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Legal Interpretation in Legal Translation? Contrasting Scholarly Views on the Interpretation of Source Legal Texts by Translators

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Abstract

This paper aims to answer certain questions raised by the contrasting views on translators' interpretation of legal texts. While interpretation is presented by some scholars as an inherent element of legal translation, others argue that by interpreting, the legal translator oversteps their authority. There are also many other, more nuanced views. Therefore, the main research questions posed in the first section of the paper are whether the term 'interpretation' is understood uniformly by different scholars and – if not – what accounts for the differences. To find answers, various meanings of interpretation are analysed in the second section, and in the third section, an overview of the relevant legal and translation literature is provided. On this basis, certain reasons for the terminological confusion are identified in the fourth section. A particularly relevant point of controversy turns out to be whether the translator may interpret an indeterminate source legal text in the sense of opting for one of the few possible meanings. This point is the main focus of the fifth section, which discusses the translator's authority and competence to resolve such problems and also includes two practical translation examples to better elucidate the theoretical considerations. The legal translator is presented as an active legal discourse participant who may be competent to interpret a legal text in the aforementioned way, but it is not their role to do so due to their specific position in the communicative situation of legal translation. The conclusions drawn in the sixth section emphasise the need for greater terminological clarity and the importance of the legal translator's role and legal competence.

Keywords: *interpretation; understanding; indeterminacy; legal translation; legal discourse*

1. Introduction

In the academic literature on legal translation, including publications discussing the links between legal translation and comparative law, one may encounter quite different standpoints as to how the legal translator approaches a source legal text in order to render the legal message into another language. Some scholars seem to associate the work done by translators in this respect with that of lawyers – which might suggest that legal translators engage in legal interpretation and are, indeed, supposed to do so. Others claim that it is the lawyer's – rather than the translator's – task to interpret legal texts, which, in turn, implies that the activities a legal translator undertakes to understand a source legal text are or should be something different from interpretation or, at least, legal interpretation.

The contrasting views on the above subject by legal and translation scholars seem to raise certain questions, some of which this paper will attempt to answer. First, it would be worth investigating whether the term *interpretation* is understood in a uniform manner by particular scholars and to account for possible differences. To understand its usage, it seems reasonable to ask where lines are drawn between the different facets of interpretation and, in

particular, between what lawyers and translators are permitted to do in their approach to the meaning of a legal text.

Answering the above research questions could, first of all, help achieve a clearer picture of the terminology used in the academic debate. Exposing at least some points of controversy might contribute to a better understanding between the scholars representing different fields who discuss the issue of interpretation in legal translation. The conclusions drawn might also be relevant from the point of view of legal translator competence, especially when it comes to the awareness of, and perhaps the ability to use, legal interpretation methods. The problem of interpretation and its connection with legal translation has recently been discussed by Zeifert & Tobor (2021), who presented a very insightful legal-theoretical perspective on this matter – which clearly shows that it merits further discussion and is especially worth addressing from the legal translation studies perspective. This is even more so because the view of the legal translator's position in relation to legal discourse adopted by these authors may need some clarification.

The main part of the paper will start with an overview of the possible meanings of interpretation, including general and legal dictionary meanings, the legal theory perspective and the place of interpretation in philosophy. In this overview, presented in Section 2, interpretation will be juxtaposed with understanding, the latter being often discussed together with interpretation or in some contrast to it. With the possible meanings of interpretation in mind, the various views on interpretation put forward in the broadly understood legal translation literature will be discussed and divided into three groups according to how the word *interpretation* is employed by particular authors (Section 3). The fourth section is an attempt to provide some reasons explaining why distinct authors talk about interpretation in contrasting ways. Special emphasis will be placed on the approach to indeterminacy, which is directly related to the controversy over what legal translators are or are not permitted to do (in contrast to lawyers) in their reading of legal texts. This point of controversy clearly transpires from the academic discussion on interpretation in legal translation, and it will be dealt with in detail in Section 5, which also includes two practical translation examples to better illustrate the theoretical considerations. Finally, in the last section, the answers to the research questions will be summarised, and certain practical conclusions will be presented.

At the outset of this paper, it needs to be made clear that the present research is not aimed at investigating the actual cognitive processes related to how translators or lawyers process legal texts or the translation performance of either group. These are, of course, equally interesting subjects, which might be seen as complementary to this discussion. Those interested may find useful insights in the existing literature (e.g. Orlando 2015; Griebel 2021).

2. Defining interpretation

Before reviewing the positions presented in the literature, it seems worth providing a concise and necessarily general overview of what it means *to interpret* from a few different angles. To avoid doubt, the definitions presented below do not exhaust the possible meanings that can be attached to this word. This is especially because the concept of interpretation has a prominent place in philosophical and legal-theoretical debates (cf. Margolis & Rockmore 2000; Tobor 2013, 2020; George 2021), which translates into a wide variety of aspects and nuances. Moreover, this author's intention is not to put forward his own definitions of the terms

interpretation and *understanding* but rather to observe how they may be employed in different contexts.

2.1. 'To interpret' and 'to understand' in general and legal dictionaries

Not infrequently, the concept of interpretation is accompanied by, equated with or contrasted with the concept of understanding. It is thus worth defining what it means *to interpret* in juxtaposition with the verb *to understand*. The definitions of these words found in two popular general dictionaries and two legal dictionaries (by British and American publishers) are presented below.

