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CONTRASTIVE SEMANTIC ANALYSIS OF CONTRACT LAW TERMS IN STUDIES OF FOREIGN LANGUAGE FOR SPECIFIC PURPOSES

Summary. The article is intended to present possibilities of using contrastive terminology analysis in teaching a foreign language, particularly concentrating on legal terminology and contract law. This paper has several aims. Firstly, it intends to overview foreign language teaching possibilities paying special attention to the method of contrastive semantic analysis and possible ways to involve corpus linguistics into the teaching/learning process. Secondly, it seeks to define specifics of legal terminology and contextual differences in Lithuanian, English and German contract law. Thirdly, the focus is also on semantic equivalence between lexical items of different languages. Fourthly, it presents a possible semantic analysis of very basic but at the same time quite complicated contract law terms in the EU languages. Three European languages (Lithuanian, English and German) that are widely used in commerce, logistics, administration and diplomacy are chosen for the analysis. The combination of the contrastive method and analysis of legal context of the chosen languages may reveal the different aspects of the terms. Theoretical frameworks and practical analysis presented in the article could be of great interest for LSP learners, terminologists, translators, teachers and dictionary compilers.

Keywords: comparative legal terminology, corpus linguistics, contract law terminology, contrastive linguistics, semantic equivalence, legal translation strategies, foreign language teaching.

Introduction

Nowadays it is impossible to live in the society without reflections on other cultures, customs, rules, regulations, law and languages. These reflections define the behavior in the intercultural communication. Contract law is one of the spheres that are in the constant process of modification and change, because of the steps taken to achieve unification of the EU law. As it was already expressed in 2007 by Onufrio, contract law translations are especially important because of the attempt to unify the terminology of contract law in the European Union. Intensive co-operation between the EU countries requires the harmonization of the terminology and the terms of contract law is one of the major concerns in this process. Contract law attracts special attention of the EU legislators. Moreover, the European Commission pays special attention to unification of the EU contract law and creation of its common standards. Examination of key contract law concepts in different EU member states and definition of common EU contract law concepts are among the most important objectives in the harmonization process. Contrastive analysis of contract law terminology in different legal systems within the EU may

contribute to these ongoing initiatives. That is why it is important to discuss the research of terms and their issues in translation into the EU languages.

Contrastive research principles, legal terminology and its translation strategies are extensively examined in the works of terminologists abroad. The scope of their studies encompasses the analysis of various legal languages and legal terminology used in different legal systems. Mattila (2006), DröBiger (2007), Sandrini (1996), Koček (2006) provided principles of a comparative legal terminology, examined the issue of equivalence. Pommer (2008) and Harvey (2002) highlighted the role of legal translation in intercultural communication, the factors determining difficulties of legal translation and analyzed translation strategies used for legal terminology. De Groot and van Laer (2007) inspected law dictionaries of the EU, the issues of translation from one legal system to another, the problem of equivalence and difficulties in legal translation. In Lithuania contrastive research on legal terms of different legal systems is analyzed by several researchers focusing on semantics and formation of terms in different legal systems. As an example, Rackevičienė (2011) investigates translation methods and provides a comparative analysis. Nevertheless, legal terminology translation strategies, semantic aspect of legal terms and comparison of problematic translation issues in Lithuanian, German and English languages have been only occasionally discussed alongside.

It must be emphasized that the analysis of contract law terms is particularly useful for LSP learners as participants of rapidly evolving international political, economic, cultural relations. Three European languages (Lithuanian, English and German) are chosen for the analysis. These are widely used in commerce, logistics, administration and diplomacy. Moreover, emigration of Lithuanians, business, cultural and other ties to foreign countries determine the popularity of these languages. Lithuanian, German and English languages belong to the group of Indo-European languages. The Lithuanian language is a part of the Baltic languages. English and German (High German language) belong to West Germanic languages. The Lithuanian language is used in the Lithuanian legal system; the German language is used in the German legal system. The English language is used in several legal systems, but the Anglo-Saxon (English – Welsh) legal system is the pioneer and the oldest one, that is why it is a choice of ours.

