

Ss Cyril and Methodius University in Skopje
Универзитет „Св. Кирил и Методиј“ во Скопје

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SHALL IN LEGAL LANGUAGE AND ITS TRANSLATION EQUIVALENTS IN SERBIAN

Abstract: This paper aims to examine the translation equivalents of the verb *shall* in legal discourse and in what way the relevance might be affected by the translator's choice. For the purpose of this paper, the verb *shall* is viewed as a communicative clue the way it was defined by Gutt (1989) in his dissertation on relevance and translation. Verbs, especially modals, are not frequently used in legal register in Serbian¹, and here we are interested to see if this tendency is affected by the fact that original texts of legal documents in English are abundant in examples of the verb *shall*. The modal (and auxiliary) verb being examined is ambiguous, with several distinct meanings, and the main goal is to investigate how the meaning is narrowed in the target language, and what the effects on the explicatures and implicatures in the text are. Examples are excerpted from EU directives within the Development of Environmental Legislation project, in the Federal Republic of Yugoslavia (2002)².

Keywords: communicative clue, verb *shall*, translation equivalents, legal language

1. Introduction

This paper deals with one of the stylistic markers of legal language and the ways it is translated into Serbian. The verb *shall* is viewed as a communicative clue (Gutt, 1989) since it carries information about the style and register, apart from other semantic layers, hence, it represents one of the significant factors in forming explicatures and implicatures.

Legal language in Serbian and in English has numerous common characteristics even though these two legal systems have developed under different influences – the English legal system developed mainly under the

¹ Tošović finds that there are twice as many verbs than nouns in legal register in Serbian (Tošović 2002: 363)

² *EU Directives in focus*, 2002, Ed. Slavko Bogdanović, Budućnost: Novi Sad

influence of the French³, while the Serbian legal system was strongly influenced by German legal acts. These common characteristics include mainly nominalized expressions, excessive use of passive voice, longer and more complicated sentences, an unnecessary piling of words, highly specialized terminology, a weak presence of verbs, etc. The tendency towards depersonalization has led to a high degree of nominalization (Radovanović 2004: 177) and the syntax of generalization deletes the context and the participants (Goodrich 1990: 223). On the other hand, the verb *shall* represents a major difference between the two languages and might prove to be problematic upon translation from English legal texts, since Serbian does not have an adequate verb equivalent or an expression to transfer all the aspects of meaning of this polysemous verb into the translated text. In an English-Serbian dictionary, different translations can be found for the verb *shall* – they include the future tense of the verb *be* (*biti*), the verb *must* (*morati*), *ne smeti*, *trebati*, *može se očekivati*, and so on⁴. These are some of the possible meanings and, hence, translations of constructions in English that contain the verb *shall*. It should be noted that the verb we are examining in this paper also serves the purpose of generalization since it has several different meanings and allows for different interpretations on different occasions of use.

Even though some researchers of legal language hold that the verb *shall* should be replaced by *must* (Butt 2002: 10), this might prove difficult due to the polysemous nature of *shall*. Our main hypothesis is that the translator will have to, in the majority of cases, decide on one of the aspects of the meaning of the verb *shall*, which leads to concept narrowing. Since the corpus is made up of legal texts, this narrowing proves to not be crucial for the process of interpretation, as we shall see in our analysis.

2. Theoretical framework

Ernst August Gutt (1989) developed an approach to translation based on the Relevance Theory. This inferential approach to communication was first developed by Sperber and Wilson (1986/95) and it is structured around the cognitive and communicative principle; it presupposes that the hearer (or the reader) is guided through the process of utterance (and sentence) interpretation by the expectation of relevance. Relevance is proportional to cognitive effects achieved and inversely proportional to cognitive effort needed for the interpretation process. This approach stresses the importance of context in

³ Hence, the reverse word order (noun + adjective) in some legal terms, which is unusual for English, but quite common for French – *attorney general*, *condition precedent* or *notary public* (Solan and Tiersma 2010: 14)

⁴ *English-Croatian Dictionary*, 1999, Ed. Rudolf Filipović, Školska knjiga: Zagreb

utterance interpretation – the subset of assumptions used in interpretation. Context comprises not only information about the immediate physical surroundings and preceding utterances in communication, but also general knowledge, beliefs, expectations, etc. We can see how context is important within our framework of legal text analysis, since numerous pre-existing assumptions and expectations affect the text interpretation.