According to Cambridge Dictionary (n.d.–a), *to understand* means "to know the meaning of something that someone says", "to know why or how something happens or works", "to know how someone feels or why someone behaves in a particular way", or "to know or realize something because you have been told it". The word is also "used when making certain that someone knows what you mean and will do as you want". *To interpret*, on the other hand, is defined in the same dictionary as follows: "to decide what the intended meaning of something is", "to express your own ideas about the intended meaning of a play or a piece of music when performing it" or "to change what someone is saying into another language" (Cambridge Dictionary n.d.–b). Merriam-Webster's (n.d.–a) definitions of *to understand* are the following: "to grasp the meaning of", "to grasp the reasonableness of", "to have thorough or technical acquaintance with or expertness in the practice of", "to be thoroughly familiar with the character and propensities of", "to accept as a fact or truth or regard as plausible without utter certainty", "to interpret in one of a number of possible ways", "to supply in thought as though expressed", "to have understanding: have the power of comprehension", "to achieve a grasp of the nature, significance, or explanation of something", "to believe or infer something to be the case" or "to show a sympathetic or tolerant attitude toward something". According to this dictionary, *to interpret* means "to explain or tell the meaning of: present in understandable terms", "to conceive in the light of individual belief, judgment, or circumstance: CONSTRUE", "to represent by means of art: bring to realization by performance or direction" or "to act as an interpreter between speakers of different languages" (Merriam-Webster n.d.–b). Black's Law Dictionary defines the verb *to understand* as "to apprehend the meaning of; to know" (Garner 2004: 1665). *Interpretation* (no verb form listed), on the other hand, is explained as follows: "the process of determining what something, esp. the law or a legal document, means; the ascertainment of meaning to be given to words or other manifestations of intention", "the understanding one has about the meaning of something", "a translation, esp. oral, from one language to another" or "characterization" (Garner 2004: 894). It might also be worth adding what *construction* means, as this term is referenced in the entry on interpretation in Black's Law Dictionary, and the verb *to construe* is used in one of the definitions cited above. *Construction* – aside from the meaning of building something – is "the act or process of interpreting or explaining the sense or intention of a writing (usu. a constitution, statute, or instrument); the ascertainment of a document's meaning in accordance with judicial standards" (Garner 2004: 355). Similarly, the entry on *interpretation* in A Dictionary of Law starts as follows: "interpretation (construction) n. The process of determining the true meaning of a written document. It is a judicial process, effected in accordance with several rules and presumptions [...]" (Martin 2003: 261). *Understanding* is not listed in this dictionary.

Disregarding the meanings of the verb *to interpret* unrelated to the present discussion (although not unrelated to interpretation as such), like performing oral translation, it can be easily observed that the dictionary definitions are far from drawing a clear line between interpretation and understanding. One of them even defines the verb *to understand* using the verb *to interpret*, and another defines *interpretation* as *understanding*. Yet, there seems to be a certain shift of emphasis between the two. *To understand* is mostly centred on knowing or grasping the meaning of something. *To interpret*, conversely, is associated with explaining, construing, deciding on or ascertaining the meaning. In legal language, the verb *to interpret* may be used as a synonym of the verb *to construe*, which refers to determining the sense or intention of a piece of legal writing. *Interpretation* can, therefore, refer to legal interpretation and be broadly synonymous with *construction*.

2.2. Legal interpretation

In this connection, it is worth looking at the role of interpretation and understanding in lawyers' work. Tobor (2020: 297–299) notes that understanding legal texts is one of the key skills lawyers need, and this applies to understanding both provisions of law and court rulings. The author also highlights that the relationship between understanding and interpretation can be approached differently. As demonstrated by Tobor's (2013: 20–36) analysis, the concept of legal interpretation and its scope are not clear in legal theory, and they revolve around two main principles that may not be understood uniformly either. These are *clara non sunt interpretanda* ('what is clear does not call for interpretation – interpretation comes into play if there is a doubt') and *omnia sunt interpretanda* ('everything calls for interpretation'). Tobor (2020: 299–300) himself assumes that if there are no doubts among discourse participants about understanding some fragment of a legal text, interpretation activities are not undertaken. As he puts it, an initial understanding of the text is the condition for undertaking interpretation activities. Many authors see interpretation activities as parts of a single process divided into two stages. The first consists in establishing the possible ways of understanding the text, and the second is about choosing one of the possible hypotheses (Tobor 2020: 299). Interestingly, González (1996: 720), a proponent of the two-step interpretive approach for U.S. federal courts, calls these two stages "interpretation" and "construction", respectively.

2.3. Interpretation and understanding in philosophy

As already mentioned, interpretation is an important topic in philosophy. Also in this area, it is reasonable to juxtapose it with understanding, as the philosophical notions of interpretation and understanding are considerably interwoven. The following is only a very brief outline of the philosophical underpinnings of these concepts intended to provide some background for further discussion. Notably, as will later be shown, references to philosophy, especially hermeneutics, are made in the legal translation literature addressing interpretation.

Grimm (2011: 84) notes that understanding takes various forms. In philosophy of science, understanding is often seen as the good at which scientific enquiry aims. Understanding the world is thus more than learning some truths about it. Frequently, understanding is seen as one of the goods that make life worthwhile. Understanding covers a vast ground, and besides the understanding of the broadly conceived natural world, there are other approaches like the linguistic understanding of concepts and meanings or the understanding of human actions. Regarding linguistic understanding, Grodniewicz (2021:

11464–11466) distinguishes three senses of this concept. Philosophical theories focus on states of understanding, i.e. mental states in which someone represents the content of an utterance they have heard. Understanding can also mean a disposition or stable ability to decode sentences of a specific language. The third approach involves thinking of understanding as an event, process, episode or achievement of one's coming to the state of understanding an utterance.

