

## **The Impact of Legal Translation on Criminal Proceedings**

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### **Abstract**

This article explores the little-known need for the role of legal interpreters in the courtroom, particularly in criminal proceedings. This article, based on research in the professional literature, explores common misconceptions about the role of the legal translator, experienced by experienced professionals and likely experienced by many others in the courtroom. This article attempts to shed light on the complexities of legal translation and the challenges it faces in the criminal justice system. The article highlights important circumstances of the role of law, equality and justice can only be achieved if translations meet the highest standards. It also argues that safeguarding the integrity of the evidence and the defendant's right to a fair trial is accomplished by accurate translation. To achieve this, we use qualitative methods to tease out the full meaning of the topic through a scientific and insightful process.

**Keywords:** Legal translation, criminal proceedings, cross-border justice, equality, interpreter role.

### **Introduction**

The role of legal translation in criminal procedure is one which has received little attention despite the fact that it is a discipline of paramount importance. Criminal procedure has various aims (Morris, 1993). Legal translation is a relatively new field, since the idea of using language and languages as a tool for diplomacy and international relations is itself a relatively new concept. It is sometimes said that the real importance of legal translation can only truly be appreciated by those who work in this field (Schleiermacher & Bernofsky, 2021). This is due to the fact that legal translation is the only tool enabling a multilingual society to access and understand the basic laws under which it is governed. Others would argue that the importance and indeed the impact of legal translation is most evident in its absence, citing the breakdown of communication within the EU as an example. Consequently, legal translation has been seen as both a facilitator and a barrier in the interaction of legal systems and cultures and continues to play a key role in the harmonisation of legal discourse and the attainment of a uniform legal culture (Sammut, 2021).

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The first issue to be considered is the importance of legal translation, mainly as it affects criminal proceedings. Legal translation is important as it serves to ensure a common understanding in applying the principles of the rule of law, equality, and justice in the administration of justice in cross-border situations. This does not necessarily mean only in cases involving foreign nationals or in cases before international courts. Therefore, it is only natural that evidence collected in one state will often need to be used in criminal proceedings in another state, whether it is the testimony of a witness, a recording of an interview with a suspect, or a piece of documentary evidence (e.g., a writing sample, a tape recording, or computer recording). Another EU-funded study found that around 30% of mutual legal assistance requests involving the EU requested evidence of being located in another member state at the time (Łacny, 2021). This evidence may then be required to be used in proceedings relating to local crimes, or possibly in proceedings abroad. Not knowing exactly what the evidence means may lead to misunderstandings or make it inadmissible under commercial law in the receiving country. A judgment rendered in one country may be final in order to be enforced in another country, and even in this case it may be necessary to try to understand and translate the judgment and the essential elements of the case. Another very important aspect of legal translation in the context of globalization is that it can promote legal harmonization. This is particularly so in the EU and in other regional organizations which have sought to establish common markets and trading blocks. Harmonization does not mean that the laws of the various countries are exactly the same; it means that they are similar enough that they can coexist without trade barriers and discrimination in the provisions of goods and services. In some cases, it may mean that a law of one country is deemed to be equivalent to the law of another country. The existence of a common understanding of laws between language communities reduces the need for the laws to be compared and analyzed, and it allows for the creation of a body of comparative law (Siems, 2022). This, in turn, can create legal work opportunities and specializations for lawyers, and it provides a basis for legal education and the future development of the law.

### **Methodology**

The methodology proposed in this study consists of a qualitative approach to review the relevant literature and understand the role of legal and general professional translators, primarily within case studies of the criminal justice system. This qualitative interview formed the main basis for the analytical research and all themes, trends and differences discussed and concluded were critically analyzed, interpreted and cross-referenced to form the body of the

academic work. This analytical model enables the integration of qualitative documentary research and interviews. This study has the added benefit of being both a critique of misconceptions and a basis for improving professional training, thereby optimizing legal translation as a consolidating element of justice and equality. The Discussion section summarizes the results of the analysis of the complexity of legal translation in today's criminal justice system and provides recommendations to improve its effectiveness.