Sperber and Wilson (1986/95: 19) exemplify the notion of mutual knowledge by using legal language context:

In legal proceedings, for instance, there really is a serious attempt to establish mutual knowledge among all the parties concerned: all laws and precedents are made public, all legitimate evidence is recorded, and only legitimate evidence can be considered, so that there is indeed a restricted domain of mutual knowledge on which all parties may call, and within which they must remain.

Witczak-Plisiecka (2006: 183-185) identifies several problems related to the description of legal language from a relevance-theoretic perspective. One of the problems is the object of description, since the discussion is possible only *a posteriori* since relevance depends on the participants in the act of communication and the context, neither of which are pre-given in the case of legal texts. She notes that, despite the efforts to make this register more explicit, legal texts are not easily accessible to all participants. The recipients of legal texts vary from experts (attorneys, judges, lawyers, etc.) to laymen. Here we have to acknowledge the difference in accessible background information, which may affect the interpretation of legal texts depending on the audience. Another problem important for our analysis is that of vagueness (Witczak-Plisiecka 2009). This is important for us since vagueness is also created by the verb we are examining here, as it can have several different meanings, but we shall address this issue in more detail within our analysis.

Gutt wrote his dissertation on the relation between relevance and translation. He proposes the idea that the majority of translations can be viewed as a form of interpretative use of language within the ostensive-inferential communication, and suggests a deductive approach to translation. One of the most important assumptions here is that translation is an example of normal communication, but in which the communicator is the original source and the recipients receive the communicated message in a different language. The goal of the translation is that explicatures and implicatures be preserved. This may pose a problem if we consider the interdependency of explicatures, implicatures and potential context (which may differ in translation, due to cultural differences, for example).

Gutt turns to direct quotation as a possible solution and proposes that communicative clues present the bearers of stimulus interpretation. One

interesting characteristic of language is the fact that even though particular languages may differ in concrete traits, they may be similar in terms of the communicative clues they can offer.

When it comes to direct quotation, the problem is that the addressees cannot simply use the contextual assumptions that are most available in order to retrieve the intended interpretation. Instead, they will have to use the assumptions intended by the original communicator. Gutt defines direct translation on the basis of direct quotation (1989: 88):

Direct translation: A receptor language stimulus is a direct translation if and only if it creates a presumption of complete interpretative resemblance with the source language original

This definition determines translation independently from potential contexts of recipients since two stimuli can share analytic and contextual implications only when processed in the same context. This, in turn, implies that the translator should not adapt the translated text, that is, they should not explicate the implicit information, summarize or make other adjustments of the explicit content. However, the translated text should also preserve all the properties needed to make the mentioned implications obvious. So, the communicative clues depend precisely on the context of the original text.

Due to the differences that exist among languages, it is impossible to achieve complete interpretative resemblance; this approach predicts cases where some conclusions reached by the recipients of the translated text will be incorrect. Since Serbian has no equivalent for transferring all the implications conveyed by the use of the verb *shall*, we shall examine how the translation of the said verb is affected in legal discourse.

