

Linguistic and Translatology Analysis of the Macedonian Version of the European Convention on Human Rights

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Abstract

This paper has a double objective: on one hand, to analyze the linguistic characteristic of the Macedonian version of European Convention on Human Rights and on the other, to analyze the quality of this text as a translation. The first analysis will be fulfilled on three levels: terminology, morphosyntactic and textual, which will lead us to some general conclusions about this type of legal texts.

The second analysis, fulfilled on the same three levels, will point out the positive and negative aspects of the given translation that could contribute to overcoming the flaws, not just in this concrete text, but also of the legal translation into Macedonian in general.

Key words: European Convention on Human Rights, Macedonian language, terminology, morphosyntactic analysis, textual analysis, translation

About the Convention

The full name of the European Convention on Human Rights (ECHR) is *Convention for the Protection of Human Rights and Fundamental Freedoms*. It is an international treaty drafted and adopted in 1950 by the Council of Europe, and it entered into force three years later. The objective of this document is to protect human rights and fundamental freedoms in Europe, such as the right to life, the right to liberty and security, and the freedom of thought, conscience, and religion. The Convention was ratified by all Council of Europe member states, and the new members are also expected to do so.

The importance of this Convention lies in the fact that it protects the rights and freedoms, not only on a theoretical, but also on a practical level. In fact, the European Court of Human Rights established by the Convention offers the possibility to any person, who feels his or her rights have been violated under the Convention by a state party and has exhausted all national remedies, to take their case to the Court. The judgments are binding on the states and the Committee of

Ministers of the Council of Europe supervises the execution of Court judgments. Thus, the Convention is the only international human rights agreement providing a high degree of individual protection.

Macedonian Version of the Conention

The English and the French version of the Convention are authentic, while the Macedonian version is a translation, probably, of the English text. So, in the Macedonian version the influence of the source text is strongly felt.¹

In the first part of this paper, we will analyze the linguistic characteristics of the Convention's text in order to identify the general characteristics of this type of legal document.

Terminology Aspects of the Macedonian Version of the Convention

Macedonian version of the Convention is of great terminology interest. In fact, when reading the Convention, one can easily identify a wide range of terms that are part of the general language, but also, a certain number of terms that are highly specialized. Of course, a strict line between these two groups is impossible to establish, because there are some general terms used often in the legal texts, as well some legal terms that are also used in the everyday communication. There are even some terms that acquire, through a metaphorical transposition, new meanings in different disciplines. That is the case of the term *имунитет* used in medicine and in the legal discourse because of the similarity of the natural immunity of the organism to diseases and the immunity of certain person to bear legal responsibility.

Highly specialized terms in the text of the Convention are numerous, and their presence is to be explained by the very character of the text. We can just mention terms like: *деликт, екстрадикција, декларација, протокол, ратификација*...The bulk of these terms are Latin and they can be divided into three categories: Latin terms, represented in their original form, terms that have Latin origin, but can be easily replaced with Macedonian terms, and finally, terms with Latin etymology, embedded in the legal vocabulary, that should not be replaced with a Macedonian equivalent.

¹The Macedonian version is available at http://www.imor.org.mk/programmes/common_values/New%20folder/covekovipravaEU.html.

In the first group, we can mention only one term: *ex officio* (*Судијата, кој е избран од Високата договорна страна засегната со некој спор пред Судот, ќе биде **ex officio** член на советот или на Големиот судски совет....(Art.27)*) given in the original Latin form, even with Latin alphabet, although there is a Macedonian equivalent largely used by legal experts - *службено* or *по службена должност*. The Latin form is part of the English version, but not of the French version, where we find the equivalent *de droit*. This is due to the tendency in the francophone world to replace the Latin forms with French forms, so that legal texts would be more comprehensible for the large public that they address².