Regarding interpretation, Margolis & Rockmore (2000: 1) observe that in the second half of the 20th century, interpretation was becoming increasingly prominent in the perception and understanding of physical and cultural reality and people's role in both. A crucial notion related to interpretation is undoubtedly hermeneutics. It is described as a practice and art of reading, interpreting (explaining, translating) and understanding oral and written texts (both religious and lay, e.g. poetic and legal, the sense of which is alien or hidden) and broadly also history and culture perceived in a text-like manner (Encyklopedia PWN n.d.). Philosophical hermeneutics treats interpretation as its subject matter and deals with its nature, scope, validity and role in human existence. Interpretive experience in hermeneutics refers to understanding. When one says that they understand, they mean that they have arrived at something through an attempt at interpretation. Conversely, when one has not arrived anywhere with their interpretation, they can say they do not understand. Understanding is, therefore, described as a success of interpretation. An important controversy spurred by philosophical hermeneutics is related to deconstructionism – and especially to the discussion that originated between Gadamer and Derrida. The crucial point of this controversy is whether the success of understanding does achieve a determinate meaning. For Gadamer, the success is to understand something as it genuinely or truly is, whereas Derrida argues that determining the meaning of something is beyond one's reach, as the meaning remains subject to a free play of signs (George 2021).

2.4. Where do the definitions lead?

The above overview shows that the meaning of the words *to interpret* or *interpretation* can be viewed from different angles and might indeed be ambiguous. To roughly summarise these definitional considerations, interpretation could potentially have some of the following – not necessarily disjunctive – meanings: 1) understanding or an element of understanding; 2) determining the actual or right meaning of something; 3) legal interpretation applied to the whole legal text; or 4) legal interpretation applied to resolve legal interpretive doubts. This list excludes some more area-specific meanings, like oral translation or representation of something through art. The multiplicity of possible meanings of the term needs to be considered when analysing the various positions on interpretation taken in legal translation literature, which might be underlain by different legal and philosophical approaches or, quite mundanely, affected by terminological incompatibility. Careful attention should especially be paid to the lines, if any, drawn between understanding and interpretation or its varieties.

3. Understanding and interpretation in legal translation literature

This section contains an overview of approaches to interpretation that exemplify a wide spectrum of views on this subject in the broadly understood legal translation literature. The views have been divided into three broad categories intended to represent the contrasting ways

particular authors use the word *interpretation*. They range from considering translators to be interpreters of legal texts (Section 3.1) to highlighting differences between interpretation by lawyers and by translators (Section 3.2) to claiming that legal translation is something different from interpretation (Section 3.3). Bearing in mind the ambiguity of the term, demonstrated in Section 2, these categorisations do not necessarily mean that particular authors' views are substantively inconsistent.

3.1. Interpretation (in general) is an inherent part of translation

A view at one end of the spectrum boils down to a claim that translators are interpreters of the legal texts they translate. The authors discussed here refer to interpretation but do not make it specific what kind of interpretation they mean or do not draw a clear distinction between lawyers' and translators' manners of interpretation.

Glanert (2015: 5–10) notes that all translators face two challenges, one being that languages do not signify identically. Secondly, every act of translation involves, in her view, a process of interpretation whereby the translator, before performing the translation, must first understand the source text. She equates this understanding with an act of interpretation, indicating that it is neither neutral nor objective. This point is evocative of Gadamer's (2004: 387–388) position on translation:

> *Here no one can doubt that the translation of a text, however much the translator may have dwelt with and empathized with his author, cannot be simply a re-awakening of the original process in the writer's mind; rather, it is necessarily a re-creation of the text guided by the way the translator understands what it says. No one can doubt that what we are dealing with here is interpretation, and not simply reproduction. A new light falls on the text from the other language and for the reader of it.*

In this vein, in her paper on legal translator competence, Piecychna (2013) – for whom "hermeneutics, similarly to translation studies, is concerned mainly with interpretation" (Piecychna 2013: 149) – argues that it is not only understanding that has an important role to play in the translation process. In her opinion, a significant role should also be attributed to the act of interpretation. After a legal translator has understood the text, their task is to interpret the source message and then transpose it into the target message. Hence, "any translational act may be described as an activity bearing testimony to the hermeneutical commitment of a competent legal translator" (Piecychna 2013: 155). Piecychna thus claims that the ability to interpret texts is a must for all legal translators.

3.2. Translators and lawyers interpret differently

Some authors – who, like the previous group, see interpretation as involved in translation – make it clear that interpretation done by translators is somehow different from that done by lawyers.

According to Gémar (2015: 72–81), one of the things legal comparatists and translators have in common is, in particular, that they both interpret texts. While he points out that the purposes and methods of such interpretation are different, he still argues that interpreting the source text is one of the essential steps in the translation process. He calls translators "natural interpreters of language as such", who "employ a highly complex sense-reading and sense-

giving process to construe the meaning of the source text they have to transfer and re-express in a target text" (Gémar 2015: 81). He goes even further to claim that translators, as natural construers of texts, can shed new light on the meaning of the message of the source text through the process of interpreting it and thus even contribute to its clarification.

An interesting position is taken by Husa (2012), who – citing Gadamer – admits, on the one hand, that every translator is an interpreter but, on the other hand, restricts his statement that translating quickly turns out to be actually interpreting to those cases where a legal translator is dealing with difficult terms, concepts or idiomatic expressions. He sees translation as an attempt to "conquer the aliennes [*sic*] of the text" (Husa 2012: sec. 7.6.) and claims that understanding and interpretation are indissolubly bound. He makes a point that a translator is concerned with what a text says, whereas a lawyer is concerned with what it means – which distinction is important when it comes to difficult translations. However, what a text says and what a text means cannot always be separated, and thus, the roles of a translator and a lawyer are not always separable either. Husa's (2017) views presented in another paper support the distinction between how translators and lawyers read texts and perhaps go even further in distinguishing the lawyer's and the translator's approaches to meaning.