3. Data analysis

The verb *shall* has come a long way from being only an auxiliary verb used for constructing the future tense. It was not distinguished from *will* in the grammars until the 17th century (Fries 1925). As the differentiation of the two verbs progressed, both verbs began to acquire new meanings and different uses. The verb *shall* is not frequent in everyday communication, as opposed to legal language, where it serves as the go-to means of prescribing and giving orders. Witzak-Plisiecka (2009) explains that people unaccustomed to the legal register might find this verb problematic, since its deontic aspect is not always obvious. This duality is present in passive constructions, as well. Sperber and Wilson (1986/95: 179) note that the task of the addressee is to assign a single

propositional form to an utterance, and they provide the following example: *It will get cold*, which (apart from reference assignment for *it*) calls for a narrowing of the concept encoded by the verb *will*. For example, enrichment [*very soon*] provides a satisfactory constituent of the proposition. In legal discourse, on the other hand, this kind of enrichment is not always possible. The time frame is either determined by a provision or conditions of a provision, or it implies [*while the said legal act is in force*]. In this sense, the verb *shall* does not represent a problem in terms of temporal determination.

When talking about speech acts, Sperber and Wilson (1986/95: 245-246) note that some speech acts, including demanding, do not have to be recognized as such in order to be executed properly. They give the example of the declarative: *You will finish the work before 6 p.m.*, which is connected with imperative: *Finish the work before 6 p.m.* Similarly, within the legal framework, which is by the nature of things directive, *shall* often performs this function. The problem is the fact that the same verb is used for forming the future tense. It is up to the translator to narrow the encoded concept in translation, or to try and maintain, where possible, the polysemous nature of the verb.

The examples are excerpted from EU directives within the Development of Environmental Legislation project, in the Federal Republic of Yugoslavia (2002). We have noticed a certain pattern when it comes to translating the verb *shall* in these documents. Namely, when the subject of a sentence is inanimate (directive, provision, condition, etc.), the verb *shall* is most often translated by the present tense (both in active and passive voice). This is the case with provisions that serve to define terms, where *shall mean/be/include* is translated by *označava se/podrazumeva se*:

(1) This Directive **shall apply to** the assessment of the environmental effects of those public and private projects which are likely to have significant effects on the environment.

(1a) Ova Direktiva **primenjuje se na** procenu uticaja na životnu sredinu onih javnih i privatnih projekata koji mogu imati značajne posledice po životnu sredinu.

(2) The provisions of this Directive **shall not affect** the obligation on the competent authorities to respect the limitations imposed by national regulations and administrative provisions and accepted legal practices with regard to commercial and industrial confidentiality, including intellectual property, and the safeguarding of the public interest.

(2a) Odredbe ove Direktive **ne utiču** na obavezu nadležnih organa da poštuju ograničenja predviđena nacionalnim propisima, i prihvaćenom pravnom

praksom u pogledu komercijalnih ili industrijskih tajni, uključujući i intelektualnu svojinu i zaštitu javnog interesa.

(3) “Substance” **shall mean** any chemical element and its compounds, with the exception of radioactive substances within the meaning of Directive 80/836/Euratom8 and genetically modified organisms within the meaning of Directive 90/219/EEC9 and Directive 90/220/EEC10;

(3a) Pod terminom “materija” **podrazumeva se** svaki hemijski elemenat i njegova jedinjenja, sa izuzetkom radioaktivnih materija definisanih Direktivom 80/836/Euroatom8, kao i genetski modifikovanih organizama u okviru značenja upotrebljenog u Direktivi 90/219/EEZ9 i Direktivi 90/220/EEZ10;

(4) “Techniques” **shall include** both the technology used and the way in which the installation is designed, built, maintained, operated and decommissioned.

(4a) Terminom “tehnike” **označava se** kako tehnologija koja je korišćena tako i način na koji je postrojenje projektovano, izgrađeno, održavano i na koji funkcioniše stavlja se van pogona.

The second consistency occurs with subjects that can be viewed as animate, that is, those that can perform an action. Most often, these subjects are states, authorities, commissions, etc. In these instances, the verb *shall* is translated by a construction characteristic for legal register in Serbian – *biti dužan*, or, less commonly, *biti obavezan*:

(5) The Member States concerned **shall enter into consultations** regarding, inter alia, the potential transboundary effects of the project and the measures envisaged to reduce or eliminate such effects and shall agree on a reasonable time frame for the duration of the consultation period.