There is a certain number of terms of Latin origin, replaceable with Macedonian terms: *репарација на штета - надомест на штета, компензира - надоместува, нотифицира - известува, интерпретација на Конвенцијата - толкување на Конвенцијата, лимитирање - ограничување, лиценци за работа - дозволи за работа, перманентна - постојана* итн. Some of these terms should not be part of a document of such a high importance, and their presence can only be explained by a negative interference of the English source text. This especially true of the term *нотифицира* (*to notify*) that should be replaced with the Macedonian term *известува*. The Latin terms and terms of Latin origin sometimes give the impression that the text is very specialized, but the translator, as well as the person creating a legal text, should always be aware that these texts concern not only legal experts, but all the citizens, so it should be comprehensible for them.

Still, there are some terms of Latin origin that are embedded in the use, or that contribute to the stylistic variety. For example, the Macedonian translation of the first section, article 2, states, "... **санкциониран** со ваква казна." The word *санкциониран*, can be replaced with the word *казнет*, but it would introduce a redundancy with the sentence's object *казна*.

Some other strictly specialized terms used in the legal language, have a particular range of meaning nuances and they should not be replaced with Macedonian terms, because that would have an impact on the whole context. The terms *деликт, дерогација, ратификува, екстрадиција* belong to this third group.

Even though Latin terms are predominant, in the Macedonian version of the Convention one can find archaic terms, that are part of the legal vocabulary, and whose presence in the translation can be explained by their contribution to the

² VITALE,G. SPARER, M. & LAROSE, R. (1978, 205)

It should also be noted that the presence of Latin expressions in the law texts and other legal texts is no longer justified in French. The Charter of the French language, for example, replaces the expression «mutatis mutandis» by the French phrase « compte tenu des changements nécessaires» ou «compte tenu des adaptations nécessaires».

solemnity of the text. These terms are *насилне* and *сомнение*, whose endings *-ие*, *-ние*³, are archaic: they are not productive in the contemporary Macedonian language and are usually parts of terms designating abstract concepts.

Semantic Aspects of the Convention

The legal terminology, as all other specialized terminologies, tends to use unambiguous terms in order to increase precision and avoid misunderstandings or abuses. Still, the legal language as part of the general language shares its weaknesses i.e. the ambiguity. Ambiguity can be due to the polysemy or homonymy.

Polysemy is a linguistic phenomenon for a designation to refer to different concepts (Depecker: 2002). Analyzing the Convention, we found over hundred polysemic terms, that were either specialized or common language terms. Still, as we will see further in the text, they do not influence the precision of the text, or they do not lead to ambiguous interpretations, because, the context points out the meaning nuance that is referred to. Very often, the polysemy is due to a figure of speech i.e. it is a result of a metaphorical or metonymical transposition. For example, the term *лице*, often used in the Macedonian translation, is a typical example of a metonymical transposition where a part of the body is used to identify a person.

On the other hand, the word, *чекор*, used in the text with the meaning, “постапка” designates a metonymical transposition of a movement characteristic for the people:

*Решени, како влади на европски земји, со исти стремежи и заедничко наследство на политичка традиција, идеали, почитувањена слободата и правната држава, да ги направат првите **чекори** за колективно гарантирање на определени права... (Introduction)*

The expression *високи договорни страни* illustrates a metaphorical transposition. The adjective *висок*, used primarily to designate physical characteristic, is later used in order to identify something significant, important or something having high responsibility.

³ The ending *-ие* as a word forming element is mentioned by Kiril Koneski (2003) who points out that it is an archaic ending (p.47) and that words containing this ending designate an abstract concept (p.79).

³ Koneski (2003) also mentions the ending *-ние* (стр.40) introduced through the literature and unproductive in the contemporary language, so, consequently, there is a tendency of replacement of this ending with productive ending types.

In the same way the word *тек* became polysemic, because the water flow was associated to the conduct of a litigation -*тек на судската постапка*. Or, the word *темел*, the fundamental element of the house, became a metaphor not only for the concrete concept, but also for many abstract concepts: *Реафирмирајќи ја својата длабока верба во основните човекови слободи, кои што ги чинат темелите на правдата и мирот во светот, ... (Introduction)*

The polysemy in the specialized terminology is often due to the use of terms in a certain context i.e. in certain expressions. Thus, the term becomes specialized and acquires a new meaning nuance or a new meaning. For example, the verb *стати* means to step, and the word *сила* indicates force, usually physical. However, the expression *стапува во сила*, which is often part of legal documents, gets a whole new meaning: *започнува да важу (enter into force)*.