A clear distinction between interpretation by translators and by lawyers is made by Simonnæs (2013), who argues that, while interpretation is the most common methodological approach for legal comparison and legal translation, it is classified differently in comparative law and translation studies and rules of interpretation differ between the fields. Interpretation done by lawyers consists of grammatical, historical, systematic and teleological interpretation and, given the inherent vagueness of text, is used when a particular case needs to be resolved. The goal of legal translation, in turn, is to compensate for the incongruence between two legal systems, the result of which should be a translation that achieves uniform interpretation and application in both source and target legal systems. Simonnæs (2013) notes that it is often acknowledged that the activity of translating presupposes interpretation (an effort to grasp the sense). As one cannot translate something they have failed to understand, interpretation – as a means of understanding – is crucial in translation studies.

Yet another position is taken by Chromá (2004), who distinguishes between interpretation by lawyers with no linguistic education and translators untrained in law. She refers to the legal thinking lawyers acquire during their education. Chromá states that each legal text may be interpreted in several ways depending on the priorities and the interpreters themselves. She also considers legal translation a complex process determined by several factors, the most important being the linguistic and legal interpretation of a source text as a whole and of its particular components. While the construction of the same text is different when pursued by a lawyer and by a linguist, the linguist ought to strive to acquire sufficient legal knowledge to approximate the lawyer in their interpretation to be able to mediate in conveying legal information contained in the text as precisely and fully as possible, preserving its legal specificity and effect. Elsewhere Chromá (2014: 130) elaborates on the purpose of interpretation in the following way:

> *The main aim of interpretation should be that the translator understands the text as a whole and that the text makes sense to her; only then is the translator ready to transmit the legal information into the target language and process the transmission accordingly.*

Alcaraz Varó & Hughes (2002: 24) define what they mean by the verb *to interpret* as follows: "to assign a meaning to a word, phrase, clause, sentence or utterance, and, where two or more meanings are possible, either to decide between them or to declare the utterance indeterminably ambiguous". For Alcaraz Varó & Hughes (2002), translators and all practising lawyers alike are engaged in their job in interpreting the meaning of texts and particular words in specific texts. The purposes of this interpretation differ, though. Translators look for the closest equivalent in the target language, whereas the judge's task is to "match up the resulting propositions against the definitions established in existing law" (Alcaraz Varó & Hughes 2002: 24). The end of the translator's work is when the semantic obstacle has been overcome, while the judge needs to go a step further and apply the results of the linguistic analysis and decide in accordance with the law.

Engberg (2017: 7) sees the task of the legal translator as getting to know the concept behind a source text word "well enough to be able to interpret which parts of the full concept play a central role in the contextual understanding of the source text". As he states in another paper, "users of translation 'read' the original texts through the interpretation of a translator", and just like "a context-free and education-independent understanding of legal texts in the mother tongue is not possible", there is no context-free literal translation strategy. The translation is based on the translator's interpretation of overlaps and differences and of how important they are for the purposes of the receivers (Engberg 2020: 269–270). However, Engberg (2002: 387–388) does not perceive interpretation by lawyers and translators in the same way. While there are similarities, he also claims that:

> *The difference between the two groups lies in the fact that where the legal interpreter can be an architect and construct new meaning because of the authority given to* his discourse community *by society, the legal translator does not have access to the construction of new meaning. His field is the text, and it is his primary responsibility that the target text may fulfil its purposes as fully as possible and that it presents a valid portrait of the meaning assumptions of the author of the source text* [emphasis mine].

An important point upon which this argumentation is built is that translators, as seen by Engberg (2002: 386–387), are outsiders not involved in the official, binding process of interpretation. Hence, translators need to work based on interpretations presented by legal interpreters and cannot directly join "the argumentative battle" (Engberg 2002: 386). Engberg's views are actually on the border of this category and the category covered in the subsequent section.

An insightful and thorough investigation into the problem of the relationship between legal translation and legal interpretation has been carried out by Zeifert & Tobor (2021). Their point of view can also be considered as bordering the subsequent category. Recognising the vagueness of the term *interpretation* itself, in their analysis, they adopted a terminological framework based on a distinction between *interpretation sensu largo* and *interpretation sensu stricto*, where the former equals understanding and is, therefore, a prerequisite for legal translation, whereas the latter (also known as legal, judicial or operative interpretation) is done when doubts arise as to the application of a rule in a particular factual situation. Hence, the interpretation in the narrow sense is not triggered solely by linguistic features of a legal text, which may be resolved by the context, but rather applies to particular factual situations. The reason for using it is doubt "whether the law, expressed in language, applies to a particular situation" (Zeifert & Tobor 2021: 1678). This is the kind of activity translators are not necessarily supposed to perform. In Zeifert & Tobor's (2021: 1680–1684) opinion, legal

translators may not be competent to undertake legal interpretation, as they have an external perspective – being outsiders rather than insiders in the context of legal discourse (the authors also cite Engberg's position discussed above). On the other hand, it is doubtful that translators have the authority to eliminate interpretive problems, as indeterminacy in legal texts is often deliberate.

3.3. Translators are not supposed to interpret

This section includes views which suggest – at least in the form the authors have formulated them – that translation is something different from interpretation.

Šarčević (1997: 87–92) draws a line between understanding and legal interpretation – a line that is not to be crossed. She claims that while it is agreed that the translator has to understand a source text so as to create an adequate translation, they have to express the actual content of the text, not their impression of what has been said. Thus, in the case of ambiguity, interpretation or construing based on the translators' reflections about the meaning are not permissible. Being familiar with lawyers' methods of interpretation, translators should not overstep their authority by interpreting texts in the legal sense. The latter statement may, however, imply that Šarčević recognises some non-legal kind of interpretation.

