

Linguistic and legal balance in the translation of legal terms under Algerian law التوازن اللغوي والقانوني عند ترجمة المصطلحات القانونية في القانون الجزائري

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Abstract :

In legal translation, the main challenge for any researcher is to find a new version of the same text. A seemingly impossible task given that law reflects the entire history and culture of the country. It therefore seems rare to be able to transfer exact legal terms and concepts from one legal system to another while keeping the same legal effect of the original text. The influence of French law and Islamic Law (Sharia) on Algerian law poses the problem of translating legal terms into English, which increases the challenge for the Algerian researcher.

Key words: Legal language, English language, Legal systems, Equivalence.

ملخص:

إن أكبر تحد يواجهه أي باحث في الترجمة القانونية هو محاولة إيجاد نسخة جديدة من ذات النص. وهي مهمة قد تبدو مستحيلة باعتبار أن القانون يعكس تاريخ البلد وثقافته بالكامل. لذلك، فإنه نادرا ما يتم نقل المصطلحات والمفاهيم القانونية بشكل دقيق من نظام قانوني إلى آخر مع الحفاظ على نفس الأثر القانوني للنص الأصلي. إن تأثير القانون الجزائري بالقانون الفرنسي وبأحكام الشريعة الإسلامية يطرح إشكالية ترجمة المصطلحات القانونية إلى اللغة الإنجليزية، وهو ما يرفع سقف التحدي لدى الباحث الجزائري.

الكلمات المفتاحية: ، اللغة القانونية، اللغة الإنجليزية، الأنظمة القانونية، التكافؤ.

Introduction :

'*To translate is to betray*', this expression perfectly describes the difficulty that faces any translator in the translation process. *Hermes*, the Greek god of translation, is the archetype of the good thief as he knows how to hide the traces of his crime and is gifted at lying. This myth evokes two themes in contemporary discussions on translation: 'truth' and 'fidelity'¹.

Legal translation involves the transfer of a text that relates to law from one language (source language) into another (target language). The analysis of this "discipline" and its particular interaction with law constitutes a priority to promote the quality of the Algerian research and consequently the improvement of Algerian laws.

In the contemporary world, there are three main legal systems in force: Romano-Germanic Law that draws its origins from Roman law and Germanic customs, characterized by the importance of written law from which the legal solution is derived. Common Law, which emphasizes the overriding importance of custom and relies primarily on case law precedents in the legal solution. In addition to Islamic law which is a system of religious nature and whose legal terms pose problematic issues in legal translation from a linguistic, cultural and legal point of view.

Algerian law draws its origins from French law with most of its terminology and concepts, in addition to Islamic Law particularly found in Algerian Family Code². This mix may create several confusions when translating Arabic legal terms from Algerian law, especially into English. And in the light of the linguistic transition to English that Algeria is currently experiencing, the greatest challenge of any Algerian translator/researcher/jurist is, therefore, to find an equation that connects concepts belonging to different legal systems. That is, to find the closest formula that allows to express the legal message of the source language through the terms used in the target language, while respecting the legal effect of the original text.

In this paper we will show how difficult it is to find the equivalent legal term in the translation process, using concrete examples to illustrate the issue of translating some Arabic legal terms in Algerian law. The question that arises is: Given the divergence of legal systems, are there any criteria for a proper translation of legal terms in Algerian law especially into English?

To answer this question, we are going to adopt the descriptive approach in order to observe and describe different points of view of the notion of legal language. We will also adopt the analytical approach to discuss the challenges of a proper legal translation.

This study will be divided into two parts: the first part will be focused on the particularity of legal language (1), and the second part will be intended for the problematic of equivalence in legal translation under Algerian law (2).

Section I: Particularity of legal language:

Legal language is the language used in the field of law to express legal concepts. In order to understand the challenges of an adequate legal translation, we will show the characteristics of legal language (1) and the specificity of its drafting (2).

A. Characteristics of legal language:

Legal language is the language in which the legislator formulates the law, the judge interprets the rules and makes decisions, the administration expresses itself, the jurist makes his research in

law etc. It is a language which accomplishes various tasks and within which several languages coexist; legislative, judicial, administrative, customary, contractual³. The process of legal translation creates particular difficulties for the translator due to the particularity of legal language.

Translation means transmitting a message from one text to another, from one person to another, and from one language to another⁴. It aims to create the closest possible version to the original text. In legal translation, the translator/researcher/jurist must not only be familiar with the general language of both countries but also master the legal terms and concepts of both legal systems. Legal translator is required to fully understand the original text with all its legal effects. He is required to maintain the same level of redundancy as the source text and ensure that the equivalent version is as clear as its original text⁵.