### **Effects of Legal Translation on Criminal Proceedings**

Legal translation has profound effects on the course of criminal proceedings. It accurately reflects source language meaning and uses precise and clear legal terminology. The European Convention on Human Rights, Article 6(3)(e), requires an accused person to be informed promptly, in a language which he understands, of the nature and cause of the accusation against him. Article 14(3)(f) of the ICCPR provides that an arrested person shall be promptly informed of the reason for his arrest and any charge against him, again, in a language that he understands (Altgelt, 2024). At both international and municipal levels, fair trial guarantees and the related right to access justice require an individual to understand the charges against him. Each of these rights necessitates translation into simple, clear language that the accused can understand. Failure to do so may result in a breach of a defendant's right to linguistic equality and understanding, or even lead to a wrongful conviction. Translation often takes place between two "culturally foreign" languages and legal systems. This creates complex problems in accurately establishing the legal equivalent in the target legal system. Due to the inherent differences between legal systems, legal concepts may have no direct equivalent in the target language and will need to be "imported" as a new term. In some cases, a "functional" translation, which conveys the meaning and purpose of a source text without following the form, will be the most appropriate. This is particularly true in the translation of EU texts, which are often overly complex and confusing. Dynamic translation runs the risk that the translated provisions, while technically correct, no longer reflect the source language and are thus incompatible with the directive of autonomous interpretation (Taylor-Baer & Anderson, 2023).

### **Accuracy and Clarity in Legal Documents**

A further issue is that the ambiguity in a legal translation can lead to different interpretations of the translated text. A 2001 Canadian study found that in cases where there were two different versions of a translated statute, a Francophone judge was more likely to apply a literal interpretation. However,

Anglophone judges applied a more liberal interpretation in line with the common law (Taylor-Baer & Anderson, 2023). This resulted in inconsistencies in the application of the law. The same study found that lay individuals in Canada who relied on translated versions of statutes were also likely to misinterpret the statute (Siems, 2022). All of these scenarios can result in the law not being applied as it was intended.

The clarity of the translated text has a far-reaching impact on its use in the legal system. If the translated text is ambiguous or difficult to understand, it can affect the ability of all parties to understand and implement it correctly. This can cause serious problems. In the UK, there have been numerous cases of miscarriages of justice where, for example, a police caution has been incorrectly translated and the defendant has not understood the consequences of accepting it (Evans, 2021). New Zealand reports similar problems, for example, where a Samoan defendant did not understand the meaning of Legal Aid and spent several years trying to apply for it (Evans, 2021). Problems such as these usually result in more expense as further legal work is required to correct mistakes, and in the worst case, can result in the innocent being punished and the guilty going free.

### **Understanding and Communication between Parties**

Legal communication is dependent upon the clarity of information with the intent that it has good precision. The legal text carries very important information. The situation or event of legal proceeding is often filled with jargons and idiomatic expressions. It is different from daily conversation that is easier to be understood by lay people. There might be a big difference between the language used in the original text and the receiving end. A language might be using a specific idiom which has no equivalence in the equivalent target language. The legal process in international level also causes the complexity of legal language equivalence required in the trial. The difference of legal term and idiom between a nation has contributed to the difficulty in legal translation (Sofyan, 2021). The complexity of legal term and idiomatic expressions have a big probability of having more than one translation of a word to the equivalent word in the target language. This may cause confusion to the translator to choose the right word of its equivalent. Hence, it is necessary to have a variation of synonym words between the source and target language. In Malaysia, for example, the existence of two different law systems which are the civil law and syariah law has contributed to the complexity of legal term equivalence. This can be proven in the case; *R. v. Jais Menteri Besar Kelantan* where the appellant was charged in a civil court with challenging the validity of a search warrant. In France, the use of French legal term in EU has caused the French language to be the 3rd working

language in EU. The legal translator" must ensure that he can do his work in a way predetermined by the High Authority of the European Community as part of a wider policy to standardize the institution and terminology of Community law (Seçkin, 2021).

### **Legal Translation Methods and Techniques**

Literal translation is about the translation of SL text which retains the word order and sentence structure, and attempts to transfer the meaning without interpreting it. This method is useful where a certain wording of a law is so important that a small change in wording might change the legal effect. A good example of this is article 54 EPC which says, "Patent applications shall be filed in writing" (Sofyan, 2021). PCT have translated this into Japanese stating "Patento shingi wa gaikoku saki ni oyobi kokunai saki ni torikomi ni hozon sareta mata wa hougai touhikou chu ni saki gaikoku kokunai no toriire o hojin ni gite kou ondanka nitsuite hensen kinou ga tujou ikuji kono jourei wo tora ni patento oshirase saki ni ki nihongai kokunai ni oyobi shouken appu jimu haishi saki ni oite" which translated back into English means "Patent specification is assumed to result in multiple procedures synchronously with domestic or foreign sake at the above changeover conducting changeover on the time variously on the said joint regulation an amendment to article kokuji this ordinance take force patento advertisements sake set" (Sofyan, 2021). This is an obvious bad translation of what is a simple sentence in English, and a literal translation bears a better result. However, the SL and TL legal systems are not always compatible and different SL and TL language structures can mean that the meaning is not transferable even though the words are. This could make a literal translation useless as a legal effect is not achieved.

