ТЕОРЕТИЧЕСКАЯ, ПРИКЛАДНАЯ И СРАВНИТЕЛЬНО-СОПОСТАВИТЕЛЬНАЯ ЛИНГВИСТИКА / THEORETICAL, APPLIED AND COMPARATIVE LINGUISTICS

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AN ANALYSIS OF SPECIFICS OF LEGAL SYSTEMS IN TRANSLATION

Research article

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Abstract

The topic of this study is increasingly focused on the relationship between law and language, devoted to analysis of the structure of multilingual legal texts and determining features of legal systems in different countries. The relevance of the research is dictated by the necessity to systematize and combine current knowledge in order to understand a unified picture of the modern world and European space in a multinational community. The practical significance of this research is shown in use of the work in courses on the general and international law, comparative law, legal theory, intercultural communication, legal linguistics, theory and practice of translation. Materials of the study were the national reports of some EU states, international documents of Canada, New Zealand and Japan which became resources of considering the relationship between language and law and introducing concepts of monolingualism and multilingualism, legal text and legal rule. Thanks to the analysis of monolingual models and legal multilingualism of some countries, factors affecting translating were identified.

Keywords: translation of legal texts, monolingualism and multilingualism of legislative texts, legal text and legal rule, language and law, legal language and linguistic code.

АНАЛИЗ ОСОБЕННОСТЕЙ ПРАВОВЫХ СИСТЕМ ПРИ ПЕРЕВОДЕ

Научная статья

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Аннотация

Тема исследования в большей степени сконцентрирована на отношении между правом и языком, посвящена анализу структуры многоязычных юридических текстов и выделению особенностей юридических систем при переводе в разных странах. Актуальность исследования продиктована необходимостью систематизации и объединения имеющихся знаний для представления единой картины современного мирового и пространства в многонациональном сообществе. Практическая значимость исследования проявляется в использовании материала работы в курсах по общему и международному праву, сравнительному правоведению, теории права, межкультурной коммуникации, юрислингвистике, теории и практике перевода. Материалом исследования стали национальные отчеты некоторых государств ЕС, документы международного права Канады, Новой Зеландии и Японии, которые стали источником рассмотрения связи между языком и правом, введения понятия монолингвизма и мультилингвизма, юридического текста и юридического правила. В результате анализа монолингвистических моделей и юридического мультилингвизма отдельных стран установлены факторы, влияющие на перевод.

Ключевые слова: перевод юридических текстов, монолингвизм и мультилингвизм юридических текстов, юридический текст и юридическое правило, язык и право, язык права и языковой код.

Introduction

The current work belongs to the field of applied research as it is among aspects of descriptive and contrastive linguistics, translation studies, legal linguistics and partly law. The significance of the research is especially relevant to understanding the unified picture of the world, interaction and cooperation of multinational communities. The issues of multilingualism and bilingualism are discussed in countries which have two or more languages at the state level, where legislative documents are addressed to all citizens of the state. Nowadays, the translation of multilingual legal texts appears in various forums, a similar theme was chosen for the XV International Congress on Comparative Law held in Bristol in 1998. The relationship between law and language in the field of international law refers in part to Article 33 of the 1969 Vienna Convention on International Treaty Law [10]. The aim of the work is to review relevant materials for the research topic, describe, compare and contrast main features of multilingual texts and reveal relations between law and language in translating.

Research methods and principles

According to national reports of some states, the creation of laws in jurisprudence is monolingual [7]. In certain countries, legislative texts may be published in several languages in different versions and may not be authentic. In New Zealand, for example, laws are introduced in English, although Majori is also the official language of the country [8]. The multilingualism and bilingualism of English legal texts, in particular materials of international law, determined the choice of research methods.

