowledge of the political and legal system of a state, elements of its power structures and institutions, as well as its history.

Correspondence of legal terminology in the context of translation means such a situation when the legal terms of the source text of the translation adequately correspond to the legal terms of the translated text and vice versa.

However, it often happens that in the legal system of one of the parties there are no institutions, concepts (doctrines) and corresponding terms that would adequately convey the relevant terminology of the legal system of another country. Such phenomena create a language barrier, also called "linguistic-ethnic", because it is not so much linguistic as ethnic. It is based on cultural differences, national psychology, other ethnic characteristics, and so on.

The linguistic-ethnic barrier divides not only those who speak different languages. Even between English and Native Americans, language misunderstandings can arise. A well-known saying, attributed to Bernard Shaw, states this fact as following: "England and America are two countries separated by a common language". Such differences have been acquired over the centuries in the development of the English language in two different historical and cultural environments.

Differences of linguistic and ethnic nature between native speakers of the foreign language and the language of the translated text can be both cultural-historical and current-action nature, which are reflected in the terminology.
The connection between culture and language is most clearly reflected in the lexical structure of language, national specificity is manifested in legal terms related to non-equivalent vocabulary, because in most cases it is about the realities inherent in a particular legal system. For example, there may be specific difficulties in conveying the meaning of terms denoting legal institutions, legal positions, categories and classifications of crimes, etc. The scientific literature has repeatedly noted the special difficulties of translating such legal terms of Anglo-Saxon law as larceny, felony, murder, misdemeanor, robbery, burglary and many others.

Thus, identical terms may have different semantic meanings and vice versa: different terms have identical meanings. Among the most typical examples of the ambiguity of identical terminology or the identity of ambiguous terms is legal terminology. For example, different terms may be used to refer to the same legal institution in the United Kingdom and the United States. For example, the British use the term “company”, while the Americans – “corporation”, meaning the same.

Scholar I. Sapovsky gives an example of the etiquette of a diplomatic protocol, which requires that during negotiations with any state the position of the authorized representative of that state be accurately transferred. Thus, in translation the term «министр закордонных справ» is not always transferred to the term "Minister for Foreign Affairs". Such translation in some of its variations is found in most English-language publications in Ukraine. The use of this term to translate the mentioned position of Minister in Ukraine is quite justified and does not cause objections. The term is also used to refer to the same official, for example, in Denmark. However, in Canada the term "Minister for External Affairs" is used, while in the United States – "State Secretary", and in the United Kingdom of Great Britain and Northern Ireland the term "Secretary for Foreign and Commonwealth Office" is used [8].

Even more attention should be paid to the translation of legal terms that have become widely used in the English-speaking world. For example, the term "attorney" can create a lot of problems for a translator. Thus, "Attorney General" in the United Kingdom means the position of Attorney General and the position of Secretary of Justice in the United States. It should be remembered that while “Minister of Justice” is widely used in English-language publications in Ukraine, this term is not recommended for the US and British Ministers of Justice. While the term "attorney" is used in most phrases to mean «адвокат», in the United States, the term “district attorney” should be translated as «окружный прокурор».

Another problem that a translator may face is the parallel official names used to denote the same phenomenon of socio-economic life. Thus, along with the official name of states and units of their administrative division, seas, etc. in everyday use there are their synonymous names. For example, in the Anglo-American literature, along with the officially accepted name of the country “Canada” its synonymous name “The Provinces” can be used.

Many problems are associated with the translation of units of administrative division. In Ukraine, such a unit of territorial division is the region. The term "oblast" is found in most English-language publications in Ukraine, which is quite justified. Although many translators prefer the term "region", the use of the term "oblast" is not excluded, as it is mentioned in most English dictionaries.

In the same context, the question arises about the expediency of translating the Transcarpathian region of Ukraine with the term "Transcarpathia". Recall that the common translation of Transnistria – "Transnistria". Given this, it would be more appropriate to transiterate Transcarpathia – "Zakarpattya", which will avoid misunderstandings. "Priorsky Krai" is transferred in parallel with the existing official names "The Maritime Province" and "Maritime Territory". Historically, the term "Short Seas" has been used to refer to the seas known separately as "The Baltic Sea" and "The White Sea".