Cao (2007: 80) underlines that an important point regarding linguistic uncertainty is that a legal translator is not a lawyer, so their central task is to translate rather than to solve legal problems. It is the judicial interpretation of a disputed word that is correct and enforceable. The translator needs to recognise the intentional or unintentional linguistic uncertainty and then convey and retain it in translation. They should avoid clarifying a word or making it more precise or less ambiguous. Otherwise, this could limit the possible future interpretations by the court.

4. Some reasons behind the contrasting views on interpretation in legal translation

The above overview of literature demonstrates that there is indeed a variety of views on interpretation in legal translation. Several observations could be made on this basis. These will be divided into more general inferences (Section 4.1) and a discussion of whether the controversies between the scholars are purely terminological or include substantive disagreements (Section 4.2).

4.1. General observations from the literature review

To start with, it is worth noting that most of the scholars referred to above, i.e. the first and second categories (Sections 3.1 and 3.2), agree that (some kind of) interpretation is involved in legal translation. The second group, however, make more or less explicit distinctions between different kinds of interpretation.

Furthermore, while some authors look at interpretation in more general terms, as if it refers to the entire source text or is generally synonymous with – or involved in – understanding, a few other scholars associate interpretation with problems related to the meaning of a legal text: multiple possible interpretations (lack of objectivity in interpretation), unclear parts, ambiguity or interpretive doubts. Such views are represented regardless of the

categories distinguished in the preceding section. This recalls the *clara non sunt interpretanda* and *omnia sunt interpretanda* debate in legal theory, mentioned in Section 2.2.

A related issue is the approach to cases of uncertainty. For Šarčević (1997: 87–92), for instance, the approach to ambiguity appears to be the borderline between understanding and interpretation or construction. A line seems to be drawn in roughly the same place by Engberg (2002), Cao (2007: 80) and Zeifert & Tobor (2021). For Zeifert & Tobor (2021) and Engberg (2002), the boundary is rather one between distinct kinds of interpretation: interpretation by lawyers and interpretation by translators or legal interpretation and interpretation in a broad sense, respectively. Husa (2012) also draws a certain line when referring to hard cases in translation, for which interpretive decisions are needed, yet this does not appear to be a boundary between what is or is not allowed for legal translators – like it is for the other authors mentioned above.

Chromá (2004), in turn, even argues that, ideally, translators should seek to approximate lawyers' manner of interpretation, and Gémar (2015) claims that translators can shed new light on the meaning of a text. Glanert (2015) denies the objectivity of translation in general.

The above raises an important controversy since part of the authors use the distinction between understanding and interpretation or between different facets of interpretation to argue what is impermissible for translators, whereas other scholars do not seem to be so concerned about this aspect.

Multiple more nuanced differences as to how particular authors see lawyers' and translators' ways of interpreting or understanding legal texts may exist, especially between the authors discussed in Section 3.2. For instance, some of the scholars emphasise the link between the interpretation of legal texts by lawyers and the facts of a particular case at hand – typically missing in the case of legal translators' work.

4.2. Terminological and substantive reasons for the controversies

The above analysis, first of all, confirms that particular authors do not use common terminology and mean different things by the term *interpretation*, which is the most manifest reason why their views are – at least apparently – contradictory. Notably, the approaches can be matched up with the various definitions of interpretation discussed in Section 2. For example, the authors who consider interpretation in general a necessary component of legal translation do not seem to draw a strong distinction between understanding and interpretation, so these two notions are, in their view, synonymous, or one is a preliminary step for the other. The second group of authors, who highlight differences in interpretations done by lawyers and translators, seems to be more diverse, and various shades of the term *interpretation* are used by them. The authors in the third group subscribe to the definition of *interpretation* as deciding on one specific meaning among several alternatives.

The above is not to say, however, that the differences identified are purely terminological. There exist substantive points of controversy, too. As already indicated in Section 4.1, one of them is clearly the approach to establishing the meaning of a source text if it is indeterminate or uncertain. In other words, this controversy refers to problems encountered when deciding in a situation where there are more possible interpretations or understandings of a source text. As this issue seems to be the most pronounced and is especially significant from the perspective of legal translation practice, it will be the main focus in the further part of the paper. Indeed, in this respect, the terminological confusion is not limited to the academic debate but may actually be very misleading for practising translators and students of

translation. If some resources say that interpretation (or legal interpretation) is impermissible in legal translation while others proclaim interpretation as an inherent element of it (even encouraging translators to approximate lawyers), their readers may be perplexed and misguided as to what approach they should actually take in practical translation tasks.

To be sure, there are also other substantive reasons for the contrasting scholarly views. One which can be identified easily is that the authors who recognise some differences in the ways lawyers and translators interpret legal texts have in mind different distinctions between these kinds of interpretation. The nature of these specific distinctions definitely requires further investigation. Still, due to space constraints and the limited scope of the present research project, that would merit discussion in a separate paper.

5. Scholarly views on interpretation from the perspective of indeterminacy

The specific controversy in the debate on interpretation in legal translation identified in the preceding section relates to indeterminacy. Indeterminacy is undoubtedly widely discussed in the translation, linguistic and legal literature. While it is obviously not restricted to legal language – but applies to language in general (Gizbert-Studnicki 1986: 106–108; Cao 2007: 13, 80) – the problem of indeterminacy or uncertainty is of particular significance in the field of law.

