

TRANSLATING MEDIATION TERMINOLOGY IN CRIMINAL LAW FROM ENGLISH INTO ROMANIAN

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ABSTRACT. *As mediation gains more acceptance and recognition, it is essential to have precise translations of mediation terms and concepts to ensure the success of the mediation process. Translating mediation terminology in criminal law from English into Romanian requires a deep understanding of both legal systems and proficiency in both languages. Mediation terminology is often specific and technical, and it is important to find the right equivalent term in the target language to avoid ambiguity or confusion. In the context of criminal law, the translation of mediation terminology is particularly challenging as it involves concepts related to crime, punishment, and justice. The translator must be familiar with the legal frameworks of both countries and be able to accurately convey the meaning and nuances of legal terms. Additionally, the translator should be aware of any cultural or social differences between the two languages that may impact the interpretation of the terminology.*

Key-words: *terminology, criminal law, mediation, translation techniques*

REZUMAT. *Pe măsură ce medierea câștigă mai multă acceptare și recunoaștere, este esențial să existe traduceri precise ale termenilor și conceptelor de mediere pentru a asigura succesul procesului de mediere. Traducerea terminologiei de mediere în dreptul penal din engleză în română necesită o înțelegere profundă a ambelor sisteme juridice și competență în ambele limbi. Terminologia medierii este adesea specifică și tehnică și este important de identificat termenul echivalent potrivit în limba țintă pentru a evita ambiguitatea sau confuzia. În contextul dreptului penal, traducerea terminologiei de mediere este deosebit de dificilă, deoarece implică concepte legate de infracțiune, pedeapsă și justiție. Traducătorul trebuie să fie familiarizat cu cadrele legale din ambele țări și să fie capabil să transmită cu acuratețe semnificația și nuanțele termenilor juridici. În plus, traducătorul trebuie să fie conștient de orice diferențe culturale sau sociale dintre cele două limbi care ar putea afecta interpretarea terminologiei.*

Cuvintele-cheie: *terminologie, drept penal, mediere, tehnici de traducere*

Terminology is fundamental to all law and legal thinking. Many legal problems center on the issue whether *X*, a given state of facts, is *A* or *B*, alternate legal concepts. The tendency of courts in their opinions in some types of cases has been to treat the problem before them as if it were necessary to find the proper classifications for given facts, and nothing more. Having once determined that classification, deciding the issue merely requires the application of proper hornbook logic [1, p. 814]. It is not uncommon in this procedure to ignore, reject, or accept legal concepts without statement of reason. In some cases, the facts with which the court must contend do not fit very sedately into any legal concept. The practice in such a situation is to conform the facts or to treat them as if they were different from what they are - whence stem legal fictions. The court, in each instance, is applying legal categories in a particular context and is reaching a significant social or political result. Still, opinions commonly fail to indicate that any factor other than a proper respect for legal usage is involved.

The law language is highly specialized and unique used by legal professionals, including lawyers, judges, and lawmakers and its understanding is crucial for the effective functioning of the legal system that ensures clarity, consistency, and accuracy in legal proceedings. It has been shaped by centuries of legal history and practice, with its own set of rules and conventions.

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The origins of law language can be traced back to ancient civilizations such as Rome and Greece. Legal language evolved to create a formal system of rules and regulations that could be applied uniformly to society. Latin, the language of ancient Rome, was the language of law until the 18th century. Legal professionals use, nowadays, these Latin terms to convey precise meanings and to emphasize specific legal concepts. Latin terms such as "habeas corpus," "pro bono," and "quid pro quo" are commonly used in legal proceedings.

During the Middle Ages, law language was further developed through the use of canon law and the emergence of common law in England. Legal language became more standardized and formalized, and Latin continued to be used in legal documents and court proceedings.

In modern globalization context the law (legal rights) is necessary for serving its crucial purpose. After The World War II the problems of the translation of juridical texts had been discussed and analyzed by theorists, legal experts, translators, linguists. They made the conclusion that - to achieve the absolute equivalent during the translation of a juridical text is impossible, because like any translation, the translation of juridical texts presupposes the interrelation of linguistic and extralinguistic knowledge [5, p. 124].

It is generally accepted that the terminological incongruity between legal systems is the greatest challenge for legal translators. Legal translators are required to produce faithful translations; yet, the notion of faithfulness seems to be subjective and difficult to define. However, the mediation translator needs awareness of how the text functions in the source country's institutional, political, and economic context. The translator, likewise should be conducted according to the principle of providing literate rather than literal translations.