Obviously, the translator should not lose sight of another, no less important point, namely the fact that the clarifying meaning of the term is often associated with its spelling. I. Sapovsky explains this with examples:

1) "dual monarchy" – «дualистична монархія», «The Dual Monarchy» (historical) – «Австрійська Монархія»;
2) "partition treaty" – «договір між корпораціями про розподіл прибутку чи ринку», «Partition Treaty» (historical) – «договори про розподіл іспанського спадку»;
3) "protectorate" – «опіка, захист», «Protectorate» (historical) – «Протекторат (воєнна диктатура Олівера Кромвеля)»;
4) "new order" – «нове звільнення, новий наказ», «New Order» (historical) – «Новий порядок» – окupaційний режим німечької Німеччини на захоплених нею територіях [8].

The legal aspect of the linguistic-ethnic barrier is overcome in the cooperation between lawyers and translators, who are called upon to resolve a set of subject-conceptual and semantic-terminological issues concerning the content of the relevant document.

To understand and translate such vocabulary properly, it requires extensive background knowledge, the ability to navigate in legal systems, the intricacies of the target language and the language of translation. Insufficient understanding of the meaning of key concepts in the minds of speakers of legal language can lead to misunderstandings in communication and cultural errors. Thus, in the American legal and political system, the term a lame duck, «lame-duck session», widely understood by members of the US linguistic and cultural community, is widely used. Very often in the translation of especially media texts the term is transmitted by the method of calquing as «кульгава качка», «есей кульгавих качок». Such a transfer of the image in translation not only does not reveal the meaning of the term, but also gives a distorted idea of it and the possibility of misinterpretation for the Ukrainian-speaking reader who is not very familiar with the US political system. For example, "In his last year as president, Obama faces the challenge of remaining a 'lame duck,' while the American public is focusing on who will lead the country in 2017" – «У свій останній рік на посаді президента Обама стикається з проблемою так і залишиться «кульгавою качкою», в той час, як американська
Meanwhile, the "lame duck" in the United States is traditionally called the president, whose term as head of state is nearing completion, and he does not want to be re-elected or can not. In English, this term is quite neutral and has no expressive or derogatory connotation. Americans, comparing their president to a lame duck, mean that he will most likely not pursue any large-scale projects in either domestic or foreign policy, because he simply will not have time to complete them. Of course, a more compact way of conveying the content is better when translating terms, but the translation should convey not only the external form, but also to reveal as much as possible the nuances of the meaning of the term. In this example, most likely without the interpretation or translation commentary of the term can not do to fill in the gap of different linguistic cultures gap, by which we mean a mismatched element that reflects the national and cultural specifics of a particular linguistic culture.

When translating realities, words with a linguistic and cultural component, the translator is faced with the dilemma of whether to fill the gap with a lengthy interpretation or introduction into the text of the reality of another political and legal system, transmitting it through transcription/transliteration or calquing. For example, "Hawks", that is supporters of a tough monetary policy like the legendary Paul Walker, now can not be found in the afternoon even with fire. "Janet Yellen is even a bigger pigeon than Ben Bernanke". "Yellen's last name in the United States is the Queen of Pigeons".

In the United States, hawks and doves are called supporters of a hard political course and a peaceful soft course, respectively. The relationship between culture and law is so close and complex that in order to understand the meaning of modern legal concepts and related terms, you need to explore the history of the origin and development of legal concepts and factors that influenced this process. Thus, the history of the American legal term "grandfather clause" (дідусева обмовка) – article on the qualification of literacy in the constitutions of some southern states of the United States provides a key to understanding the law and culture in the South. This stipulation gave the descendants of white free people an automatic right to participate in elections (even without a literacy check). Over time, the meaning of the term changed, acquiring a new element of meaning: the benefits associated with the duration of possession of a particular right. Then the term in this sense was borrowed from investment, international public and private law. It is in this sense that the term entered by calquing the terminology of Ukrainian private international law [5, p. 278]. Linguistic and cultural analysis of this term, studying the history of its origin, culture and history of the southern states of the United States help to understand the relationship between the different meanings of the concept and correctly interpret it in translation.

In Anglo-American linguistics, the adjective blue is often used in idioms, proverbs, and phraseologies. Some researchers believe that in English culture since the time of J. Chaucer, the colour blue symbolizes fidelity, which may be associated with the rhyme "true blue" – вірний синій / блакитний / ох істинно синій. Blue ribbons on the clothes of the bride and groom are one of the manifestations of this belief. The Anglo-American wedding tradition orders the bride to wear something old, something new, something borrowed, something blue.