The object and method of the research. Three terms and their Lithuanian and German equivalents were taken for the analysis. As we deal with

contract law in our analysis, the research is targeted at the English-Welsh contract law terms (contract, agreement, consideration). The analysis was performed using descriptive and contrastive methods which allowed describing and comparing the semantic features of the English, German and Lithuanian terms.

The goal of the research is to show what key parts of the semantic analysis of contract law terms must be considered to conduct the research on terminology. **The research** has the following **objectives**:

- 1) to mark a great significance of the legal context dealing with contract law terms in different languages;
- 2) to indicate the importance of the choice of translation method and the problem of equivalence in dealing with law terminology;
- 3) to analyze the main semantic features of the chosen contract law terms in three languages;
- 4) to direct LSP learners' attention towards corpus linguistics as a supplementary method in language learning.

In this research, we deal with terms by giving three examples of the most common but at the same time quite complicated terms in their usage. Describing their usage in different legal systems and analyzing their most important features, we pay special attention to semantics and add corpus linguistic aspect. This kind of analysis is an input to the learning process and application of contract law terminology.

Contrastive Semantic Analysis and Corpus Linguistics

In contemporary society contrastive semantic studies are particularly relevant. According to Gudavičius (2007), the object of contrastive semantics is the research itself of semantics of contrasted languages. Contrastive semantics is oriented towards the content and the plane of expression simultaneously. The content may embrace the naming of one object or the naming of abstraction. Contrastive semantics defines the contrast or comparison as a method that helps to reveal the systems of lexical semantics of different languages as well as show common and specific features of each language. Contrastive semantic studies facilitate understanding of our own language differences, reveal characteristics of other languages. Contrastive studies of terminology are critical because they help to reveal the peculiarities of both the foreign language and native language

terminology and provide much important information for foreign language teachers and learners. Contrastive semantic analysis usually encompasses two or more languages. The analysis is based on the comparison of languages, very often aiming to assist in language learning by identifying differences in the compared languages. The principles of contrastive analysis were extensively used in the 1950–1970s, as structural linguistic theories appeared, developed by Ferdinand de Saussure. In the Second Language Acquisition behaviorist theories, grounded by J. B. Watson, the processes of interference were prevailing. Contrastive analysis was broadly used in the Second Language Acquisition but it could not predict all learning difficulties. Later on contrastive analysis lost its popularity but nowadays the use of corpus linguistics in contrastive analysis could get a comeback in foreign language teaching.

Corpus could be defined as a machine-readable collection of naturally appearing languages compiled for the purpose of linguistic analysis. That is the underlying basis for corpus linguistics (Biel, 2009). The term corpus linguistics dates back to the 1980s. Developments using corpus linguistics in computer science helped to move towards a different, more productive manner of language teaching. Moreover, corpus linguistics empowers contrastive analysis to extend the limits of language teaching methodology of legal terminology as well as LSP in general. It is obvious that one of the tools which could help to improve the quality of contrastive analysis is corpus investigation. According to Biel (2009), legal translation is an inter-discipline study. It is in close relation to translation and cultural studies, linguistics, terminology and comparative law. Significant developments in corpus-based research encourage advancement within translation studies. Corpus-based translation studies moved forward in the mid 1990s and changed for the better in the last decade. Legal translation may gain supplementary theoretical and practical novelties from corpus linguistics. Besides, Bonelli (2000) highlighted the importance of corpus evidence in the classroom. Corpus linguistics enables the learner to be aware of a new style of learning because of methodological and theoretical innovations. In what manner corpus linguistics is used is related to the type of corpora. In contrastive translation studies of legal terms of more than two languages such types of corpora could be applied: multilingual comparable and multilingual parallel corpora. In accordance with Biel (2009), multilingual comparable corpora are used for cross-linguistic analysis and are associated with contrastive and comparable linguistics. This type

of corpora contains texts in two different languages and does not hold the translated language within. Parallel corpus is bilingual or multilingual and may be bi-directional. This type of corpus is usually used to prepare dictionaries, extract terms for terminological databases and train translators. It is not effective in translation of legal terms as one of the most important factors in legal translation is the legal system and context. However, parallel corpora can be used in the teaching process, as it helps to make students aware of the question of equivalence and “may help learners to distinguish between different contexts of use, and reduce their tendency to think in terms of one-to-one equivalence” and “can provide a means of identifying areas of difficulty that could then be integrated into the curriculum and discussed in class” (Oster; Lawick, 2008, p. 334).

