

The Complexities of Turkish Legal Translation

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No one doubts the challenge of doing legal translation in any language. However, legal translations both from and into Turkish pose unique difficulties for the translator because of the significant differences in the fundamentals of the Anglo-American and Turkish judicial systems. This difficulty arises from Turkey's radical transformation from the Islamic Ottoman Empire to the secular Turkish Republic and the subsequent complex judicial legacy.

The judiciary and administrative aspects of the Ottoman Empire were governed by the Shari'a, Islamic law, since the Sultans were also the Caliphs, who served as the spiritual leaders of the Islamic world. It must be noted that Islam is not merely a religion but a system of law, and a social and political ideology, containing specific rules about marriage, divorce, inheritance, etc. In the 1870s there were reluctant government attempts to adopt certain Western laws and a constitution with the *Tanzimat* reforms, but these were neither thorough, nor long-lived.

After the defeat of the Ottoman Empire at the end of World War I and the signing of the Sevres Treaty in 1920, the empire was in ruins, and large chunks of land were claimed by the victorious Allies. Modern Turkish history begins at this juncture, when Mustafa Kemal Atatürk, a military officer, organized a national resistance which resulted in the expulsion of the Allies from Turkish soil. The signing of the Lausanne Treaty in 1923 set the boundaries of present-day Turkey.

However, it was Atatürk who set the course for modern Turkey by radically transforming the nation into a secular Republic with the help of swift reforms. The Sultanate and the Caliphate were abolished, the Arabic alphabet was replaced with an adapted Latin version, equal rights for women were granted, and a wide range of social and political reforms were enacted to align the country with the West. Turkey became an independent Republic in 1923.

These secularist and Western-inspired reforms shook the core of the Islamic Ottoman judicial apparatus. Shari'a was no longer the law of the land. Instead, many European codes were studied, adapted, and introduced. The Turkish Civil Code and Code of Obligations of 1926 were based on Swiss law. The Civil Procedure Code of 1927 was a modified version of the law of the Swiss Canton Neuchatel. The Criminal Code of 1926 was patterned after the Italian Code of 1889. The

Criminal Procedure Code of 1929 was adapted from its German counterpart of 1877. The Commercial Code of 1926 was replaced in 1957 with a new Code containing many provisions from German and Swiss laws. Needless to say, most of these have since been modified to adapt to the country's changing needs. Still, Turkish law retains its distinctly continental flavor in comparison to Anglo-American law.

However, these continental codes are not the only sources of law in Turkey. The primary source, as in the U.S., is the Turkish Constitution. The first Constitution was enacted by the Grand National Assembly in 1924. Since then, the political instability encountered in the development of democracy in Turkey has necessitated the adoption of a new Constitution in 1961 and again in 1982. Article 2 of the 1982 Constitution defines Turkey as "a democratic, secular, and social state governed by the rule of law..."

As in the U.S., the Constitution and enacted statutes are the primary sources of law in Turkey, but the similarities end there. First, Turkey does not have the additional layer of state laws. Second, case law, or precedents, on which the Anglo-American law relies so heavily, is not a factor in the Turkish judiciary. That means there is not a body of "judge-made" law in Turkey.

Nonetheless, the role of judges is far more pivotal and substantial in Turkey. There is no jury trial in Turkey; all are bench trials. Judges are not politically elected or appointed officials, but career professionals who must rise through the ranks by merit, and whose independence is guaranteed by Article 138 of the Constitution. It is the judges who question witnesses during trials in Turkey. The parties may suggest questions, but it is up to the judge to utilize them. (By the way, witnesses have the option to testify either under oath or without, but with varying consequences). Moreover, it is again the judges who choose to retain experts who present the court with written reports but do not testify in person. Thus, the larger role of the judge seems to come at the expense of counsel, and this role shift does not allow for the sensational confrontations between defense attorneys, and witnesses, and experts which are well-known in America.

So, given these vast and fundamental differences between the American and Turkish judicial

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systems, what is required of the Turkish translator to produce an accurate and meaningful legal translation? It goes without saying that the translator must possess excellent comprehension and written skills in both English and Turkish as well as extensive dictionaries and resource books. A few specialized legal dictionaries are available, but most seem to be from English into Turkish. But fluency in the languages and possession of dictionaries are simply not adequate. The reason for this is simple. Dictionaries are designed to provide synonyms, not an in-depth exploration of concepts and legal systems. The qualified Turkish legal translator must also possess the intellectual curiosity and vigilance to question concepts, to delve into ideas, and to do the necessary research to discern nuances of meaning. That means not being satisfied with plugging terms into the text, and serving the best interests of the client by pointing out differences between the American and Turkish judicial systems in footnotes when necessary.

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An excellent example of this necessity can be found in the term *müteselsil kefil*, which pops up frequently in commercial credit agreements, joint venture protocols, etc. Dictionaries yield "joint guarantor/co-signee" which is a widely-used and understood concept in the U.S. If the translator's job ended with the typing of this synonym, it would be a grave disservice to the client. The translator needs to question the significance of the word *müteselsil*, which means "continuous as in a chain" or "joint." Upon further research, a fundamental difference becomes obvious. Turkish law allows for two types of "joint co-signees or guarantors": *adi kefil* (common guarantor) and *müteselsil kefil*. In the

first, the creditor can initiate legal action against the co-signee only after having exhausted various avenues against the debtor. In the latter, however, the creditor can seek legal action against the co-signee without being obliged to pursue the principal debtor first. This is critical information for the foreign corporation that inked its name under *müteselsil kefil*.

Translation agencies also have an important role to play in producing top quality legal translations from or into Turkish. First of all, it goes without saying that the agency must exercise great care in selecting the translator. It would be ideal to identify potential legal translators before a project comes along so credentials can be fully examined at the agency's convenience. Second, since specialized experience and resources are paramount to the success of the translation, agencies need to realize that these may come at a higher cost. Agencies must also appreciate the importance of sometimes providing extensive footnotes even for budget-sensitive projects. This becomes a major concern, especially in translations from Turkish into English, where word counts typically expand about 25-30 percent. Legal footnotes may add to this number and upset the calculations and margins established by the agency. But this need not be a surprise; a seasoned legal translator ought to forewarn the agency.

Finally, the agency may greatly contribute to the process by educating the client about the intricacies of legal translation; by negotiating sufficient deadlines so quality will not be compromised; and by facilitating effective communications between the translator and the client so questions can be answered promptly. Written questions and answers are preferable in order to eliminate the distortions which may occur when information is relayed through several channels.

Today, the demand for Turkish legal translation work in the U.S. can be divided into two informal categories: personal and commercial/corporate. Personal legal translation consists of power of attorney documents, divorce decrees, certificates of notification, personal lawsuits, etc. There are also frequent demands for the translation of personal legal documents, such as identification and marriage certificates, but these are only marginally legal as they are simple documents requiring no specialized expertise.

In terms of sheer word count and mental challenge, however, personal legal translations pale in comparison to commercial/corporate translations. The large volume of commercial/corporate work is a result of increasing foreign investment and capital in Turkey. Turkish Law No. 6224, titled "Law on the Encouragement of Foreign Capital" was specifically designed to entice foreign investment for industrial development by providing equal treatment for domestic and foreign capital. This legislation, and the favorable political climate in Turkey, have spawned much foreign investment in areas ranging from the military to the construction industries, and from multimillion dollar sales to joint ventures. All of this activity necessitates the translation of protocols, bid proposals, commercial credit agreements, and inevitably, lawsuits, court judgments, appeals, and writs. And of course, for the translator who enjoys the legal field and a good challenge, this means lots of interesting work.

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