The descriptive or descriptive-analytical methods were chosen, in which there is a synchronous analysis of textual units, followed by their consideration without defining their causal relationship as the main method of research. Thanks to the comparative method, in particular comparative-contrast analysis, the article demonstrates some specific issues of linguistic identity of legal systems of the EU, Canada, Japan and New Zealand and describes the typical features connected with monolinguistic and bilingual language structures. The structural method of research has been partially applied to stipulate the interrelation of several languages within one state's linguistic as well as legal system. The materials of the research were texts of legislative documents and texts of international documents [3], [5], [7], [10].

Main results

Comparative analysis has helped to show that monolingualism dominates at the national level, for example, in France linguistic unity is seen as an important element of national unity and identity.

From a political point of view, some categories of national monolingualism may differ. The first category is assimilation, e.g., in general education the language spoken by a smaller population will be different from the official language [2]. The second category is based on tolerance towards communities that speak another language. The third type aims to protect the cultural identity of minority languages. In this case, the state undertakes attempts and affirmative actions to prevent the disappearance of rare languages when they are assimilated into larger national language-speaking communities. For instance, there are provisions and other official documents in Great Britain which are drawn up in other languages to protect linguistic minorities [10].

From a legal point of view, specific problems relating to the translation of legal texts are usually encountered when bilingual or multilingual laws are introduced. These problems represent the relationship between language and legal issues.

The multilingualism of legal texts is supposed to be viewed from different perspectives, which are well known in contemporary legal theory. First of all, it is important to note the difference between *legal text* and *legal rule*. *Legal text* is a set of linguistic signs, which refers to a certain linguistic code and linguistic message that must be in a definite context in order to understand the intention of the legislator. *Legal rule* refers to a rule for organizing and evaluating human behaviour [1]. The process of translating a monolingual text is usually easier, unlike translating a multilingual text.

A typical example of a monolingual model of society is the linguistic unity in France, which is the result of a rather long history, a centuries-old policy pursued both by the monarchy and in the revolutionary time as well as in the democratic phase. The purpose of this law is to avoid the use of Latin in legal documents [3].

Linguistic identity is evident in the absence of dual language, when the expression will have the same meaning to both the sender and receiver of the information. When the language of the legislator is dual, different translating techniques are used. Consequently, there is no difference between a message that contains functional statements and one that includes only descriptive statements.

Monolingual legal systems separate legal language from ordinary language due to a number of circumstances. For example, Japan is a forerunner in the processes of changing laws. The updating of Japanese law has had a tremendous impact on European legal systems, particularly the French and German legal systems. These changes require equally great translations, which must take into account the cultural difference between the source language and target language. Many Japanese legal neologisms arose through the use of Chinese terms during the Meiji period of 1868−1912 [9]. Words appeared in a legal context and unknown to Japanese legal traditions were translated into Japanese creating Japanese legal neologisms and quoting legal words from Chinese translated foreign editions of legal books. Foreign legal concepts may also have been borrowed from countries where French, English and German are used.

In Germany, a similar discrepancy between legal language and source language also occurred for various historical reasons. When the legislators of the former GDR decided to create their own Civil Code, its original purpose was to eliminate all terms that belonged to the branch language of lawyers and thus to simplify terminology borrowed from the common German language. If the legal message can only be translated by means of legal texts and concepts, the linguistic code used between the government and the people is insufficient, which entails the creation of new cultural norms [7].

In these circumstances it is not easy to establish translating criteria based on the simple meaning of words, and consequently extrapolating a rule from a text requires a command of legal culture and terms.

Discussion

There are jurisdictions in the world community which are fully adapted to multilingual law. These jurisdictions may exist only in those states where several nationalities officially reside. In these states, codes of laws and other official documents are written in several languages. Consequently, the translator needs to use multiple language versions of the same text for translating purposes. In fact, the authenticity of the same law in different languages is ratified at the constitutional level, but the relation between the texts in different languages is a matter of balance.