Contextual Differences of Lithuanian, English and German Contract Law

We have to be aware that without knowing the contextual differences of legal terms of comparable languages, it is not possible to translate the terms properly and use them accordingly. The knowledge of the legal system is of central importance. This article provides information on differences and similarities of the Lithuanian, German and English contract law systems below.

The Lithuanian contract law is codified in the Lithuanian Civil Code. The new Lithuanian Civil Code replaced the old one (1964) in 2001. Tikniūtė and Dambrauskaitė (2014) examined the contract under the law of Lithuania and other EU countries. According to the authors, the Lithuanian contract law includes several legal systems. Influence of French and German legal systems and generally international documents is predominant. There is no requirement of consideration or *causa*. These elements are substituted by a remedy mechanism for gross disparity. The contract is described as an expression of the parties’ will. In the modern Lithuanian civil law doctrine the agreement is sufficient for the existence of the contract. Moreover, free will of persons is obligatory to create reciprocal rights and duties.

To summarize, in Lithuania the required elements of the contract are the parties’ agreement, the basis of the contract, the subject of the contract and the form required by the law (Mikelėnas, 1996). In the Lithuanian contract law

consideration is obligatory only in certain type of contracts, which are called *onerous contracts* (*atlygintinės sutartys*).

The German contract law is codified in the Civil Code (Bürgerliches Gesetzbuch). The code was reformed in 2001, and replaced the BGB of 1900. According to Tikniūtė and Dambrauskaitė (2011), there are no additional requirements applied in the German law for the formation of the contract. The parties agree and express wilful intention to create legal effects. In Germany the contract is defined as an intention to create legal relations (Willenserklärungen) by two or more persons. The agreement is considered one of the legal transaction types (Rechtsgeschäft). The concept of the contract in Germany is neither connected with the basis of the contract nor with the consideration doctrine. The essential feature of the contract and a necessary element of the agreement between the parties to conclude a contract is to reconcile the parties' will (Willenserklärung), confirming that the parties intend to create a contractual relationship. The essential elements of the contract are consent of the parties, capability of the parties and contract execution feasibility (Mikelėnas, 1996). Giuditta Cordero Moss (2004, p. 39) states that legal scholars have devoted considerable energy to classify and systemize the Roman law into the German law and have implemented the European standards on "consumer protection, extending most of them to all contracts, not only consumer contracts".

The English law consists of the common law and statutory law and the rules of equity. Moss (2004, p. 43) states that the English law of contracts is based on "the liberal ideal of the individual's autonomy". The party's determination of their own interests is respected by the legal system even if this should harm justice or sound judgement. The English law is very reluctant to interfere with the parties' own regulations, and the primary task is to enforce what the parties have agreed on rather than create justice. This attitude is based on the central position that in England the parties in the international business exchanges are expected to be able to take care of their own interests. The parties do not expect the legal system to keep them safe and treat them appropriately as they believe the legal system will give them tools to solve their issues in compliance with their agreement.

In sum, the contract is considered to exist when there are four elements of the promise or agreement: the parties' agreement expressed as an offer or acceptance; capacity of parties; satisfaction of consideration doctrine; parties'

intention to create a legal relationship. The main doctrine of the consideration is the idea of reciprocity. It means that each party is to get something of a certain value, or one party benefits and the other parties have certain detriments. Satisfaction of the doctrine of consideration distinguishes the English contract law from the continental law countries. The intention to create legal relations is a necessary element of the agreement (Mikelėnas, 1996).