As a discipline of study, the terminology is a relative newcomer. It arose from the need to facilitate specialized communication and translation, as well as knowledge transfer between text users belonging to different language communities and of similar as well as different knowledge levels. The theoretical proposals in this field have been mostly practice-based, arising from the elaboration of glossaries, specialized dictionaries and terminological and translation resources, as claimed by **P. Faber** [3, p. 31].

Like all sciences, terminology is experiencing unprecedented development and diversification in our century, and the study of special language is becoming increasingly important. A synthesis on the evolution of terminology is presented by the researcher **M. T. Cabré**, who distinguishes four stages in the development of this discipline:

1. The origins of the discipline (1939-1960). During this period the methods of terminological activities are developed, which take into account the systemic character of the terms and the first theoretical texts of **E. Wüster and D.S. Lotte**.

2. The Structuring of the field (1960-1975). The most important contribution is found in this IT activity and the documentary techniques. The first databases appear and the first activities of international organization of terminology are observed. Terminology is beginning to have an important say in the process of standardizing a language.

3. The boom (1975-1985). Informatics continues to develop and make new contributions to the development of terminology, especially through elements of micro-informatics. Language development projects are emerging and terminology is becoming increasingly important in the process of modernizing a language and a society.

4. The expansion period (from 1985 to the present). A real language industry is developing, in which terminology occupies an important place. International cooperation is also becoming more intense the first international networks appear that group different countries with common problems. Increases the effort of standardization and linguistic arrangement [2, p. 27 - 29].

Nowadays mediation is the most grooming process applied all over the world. This may be defined as a process by which disputing parties voluntarily engage the assistance of a neutral mediator, who has no authority to make all decisions for them, but who uses certain skills to help them to resolve their dispute by negotiating agreement without adjudication. Mediation serves various purposes, including providing the opportunity for parties to define and clarify issues,

understand different perspectives, identifying interests, explore and assess possible solution, and reach mutually satisfactory agreement, when desired [4, p. 33].

In order to help us understand the process of mediation, **J.G. Merrills**, explains that the parties have to voluntarily seek for mediation or may be offered by outsiders. At the onset of the conflict, parties may now have the hope of resolving the conflict. During the mediation process, the parties in conflict are always open to the mediator's solution but are not compelled to embrace them in the long run. This helps in ensuring that the parties maintain an upper hand in the dispute for purposes of ensuring continuity in ensuring that their interests are partially met should the process fail. Should the degree of the dispute be of high sensitivity, then the mediation process will not be publicized.

There are two types of dispute resolutions. The first is by adjudication, a binding process resulting in a decision by a third party that can be achieved in two ways. First is adjudication by a public forum (courts or statutory tribunals). Second is adjudication by a private forum (arbitral tribunals). In the first method, a party raises a dispute by petitioning to the court or statutory tribunal, presided by adjudicator/s appointed by the State, for a decision. The second is by negotiations, where a reference is made to an Arbitral Tribunal consisting of person/s chosen by the parties for adjudication and decision. The adjudication process is governed by the Arbitration and Conciliation Act. The decision of the Arbitral Tribunal is based on the substantive laws, unless parties authorize the arbitral tribunal to decide the disputes. This non-binding process dependent upon the volition of parties, which if successful, does not result in a „decision”, but in a „solution” agreeable to the parties [7, p. 69].

Mediation is a voluntary process where a natural mediator attempts to help the disputing parties to reach an agreement that is acceptable to both the sides and that will bring the dispute to an early conclusion without having to go to court, as stated by S. S. Silbey [6, p. 59].

Consequently, we examined and analyzed several selected excerpts from five different mediation agreements, where numerous ways of rendering the mediation terms were deduced and determined.

1. One of the most recurrent translation techniques used in translation of terms from mediation domain is **equivalence** translation. It is the direct transfer of the source text into the target language in a grammatically and idiomatically proper way. This technique is chosen by the translator, just in case of translation a SL term with a well-known accepted term of a TL. As for example:

*The Mediator is an impartial **third party** who does not represent either of the Parties.*

*Mediatorul este o **persoană terță** imparțial care nu reprezintă niciuna dintre părți.*

In the previous examples, the highlighted term is one and the same mediation term. As we can notice, the English mediation term *third party* represents a monosemantic word, which poses only one equivalence in Romanian – *persoană terță*. In addition, the translator should pay attention when translating this mediation term, because it is a ”false friend”. The accurate translation of this term is limited to several factors: the translator’s fund of knowledge regarding the mediation domain and the experience of working in the specific domain. The knowledge base of the target and source languages is of great importance for a specialized translator, because it is impossible for a translator to perform a good and qualitative translation without the necessary specialized knowledge.