(5a) Zainteresovane države članice **dužne su da se konsultuju**, inter alia, o potencijalnim prekograničnim posledicama projekta i o merama koje se predviđaju u cilju smanjenja ili otklanjanja ovakvih uticaja, kao i da se sporazumeju o razumnom vremenskom okviru trajanja ovakvih konsultacija.

(6) When a decision to grant or refuse development consent has been taken, the competent authority or authorities **shall inform the public** thereof in accordance with the appropriate procedures and **shall make available to the public** the following information (...)

(6a) Kad je odluka o davanju ili odbijanju projektne saglasnosti doneta, nadležni organ ili organi **dužni su da o tome obaveste javnost** u skladu sa odgovarajućim postupcima, pri čemu **su dužni da stave na uvid javnosti** sledeće informacije (...)

(7) Five years after the entry into force of this Directive, the Commission **shall send** the European Parliament and the Council a report on the application and effectiveness of Directive 85/337/EEC as amended by this Directive.

(7a) Pet godina po stupanju na snagu ove Direktive, Komisija **je dužna da** Evropskom parlamentu i Savetu **dostavi** izveštaj o primeni i efektima Direktive 85//337/EEZ izmenjene i dopunjene ovom Direktivom.

(8) Four years after the date referred to in Article 9 (1), the Member States shall report to the Commission on the experience gained in the light of which the Commission **shall make** a report to the European Parliament and the Council together with any proposal for revision which it may consider appropriate.

(8a) Četiri godine posle datuma iz člana 9(1), države članice **su obavezne** da podnesu izveštaj Komisiji o stečenim iskustvima, a u svetlu tog izveštaja Komisija je dužna da podnese izveštaj Evropskom parlamentu i Savetu, zajedno sa eventualnim predlozima za reviziju koje bude smatrala potrebnim.

There are certain exceptions to these rules. In certain instances the translator opts for the intensification of the directive force of the verb *shall* by translating it with the verb *morati (must)*. The reason for this may be the severity of the provision, or the failure to observe it (example (9)). The translator also sometimes opts for a future tense (example (10)):

(9) (...) the conditions of the permit **shall contain** provisions on the minimization of long-distance or transboundary pollution and ensure a high level of protection for the environment as a whole.

(9a) (...) uslovi za izdavanje dozvola **moraju sadržati** odredbe o svođenju na minimum zagađenja koje se prostire na veće udaljenosti i preko državnih granica i o obezbeivanju visokog nivoa zaštite životne sredine kao celine.

(10) The provisions of this Directive **shall not affect** the right of a Member State to maintain or introduce measures providing for broader access to information than required by this Directive.

(10a) Odredbe ove Direktive **neće uticati** na pravo država članica da održavaju ili uvode mere koje obezbeđuju širu dostupnost informacija u odnosu na onu koja se traži ovom Direktivom.

In example (10), the translator has conveyed purely temporal meaning, however, the translated sentence also has a directive force and does not differ greatly from the translation in example (2), where the same construction (*shall not affect*) is translated by a present tense.

It is often the case that the co-text (or context) affects the translator's choice when it comes to the deontic force of the translational equivalent. If the certainty of the execution of the obligation is weakened, the translator has the tendency to replace the construction *biti dužan* with a present or future tense. The most obvious examples are those provisions that contain a condition under which the said obligation will be valid or obligatory:

(11) Save as provided in this Article, Member States **shall ensure** that public authorities are required to make available information relating to the environment to any natural or legal person at his request and without his having to prove an interest.

(11a) Uz izuzetke predviđene ovim članom, države članice **obezbeđuju** obavezu javnih organa da stavljaju na uvid dostupne informacije koje se odnose na životnu sredinu svakom fizičkom ili pravnom licu, na njegov zahtev i bez potrebe da podnosioc zahteva pri tome naznači u čemu je njegov interes za to.