Translations of Legal Terms

While analyzing the semantics of the terms of contract law it is important to investigate to which extend the terms are identical and not identical. In the analysis of legal terms it is particularly relevant to examine the issue of semantic equivalence. As stated by Sandrini (1996), the terms of different languages and legal systems cannot be absolutely equivalent. The definitions of terms, their similarities and differences have to be analysed. Contract law terms cannot be translated without taking into account the cultural and legal differences between the systems. The level of equivalence of terms depends on how closely the legal systems are related. The main translation problems of contract terms that arise from the differences of the Lithuanian/German contract law and the English common law have been insufficiently studied.

The concept of *equivalence* has been one of the most debated issues in the contrastive semantics and especially in comparative legal terminology. If the first and the second terms are said to be equivalents, the first one can be used to translate the second and vice versa, without implying that they are identical at the conceptual level. Šarčević (2000) marks that because of the inherent incongruence of the terminology of different legal systems, it is not suitable to use natural equivalents of the target legal system that are identical with their source terms at the conceptual level. A more appropriate way is to choose the closest *natural equivalent* that is capable of providing the legal sense of the source term and leads to the favourable outcome.

Semantic analysis is particularly relevant for translators. It is quite normal that the terms of one legal system do not comply with the terms of the other legal system. Ajani (2007) emphasises that the problem of mismatch between translations of contract law terms is fundamental. The problems may lie even in the translation of terms that seem quite clear: "sutartis" in Lithuanian is always

translated as "Vertrag" in German and "contract" in English, but that does not mean that the rules governing contracts in Lithuania, the United Kingdom and Germany are the same. Given these circumstances the relevance of the problem of mismatch in contract law translations is obvious.

De Groot and Van Laer (2007) hold that legal terms will hardly ever contain the same semantic content in both source and target legal systems. The translator has to analyse the source legal system in order to understand a legal concept. The legal setting the concepts are used in, the functions and purposes of concepts and relations with each other should be examined. Nevertheless, the translator has to possess sufficient knowledge of the target legal system as well. De Groot and Van Laer (2007) consider that translators of legal terminology are obliged to practice comparative law and that legal translation requires both cognitive and communicative approach to the material. The knowledge of source/target legal systems, assessment of the recipient and the function of the target text are of major importance. Different translation methods should be applied while translating the terms for readers and for lawyers. Besides, the material influences the choice of translation method, which is not the same for the texts to be used for information purposes and for the texts to be used as legal documents in the target language (Harvey, 2002).

Jakaitienė (2009) mentions the importance of the selection of translation strategy. She notes that translation method depends on what the translator seeks to preserve. It could be either semantic properties of the translated term or the nearest equivalent in the target language of the target legal system. It is clear that not always a word or phrase of the target language accurately reflects the content of the term of the first language. Absolute match of meanings can hardly be expected in general, because during the process of translation a part of the information is omitted or disappears.

Rackevičienė and Janulevičienė (2011) state that translation methods for legal terms vary between the target language to the source language oriented (hereinafter, TL-oriented and SL-oriented respectively) methods. The target language oriented translations try to assimilate the source legal terms. The latter seeks to preserve the semantic content of the source language legal terms. Harvey (2002) marks that the TL-oriented strategy constitutes functional equivalence, i.e. the use of the TL legal concept, the function of which is similar to that of the SL legal concept. The most usual SL-oriented translation techniques are literal

translation and borrowing. Another widely used translation technique of legal terminology, which is considered to be an intermediate method, is a description of the meaning of the term.

Each of the above mentioned translation techniques can become in hand only when the translator assesses every term and pays attention to several factors: legal system and context, desired result and implied recipient. LSP-learners and translators of contract law terms must become familiar with translation techniques, since these are vital in the process of translation. Moreover, it is important to know where and when corpus assisted translation could be used and corpus analysis could be conveyed.

After discussing the issue of corpora, semantics, translation and other important topics related to legal terms, we move to the possible analysis of contract law terms presented below.

