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CHALLENGES IN TRANSLATING AND INTERPRETING EU ACTS IN THE FIELD OF TAXATION

ПРОБЛЕМИ ПЕРЕКЛАДУ ТА ТЛУМАЧЕННЯ АКТІВ ЄС У ГАЛУЗІ ОПОДАТКУВАННЯ

Vladyka S.A.,
orcid.org/0009-0007-3117-0714
PhD in International Law,
Associate Professor at the Chair of Foreign Languages
Educational and Scientific Institute of International Relations
of Taras Shevchenko National University of Kyiv

Being a multilingual international organization, the European Union faces various difficulties in translation and application of its constituent instruments as well as acts of secondary legislation, especially in the field of taxation. The principle of equal status for the languages of the Member States was declared when the Union was established. Legislation and documents of major public importance or interest are produced in all official languages. Legal translation plays a key role in this regard. Along with legal terminology, textual and pragmatic considerations should be taken into account. It is argued that general translation principles may be applied to legal translation only with regard to special methods and techniques. Nowadays, translator is no longer a mediator who reproduces a source text. Translators have to take into account cultural and legal context (legal system of the state, type of a legal document, legal formalities), as well as style for accuracy of the target text. Ambiguity and vagueness may result in challenges for translation, and consequently for application, as well as enforcement of tax provisions that may lead to tax avoidance and even tax evasion. Should any differences in translation and interpretation of tax rules arise within the EU, the European Court of Justice plays the key role in their settlement. With a view to overcoming tax evasion, the ECJ interprets the provisions in question in the light of the other languages and due to the context and EU legislation. Furthermore, in case of divergence the provision at issue shall be interpreted by considering its purpose and giving due consideration to the general scheme of the rules of which it forms part. Interpreted separately, tax acts suffer linguistic uncertainty.

Key words: multilingualism, legal translation, tax law, interpretation, European Union, European Court of Justice, tax evasion, tax avoidance.

Як багатомовна міжнародна організація Європейський Союз стикається з різними труднощами у разі перекладу та застосування установчих документів, а також актів вторинного законодавства, особливо у сфері оподаткування. Принцип рівного статусу мов держав-членів був проголошений під час заснування Союзу. Законодавчі акти та документи, що мають велике суспільне значення чи інтерес, представлені всіма офіційними мовами. Тому юридичний переклад має велике значення. Під час перекладу юридичних текстів, окрім юридичної термінології, слід враховувати текстуальні та прагматичні особливості. Поширеною є думка, що загальні принципи перекладу можуть застосовуватись до юридичного перекладу лише із використанням спеціальних методів і технік. У наш час перекладач – це вже не посередник, який відтворює вихідний текст. Перекладачі повинні враховувати культурний і правовий контекст (правова система держави, тип юридичного документа, юридичні формальності), а також стиль для точності перекладу. Неоднозначність і розпливчастість формулювань можуть викликати проблеми із перекладом, а отже, із застосуванням і виконанням податкових положень, що може призвести до уникнення від сплати податків і навіть ухилення від сплати. Інколи можуть виникати розбіжності в перекладі та тлумаченні податкових норм. Ключову роль у їх врегулюванні відіграє Суд ЄС. З метою подолання ухилення від сплати податків Суд ЄС тлумачить спірні положення з урахуванням текстів іншими мовами, контексту та законодавства ЄС загалом. Крім того, у разі розбіжності спірне положення має тлумачитися з урахуванням його мети та загальних правил, частиною яких воно є. Якщо податкові акти будуть тлумачитись відокремлено, можлива лінгвістична невизначеність.

Ключові слова: багатомовність, юридичний переклад, податкове право, тлумачення, Європейський Союз, Суд ЄС, уникнення, ухилення від сплати податків.

Problem statement. Plurality is a distinguishing feature of the European Union (EU), especially in the cultural, and also in the linguistic areas. One of the characteristics of the European Union is that it is multilingual. Given the equality and equivalence of all (official) languages of the Member States, there is no 'language of Europe'. Nor do the treaties provide for any jurisdiction to determine or give preferential treatment to one single language. Unique legal nature as a treaty-based organization made up of sovereign states, unprecedented legal and institutional frameworks justify linguistic pluralism and differentiate the EU from other international organizations.

According to Abraam de Swaan, '[The EU's] multilingualism is a visible and audible manifestation of the Union's respect for the equality and autonomy of the member nations' [5, p. 173]. At the same time, multilingualism results in difficulties in application of EU legal instruments. In particular, tax law is an area of legal study where legislators as well as translators face changing language and legal terms. Tax law is a dynamic branch of law. Though graphic signs may be stable, their semantic contents are constantly changing. Meaning extension and ambiguity or polysemy may be inevitable. The semantic application and extension of tax terms are in constant dispute [14, p. 35].