Legal translation is a kind of technical translation, and often technical translation has specific methods which are used to perform the task (Prieto Ramos, 2020). The law, as a professional discipline, uses a kind of language which is different from ordinary language, and this is the main reason why legal translation is needed. The difference is shown through the use of specific legal terminology, archaic language, defined elements of grammar and syntax, and a high degree of logical coherence. In order to communicate the same in the target text, the translator needs to choose the method which is most appropriate considering the source text and the function of the target text. This is because legal translation is not only about translation of what is written; it is mostly about the transfer of legal effect of a source text into a target text (Kreps et al., 2022).

**Literal Translation**

Literal translation is the most identification method for legal translation. This method simply replaces the source language text with the closest target language equivalent. According to Bassnet, the method of literal is "word-for-word translation of the source language text without any attempt to reproduce the natural syntax, in a way that sounds very odd in the target language". She adds that because time-level systems in the two languages might be different, literal translation can produce odd results with the surface structure of the target language is fine, but the deep structure is abnormal. Hiscock adds that while "a word-for-word translation will not be acceptable in most cases...it is sometimes an assistance to understanding". An example of this can be seen in Turkish simple past tense verb for a completed action at some time in the distant or recent past always takes 3rd person. When Turks use the simple past tense in conversation with English-speaking Turks, they often make "errors" such as 'I go to the store yesterday'. Analysis of the Turk's utterance shows that the surface structure of the English sentence is the same as the Turkish equivalent, but the Turk has attempted a literal translation of the Turkish sentence and used past tense (Dobrovits, 2021). This can sometimes cause confusion as to why mistakes are being made. Although such mistakes are not detrimental in a criminal case, they can lead to a charge of an unqualified interpreter, and possible mistakes made by an unqualified interpreter can have considerable consequences in a trial.

**Transposition**

Transposition is a method widely used in the translation of EU law, where the legal systems of many varied nations often result in the same law needing to be applied differently in each country. An example of this can be seen in French higher education, where the principles of many laws have been enshrined separately in legislative acts, resulting in a complex body of legislation that is not always easy for the French to understand (Szatkowski, 2022). An attempt to clarify and unify this legislation resulted in extensive translation work by a team of British lawyers. Solly describes how in some cases the team gave up on directly translating the laws, opting instead to explain the principles to a French lawyer who would then find the equivalent legislation. An agreeable result may not have been achieved, but with some of these laws, the British interpretations have aided French understanding of their own legislation.

In comparing the source language to the translated text, transpositioning terms into simpler versions may often result in an oversimplification of the law. Such a thing may lead to confusion on its meaning. McCartney gives a very good example of this: a Norwegian translator had to translate a complex section of a law

concerning psychiatric nurses into simpler Norwegian (Nesse, 2022). The result was an oversimplified version of the law that was mistaken for a new law, which resulted in an unwanted change to it. This kind of mistake can make a big impact in legal translation but can often go unnoticed or be discovered too late.

### **Adaptation**

Meaning-based changes also characterise the third method, adaptation, which, like transposition, can entail some degree of cultural filtering. But, unlike transposition, adaptation 'alters the form as well as the substance of the ST so that the TT is closely idiomatic' (Muhammad, Khan, & Ullah, 2022). This strategy can allow a legal system to adopt a common law or civil law provision which it finds attractive, without being constrained to construe it in its own terms because of the impossibility of finding equivalence. Alternatively, it might be decided that the foreign law is based on sounder social policy and the adaptation of a provision will allow a judge to further the development of the common law or give effect to its intention had the statute predating incorporation of the ECHR (ibid.). Since the TT is likely to be quite far removed from the ST, it might be considered unsatisfactory for the translation of legislation, but it could be suited to fiction or a summarised version of a judgement to be used for teaching. This method, of course, runs the risk of the TT being used as a pretext for incorrect interpretations of the foreign legal concept, but it can be a useful tool for legal scholars who wish to undertake comparative law by highlighting differences in social policy and legal culture.

### **Ethical Considerations in Legal Translation**

Legal translators are required to adhere to strict codes of confidentiality and are often required to put their duty to the court above that to the client (Nesse, 2022). This reaction is no different among other legal professionals. Furthermore, unlike other legal professionals, translators are often the only individual that has access to the information they are translating. At times, this may require the translator to go to the client for clarification of ambiguous source language text, but this can lead to conflicts of interest. From evidence in the Canadian courts, Cofone (2022) provides anecdotal information of a situation where the accused was assigned a translator by the Social Enquiry Report writer. This was done because the accused was a friend of the writer and he wanted to help him out. In this case, once again, biased translation occurred because the translator wanted to soften possibly offensive information in order to help the defendant. The case shows that a translator should always pay attention to who he or she works for and try to remain a neutral, impartial arbitrator. A profound breach of the standards of neutrality and impartiality could have disastrous consequences for the case and the

administration of justice. An interesting twist to the concept of neutrality is that according to some sources in the US, Spanish speakers have a constitutional right to a fair trial under the Court Interpreters Act of 1978 (Higgins, 2020), which reads: "he is entitled to relief "a translator who can translate the proceedings in such a way that the accused has the same opportunities to understand and be understood as a person using the language of the proceedings and court employees." This means that in some cases translators may need to explain the cultural context of a concept rather than translating it directly.