5.1. Indeterminacy in law and language

Cao distinguishes two related types of uncertainty: linguistic and legal. Linguistic uncertainty refers to the uncertain and indeterminate property of language and includes linguistic vagueness, generality and ambiguity on both lexical and syntactical levels. Linguistic uncertainty found or allegedly found in legal instruments is not infrequently a source of legal disputes. Indeed, linguistic indeterminacy may lead to legal indeterminacy,[1] as law depends upon and makes use of the linguistic features of generality and vagueness (Cao 2007: 73–75). It is important to emphasise that indeterminacy in the law is not only the consequence of the qualities of language itself. It may result from strategic, deliberate decisions of drafters (Lanius 2019: 216–217). Indeterminacy may well be the consequence of poor drafting related to incompetence, insufficient resources (Lanius 2019: 216–217) or failure to acquire a specialist technical understanding of language (Halpin 2013: 69).

5.2. Different views on interpretation in legal translation applied to examples of indeterminacy

To supplement the theoretical discussion in Section 4 and Section 5.1, two anonymised examples from the author's own Polish-English and English-Polish translation practice will be discussed here. They are by no means a representative sample and merely serve to illustrate how particular indeterminacy-related translation problems can be described when one adopts different definitions of interpretation.

[1] Legal uncertainty or, in other words, legal indeterminacy refers to a situation where there is no single answer to a question of law or of how the law applies to facts (Cao 2007: 75).

Table 1 presents the source and target texts of an excerpt from a framework service contract. The translation problem identified here is related to the term *dobre obyczaje*, which is both vague and polysemous and whose translations could range from *good practice* to *good manners* to *principles of morality*.[2] The term itself is an established general clause in civil law systems (Mojak 2016), but in the context of the entire source document, it is not fully clear whether it is used in the same sense as in the Civil Code. Given this problem, the translator could (1) make an explicit decision to pick the most probable version (*good practice*), assuming that the source term is more focused on good business practice than on morality, or (2) choose one of the options, yet leaving a comment to inform the client (reader) about the other versions that are more or less plausible (as shown in Table 1).

Table 1: Excerpt from a framework service contract

Source text	Proposed target text
Usługodawca ma prawo rozwiązać umowę bez wypowiedzenia ze skutkiem natychmiastowym, poprzez przesłanie oświadczenia na piśmie lub za pomocą poczty elektronicznej w przypadku gdy Usługobiorca: [...] e) w zakresie przedmiotu prowadzonej działalności podejmuje czynności stanowiące działania nieetyczne, niezgodne z dobrymi obyczajami i obowiązującym porządkiem prawnym.	The Service Provider shall have the right to terminate the agreement without notice with immediate effect by sending a declaration in writing or by e-mail in the event that the Customer: [...] e) within the scope of the objects of his business activities, engages in actions that are unethical, inconsistent with good practice [*translator's note: possible alternative meanings: "good manners", "principles of morality"*] and the applicable legal order.

Table 2 shows a fragment of a boilerplate *No Partnership* clause. The ambiguity here is syntactic and relates to the verb *direct* – particularly whether it pertains to directing *day-to-day activities* or directing *the other* (party). Since the punctuation does not imply otherwise, the translator could decide that the reference is made to *day-to-day activities*. However, given the sparing and sometimes inconsistent use of punctuation by drafters, the other meaning cannot be ruled out. Hence, the translator could (1) decide on one of the options they find more plausible, perhaps even starting to wonder whether there is any material difference between the two, or (2) try to preserve a similar ambiguity in the target text (as shown in Table 2). Adding a comment could also be considered.

Table 2: *No Partnership* clause from a commercial contract

Source text	Proposed target text
Both Parties agree that the relationship established by this Agreement is that of independent contractors and, except as otherwise specifically provided herein, nothing contained in this Agreement shall be construed to (i) give either Party the power to direct and control the day-to-day activities of the other [...]	Obie Strony zgadzają się, że stosunek ustanowiony niniejszą Umową jest stosunkiem niezależnych kontrahentów i z wyjątkiem wyraźnych postanowień o przeciwnej treści zawartych w niniejszej Umowie żadne postanowienia niniejszej Umowy nie będą wykładane jako (i) przyznające którejkolwiek ze Stron uprawnienia do kontrolowania bieżącej działalności drugiej Strony i kierowania nią [...]

[2] See, e.g, the discussions at https://www.proz.com/kudoz/polish-to-english/social-science-sociology-ethics-etc/1846362-zachowania-sprzeczne-z-dobrymi-obyczajami.html and https://www.proz.com/kudoz/polish-to-english/law-general/5490985-zasady-dobrego-obyczaju.html (Accessed: 2023-12-13).

When seen from the perspective of the various views on interpretation, for some scholars (cf. Section 3.3), only the first scenario (choosing one specific meaning and resolving the indeterminacy) in both cases would involve interpretation. Accordingly, they could say that in the second scenario, the translator merely understood the text, leaving its interpretation to lawyers. For others (cf. Sections 3.1 and 3.2), the whole processing of the source text would be interpretation, regardless of the final decision made by the translator. The scholars discussed in Section 3.2 might try to further describe this process or its elements as linguistic and/or legal interpretation, etc. Furthermore, it could be argued whether the first scenario is a permissible course of action.

The target texts proposed in both tables exemplify the second scenario, where the translator refrains from resolving the indeterminacy, and the rationale for this approach will become apparent from the conclusions reached in the further part of the paper.

5.3. Translator as a participant in an act of communication in the mechanism of the law

This and the following sections will be devoted to the specific issue of whether a legal translator is actually authorised or competent to interpret source legal texts in the sense of resolving indeterminacy or uncertainty in the translation process (cf. scenarios 1 and 2 in the examples above).

