"Legalese"

How to translate law report into clear and simple Swedish

Maria Claesson
Abstract

This paper deals with the translation of English law reports from *The Times* online. The analysis focuses on the translation of culture-specific phenomena, overly long sentences, double negations and passive constructions.

When dealing with the culture-specific phenomena, the translation strategy put forth by Vinay & Darbelnet was applied, mainly borrowing and adaptation. Explanations were also frequently used, either positioned in the text or in a footnote.

When dealing with the overly long sentences, double negations and passive constructions, the directions in *Att översätta EU-rättsakter* (www) were very valuable, as well as parallel texts. In recent years there has been a change toward using a legal language which is simpler, clearer and easier to understand. The translations in this paper are done with this ambition in mind.

Keywords: translation, legal language, culture-specific phenomena, overly long sentences, double negations, passive constructions
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1. Introduction
The main topic of this paper is to investigate some of the strategies used when translating English law reports into clear and simple Swedish. In the summer of 2009 I studied an introductory course in law in order to familiarize myself with the judicial terminology. When choosing a source text (henceforth ST) for this paper to translate and subsequently analyse I therefore opted for a legal text. I knew that it would not be easy. I just did not realise that it was going to be as problematic as it turned out to be. Two main factors posed difficulties for me.

Firstly, the English judicial system differs in relevant aspects from its Swedish counterpart. For example, the organisation of the courts is not the same. Furthermore Swedish law is a written law, constituted by printed statutes, whereas one relies to a great extent on common law, i.e. precedential decisions from previous cases in courts, in England.

Secondly, the law is often expressed in a style of language that is difficult for lay people to understand. According to Tiersma (1999:49) some people have even suggested that legal language is a separate language, preserved by lawyers as an exclusive language of their own: “legalese”. This linguistic conservatism may also be an effect of the doctrine of precedent: common law. Judges consider themselves bound by decisions made fifty or hundred years ago. The verbiage of these decisions thus often gets repeated by lawyers and judges still today (Tiersma 1999:40-47).

Translating a text with such specific linguistic traits raises the important question whether one should stay true to the complexity of the ST or try to change the target text (henceforth TT) to a more general type of text and avoid the “legalese” aspects. Recent years have seen a change in legal language, a change toward clarity and simplicity. People outside the legal system have been involved for the first time in the process of drawing up the rules, with the result of favouring simpler and more understandable English instead of using obscure legal terms. There are many organisations working to improve and simplify administrative and legal texts. An example is Clarity, a worldwide organisation of lawyers and other interested parties. Other groups in the UK are Plain English Commission and Plain English Campaign, both consisting
of private language consultancies (www.clarity-international.net). Swedish legal language is entering the same course. It started in 1965 and the idea was that if legislation were written in clear language it would have an impact on the language used in all administrative documents. Since 1988 Statsrådsberedningen has worked towards a modernisation of words and phrases in statutes. An important tool in this effort is “Svarta Listan”, which is a glossary that lists words that are unnecessarily complicated or stilted and provides examples of appropriate replacements (www.regeringen.se). There are also guidelines and recommendations on how to write EU texts. In brief, they state that EU legislation must be appropriate for its target group as well as clearly and simply worded (www.eur-lex.europa). I decided to do my translation with these ambitions in mind.

1.1 Aim
The aim of this paper is to analyse translations of law reports published in The Times in order to see how the following problematic aspects may be dealt with:

- Culture-specific phenomena
- Overly long sentences
- Double negations
- Passive constructions

1.2 Method
For the present study I have translated six law reports from The Times online. When translating the ST, quite a few problem areas were encountered. Firstly, there were the culture specific phenomena. To deal with these I used some strategies defined by Vinay & Darbelnet. These strategies will be explained further in section 2.

Regeringskansliet has published a booklet called Det svenska rättsväsendet – en kort introduktion. They have published an English version as well: The Swedish judicial system – a brief presentation (www.sweden.gov.se). These booklets were initially consulted when dealing with terms for judges and courts. Texts from a website called EUR-Lex “Ingång till EU-rätten” (www) were also used. Most EU-texts are translated into both English and Swedish and they were of great assistance in terms of proper terminology. The law reports that were translated in order to obtain data for this study included a substantial number of terms dealing specifically with the legal situation in Great Britain, there were numerous titles
on the different judges as well as names of the courts, where the trial was held. Although there
are similarities between the judicial system of Sweden and the judicial system of Great Britain
there are also quite substantial differences, inconsistencies which were too significant to
enable a translation. The parallel texts from EUR-Lex served as a guideline to when it was
best to leave a term untranslated due to insufficient coherence.

