

Professional Translator vs. Translating Islamic Law

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Abstract:

Translation is one of the most important field of interdisciplinary inquiry that involves a number of subject-matters such as: economy, law, commerce, didactics, etc. for instance legal translation can tackle some sub-branches of law such as Islamic law which refers to the study of the law in Islam. Islamic law is called in Arabic “*al fikh al-islami*”. The question raised now is: to what extent can a professional translator translate Islamic Law?

Key words: Professional; Translator; Islamic Law; Legal; *Fikh*.

Sharia refers to the divine law itself; *fikh* denotes the human interpretation of the divine commands. it constitutes the discipline of deriving and formulating positive law in a number of branches called (*furu*). Literally, the word *fikh* is an Arabic term meaning "deep understanding" or "full comprehension". Technically, it refers to the science of Islamic law extracted from detailed Islamic sources (which are studied in the principles of Islamic jurisprudence). The process of gaining knowledge of Islam through jurisprudence, and the body of legal advisements so derived, is known as *fiqh*.¹

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Paul Ricoeur (2004) argues that translation has two meanings. The authentic meaning, which was used by Antoine Berman in his book named “*L’épreuve de l’étranger*”, means to transfer a linguistic message from one language to another. It takes into consideration languages diversity.

In its wide meaning, translation means interpretation of meaning within a given language. It is mentioned by George Steiner in “*After Babel*” in which he focuses on content and concluded his speech with: “understanding is translation”.²

Most importantly, the meaning is the core of translation and the crucial factor that must be emphasized. Otherwise, it will be no more than “*transcodage*”. At this point, legal translation requires interpretation for “*ascertaining the meaning of statute, will, contract, or any written document*”.³

Translating a legal text is a hard task that carries out a great liability upon the translator. This difficulty lies in two spheres. The first is pertaining to translator proficiency or competence, because legal translation is not easy to reach without possessing cognitive knowledge about legal issues. Hence, legal translator must reproduce the meaning into another language using specific legal terms and expressions.

The second is concerned with law drafting which is presumed to be done genuinely by law drafting experts. Sometimes, legal translator finds himself in a dilemma because of erroneous or ambiguous statutes.

In this issue, we can find many illustrations in private or public law, whether local or international. For this reason, drafting treaties, in a clear way, is very important for states and organizations in order to avoid disputes which may arise because of bad treaty drafting.

As far as our law is concerned, there are many illustrations that show bad law drafting and the difference between Arabic texts and French ones. In this context, Ali Ali Suleiman mentioned them in his well known book “General theory of obligations in Algerian civil law”⁴, afterwards, he gathered them in a specific book entitled “necessity to review Algerian civil law”.

Legal translation as typical issue is still a matter of a big discussion. Some experts such as Michel Sparer (2002), linguist and lawyer, and Jean- Claude (1988), professor and researcher in legal translation, argue that not every bilingual lawyer is able achieve a professional legal translation. Translator as well cannot provide a good legal translation without having the remotest idea about legal field. Judith Lavoie (2007) shares the same idea. She emphasizes that we must *implant the taste, love and pleasure of legal translation into students' minds* in order to encourage them to be interested in this kind of specialized translation.

It is immaterial, according to the author, to interfere into too much details and complexities of translation study field, and provide further essential notions to get a common vision that enables them to *understand everything, but not to*

know everything. When we understand such a field, she added, we can appreciate it because the worry and doubt which usually occurs at the beginning is a result of fear from the unknown which in return give up knowledge pleasure. If the student discovers that he likes this field, he will *suomoto* find out means of specialization, as to attend a legal lecture or to receive training in the field ⁵

In the Light of what have been said above, is it possible for a translator to do legal translation in the domain of Islamic law? There is no doubt that Islamic law can be translated if there is a strong will; however, it is not an easy task. In fact, understanding Islamic law needs specific scientific requirements. The major ones are as follows:

- a. To master the classical Arabic and to have a background about the Islamic culture.
- b. To have written literature about Islamic jurisprudence, such as “Usul-alfiqh” by Abdalwahab khallaf and “Al wajiz fi usul- alfiqh” by Abal karim zaidan which are recent and simplified books, to understand the general rules and principles governing Islamic law, and to get the spirit of Islamic legislation. This latter becomes a separate science which is called “Makasid *a-Sharia*”.
- c. To have references about Islamic legal history to:
 - study the practice of injunctions of *Quran and Sunna* through the history of Prophet Muhammad “blessing and peace be upon him” and his companions who acknowledge the spirit of *Sharia*.

- know different schools of Islamic law, as Hanafi, Maliki, Shafii, and Hanbali schools, etc.
- have general idea about legal maxims which are called “kawaiid fikhia”, that make global understanding of Islamic legal schools.

Actually, documentary and terminological searches, through books, specialized magazines, encyclopedias, internet, and the like, can help the translator to assimilate the meaning of structures and rewrite it in the target language. However, it is not enough to consider them as definite references, but he has also to get in touch with some expert in Islamic law to seek confirmation and orientation. Receiving courses and training in this field are worthy as well.

Through my personal experience, I came across some mistakes in a particular Islamic website ⁶ when they monstion the names ef two authors of zaidi school (It belongs to shiit trend). It is said that the author of “*al bahr a-zakhar*” is *Ahmad ibn kasim al insi*, instead of *ahmad ibn yahia al-murtadha*. On the contrary, it is mentied that the author of “*a-ttaj al-mudhahab*” is latter, while he is the former (this imformation is comfirmed by Dar al kitab al islami edition).

This example aims to demystify the importance of Islamic knowledge to legal translator. Word “wajib” means literally compulsory”. According to hanafi school, its technical definition means a judgment “*hukm*” which is upper than “Sunna” and lower than “Fardh”. Whereas the other three sunni schools consider it as a synonym of fardh. In general,

this is a brief explanation. (For further reading, Islamic jurisprudence's books can provide deeper explanation).

At the end, Islamic law can be translated if the highly qualified translator has a strong willingness; however, it could be well-done and more practical to do it as a team-work.

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5. Judith Lavoie, *Faut-il être juriste ou traducteur pour traduire le droit*, Meta, Volume 48, Numéro 3, Septembre 2003, p. 393-401.
6. ww.shamela.ws (this information was found “through downloading”, and later on was omitted. Then, afterwards, I found another mistake regarding “rawda al Bahia” in which was mentioned a wrong author).