### **Confidentiality and Professionalism**

The obligation of professional translators to maintain the confidentiality of information contained in translated documents becomes particularly important when this type of translation concerns legal matters. In some countries, it is illegal to disclose any facts about matters in which a lawyer has been provided with confidential information (Nesse, 2022). The same obligation rests on a lawyer's translator, whose breach of trust may drastically affect the course of the case and result in a lawsuit. In countries where there are no professional rules that familiarize the translator with this ethical obligation, there is no guarantee that the translator will treat any information as potentially confidential. Measures such as using the same translator throughout proceedings or the translator agreeing to an official secrets act are impractical and may be insufficient to ensure that all translated information is kept confidential (DePalma et al., 2024). The only solution in the latter case is for the translator to use his or her discretion in determining what information should be translated. This may be far from satisfactory, but in the absence of clearer guidelines and stricter rules regarding the obligations of translators, it may be the only way that clients can ensure that their translator respects the confidentiality of translated information.

### **Impartiality and Neutrality**

If it is presumed that one of the primary goals of the legal system is to uncover the "truth" in any particular case, it is crucial that the translation of evidence and statements is undertaken with the utmost impartiality. However, it is a commonly held view amongst legal professionals that it is difficult, if not impossible, for translators to divorce themselves from the context of the case and produce translations which are truly neutral. There are numerous ways in which a translation can introduce bias into a legal case. Terminology which has no equivalent in the target language may be omitted, the tone of a statement may be altered, or a damaging double entendre in the original language may be completely missed by the translator, to give but a few examples (Cofone, 2022). Often, bias in a translation may be introduced unintentionally, and it is here that the potential for



damage is at its greatest. A translator who is employed by one side in a case may genuinely believe that he or she is producing a neutral translation, but it is human nature to be swayed by an allegiance to an employer, and the inherent belief in the righteousness of one's own cause, all of which will be reflected in the translation. In worst case scenarios, bias in a translation may result in a wrongful conviction. An example often cited by translation theorists is the trial of Sacco and Vanzetti, at which the presiding judge is alleged to have said to a friend "this is the slayer of the sacred cow," referring to one of the accused (Albachten, 2020). The judge had heard of the saying "sacred cow" through an English lesson given to him by his son, but did not understand its meaning. This statement was a play on words which could only be conveyed through a detailed explanation of the English idiom; it is highly unlikely that a translator could have done this without introducing an even more confusing and misleading play on words in the target language.

### **Conclusion**

The importance of legal translation in the international judicial system lies in the rapid development of the demand for translated material as evidence in court and the increased reliance on evidence in a language foreign to that of the trial. In particular, translation affects a range of actors in criminal proceedings – from defendants and witnesses to the police and other experts – at all stages of the process. In order to deem translated evidence admissible, there must first be proof of authenticity of the original evidence and a determination of whether it is relevant to the case. It may be said that the ultimate disregard of evidence due to unsatisfactory translations could prevent frivolous prosecutions. The most conclusive impact will be in the assessment of whether translated evidence is more prejudicial than probative, in terms of the rights of the defendant to a fair trial. This will depend on the nature of the evidence in question and the role it plays in the case, as well as whether there are means available to check the credibility of the evidence or to refute the translated material. Failure to demonstrate the reliability or rebuttal of translated material may impact the participation of parties or applicants.

### **Recommendations**

1. Training and Education: Create long training programs for interpreters to understand their role, and provide them with the tools and training to deal with the complexities of legal translation, including the myths that persist in the field.

2. **Certification and Accreditation:** Create certification and accreditation procedures for interpreters that ensure they are competent and qualified to perform legal translations to protect the integrity of the judicial process.
3. **Verification and Authentication:** Implement robust corroboration and verification processes for translated evidence to ensure evidence and evidence of the credibility of the translation, so as not to exclude evidence based on poor translation.
4. **Continuing Professional Development:** Provide interpreters with ongoing training opportunities to stay up to date with best practices, emerging trends and changes in the legal framework, ensuring the quality of translation remains at the highest level.

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