2. Another translation technique used in translating terms from mediation domain is **literal translation** or direct translation. It is the translation of text from one language to another directly, or as it is well known “word-for-word”. As we can notice from the following examples:

***By signing this Agreement**, each of the Parties acknowledges that he or she has read this Agreement and agree to proceed with the Mediation on the terms contained herein.*

***Prin semnarea acestui contract**, fiecare dintre Părți recunoaște că a citit acest contract și este de acord să continue medierea în condițiile prevăzute în acesta.*

3. A different translation technique of mediation terminology is **modulation**. This technique implies a change of perspective, modulating what has been written in order to express the same idea and preserve the meaning. Modulation is a translation technique that employs the translation of the text in a way that conforms to the natural patterns of the target language.

The Mediator will conduct the Mediation (including all preliminary steps) in the manner considered appropriate having regard to the nature and circumstances of the Dispute and the goal of an efficient and expeditious resolution of the Dispute having taken account of the views of each Party.

Procesul de mediere (inclusiv și etapele preliminare) va fi desfășurat de către mediator într-un mod adecvat, ținând cont de natura și circumstanțele litigiului și misiunea de a soluționa eficient și rapid litigiul, în conformitate cu interesul fiecărei părți.

According to the previous example provided. The translator chose and appealed to the translation of this phrase with the help of modulation, because it employs the translation of the phrase in a way that conforms to the natural patterns of the Romanian language. Therefore, the translator changed the form of the text of the sentence by introducing a semantic change but at the same time keeping the main idea of the phrase.

4. Another translation technique – **transposition**. This translation technique implies a shift from one grammatical category in the source language to another in target language.

*The parties acknowledge that **bona fide disputes and controversies** exist between them, and they desire to compromise and settle all claims and causes of action of any kind whatsoever which the parties may have arising out of the transaction or occurrence which is the subject of this litigation.*

*Părțile recunosc că între ele există **dispute și controverse de bună-credință** și doresc să compromită și să soluționeze toate pretențiile și cauzele de acțiune de orice fel pe care părțile le-ar putea avea, decurgând din tranzacția sau evenimentul care reprezintă obiectul prezentului litigiu.*

Analyzing these examples, we notice that the English terms from mediation domain *bona fide disputes* and *controversies* is translated in Romanian applying the transposition technique of translation as *dispute și controverse de bună-credință*. The translator has done a reversal of the topic of the speech parts, in our example from English the adjective and nouns were reversed into Romanian first the nouns and then the adjective. This grammatical change was necessary due to the fact that English and Romanian languages possess different grammatical structures.

5. One more translation technique noticed in the mediation terminology is **explanation**. It is often used when there is a need explain something to the TL term during the translation process. This particularity can be remarked from the following examples:

*In the presence of the mediator authorized by the **Mediator's Certificate**, the indicated parties were explained the rights and obligations related to the mediation procedure.*

*În prezența mediatorului autorizat prin **Atestatul pentru desfășurarea activității de mediator**, părților indicate li s-a explicat drepturile și obligațiile legate de procedura de mediere.*

As we can clearly remark from the above examples, the term *Mediator's Certificate* was translated by giving its explanation in Romanian: *Atestatul pentru desfășurarea activității de mediator*. Apparently, words were added in order to preserve the original meaning in English. In order to understand why the translator has chosen to give its explanation of the term, in this case employing the explication as the method of translation. While researching, we found the term *atestat de mediator* in the target language. This being said, we consider that translator applied this translation technique to clarify and make the term less confused and more clearly understandable for the target language audience. It requires more time, and the explanation may seem a bit vague and hard to understand. That's why it is necessary and advised not to apply the expansion technique when there are the accurate equivalents for the specific terms in the target language.

6. Another translation technique of mediation terms is **calque**. It represents a borrowing by which a specialized meaning of a word or phrase in one language is translated into another language by literal translation of each of the individual elements. In other words, it is also called the literal translation of a borrowed word. For instance:

*This form of **Alternative Dispute Resolution** (ADR) is intended to facilitate the prompt and amicable resolution of disputes between parties (allowing them to preserve their commercial*

relationship and to operate their commercial contracts sensibly) and to help them avoid arbitration and court proceedings which can be protracted.