Analysis of Contract Law Terms and Limitations of Research

Contract law is based on a number of acts and documents. It defines and regulates property relations and relations related to personal non-property relations, as well as family relationships (Mikelėnas, 1996). Contract law encompasses many spheres of life. In order to translate the terms, a translator must be prepared to deal with cultural and legal issues of different legal systems. Confronting the terms of contract law can solve many problems in the translation process and deepen the knowledge of the law systems, which is absolutely necessary for better understanding of the meaning of terms and their usage. To undertake a contrastive analysis of contract law terms of the English, German and Lithuanian languages, we start by selecting a set of semantically closely related and often confusable legal terms to work with. The set consists of specific contract law words (contract, agreement, consideration) and their definitions. The terms are compared, and their translation methods are analysed. In the analysis below, the meanings of the terms are derived consulting the dictionaries, textbooks and Civil Codes.

The English law has no universally agreed definition of a **contract**. The absence of a Code does not prevent from setting out the basic principles of the law of contract. Mckendrick (2008) writes that we can define a contract on the basic principles of the law of contract. It means that the parties can reach an agreement

which must be supported by consideration and an intention to create legal relation. The English term *contract* is of Latin origin; it is made from Latin *contractus* ('agreement'). The Lithuanian term *sutartis*, on the other hand, is a verbal derivative made from the verb *sutarti*, i.e. to agree, which is derived from the inheritance *tarti* 'to say, to pronounce.' A contract can be understood as legally binding agreement and exchange of promises between parties that the law will enforce. Turner (2011) discusses that one of the essential requirements for the validity of any English contract is consideration. It is an act or promise by one party to offer the price for which one buys the promise of the other. The English contract law is based on the belief that nobody does anything for nothing. In the Lithuanian law a contract is defined as "an agreement of two or more persons to establish, modify or extinguish legal relationships by which one or several persons obligate themselves to one or several other persons to perform certain actions (or to refrain from performing certain actions), while the latter persons obtain the right of claim" (Civil Code of Lithuania, Article 6.154).

The essential concept in the English contract law is a promise, in the Lithuanian contract law it is an obligation, in the German contract law it is intention (Willenserklärung). Another important difference is the requirement of consideration which is not obligatory in the Lithuanian and German contract law. Thus, it must be added that in the Lithuanian contract law gratuitous contracts (*neatlygintinės sutartys*) are possible.

This analysis reveals that although *contract*, *sutartis*, *Vertrag* are to be considered equivalents, they have certain semantic differences which in certain contexts might become extremely important.

The term **agreement** is used in the English language as a synonym to 'contract,' but it must be stated that every contract is an agreement, but not every agreement is a contract. In Lithuanian Civil Code 'susitarimas' is often used in agreements related to family, marriage, agreement between parties, etc. The word 'agreement' has more equivalents in German and is a general term that can be used in a broader sense than the word 'contract'. While going through the German Civil Code (BGB) translation in English it is noticeable that the term 'contract' prevails over the term 'agreement,' because 'contract' has more specific and context adopted meaning.

There are two Lithuanian equivalents (*susitarimas* / *sutartis*) of the word 'agreement'. The translation of the 'agreement' in German embraces more

equivalents. One English term could be substituted by two Lithuanian equivalents, whilst more than two German equivalents may be used translating one English term 'agreement'. In German, there is a special word for each type of agreement. For example, 'das Abkommen' and 'der Vertrag' that are analysed previously, or 'die Zustimmung' which is translated as 'agreement', but also has a seme of 'das Aussage', i.e. in English 'statement' or 'testimony'.

The meaning of the term **consideration** in Lithuanian is 'tarpusavis atsilyginimas, priepriešinis patenkinimas' (Bitinaitė, 2013, p. 169). 'Consideration' in the English legal system is a benefit which must be bargained between the parties, and it is an essential reason for a party entering into a contract. 'Consideration' must be of value and is exchanged for the performance or promise of performance by the other party (Online dictionary of law <http://dictionary.law.com/Default.aspx?selected=305>). According to Alcazar (2002), the term 'consideration' has several meanings in English. The general meaning: attention, thought, deliberation (in German 'die Überlegung'); Legal meaning: whatever is given or accepted by each party in return for the other party's reciprocal promise (in German 'Leistung,' 'Gegenleistung'). Sandrini (1996) noted that the relations between concepts of different legal systems do not imply immediate interchangeability or intentional identity but rather represent a sort of window onto another legal reality. Such an approach should enable the user to see what concepts and terms are employed by another legal system to control the same matter. The term 'consideration' has an equivalent in German with an explanation that the word is used in the Anglo-American legal system ('die Gegenversprechen' im angloamerikanischen Recht). Rackevičienė (2011) explains that legal English is affected by the Anglo-American legal system that is based on common law. It differs substantially from continental law, which is predominant in most of the European countries. Therefore, most legal concepts of the Anglo-American legal system are specific to this system and have no direct equivalents in continental law systems. Since the UK has become the member of the EU, a number of changes within the English law (including the English contract law) have been performed to meet the EU requirements and to contribute to harmonisation of the European Union law. Nevertheless, the Anglo-American law and its terminology still have a lot of special features which make them different from continental law. As a further matter, translation of English terminology requires special knowledge of the Anglo-American law.