(12) The Commission **shall adopt** the measures envisaged if they are in accordance with the opinion of the committee.

(12a) Komisija **usvaja** predložene mere ukoliko su one u skladu sa mišljenjem komiteta.

(13) Where such consultations take place, the Member States concerned **shall agree** on detailed arrangements to ensure that the authorities referred to in Article 6(3) and the public referred to in Article 6(4) in the Member State likely to be significantly affected are informed and given an opportunity to forward their opinion within a reasonable time-frame.

(13a) Kada do takvih konsultacija dođe, zainteresovane države članice **složiće se** oko detaljnih aranžmana kojima bi se osiguralo da organi koji su navedeni u članu 6 (3) i javnost navedena u članu 6 (4) u državi članici koja može biti izložena navedenim značajnim uticajima, budu informisani, kao i da im se omogući da dostave svoje mišljenje u razumnom roku.

(14) If necessary, the permit **shall include** appropriate requirements ensuring protection of the soil and ground water and measures concerning the management of waste generated by the installation.

(14a) Dozvola **će, po potrebi, sadržati** i odgovarajuće uslove kojima se obezbeđuje zaštita zemljišta i podzemnih voda, kao i mere koje se odnose na upravljanje otpadom koji nastaje pri radu postrojenja.

When it comes to the passive voice, the verb *shall* is translated mainly in two ways – with the present tense (both in passive and active), and with the verb

morati (must). In the majority of cases, there is no significant difference when it comes to provision application, since certain expressions modify their meaning in a legal context. We have seen so far that the present and future tense in Serbian, in legal texts, bear the meaning of deontic modality, alongside with the verb *must*, as well as other mentioned constructions (*biti dužan*, for example). This is why it is difficult to speak of concept narrowing of the verb *shall* in translation when it comes to legal language.

(15) Reports on the implementation of this Directive and its effectiveness compared with other Community environmental instruments **shall be established** in accordance with the procedure laid down in Articles 5 and 6 of Directive 91/692/EEC.

(15a) Izveštaji o sprovođenju ove Direktive i o njenoj efikasnosti, upoređeni sa drugim instrumentima Zajednice koji se odnose na životnu sredinu, **podnose se** u skladu sa postupkom predviđenim u čl. 5. i 6. Direktive 91/692/EEZ.

(16) Without prejudice to the requirements of this Directive, the technical requirements applicable for the landfills covered by categories 5.1 and 5.4 of Annex I, **shall be fixed** by the Council, acting on a proposal by the Commission, in accordance with the procedures laid down in the Treaty.

(16a) Ne dirajući u uslove utvrđene ovom Direktivom, tehničke uslove koji važe za deponije, koje spadaju u kategorije 5.1 i 5.4 Aneksa I, **određuje** Savet, koji će u tom smislu delovati na osnovu predloga Komisije, i u skladu sa postupcima propisanim u Ugovoru.

(17) Subject to Article 2 (3), projects listed in Annex I **shall be made subject to** an assessment in accordance with Articles 5 to 10.

(17a) Pod uslovima predviđenim članom 2. stav 3, projekti navedeni u Aneksu I **procenjuju se** u skladu sa odredbama članova od 5. do 10.

We can see that explicating the subject plays no role in translation options, except from active/passive distinction in some cases. Examples (15), (16) and (17) do not differ in terms of legislative force from examples (18), (19) and (20), where the deontic aspect of *shall* is explicated by the use of *must*:

(18) [shall determine] whether the project **shall be made subject to** an assessment in accordance with Articles 5 to 10.

(18a) [dužne su da] odrede da li projekat **mora biti podvrgnut proceni** u skladu sa odredbama članova 5 do 10.

(19) Without prejudice to Article 10, the emission limit values and the equivalent parameters and technical measures referred to in paragraph 3 **shall be based** on the best available techniques.