Această metodă de **Soluționare Alternativă a Litigiilor (SAL)** este menită să faciliteze soluționarea promptă și pe cale amiabilă a litigiilor dintre părți (permițându-le să-și păstreze relația comercială și să își desfășoare contractele comerciale în mod rațional) și să le ajute să evite arbitrajul și procedurile judiciare care pot fi prelungite.

The English set of terms *Alternative Dispute Resolution* is translated into Romanian as *Soluționare Alternativă a Litigiilor*. All elements from the source language are literally translated in the target language. In translating the term, the word order was changed. In the translation of this set of terms the structure of the TL term imitates that of the SL terms, but grammatical slots in it are filled with TL units translating the individual meaningful unit of the SL term. All elements from the source language are literally translated in the target language. In translating the term, the word order was changed. In the translation of this set of terms the structure of the TL term imitates that of the SL terms, but grammatical slots in it are filled with TL units translating the individual meaningful unit of the SL term.

7. One more translation technique is **borrowing**. It is defined as the taking of words directly from one language into another without translation and often they pass into general usage. An eloquent example is presented below:

*When signing this Agreement, the **de facto** debt had not been paid.*

*La semnarea prezentului Acord, datoria **de facto** nu fusese plătită.*

From this example, we can remark that the term *de facto* wasn't translated at all, but was simply borrowed in Romanian. It is not difficult for a specialist to understand the term, but it is a real challenge for a non-professional in the mediation or legal domain. Once the term has international use and is understood by professionals of all nationalities, there was no need to translate it. Also, we searched in dictionaries and didn't find an equivalent, only the definition of the term *de facto*. Thus, the translator, in this case, should only study the meaning of this borrowed term from Latin.

8. The last translation technique that we are going to analyze in the following is **expansion**. It is often used when there is a need to add some additional information or explain something to the TL term during the translation process, in order to preserve the meaning. For example:

*The Parties understand that mediation constitutes **settlement discussions** and that statements made during the course of the mediation are generally inadmissible in any legal proceeding relating to the matters being mediated.*

*Părțile înțeleg că medierea constituie **o modalitate de soluționare alternativă a conflictelor pe cale amiabilă** și că declarațiile făcute de către o parte în cadrul procesului de mediere, în general, nu pot fi divulgate sau invocate în alt proces de mediere.*

According to the above examples, the English expression: *settlement discussions*, of course, cannot be translated by another translation technique, so in this context, the translator added the necessary, extra information to explain the meaning of the term. This is being said because finding a translation for the words that lack any equivalents in the target language is impossible. Otherwise, we may not render the message correctly without knowing the term, so, in such cases, translating its definition is the best option for us. But we should also take into consideration the peculiarities of the target language so that the translator should offer a correct and precise explanation and translate it by rendering its meaning, essence, and signification.

We can conclude that mediation translation has to meet the principal requirements of adequacy, accuracy, and completeness. While accuracy and completeness are mainly aimed at the form of the mediation text, adequacy refers to its content. Adequacy of the mediation translation, as we have deduced, means translating culture-specific concepts, and it is mostly achieved by following the principal rules of legal terminology in the target language.

General conclusions. Through this study, we have tried to contribute to the research of English mediation terminology, emphasizing, in particular, the translation techniques established in

the terminology of mediation in English and Romanian. Finally, we want to draw some conclusions whose mission is to systematize and ascertain or reaffirm some reflections presented in this study. As a result of the foregoing, we can draw the following conclusions:

1. Legal terminology is a field of terminology that is constantly evolving and of great interest to researchers thanks to both linguistic and extralinguistic factors. The numerous studies and assertions invoked in this paper reflect the issue of specifying and defining the term and its fundamental characteristics, further demonstrating the topicality of the mediation field and the researched topic.

2. Based on the research conducted, we are convinced that English mediation terminology, unlike the common language, is made up of specialized terms with rather limited use, these being understood and used only by specialists working in this domain.

3. The comments made on the corpus of instances taken from the Mediation Agreements allow us to draw the conclusion that equivalence, modulation, adaptation, and transposition are some of the most effective translation strategies. Considering the examples cited, we can conclude that mediation terms cannot be understood outside of their context, where they retain their proper terminological meaning, despite the fact that borrowings are not frequently used in the terminology of mediation, particularly in the terminology of the English language. The context displays the definition given to the phrase in a particular circumstance.

4. Precision in legal language is critical to ensuring that legal documents, such as contracts, wills, and court orders, are unambiguous and accurately reflect the intentions of the parties involved. Legal professionals use specific legal terms and phrases to convey precise meanings and prevent misunderstandings that may arise from the use of ordinary language.

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