Secondly, the ST was difficult to understand at times due to its complicated language. Since
the aim was to present the TT in a clear and simple style of Swedish I searched for
information on the specific traits of English legalese. The books Legal Language by Peter M.
Tiersma and Juridisk engelska by Carl Svernlöv were very useful. There are some typical
language features in legal texts. These features make the texts less legible. Some of these will
be explained more thoroughly in section 2. Both Tiersma and Svernlöv advocate simplicity
and precision. The directions in Att översätta EU-rättsakter (www.ec.europa.eu) were very
valuable as were the guidelines in Joint Practical Guide of the European Parliament, the
Council and the Commission for persons involved in the drafting of legislation within the
Community institutions (www.eur-lex.europa.eu).

The parallel texts were also useful when considering the stylistic level. Swedish courts
provide a website where they publish reports of proceedings in Swedish courts as well as in
the EU (www.domstol.se). There are quite ambitious efforts made for simplifying Swedish
official texts and the reports served as a model for the translations in this paper.

For the terminology the EU website mentioned above was used as well as Iate, the Inter
Active Terminology for Europe (www) and Norstedts dictionary on the Internet (www).

1.3 Material
The STs consist of accounts of proceedings in court, either in the Court of Appeal or in the
House of Lords. The text type is informative, and does not seem to be intended for the general
public, but rather for a reader familiar with the law and interested in a quite comprehensive
report of a trial. The ST is very formal in style with long and complex sentences. There is a
considerable number of technical terms in the text and the terms are not explained which
make the text difficult to follow for an uninitiated reader. The reports are written in a
formalistic way; they start by presenting the court and the members of the court present,
continue with a brief description of the background of the case and end with the discussions leading to the decision. The discussions comprise the main part of the text. The aim of the translation was to make the TT easier to comprehend and less difficult to read compared to the ST, in order to enable a larger group of readers enjoying it. This corresponds to the ambitions to strive towards clarity in both the English-speaking and the Swedish-speaking world of law. The intended reader of the TT is someone who is interested in the processes and outcomes of British law cases, both in a specific sense as a lawyer but also in a general sense. Both categories should be able to appreciate the translation as a fluent and comprehensible text.

2. Background

2.1 Translation strategies

In this section the theoretical models used in the classification of strategies used in the translation will be presented.

Munday (2008:56-58) discusses the theorists Vinay and Darbelnet who made a comparative stylistic analysis of French and English which led them to identify different translation strategies. On the most general level Vinay and Darbelnet distinguish between direct and oblique translation. In direct translation the ST form is transferred more or less unaltered. An important kind of direct translation, first, is borrowing, which involves direct transfer of a word with no change at all. Borrowings often become fully integrated into the target language (henceforth TL), though they can turn into false friends if they undergo semantic changes in the process (Munday, 2008:56).

In example 1 the strategy of borrowing concerns the translation of a title:

(1) Before Lord Hope of Craighead, Lord Scott of Foscote, Lord Rodger of Earlsferry, Lord Walker of Gistingthorpe and Lord Mance

Inför Lord Hope of Craighead, Lord Scott of Foscote, Lord Rodger of Earlsferry, Lord Walker of Gistingthorpe och Lord Mance

Oblique translation must be used when direct translation is impossible. Important kinds of oblique translation include adaptation and transposition.
Adaptation is the term for changing the cultural reference when a situation in the source culture does not exist in the target culture (Munday 2008:58).

In example 2, the Crown was translated into staten. It is an adaptation made with consideration for modern usage. The term kronan exists in Swedish as well, but since 1974 the monarch of Sweden has no power but only representative functions and the term is hardly ever in use anymore. Therefore it was considered more appropriate to translate the Crown into staten.

(2) Mr Stephen Lowne and Mr Barnaby Evans for the Crown.

Stephen Lowne och Barnaby Evans för staten.

The action where one changes a source text expression having a given grammatical structure by a target text expression with a different grammatical structure is called transposition. In example 3 the noun declaration in the ST has been translated into a verb att förklara in the TT.

(3) In view of the provisions of the 2008 Act, a declaration of incompatibility had become unnecessary.

Mot bakgrund av bestämmelserna i 2008 års lag var det inte längre nödvändigt att förklara oförenligheten.