The argument against such interpretation put forward by Engberg (2002) and Zeifert & Tobor (2021) seems to be that the translator is a figure external to legal discourse, lacking skills or authority to resolve interpretive doubts. However, in light of the recent developments in translation studies, it is difficult to agree with this view. In line with Šarčević's (1997: 55–56) crucial statement, legal translation needs to be seen as "an act of communication in the mechanism of the law". Notably, in the historical development of legal translation, legal translators have successfully converted their role in the communication process, becoming its active participants (Šarčević 1997: 229). Legal translation is, therefore, a communicative situation in which the translator takes part and where several factors intervene. Kierzkowska (2002) aptly presented the translator's role in this situation using her *Discourse Disc* model. It seems that translated texts created by legal translators on the one hand and the entire act of communication which legal translation constitutes on the other hand can hardly be denied being part of legal communication or legal discourse (understood as either communicative interaction or the text sequence this interaction implies (Grucza 2013: 66)). In this connection, it is helpful to look at the process of legal communication from a broader perspective. As defined by Osiejewicz (2020: 449):

> *Legal communication is the whole process of providing legal information to its recipient and of gaining legal orientation, both as a result of learning about the sources of law, as well as on the basis of experience and knowledge of non-legal norms, such as morality or custom.*

The common interest for the international legal communication community, composed of public and private, domestic and international law entities that are involved in creating and applying law, is the comprehensibility and consistency of law. Their common goal is to achieve certainty of law and gain the trust of its addressees (Osiejewicz 2020: 468). Given this broader perspective, it is reasonable to consider legal translators, working at different levels of the legal communication community and at different stages of legal communication, as insiders rather

than outsiders in relation to this community. Indeed, they have an important contribution to make to the overall achievement of the goal not only of legal translation but also of legal discourse.

As a side note, it is worth adding that, as observed by Pieńkos (1999: 136–140), the job of a translator is not auxiliary or secondary in relation to other professions, including lawyers. Both lawyers and translators could achieve satisfactory results in legal translation, and to do so, the former ought to enhance their translation skills, while the latter should extend their legal knowledge. In this way, a person can become a jurilinguist – someone who is professionally at a junction between law and language, having both linguistic and legal knowledge (e.g. lawyer-linguists at the CJEU). It would definitely be even more difficult to consider such translators as outsiders to legal discourse.

5.4. Competence to interpret in the sense of resolving indeterminacy in a source legal text

Regarding the question of whether a legal translator is competent (skilled and knowledgeable enough) to interpret source legal texts in the sense of resolving indeterminacy, it seems useful first to analyse the elements of legal translator competence, discussed extensively in the literature.

Šarčević (1997: 113–115) lists certain model qualities of a legal translator, including thorough knowledge of terminology, comprehension of legal reasoning, basic knowledge of comparative law, extensive knowledge of the source and target legal systems, drafting skills as well as the ability to analyse legal texts, foresee possible interpretations and solve legal problems. Piecychna (2013) emphasises the importance of interpretation skills and thinks it would be helpful for legal translators to know how a lawyer interprets the law. Prieto Ramos (2011: 13) argues that a legal translator needs to understand and produce texts with the "lawyer-linguist" eyes, which requires familiarity with, among others, rules of interpretation and legal reasoning. When rendering international and supranational documents, legal translators need to address ambiguities "according to international rules of legal interpretation" (Prieto Ramos 2011: 13). In the QUALETRA model of translator competence, the information mining competence includes "consulting legal experts so as to better understand and foresee how legal documents may be interpreted by the parties involved or the competent court or both" (Scarpa & Orlando 2017: 30). Interestingly, the ISO 20771 standard for legal translation does not use the word *interpretation* when describing the competences required of legal translators but refers to understanding as part of the specialist legal field competence and the research, information acquisition and processing competence (International Organization for Standardization 2020: 9).

The different legal translator competence models – no matter whether they make literal references to interpretation – stress the importance of legal knowledge and skills, which are needed to process a legal text properly and render its adequate translation. While Zeifert & Tobor (2021: 1682) generally agree that legal knowledge is rightly included in the models of legal translator competence, they argue that the "difficulty lies not in its level of sophistication or complexity, but rather in the highly practical nature of the knowledge. It can hardly be attained without participating in legal discourse". Such knowledge could, consequently, only be attained by a practising lawyer or a judge. This view can be challenged on at least two grounds. First, as noted in the previous section, the legal translator should not be considered an

outsider to legal discourse. Legal translation belongs to this discourse.[3] Secondly, it is difficult to speculate about a particular legal translator's actual competence. Although the various models of competence are only idealised pictures, given that some legal translators do have a legal background and many more have considerable legal knowledge, it would be difficult to deny their legal interpretive competence outrightly. Quite the opposite, some of them may be able to apply the typically legal methods of interpretation. Hence, it can be argued that the identities of a lawyer and a translator are not always separable.[4] For the above reasons, it is not the competence or a position outside legal discourse that could be used as arguments against interpretation – understood as resolving uncertainty in source legal texts – by translators.

5.5. Authority to interpret in the sense of resolving indeterminacy in a source legal text

A determining factor in answering the question of whether legal translators are supposed to resolve problems resulting from the indeterminacy of the source legal texts they translate should rather be whether a course of action they take will help them achieve the goal of their endeavour. As noted by Kielar (1977: 152), "naturally the principal objective of the translator is to convey the sense of the message". In the case of legal translation, this can be specifically referred to as conveying the legal sense of the source text through the target text (cf. Šarčević 1997: 235). This goal pertains to any texts which acquire certain legal significance and thus become subject to legal translation, which Cao (2007: 12) refers to as "texts used in law and legal settings". Hence, the below remarks apply to indeterminacy in legal texts understood in such a broad sense.