For example, Belgium pays particular attention to achieving parity between French and Dutch. In addition to the sociolinguistic balance between the official languages, another element of separation is the proximity to the cultural roots of different legal languages. Belgium, Finland and Switzerland share common roots in civil law, although the legal concepts are expressed in different languages. For this reason, there are several problems in translating terms. When legal concepts are mentioned in a text, there are difficulties in translation. When the cultural roots of law in two or more languages are the same, the legal translation is less complicated and problems are less severe.

On the other hand, French and English texts of laws in Canada belong to legal cultures that are traditionally diverse, so connection between the linguistic structure and legal culture appears. The French versions of the Canadian laws were simply word-for-word translations of the English texts.

Sometimes such a technique is used to create a comic effect. A text in an unnatural style is usually created by lawyers who do not know the foreign language well, but who read original texts and try to translate them. In Canada, this technique is perceived to deny the principle of equality of two languages. Thus, this type is used to avoid literal translation in a legal

context for both civil and common law [4]. Both versions of the legislation must convey meaning in clear and precise language.

The distinction between bilingual legislation in Canada is noteworthy. Federal legislation is considered to be bilingual if it applies to the civil law of the province of Quebec, the common law of other provinces and must work in both legal systems. The difference between bilingual legislation and dual-jurisdictional legislation is considered as bilingual legislation [5].

A similar phenomenon exists in Belgium, but only in terms of syntax. Bilingual legal texts take into account that the Dutch language belongs to the group of Germanic languages with a linguistic structure that is not similar to the French language and therefore, Belgian laws are written in Dutch. As a rule, documents are translated by specialized governmental bodies, which may allow translating verbatim, explaining this by the fact that the text to be translated is a legal text. Problems in translating are simple when the legal text refers to subjects and objects [6].

Conclusion

Canada is one of the most successful countries in harmonizing two languages and two legal cultures. In fact, the difference between monolingualism and multilingualism can be better understood in terms of the criteria used to translate a text. Absolute monolingualism promotes a literal understanding of the text. In Canada and the EU, there are basic principles by which all legal texts are authentic. It is logical to assume that all versions are the same and convey similar rules and statements. This is a simple assumption that is contradicted by evidence that there are inconsistencies between diverse versions. When authoritative language versions of a document exist, the translator must check all versions of that document. When texts are authentic in translation, no version can dominate [10].

Moreover, any ambiguity of authentic language versions may lead to inconsistencies in the application of the law in different areas. Consequently, different versions of the same text should be compared first of all, but in practice it is extremely difficult to follow this criterion. Over time, this method has spread among lawyers as well. In Belgium, it is the duty of the translator to compare different linguistic versions of the same text. In Canada, a lawyer can be accused of negligence if he does not check both versions of a text. Hence, comparison of different linguistic texts can solve the problem of legislative multilingualism and help in translating.

Likewise, lawyers who observe the principle of language equality have fewer resources for exegetical arguments than their counterparts in the monolinguistic community. This is the reason why the latter have difficulties when deal with EU documents.

Therefore, publishing a legal text in several languages, two main aspects must be taken into account. Firstly, the legal text is a metatext created from all the language versions in which legislative acts are issued. Secondly, the legislator cannot accurately convey the meaning in words he would like when there are different versions of the same text intended for communities with various linguistic codes and significant cultural differences between the codes. In Europe, a similar phenomenon occurs with reference to legal language. These two factors lead to a change in the literal criterion of translating and cannot be used as a basic hermeneutic criterion. Thus, the translator cannot follow the intention of the legislator and accurately convey the meaning for correct understanding of the meaning of the text.

Конфликт интересов

Не указан.

Рецензия

Все статьи проходят рецензирование. Но рецензент или автор статьи предпочли не публиковать рецензию к этой статье в открытом доступе. Рецензия может быть предоставлена компетентным органам по запросу.

Conflict of Interest

None declared.

Review

All articles are peer-reviewed. But the reviewer or the author of the article chose not to publish a review of this article in the public domain. The review can be provided to the competent authorities upon request.

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