Conclusions and Recommendations

Considering the degree of completeness of the research of the analysed terms, it must be stated that it is not in full. We did not have the goal to present the analysis to the utmost, as it is not possible to do so without the documents/context the terms are used in. As it was mentioned by Sinclair (1996), the starting point of the description of meaning in language is the word, then the sentence, which is a linking element to grammar and discourse. The word is the connective element of grammar and vocabulary. A complete freedom of choice of a single word is not occurring very often. According to the scholar, the open choice, which is called '*terminological tendency*,' is the ability of a word to have a fixed meaning in reference to the world. The words tend to form groups and make meanings by their combinations. Moreover, the presented analysis of terms could cover a wider area of corpus analysis. Contrastive analysis could be extended and become more useful if corpora were included. The differences of the usage of terms as well as examples of translations could be also exposed and marked by the researchers. However, in our restricted content analysis it is not beneficial to conduct the research in full extent. We refer to corpus but exclude it in our analysis of the contract law terms. A corpus could be compiled to fulfil the tasks of translation practice of contract law terms for the learning/teaching/translating purposes, apart from a shorter version of the analysis in our case. The analysis was thrown on the other scale. The goal of the research was to show what key parts of the semantic analysis of contract law terms must be considered to conduct the research on terminology. The article covered the problem of the choice of the translation method, context of the legal terms and their semantic characteristics as well as the issue of corpora.

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SUTARČIŲ TEISĖS TERMINŲ GRE TINAMOJI SEMANTINĖ ANALIZĖ UŽSIENIO KALBOS SPECIALIESIEMS TIKSLAMS STUDIJOSE

Santrauka. Šiuo straipsniu siekiama parodyti, kaip galima gretinamąją terminologijos analizę pritaikyti mokantis užsienio kalbos specialiesiems tikslams. Straipsnis turi keletą tikslų. Pirma, juo ketinama apžvelgti užsienio kalbų mokymo strategijas, ypatingą dėmesį atkreipiant į gretinamąją semantinę analizę ir tekstynų lingvistiką, ją įtraukiant į mokymo(si) procesą. Antra, siekiama nustatyti specifinius teisės terminijos ir konteksto skirtumus lietuvių, anglų ir vokiečių sutarčių teisėje. Trečia, aptariamas skirtingų kalbų semantinis ekvivalentiškumas. Ketvirta, pateikiama keleto sutarčių teisės terminų semantinė analizė. Analizei pasirinktos trys Europos kalbos – lietuvių, anglų ir vokiečių. Šios kalbos plačiai vartojamos prekybos, logistikos, administravimo ir diplomatijos srityse. Gretinamoji semantinė analizė gali atlikti svarbų vaidmenį užsienio kalbų specialiesiems tikslams mokymo ir mokymosi procese. Užsienio kalbų terminijos gretinimas su gimtosios kalbos terminija leidžia geriau suprasti terminų semantiką ir terminus vartoti teisingai. Gretinamoji terminų analizė suteikia daug svarbios informacijos terminologijos kūrėjams ir vartotojams, taip pat vertėjams bei žodynų sudarytojams.

Pagrindinės sąvokos: gretinamoji teisės terminija, tekstynų lingvistika, sutarčių teisės terminija, gretinamoji lingvistika, semantinis ekvivalentiškumas, vertimo strategijos, užsienio kalbų mokymas.