Before more specific points are raised about legal translation, it needs to be emphasised that confrontation with the indeterminacy of language, not only legal language, is not anything unusual to translators. It is rather something they are trained to live with (Pym 2008). Nonetheless, the peculiar properties of legal language, acknowledged by legal scholars and legal linguists (see, e.g, Jadacka 2004; Halpin 2013), seem to make this confrontation more difficult, and the freedom to resolve cases of uncertainty is more limited in legal translation. This statement is additionally justified when one considers the consequences wrong translations of legal documents may cause to all parties involved, including the translator.

As a matter of fact, when faced with indeterminacy, the legal translator may spot several possible alternative meanings, which could produce different legal senses (cf. the examples in Section 5.2). In this light, choosing one of the possible meanings without adding any note on that for the client or the target reader is likely to contravene the goal of legal translation. Even if the translator is almost convinced of the correct meaning – their own Dworkinian "one right answer" (cf. Zeifert & Tobor 2021: 1684) – it is not their role, even if they are, at the same time, a perfectly qualified and experienced lawyer, to choose one and discard the others. It is not because they are an outsider to legal discourse or because they do not have the competence to do so. Instead, when translating, they assume a particular role in legal discourse, and their partners in the communicative situation have some expectations towards them and trust them (Nord 2006: 37–40). Thus, they should strive to perform this particular role to the best of their

[3] Similar questions about practical interpretation skills could be asked about the staff of administrative agencies and other authorities. Not all of them have a legal background, not to mention the experience of a trial lawyer or a judge. Yet, they are engaged in applying the law, so they can hardly be considered outsiders to legal discourse. While one may, admittedly, argue that translators do not apply the law, it might well be pointed out that several legal translators have a more thorough legal knowledge than many clerks or officials.

[4] For a detailed analysis of this issue, see Kusik (2023).

abilities, guided by the goal of legal translation. This is not to say that they must forget their legal competence or even legal interpretation skills. Quite the opposite, their legal knowledge and legal language expertise can be very precious and may help them spot an indeterminacy-related problem and highlight it to the client (reader). Each legal translator should also bear in mind, as Cao (2007: 80–81) aptly observes, that whereas they have no authority (or, perhaps, it would be better to say that it is not their role) to resolve ambiguities in a source legal text, they might do so unintentionally when they lack legal and linguistic expertise.

One additional note should be made about the perception of indeterminacy, namely that it may be individual and subjective to some extent. In this connection, it needs to be remembered that "words in translation never exist in isolation, and their true meanings cannot be fully appreciated unless they are construed with reference to the ways they are structured" (Cao 2007: 92). The whole context in which words appear certainly affects the perception of indeterminacy by translators, so they may automatically disregard absurd or irrelevant meanings (cf. Zeifert & Tobor 2021: 1678). Individual factors such as a particular translator's legal and linguistic expertise will certainly matter in this respect, too.

6. Conclusions

The notion of interpretation permeates the academic debate on legal translation and may lead to confusion, as the examples from the literature reviewed in this paper demonstrate. The variety of possible definitions of *interpreting* – in ordinary and legal language, in legal theory and in philosophy – implies that this confusion arises to some extent from the different meanings attributed to this word by particular authors. The discussion in Sections 3–5, including, in particular, the practical examples provided in Section 5.2, shows how elusive references to interpretation may be and that, depending on the view one adopts, the same actions by translators can be described as different kinds of interpretation or not interpretation at all. Therefore, the main research questions may be answered as follows: the term *interpretation* is not understood uniformly in legal translation literature, and the most apparent reason is the ambiguity of this term itself.

However, there are also more substantive points of controversy than terminological differences. These include, *inter alia*, varying distinctions made by some authors between interpretations by lawyers and by translators. The point of controversy that has been dealt with more extensively in the present paper is the approach to resolving indeterminacy or uncertainty in a source legal text. It not only seems to exacerbate the misunderstandings among scholars but is also the most relevant for translation practice, as it entails the question of whether it is permissible for the legal translator to interpret a source legal text in the sense of resolving its indeterminacy.

The point made in this paper is that it is not the legal translator's role to resolve indeterminacy in the source legal text they are translating by deciding on one of the several possible meanings (which is effectively in line with the positions of Šarčević (1997: 87–92), Cao (2007: 80) and Zeifert & Tobor (2021)). In such cases, the ambiguity should be either preserved or pointed out in a translator's note or comment – as exemplified in Section 5.2. It is, therefore, not quite accurate to say that translators should strive to approximate lawyers' approach to legal texts. This position, however, is not grounded on arguments denying legal translators' competence or role as participants in legal discourse. As opposed to that, this paper emphasises legal translators' responsible role in legal discourse, in which they actively

participate. However, the legal translator has their own function to fulfil in this discourse and is guided by the goal of legal translation, which is to communicate the legal sense – not to pursue the interests of parties or resolve a legal dispute.

A practical conclusion that can be drawn from this research is the need for scholars to use more precise terminology when discussing the various aspects of interpretation in the context of legal translation. While this paper does not seek to prescribe one particular definition of *interpretation*, it would be useful if authors clearly specified how they understand this term to avoid confusing readers – not only other expert legal or translation scholars but also those who consult their papers for educational or professional purposes. Moreover, it is uncontroversial that legal translator competence needs to involve a thorough legal component. Such knowledge and skills should involve familiarity with methods of legal reasoning and legal interpretation, which need to be included in legal translator training. The legal component is imperative in the ability to perceive possible indeterminacy-related problems and respond to them appropriately. When indeterminacy arises in a source legal text, the legal translator's professional expertise turns out to be crucial – especially for the other participants in legal discourse, whose work not infrequently depends on the work done by legal translators.

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