Legal language takes its specificity from its subject matter which is the law itself⁶. Law is essentially a language, sometimes oral, most often written. Over the centuries, jurists have created a specialized language⁷ allowing them to express their ideas precisely. Generally, specialized languages develop where general language is insufficient to explain or resolve a complex problem. Only legal language guarantees the uniformity of law, the regularity of decisions, and the control of justice⁸.

Legal vocabulary reflects the civilization that produced it. The more advanced a civilization, the richer, more complex, and more diverse it is⁹. The legal language lexicon is essentially made up of legal terms, that is to say words with specialized meanings and which differ from common language, even if they seem to belong to the general vocabulary. It is their use by jurists that gives them the status of 'terms', such as medical, economic, mathematical terminology¹⁰.

One of the most important characteristics of legal language is 'precision'. The language of the jurists must be extremely precise, what is not clear is not legal¹¹. Thus, legal language is distinguished from other languages by its clarity, accuracy and conciseness:¹²

- **Clarity:** Law is intended for all citizens and is created to be applied by every citizen who should know his rights and duties. Therefore, it is unacceptable to draft an obscure law.

- **Accuracy:** Every term in legal language has a legal and social meaning. An imprecise text opens the door to all kinds of interpretations that can lead to undesirable consequences.

- **Conciseness:** Each word in a legal language occupies an important place and a targeted use. In this sense, legal language, unlike that of literature, is intended to be more objective and direct, hence the need for precise words, clear sentences, and concise texts.

However, it should be noted that the legislator may use imprecise terms that lack accurate definitions. As for example legal terms such as 'النظام العام' and 'الآداب العامة' are two concepts that are not easy to define. But in fact, the ambiguity in legislative texts lies mainly in the provisions themselves, leaving the rest of the work to doctrine and judges.

B. Legal language drafting:

Legal language is characterized by its rigor and the use of a neutral and objective tone, especially in legislative texts, that is to say the way that the legislator adopts to draft a law. The law speaks in the present tense, in the masculine, and in the singular¹³.

For example:

- Art. 124 Algerian Civil Code¹⁴ states that: “Any act of any person which causes damage to another obligates the person through whose fault it occurred to compensate”.

In a legislative text, the language used by the legislator should be as clear and direct as possible. The legislative language must obey two principles that may seem contradictory. On the one hand, it must be as comprehensible for the people to whom it is addressed. On the other hand, it must be precise enough so as not to create uncertainty, which can make it scientific jargon¹⁵.

As for the judicial decisions, the judicial authority is subject to formal requirements that limit its freedom regarding the legal language used in drafting judgments and decisions. Failure to comply with these requirements may result in the nullity of these decisions. As mentioned in art. 275 of Algerian Code of Civil and Administrative Procedure¹⁶, under penalty of nullity, judgments must have the title of:

'الجمهورية الجزائرية الديمقراطية الشعبية'
باسم الشعب الجزائري'

In this why judges' decisions represent a challenge for the translator. The language used in judicial decisions has a style and characteristics that vary depending on the legal system to which they belong.

In the same context, legal languages sometimes include words from other languages, such as ancient legal terms. It is the archaism of legal language and is the result of centuries of usage and traditions which, most of the time, aim only at legal stability¹⁷. The use of such archaic terms aims to give a certain level of formality to the language they belong to. In Legal English, some jurists prefer to use ancient terms in place of new ones. For example, ‘*inquire*’ rather than ‘*ask*’ and ‘*peruse*’ rather than ‘*read*’¹⁸.

However, we must recognize today that the use of modern technical terms in legal language has become a necessity, due to technological developments to which the law must adapt. Like the new terms that have recently been included in many legal texts such as those relating to cybercrime¹⁹, we can find ‘*Computer system*’; ‘*Computer data*’; ‘*Electronic Communications*’... or, the ones related to e-commerce contracts²⁰ as ‘*Electronic-contract*’; ‘*E -consumer*’; ‘*E-supplier*’; ‘*Electronic- advertising*’ or even ‘*Start-up*’; ‘*Incubator*’; ‘*Innovative project*’²¹.

Section II: The problematic of equivalence in legal translation under Algerian law:

Legal translation requires not only linguistic equivalence, but also legal equivalence. In this section we will understand the meaning of equivalence (1) followed by the new challenge of legal translation into English in Algerian law (2).

A. Notion of equivalence:

Equivalence is a notion of translation by which the same situation found in the original text is transmitted into the target language, while using an entirely different wording or form²². It is to convey a message, whatever its form and content, from one text to another, so that it is understood by the recipient²³.