In the corpus, we found more than 20 synonymous⁴ pairs which means that the synonymy is more common than the homonymy. Usually the use of synonyms corresponds to the tendency to enrich the expression and to make the writing more diverse. In this sense we encounter synonyms that are almost absolute, and can be replaced in any context: *високи договорни страни – високи страни договорнички; листа – список; донесува одлука – одлучува; обем – опсег; стои на располагање – има на располагање*.

Still, the bulk of the synonyms are Latin terms used alongside with Macedonian terms. As we already mentioned, when possible, Latin terms should be replaced with Macedonian.

The Convention analysis brought to our attention twenty homonymous⁵ terms, meaning that the homonymy is present to extremely small extent in the text. This is also due to the fact that Macedonian language in general does not have a large number of homonymous words.

On the other hand, unlike the polysemy that sometimes introduces the risk of misunderstanding, even in a professional field, homonymous terms belong to a completely different domains and often, to different grammatical categories. Therefore, the homonymy is generally not an obstacle in the legal communication.

We can mention some examples, confirming the given thesis. The term *права* as plural form of the term *право (right)*. This term is homonym of the term *права* designating “a straight line” in mathematics. The confusion is impossible because the two, formally identical terms, belong to different fields.

⁴ Two or more terms are synonymous when they refer to the same concept (Depecker, 2002).

⁵ Homonymy is a linguistic phenomenon when different terms have the same form (Depecker, 2002).

Another, similar example is the term *печат*, referring to the press, and the same term designating a seal. The larger context clearly points out the referred meaning:

*Пресудите ќе се изрекуваат јавно, но **печатот** и јавноста може да се исклучат во дел или во целиот тек на постапката заради заштита на моралот.... (Art.6)*

Morphosyntactic Characteristics

Syntactic rules that apply in the general language, equally apply to the legal language. However, it is undisputable that legal texts use some specific syntactic structures that separate legal language as a specific specialized language, not only in respect to the general language, but also, in respect to other specialized languages. The Convention just confirms this fact.

This syntax is primarily marked by long sentence constructions, numerous appositions and frequent enumerations, aiming to avoid the possible gaps, which can have real consequences in practice, especially when it comes to such a high-level text.

As far as the word order is concerned, in the legal text we usually find the classical word order i.e. the subject is followed by a predicate, except for those cases where, in order to emphasis certain sentence element, it is awarded first place in the sentence, although it is usually the object of the verb:

Странец, кој законски престојува на територијата на една држава, не може да се протера од нејзината територија, ... (protocol 7, art.1)

In the whole text of the Convention (except for the Introduction), the present and future tense are used. By using the future tense, the forms *треба* or *мора* are avoided, thus suggesting that the implementation of the provisions can not be questioned:

*Високите договорни страни, на сите лица под нивна јурисдикција, **ќе** им го **обезбедат** исполнувањето на правата и слободите утврдени во делот I од оваа Конвенција. (art.1)*

It is well known that legislative texts tend to achieve a high level of neutrality, which in the Macedonian version is achieved by the use of impersonal, reflexive and passive constructions. The presence of proper passive constructions, not so characteristic for Macedonian texts, can be explained by the influence of the source text:

Комитетите ќе се формираат од страна на судските совети за фиксно определено време. (art.27)

On the other side, the reflexive passive constructions are typical for this kind of texts, because thus one can emphasize the object, and avoid redundancy in cases where the subject is well known:

Слободата на изразување на религијата или убедувањето може да се ограничи само со закон и доколку е тоа неопходно во едно демократско општество во интерес на националната безбедност, ... (art.9)

The first part of the Convention concerns the rights and freedoms of all citizens of the States Parties. The general character i.e. the fact that the Convention refers to all citizens is accomplished by the frequent use of the indefinite pronouns *секој* or *никој*, as introducers of different provisions:

Никој не смее да биде држен во ропство или ропска зависност. (art.4)

Секој има право на слобода и сигурност. (art.5)

A certain density of the style is achieved with the transgressive verb forms (present participle), verbal adjectives and verbal nouns. These forms are usually placed at the beginning of the introductory sentence:

Реафирмирајќи ја својата длабока верба во основните човекови слободи.... (intr.)