(19a) Ne dirajući u primenu člana 10, granične vrednosti i ekvivalentni parametri, kao i tehničke mere iz stava 3, **moraju se zasnivati** na najboljim dostupnim tehnikama.

(20) Thus, where there is a risk that the environment may be affected, appropriate provision **shall be made** for start-up, leaks malfunctions, momentary stoppages and definitive cessation of operations.

(20a) Tako, na primer, kad postoji rizik izlaganja životne sredine negativnim uticajima, **moraju se predvideti** odgovarajuće mere koje se odnose na početak rada postrojenja, defekte curenja, trenutno zaustavljanje rada postrojenja i definitivni prestanak rada.

Apart from the use of the verb *must* (*morati*), we can see that the passive is sometimes translated by the use of nominal expressions with a deverbative noun:

(21) The public **shall be informed** (by public notices or other appropriate means) of the following matters early in the procedure for the taking of a decision or, at the latest, as soon as the information can be provided.

(21a) **Obavezno je informisanje javnosti** (putem javnih obaveštenja ili na drugi pogodan način) o sledećim činionicima, i to u ranoj fazi postupka donošenja odluke ili, najkasnije, do trenutka do koga se informacije mogu pribaviti.

4. Discussion

We can see that a certain pattern does exist when it comes to translating constructions from English into Serbian with the verb *shall*, at least when it comes to legal language. The first regularity has to do with the features of the subject. Namely, when the subject of a sentence is inanimate, the verb *shall* is most often translated into Serbian by the present tense, both in active and passive voice. On the other hand, with subjects that can be viewed as animate, the verb *shall* is translated by a construction typical for the legal register in Serbian – *biti dužan/bit* *obavezan*.

Certainly, these regularities are not rules set in stone, and we have come across instances where the verb *shall* was translated with *morati* (*must*), or other temporal constructions (present and future), as we have seen in the data analysis.

There is a difference, linguistically and syntactically, in Serbian, between the examples with the verb *must* and those with the use of the present tense, but what accounts for the fact that they are interpreted in the same way is the legal context. However, we have noted that a slight difference can be observed when it comes to the use of the future tense in Serbian, especially where the probability of a provision having to be observed is less than 100 percent (see also examples 13 and 14):

(22) The requirements of this Directive **shall** either **be integrated** into existing procedures in Member States for the adoption of plans and programmes or **incorporated** in procedures established to comply with this Directive.

(22a) Uslovi sadržani u ovoj Direktivi **će se** ili **uklopiti** u postojeće postupke u državama članicama koji se odnose na postupak usvajanja planova i programa, ili **će se uključiti** u postupke predviđene u cilju primene ove Direktive.

(23) Access to the requested information **shall only be refused** if the public interest does not outweigh the latter interest.

(23a) Pristup traženim informacijama **biće odbijen** samo ako interes javnosti ne prevazilazi ovaj drugi interes.

All in all, we can see that the very fact that it is a legal document that is being translated (and/or, read/written) modifies certain aspects of meaning of the syntactic constructions being used, that is, there is a meaning modulation of the present and future tense that brings their meaning closer to that of an imperative (which is not prevailing and prominent in their everyday use), which was expected to be tied to *must* and *biti dužan*. This modulation is due to the interaction between the semantics of the construction and the contextual assumptions.

5. Conclusion

Legal language is a specific form of formal register and has numerous stylistic and syntactic peculiarities that may represent a problem upon translation from one language into another. This is especially true when the target language has no equivalent structure to that used in the original. This paper deals with one of the prominent communicative clues of legal language in English-speaking countries and its translation equivalents in Serbian. We have shown how the translator opts to narrow the encoded concept in translation, or to try and maintain, where possible, the polysemous nature of the verb, since in Serbian

the directive function can be achieved by the future and present tense, as we have seen in our analysis.

Future research is needed to verify whether the regularities in translating constructions with the verb *shall* in legal texts from English into Serbian, which we have found in this paper, can apply to a wider range of legal texts, and from different areas of law.

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