The blue component is also reflected in many American legal terms. For example, the blue ribbon jury – juries, selected from the most prominent and well-educated citizens appointed by the court to address particularly important or confusing issues that require the qualified opinion of a specialist. Jurors of this composition are not invited to hear criminal cases, as this violates the right of defendants in a jury trial.

The term «blue laws» dates back to the founding of the colonies of New England, when the Puritans observed a sacred day of rest and the so-called "blue" laws forbade them to engage in certain activities on Sundays, including entertainment, sports and alcohol. Probably named so because they were originally printed on blue paper. In some US states, these laws have been repealed, but their echoes remain to this day. Yes, a number of states still ban the sale of alcohol on Sundays. An important argument against these laws in the United States is that they violate the provisions of the First Amendment to the Constitution that the government should not establish a state religion. The name of these laws is consonant with the name of the so-called "blue sky laws" – laws on investment control. The laws regulate the placement and sale of securities in the United States and are designed to protect citizens from the fraudulent actions of corporations that have nothing but "blue skies".

In addition, many American legal terms are metaphorical. And for the correct interpretation and translation of such legal terms, the translator needs to understand the specifics of the legal system. Thus, Anglo-Saxon law is based on an important principle, which is that the accused can be convicted only on the basis of admissible evidence. In American law, there is an important doctrine of "fruits of the poisonous tree" – плоди отруйного дерева, in fact, is not just a beautiful metaphor, but a rule that limits the powers of the police conducting the inquiry, as well as officials investigating criminal cases. According to the exclusionary rule, all evidence obtained in violation of the constitutional rights of the accused is excluded from the proceedings.

This kind of evidence in the legal environment is called the "fruit of the poison tree." If the confession is obtained as a result of an illegal arrest, the arrest will be a "poison tree" and the recognition will be a "fruit". It is possible to translate this terminological combination with preservation of a bright metaphor, having provided it with interpretations if necessary, or to translate neutral but as "evidence obtained illegally", having lost the cultural component in translation. A characteristic feature of law enforcement in the Anglo-Saxon legal system is the judgment by analogy with the precedent, i.e. the decision made by the judge in a similar case. A distinctive feature of the US judicial system is the commitment of judges to the observance of judicial precedents. According to researchers of the Amer-
ian legal system in the United States any court decision can become law, at least during its temporary validity. The law is what the judge claims.

Accordingly, many terminological combinations of the US criminal justice system contain an onomastic component, usually the name of the person involved in a particular case. Usually this is the so-called "landmark decision" – a "fundamentally new decision" that serves as a precedent. For example, Miranda rule, Arbtire Rights, Pafic hearing, Falconer error, Megan’s law, Brady Act and others. Such terminological combinations present certain difficulties for translation, as they sometimes have to be accompanied by explanations or interpretations. The most well-known example of such terms is the term "Miranda rule" or "Miranda warning", a well-known concept for a Ukrainian-speaking recipient and which is often found in the press, fiction or movies. The term is named after a defendant in the famous Ernesto Miranda against Arizona lawsuit and refers to the entire set of rules adopted by the US Supreme Court and aimed at eliminating illegal methods of interrogation of the arrested.

The term "Megan’s Law" refers to the law that local authorities must notify citizens that a person who has been convicted of a sex crime and has served a prison sentence lives in their area. There are many such terms in the American legal terminology system and their number is constantly replenished due to the emergence of new case law, which is not only enshrined in legal practice, but also covered in the press.

Conclusions and suggestions. In conclusion, we emphasize that to overcome the complex problem of compliance with legal terminology in the translation of international documents, lawyers and translators have several effective ways. In resolving such issues, the factor of the current formation of the Ukrainian legal language and terminology should be taken into account. It is worth mentioning the idea of “thin layers” of M. Lukash that every culture has everything to fill any cultural and linguistic gaps [6, p. 267]. A true translator must find in his native language the echoes of the great European, even world-wide cultural currents, and give them life in his own language. Since the legal system of any country is unique and cannot coincide with another, the translator can offer an accurate equivalent to convey a certain fact of foreign legal reality, which over time can be used by domestic lawyers as a term. Therefore, the need to pay special attention to the historical and political aspect of translation is beyond doubt. Everyone involved in the translation of a narrow specialization, including law, has a special responsibility for a clearer and more accurate translation of legal terms from one language to another.

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