Решени, како влади на европски земји, со исти стремежи...(intr.)

Лишувањето од живот нема да се смета за спротивно на овој член... (art.2)

The sentence types represented in legal texts depend on the nature of the legal text. In legislative texts, declarative sentences that provide, allow or forbid are predominant. Apart of the declarative sentences, in the Macedonian version of the Convention we also find sentences expressing exclusion, introduced with the conjunctions *освен ако*, *освен кога*:

Расправата ќе биде јавна, освен кога Судот ќе одлучи поинаку поради исклучителни околности. (art.40)

Textual Analysis

The text of the Convention is continuously being upgraded with new protocols, so the English and French versions have 16 protocols, while the Macedonian version has only seven, which means that the Macedonian version is not being updated.

Analyzing the structure of the Convention's text, we can immediately notice that it is characterized by a high degree of incoherence. In fact, the Convention consists of three sections. The first section determines main rights and freedoms, the

second sets up the Court and its rules of operation, while the third consists of concluding provisions. Furthermore, every section consists of articles and articles of paragraphs. The bulk of articles in Section I are structured in two paragraphs, the first setting out a basic right or freedom and the second containing various exclusions, exceptions or limitations on the basic right.

The sections are preceded by short informational paragraphs about the amendments of the Convention's text and the introduction referring to the motives for establishing the Convention and to the documents that inspired the Convention.

Having in mind this structure of the text, the use of connectors is extremely rare. Greater connectivity exists between paragraphs within certain articles. The polyphony within the text is also notable. The text in general has a prescriptive, normative character; it prescribes norms. The only exception is the text placed before the sections which also includes the exceptional narrator, present as a third person. In the role of narrator in the Introduction appear governments signatory, tending to express their commitment to certain principles and ideals, like those of freedom and the rule of law.

The solemn tone resonates throughout the entire text of the Convention. This tone is achieved by using selected terms in complex, unusual syntactic constructions. Despite the specialized terms and specific structures, due to the need of clarity (the text should be understood, not only by professionals, but by all citizens) there are no syntactic or textual ambiguities, no connotations. The text's accuracy, its exhaustiveness in foreseeing different situations and providing possible solutions, thus tending to avoid legal abuses. Exhaustiveness however does not mean that the style is sparse, on the contrary, the style density is seen by the absence of long explanations; not a word is used in vain.

Translatology Aspects

As mentioned before, the characteristics of the Macedonian version are due the fact that this version is a translation.

First, there are a certain number of proofreading mistakes that are part of the Macedonian translation. Some of them are on a lexical level, showing that the spell check has not been used, and some of them are grammatical:

1. *Судиите, **чии** мандат... instead of Судиите **чиј** мандат... (art.23)*
2. *Високите договорни страни ќе се согласат дека, освен кога постои посебен договор, **ќе нема** да се користат со меѓународни договори, конвенции или декларации...- Високите договорни страни ќе се согласат дека, освен кога постои посебен договор, **нема** да се*

користат со меѓународни договори, конвенции или декларации.. (art.55)

3. Текстот на Конвенцијата е изменет **согласно на** одредбите од Протоколот. - Текстот на Конвенцијата е изменет **во согласност со** одредбите од Протоколот. (intr.)
4. Имајќи **во предвид** дека таа Декларација има за цел... - Имајќи **предвид** дека таа Декларација има за цел... (intr.)
5. ...при одбрана на **било кое** лице од незаконско насилство... - ...при одбрана на **кое било** лице од незаконско насилство... (art.2)

Second, there are some errors made during the translation process, usually due to the calquing (imitating calquing of the expression's structure) that are not part of the legal terminology. We can mention the translation of the article 13:

Член 13-Право на **ефективен лек**

Секој, чии права и слободи определени во Конвенцијата се повредени ќе има **ефективен лек** пред домашните органи, ... (art.13)

In this example, the influence of the English version is strongly felt, because the expression *effective remedy* should be translated into Macedonian as „правен лек“ or „правна заштита“ whereas the expression *ефективен лек* is not precise enough and can lead to ambiguity. It is more likely that the text is translated from English, because in French the equivalent would be *recours effectif*, so, the term *лек* is not in question.