The principle of equal status for the languages of the Member States was declared when the Union was established. Currently the possibility of producing translations of the Treaties and secondary legislation in the official languages of the EU contributes to fulfilling objective of respecting Union's rich cultural and linguistic diversity is set forth in Article 3(3) of the Treaty on European Union. In the Charter of Fundamental Rights, legally binding since its inclusion in the Lisbon Treaty, the EU declares that it respects linguistic diversity (Article 22) and prohibits discrimination on grounds of language (Article 21). The European Court of Justice (ECJ) has stated that 'the protection of the linguistic rights and privileges of individuals is of particular importance' (case 137/84 *Mutsch* and case C-274/96 *Bickel and Franz*).

The implementation of basic EU principles of free movement of people, goods and capital, creation of common market require a great deal of legal documents to be translated. Legislation and documents of major public importance or interest are produced in all official languages. Legal translation plays a key role in this regard.

Analysis of researches. Despite its importance, legal translation has long been neglected in both translation and legal studies. Theorists consider legal translation one of multiple areas of special purpose translation. Although, a great deal of legal translations is produced every day, the literature on legal translation is meager [18, p. 107]. According to most researches in the field, legal terminology is of paramount importance. At the same time, textual and pragmatic considerations are ignored. In the past general translation theories were applied to legal translation, such as Catford's concept of situational equivalence [10, p. 33] and Nida's theory of formal correspondence [21, p. 191]. Some translators argue that general translation principles may be applied to legal translation only with regard to special methods and techniques to ensure their reliability [2, p. i], and with respect to special rules [7, p. 161].

Catford's definition of translation as "a process of substituting a text in one language for a text in another" [3, p. 1] is considered simplistic and narrow in the context of legal translation. Currently, the focus in translation theory has shifted from interlingual to cultural transfer [20, p. 31]. Nowadays translator is no longer a mediator who reproduces a source text, but an active text producer with attention attached to extralinguistic factors, communicative situation, cultural context, as well as legal subtleties and formalities of a particular document type, state, its legal system and other factors in case of legal translation.

Aim of the article. The article is aimed at determining specific characteristics of translation of tax acts in the framework of the European Union as the multilingual international organization, as well as the role of the European Court of Justice in their interpretation.

Presenting main material. Special attention should be attached to the translation of acts within the European Union as a supranational organization. Texts of EU legal instruments in languages, in

which they were adopted or translated due to enlargement, are legally equally authentic. However, the multilingual character of the European Union law plays a role in the proceedings in the sense that one or both of the parties can use foreign language versions as part of their arguments, in particular in disputes concerning taxation. Thus, the European Court of Justice is involved in multilingual interpretation. An interpretation of a provision of EU law thus involves a comparison of the different language versions (Case C.I.L.F.I.T.).

According to *Kik v OHIM case,* the language regime is often the result of difficult process aimed at achieving necessary balance between conflicting interests as well as an appropriate linguistic solution to practical difficulties [15, p. 35].

According to George Eliot, all meanings, we know, depend on the key of interpretation. The ECJ has to use one or more foreign language versions due to some doubt in order to provide interpretation of the EU tax law provisions, overcome ambiguity, unreasonableness and vagueness of national language versions of the relevant tax provisions. Marginal note 19 in the grounds for the Milk Marketing Board judgment reads as follows: 'As the Court stated in its judgment of 5 December 1967 in Case 19/67 Sociale Verzekeringsbank *v* Van tier Vecht (1967) ECR 345, the need for a uniform interpretation of Community regulations means that a particular provision should not be considered in isolation but in cases of doubt should be interpreted and applied in the light of the other languages'.

It must also be borne in mind, even where the different language versions are entirely in accord with one another, that the EU law uses terminology which is peculiar to it. Furthermore, it must be emphasized that legal concepts do not necessarily have the same meaning in the EU law and in the law of its member states.

Translators must learn to approach legal texts through a twofold lens: the linguistic and legal ones [8, p. 120]. Thus, a translator's task is to consider both the language level and the legal background. After comprehension of the source text within its legal perspective, a translator is to dispose good language proficiency in technical communication. Beyond legal awareness, the translation of legal texts requires thorough research, since legal terms often have no full equivalents. At the same time, a translator has to take into account cultural and legal context (legal system of the state, type of a legal document), as well as formulaic style for accuracy of the target text.

The idiom goes: '*Vox significant mediantibus conceptis*' (a word can only refer through a concept). Thus, to provide coherency a translator shall understand nature of legal concept. There is an opinion that when linguistic means fail to ensure the reliability of parallel texts, legal means are the last resort [18, p. 121]. However, in most cases of legal translation linguistic means do not suffice. According to some scholars, it is an undisputed fact in legal translation that "translators of legal terminology are obliged to practice comparative law" [4, p. 424; 11, p. 61]. Some experts argue that "content and scope of legal translation is about law, and essence of it is on linguistics" [12, p. 190]. For instance, in the field of taxation the very term 'taxes' is often confused with 'levies', 'charges', 'withholdings', 'duties', 'imposts'. In some EU member states, these terms have the same translation, though denoting different concepts. Terminology of tax law is so intertwined with national legal and linguistic traditions that any translation of tax terms will necessarily refer to legal background of a translator.