Equivalence in translation is a kind of paradox, in that the text must remain the same while becoming another text, because it has been reorganized in another form. The translated text is

therefore identical to the source text and at the same time different from it. From this perspective, translation is a form of indirect discourse, a form of discourse that speaks about someone else's discourse²⁴. This is why, in fact, a legal translator does not work with languages, but with discourses. The translator must be familiar with the different forms of legal discourse, with its terminological and syntactic subtleties, and should know the socio-cultural background that gave rise to the legal text he aims to translate²⁵.

In translation, what matters most is the "meaning", otherwise the target text risks distorting the source text. Translating a text from the source language to the target language requires a lot of work on the part of the translator to get a deep understanding of the text²⁶. The translator uses this or that notion when respecting the form of the source text becomes impossible because each language has its own code.²⁷

The main difficulty in the translation process lies in the fact that any legal text always refers to a specific legal system that is the result of historical development and, therefore, can be different from other legal systems that have undergone different developments. Since law is a social phenomenon, the legal system of the source language is closely linked to the sociocultural reality of the country in question, which often does not always correspond to the sociocultural reality of the legal system of the target language²⁸. In different legal systems, identical problems arise but these problems are solved by different means²⁹. This is why the translation of Islamic Law becomes difficult, because we are not only dealing with two different languages but also with two completely different cultures. Here, the notion of 'fidelity' in translation becomes a primary moral dimension, it is in fact a value rather than an objective criterion³⁰.

Trying to find solutions, two important theories of equivalence appeared: formal equivalence and functional equivalence. While traditional formal approach obeys faithfully to the words and phrases of the source text, modern functionalist approach emphasize the translator's freedom to adapt the translation and its degree of adequacy according to the purpose of the target text³¹. Most countries use literal or free translations, but also various ways of combining the two³².

The problem of non-equivalence arises particularly when the terms, notions and legal institutions do not exist in the legal system of the target country. As for the translation of religious terms and concepts such as Islamic Law from which Algerian Family Code is inspired. In this case, there is no equivalent in the target legal system and the term is linguistically untranslatable. For example:

Fatwa (فتوى); *Sadaq* (صداق) ; *Sharia* (شريعة) ; *Tabanni* (تبني) ; *Hadana* (حضانة);
Khitba (خطبة) ; *Kafala* (كفالة).

In this case, translators often resort to conceptual equivalence, so that the term will be translated according to its religious meaning in order to make the term understandable in other legal systems.

If we take the example of the term '*Zakat*' 'زكاة' which is the third pillar of Islam and represents the obligation of a Muslim who has wealth reaching a certain level to give part of his wealth to the poor. This term is strictly related to Islamic law and cannot be understood as it is in any other legal system.

Similarly, the notion of '*Nikah*' 'نكاح' in Islam is specifically related to Islamic religious practice and its translation into English as '*Marriage*' or into French as '*Mariage*' cannot be fully understood within any other religion or legal system. As a religious aspect of marriage, the term 'نكاح' cannot be considered a civil contract in the sense known in other legal systems.

Another example that illustrates the divergence between different translations of the same term in Islamic law: some authors³³ consider that the French translation of '*Fiqh*' and '*Mazhab*' into '*jurisprudence*' and '*doctrine*' is not accurate. The term '*Fiqh*' is translated as '*jurisprudence*' in French and '*case law*' in English. While in Arabic, 'فقه' is a legal, academic and scientific work of Muslim scholars and not necessarily jurisdictional. Whereas '*jurisprudence*' or '*case law*' is the summary of the jurisdictional practice of the supreme courts.

The term '*Mazhab*' is translated as '*doctrine*'. '*Doctrine*' is a set of legal theories and conclusions reached by law professors. However, in Islam the Arabic term 'مذهب' represents the broad outlines and trends of an entire legal school, and not a single individual.

Other authors³⁴ translate both 'مذهب' and 'فقه' into the same legal term '*Doctrine*' as a source of law, consisting essentially of the publications and works of '*juris consultes*' 'فقيه - فقهاء' (jurists whose profession is to give consultations and opinions on issues of law). And also the set of beliefs or opinions of these people.

It is clear that the transfer of religious legal terms and concepts into English or any language other than Arabic remains one of the most problematic issue in legal translation worldwide and what accentuates the problem is the difficulty of unifying the translation of these terms.

B. Transfer of legal terms into English in Algerian law:

Algerian law is characterized by its linguistic duality, which results from the use of Arabic and French language. Paradoxically, while judiciary power must use the Arabic language in judicial decisions under penalty of nullity (art. 8 C.C.A.P.), laws emanating from the legislative and executive powers are issued in two languages, Arabic and French, including the constitution³⁵.

From a legal point of view, the pronounced impact of French law on Algerian law makes that legal texts in Algerian law, whose equivalent in French is very accessible, do not really create a problem in translation into French, especially that they are set by the legislator in both languages (Arabic and French)³⁶. The problem arises when it comes to translate legal texts from Algerian law into English.