Another terminology mistake is the translation of the English expression *Grand chamber* with the Macedonian equivalent *Голем судски совет*, instead of *Висок судски совет*, because the adjective *Голем* refers to the physical characteristic of the chamber (a great number of judges, for example) whereas the term *Висок* refers to its high importance.

A terminology flaw, frequently present in the text, is the translation of the English term *Tribunal* with the Macedonian term *трибунал*. In fact, they are not equivalents, but false friends, because the English term is generic and designates any body acting judicially, and should be translated in this text with the Macedonian term *суд*:

Секој, при определување на неговите граѓанските права и обврски или кога е кривично гонет, има право на правично и јавно судење во разумен рок, пред независен и непристрасен **трибунал** основан со закон. (art.6)

There are many similar mistakes, indicating clearly that the translator has not taken the necessary distance regarding the source language. The article 36 gives an example of both lexical and syntactic interference:

„Претседателот на Судот, ако **најде** (смета) дека тоа е во интерес на правилното водење на судската постапка, може да повика...“ (art. 36)

First, the equivalent for the English word *find* is the Macedonian word *смета*, and, second, the English syntactic structure resulted in an inappropriate Macedonian structure, that normally should be translated:

„Ако претседателот на Судот смета дека е во интерес на правилното водење на судската постапка, тој може да повика...“

Finally, we can also mention the interference of the English syntax leading to ambiguous sentences in the target text:

*Остварувањето на овие слободи, **бидејќи со себе носи и одговорност**, може да се подложи на формалности, услови, ... (art.10)*

In fact, the place of the apposition is imitated from the source text, whereas, the sentence should be completely restructured:

Бидејќи остварувањето на овие слободи, со себе носи и одговорност, тоа може да се подложи на формалности, услови, ...

In the sentence: *Секоја држава која дала декларација согласно ставот 1 и 2 од овој член може во било кое време подоцна да декларира од името на една или повеќе територии на кои се однесува декларацијата, дека ја прифаќа надлежноста на Судот **да добива** индивидуални барања, **невладини организации или групи на лица** согласно членот 34 од Конвенцијата, (art.56)* there is an imprecision in the translation leading to ambiguity, that should be reformulated by adding an element : *да добива индивидуални барања, **барања од невладини организации или од групи на лица** согласно членот 34 од Конвенцијата.*

Conclusion

Several conclusions arose from the corpus analysis.

First, on a terminology level, we spotted the presence of one Latin and some archaic terms in the Macedonian translation. Because of the fact that legal texts tend to achieve high degree of clarity, Latin terms should be replaced, when possible, with Macedonian terms. On the other hand, a very positive aspect of the translation is the presence of some archaic terms giving solemn tone to the text. The analysis also showed that the polysemy is the predominant semantic relation on a terminology level, whereas the examples of synonymy and homonymy are fewer. The polysemy however does not endanger the clarity and the precision, because it appears only on a terminology level, and is limited by the larger context inside the sentence.

On a morphosyntactic level, the use of present and future tense is easily spotted, as well as the use of impersonal structures contributing to the neutrality of the text in general.

Finally, on a textual level, the general conclusion to be drawn is that legal texts of this kind are structured in sections, then in articles and paragraphs characterized by a high level of independence regarding the text in general. Because of that, translation mistakes performed on a terminology level can influence the understanding of the sentence, that, being relatively independent, can sometimes not be explained or understood by the rest of the text. Some errors on a syntactic level, that rendered incomprehensible whole paragraphs were also mentioned. Finally, on a textual level, some protocols have not been translated. It means that the Macedonian version should first be revised, so that by eliminating the translation errors, the text regains its precision and clarity and then updated with information that can be of great interest for Macedonian citizens. Having in mind the structure and the characteristics of this type of texts, the translation should always be done with a much precaution and precision.

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