Tax terms are not clear in themselves. Taken out of context tax terms and concepts are ambiguous. According to Black's Law Dictionary ambiguity can be defined as 'doubtfulness; doubleness of meaning; indistinctness or uncertainty of meaning of an expression used in a written instrument' [1]. It may result in challenges for translation, and consequently for application as well as enforcement of provisions of legal instruments. Thus, due to the difficulty in using different language versions it is reasonable to go directly to the context and purpose of the legal instrument, as well as to the provisions of the EU law as a whole, with regard to the objectives thereof and to its state of evolution at the date on which the provision in question is to be applied (Case C.I.L.F.I.T.).

In the Fonden Marselisborg Lystbadehavn *case* (concerning determining scope of VAT exemptions under the Sixth Directive) the Court delivered its judgment on the basis of the purpose and aims

of the Sixth Directive. The ECJ has reiterated its well-established position that in case of divergence the provision at issue shall be interpreted by considering its purpose and giving due consideration to the general scheme of the rules of which it forms part. In Lietuvos geležinkeliai case (the Court was asked to define term 'motorized vehicle' for the purposes of determining the scope of exemptions from import duties and VAT) in the framework of multilingualism the Court applies language versions as raw material from which it construes a meaning that takes legal as well as political and social context into account. In linguistic terms, the ECJ in fact resolved a meaning conflict – within its 'linguistic jurisdiction' – between the parties and 'overruled' the existing differences in meaning found in different language versions. In both cases the meaning conflict is related to inter-lingual uncertainty [6, p. 48]. Thus, there is no apparent linguistic uncertainty in one language version, but once it is compared with other language versions, linguistic uncertainty emerges.

Vague translation of tax terms may invoke different perceptions, create private benefits and subsequently may lead to underpayment of estimated taxes. Almost every person has to deal with taxes at some point in life. Taxpayers have a persistent interest in using language of legal instruments inaccurately with the view of profiting. Hence, the need for less uncertainty in this field is stronger than in any other. Different tax terms can partially overlap and taxpayers are willing to use tax terms with more favourable tax consequences. Thus, they avoid the semantic cores of undesirable tax concepts. In case a translator analyses a source text incorrectly, tax evasion is possible [19].

Translation of the Italian term 'elusione' is a good example thereof. Article 11 of Directive 90/434 of 23 July 1990 and Directive 90/435 allow single states freedom to choose the possibility to ban advantages of the application of directives when that produces avoidance. The French corresponding term is 'évasion fiscale', which cannot be translated into Italian with 'evasione' but by 'elusione' (as in the English 'tax avoidance'). The Italian 'evasions' is in French 'fraude fiscale' (in English, 'tax evasion') [16, p. 175]. In Italian translations there was a terminological incorrectness but one with huge consequences, considering that tax evasion is a tort while tax avoidance is not (but it is opposed by domestic orders in order to conserve the taxable base). Thus, the phenomenon can be explained considering that the ECJ interpretation cannot be referred explicitly to the tax avoidance concept but to another (different) juridical concept, that of the 'abuse of law' [13, p. 76].

According to Denis Healey, the difference between tax avoidance and tax evasion is the thickness of a prison wall. The line between illegal tax evasion and legal tax avoidance is blurring. The conceptual distinction between tax evasion and tax avoidance hinges on the legality of the taxpayer's actions. Tax evasion is a violation of the law. Tax avoidance, on the other hand, is within the legal framework of the tax law. It consists in exploiting loopholes in the tax law in order to reduce one's tax liability. In case of tax avoidance, the taxpayer has no reason to worry about possible detection; quite the contrary, it is often imperative that he makes a detailed statement about his transactions in order to ensure that he gets the tax reduction that he desires. A simplistic definition of tax avoidance is one that focuses on the lawmakers' intention and says that avoidance is a type of action that is an unintended although legal consequence of tax policy [17]. Moreover, according to the contra *fiscum rule* (*in dubio contra fiscum*), should any doubt arise, no tax can be imposed. Thus, ambiguous rules shall be interpreted in a manner that favours a taxpayer and the court will opt for the construction that imposes smaller burden on the taxpayer.

Moreover, ambiguities are quite often in international tax agreements creating barriers for further fruitful cooperation between states. In cases of lack of agreement between the parties a 'neutral language' is added (usually English or French) to prevail in the event of diverging texts. Most recently, states began to conclude tax treaties only in English, even where English is not the official language of any of the contracting states [9, p. 6].

Conclusions. Indeed, no definite way for determining notions of particular concepts and their scope exists and, being interpreted separately, tax acts suffer linguistic (semantic) uncertainty caused by ambiguity and vagueness. Indeterminacy and vagueness of translation are a negative phenomenon

in tax law, hinder proper functioning thereof and are source of avoidance, cause interpretation and application difficulties and disputes, lead to loopholes in legal system, provide 'grey zone' for tax evasion. The European Court of Justice interprets the provisions in question in the light of the other languages and due to the context and EU legislation.

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