As Algerian law is derived from French law which belongs to Romano-Germanic family, translating a legal text in Algerian law from Arabic into English or from English into Arabic involves moving from Romano-Germanic Law to Common Law and vice versa.

This requires the Algerian translator/researcher/jurist to reconcile the legal principles, terms and notions of the two legal systems which are often very far apart legally and structurally. In this contrast, the translator must be vigilant to choose the right legal term and notion, as closely as possible to the source text.

The objective of legal translation is to achieve the highest possible degree of equivalence between the source text and the target text. The degree of equivalence between the two texts

therefore becomes the main criterion for a successful translation. The total or partial success of legal translation depends on the translator.

The dissimilarities in legal provisions between different legal systems can make legal translation from Arabic into English or from English into Arabic dangerous. Therefore, it is necessary for the Algerian translator/researcher/jurist to use correct, precise, and appropriate legal terms to avoid an erroneous translation based on erroneous legal concepts.

Equivalence is not a question of reproducing a text that would be strictly identical to the source text, but of transposing to the target text the legal effect intended by the source text, according to the country concerned. In the absence of perfect equivalence between two different legal systems, the translator must be able to compare and transcribe as a whole and not word for word the concepts of the legal systems with which he is confronted³⁷.

Here are some Arabic legal terms from Algerian law derived from French law, and whose translation into English creates confusion between translating the term literally as it is in French law or finding its equivalent in Common Law:

In Algerian law the term 'النظام العام' refers to a set of mandatory rules that no one can deviate from, which concern the organization of the country and the essential rights and freedoms of each individual. The term '*Ordre public*' is the French translation of the Arabic term.

In Common Law we can find two legal terms referring to the Arabic notion of 'النظام العام': '*Public order*' and '*Public policy*' and, regardless of their ambiguity, both of these concepts are close to the Arabic term. Which raises the question of the extent of their use when translating Arabic legal terms from Algerian law into English. And whether we can be satisfied with a literal translation of the French term "*Ordre public*" which is '*Public order*', or should we adapt the term "*public policy*" used in Common Law?

Another legal term that creates confusion is the Arabic legal term 'المحل' which is an element of the contract in Algerian law. Should we use the literal translation of the French version '*Objet*' which give '*Object*', or use the term '*consideration*' as known in Common law?

There are many legal terms in Algerian law that create both linguistic and legal confusion when transferred into English, hence the need of a unified terminology in Arabic- French – English.

Conclusion:

Translation is, first, about collecting correct information. Errors in legal translation can have serious consequences on the credibility of the legal research or even more so on the rights of individuals, as it involves the translation of legal documents. Adapting a foreign document to the Algerian legal system is not always possible. Otherwise, a mistranslation could make a document meaningless.

The aim of legal translation is to obtain an equivalent text in another language and not an identical one. However, it is absolutely necessary for the Algerian translator/researcher/jurist to take into account the divergence of the different legal systems. As we have seen in this paper, some legal terms remain untranslatable due to the impossibility of finding their equivalent in the target language, even conceptually, as is the case with terms derived from Islamic law.

There are no specific criteria for a perfect legal translation, but the more the legal identity of the source text is respected, the more accurate the translation will be. The key to successful legal translation lies primarily in the study of foreign legal systems, with all their linguistic, cultural and historical aspects. Legal translation is a responsibility of Algerian translators, researchers, and jurists to conduct in-depth research on both Algerian and foreign legal terminology, as well as comparative legal systems, in order to achieve a compliant legal translation.

A unified dictionary (Arabic - French - English) in legal translation would be a solution to reduce terminology conflicts in Algerian law, especially in English.

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⁶ Abdelkarim EL AMARI, *The Expression of Law (in Arabic, French and English) and the Problems of Translation: the Case of Civil Law*, Doctoral Thesis in Linguistics, Paul Verlaine University - Metz, 2001,p. 17.

⁷ The language of speciality can be defined as a sublanguage or subset of the general language, but which is different by its lexical particularities. That is to say a set of technical terms exclusive to a given field, or semiotic terms, such as mathematical signs or others. Abdelkarim EL AMARI, op. cit. , p. 6.

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¹¹ Jean-Claude GEMAR, *The Foundations of the Language of Law as a Specialized Language*, op. cit., p. 722.

¹² Abdelkarim EL AMARI, op. cit.,p. 18.

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See also art. 276 which specifies the information that the judgment must contain.

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- ³⁷ The History of Legal Translation [Online] <https://www.ae-traduction.com/articles/l-histoire-de-la-traduction-juridique> Access 21/03/2025.