When dealing with culture-specific phenomena it may be necessary to include additions. In Munday (2008:97) the coherence of a text is explained in terms of the receiver’s expectations and experience of the world. When translating a text where the cultural references differ, the translator has to make explicit what may not be known to readers in the target culture.

Ingo (2007:123) consider that additions to a text are to be made pragmatically, and not be overused as a general process. For example, one has to explain terms in a technical text to an uninitiated reader, or if the recipient of a text is part of a different culture or environment, but the explanation should only add information that the translator has judged to be essential for the understanding of the text. The more unfamiliar the culture and practice in the ST, the stronger is the need for the translator to use clarifying strategies. Additions can consist of a single word. More complex additions can be placed in the sentence but can be separated by a comma or put within brackets. In example 4, the addition has been placed after the explained word, Lord Justice, and commas have been used to distinguish it from the rest of the sentence.
Footnotes are to be used when the explanations seem too long and comprehensive to be positioned in the text (Ingo 2007:135) which is illustrated in the example below:

High Court kan handlägga nästan alla typer av tvistemål, men i praktiken tar den huvudsakligen upp större och mer invecklade mål. Den består av tre avdelningar, som motsvarar några av de äldre domstolar som den ersatte på 1800-talet. De tre avdelningarna är Queen's Bench Division, Chancery Division och Family Division.

2.2 The nature of legalese

The aim of the translation was to achieve clear and simple Swedish in the translation. According to both Tiersma and Svernlöv there are some specific traits that identify legal language and make it difficult to understand. As stated under aim, I have chosen to examine in some detail how to translate some of these traits: overly long sentences, double negations and passive constructions. Let us look at each of these in turn.

As regards overly long sentences, first, this is a common feature of legal text. According to the guidelines in Att översätta EU-rättsakter (www) each sentence should express only one idea. The text should be split into easily assimilated subdivisions following the progression of the reasoning. An excessively compact block of text is hard for both the eye and the mind to take in. This must not, however, result in sentences being artificially and unduly broken up. The directions in Att översätta EU-rättsakter suggest that a translator shall strive to achieve an idiomatic language without heavy and complicated constructions, even though they may exist in the ST. The EU-guidelines also state that inaccuracies, approximations or mistranslations can be the result when an original text is unnecessarily complex. According to the guidelines on how to draft legislation there should be no doubt as to whether an object relates to the verb in the main clause or that in a subordinate clause.

The reason for the high frequency of overly long sentences in legal texts is that there seems to be a tendency towards placing all information on a particular topic into one self-contained unit in order to eliminate the ambiguity that might result if conditions on a rule or provision are placed in separate sentences, an ambiguity that lawyers might use to their advantage (Tiersma 1999:55-56).
In view of what is mentioned above let us consider the following example:

(6) In the present case, the council’s statutory duty to correct the position which had arisen at the school in question by the putting in place of an interim executive board, and their duty of care to the claimant, plainly marched together so that the constraints on the use of public law powers to serve an established private law duty of care were well met.

This example consists of one single sentence, comprising no less than 64 words, falling into phrases and sub clauses on several levels of embedding. The problem with sentences of this kind is that they are hard to understand for a reader. Complexity may result in misinterpretations. According to the guidelines in EUR-Lex (www), it is essential to strive towards simplicity, even though it may be easier to produce complicated sentences than to arrive at the synthesis necessary to achieve clear wording. Grammatical relationship between the different parts of the sentence must be clear (EUR-Lex; www). Looking again at example 6, we see that grammatical relationships are, not clear; for instance, it takes several readings before the reader is able to determine that the full complex of elements running from the council’s statutory duty to executive board makes up one single subject.

Legal texts often consist of double negations. In both Swedish and English grammar double negatives combine to form an affirmative, according to NE (www). Research indicates that a sentence containing more than one negation is harder to process. The first negation makes it appear that the sentence will be negative, whereas the second forces the reader to reverse course and interpret the sentence as positive (Tiersma 1999:208). For a long time grammarians have objected to the multiple negations in English and have held on to the notion that two negations cancel each other out and make a positive, a rule that has become established as a fundamental of standard usage, according to the Free Dictionary (www). Double negations are a frequent feature in legal language. It derives from the fact that law is primarily about what people cannot do (Tiersma 1999:66). Svernlöv (2008:78) thinks it is preferable to avoid double negations since they make the text longer and harder to read.

Negations consist not only of words like not or never. Negations also include any element with negative meaning, like prefixes such as mis-, non- or un- (Tiersma 1999:66). There are three different ways of interpreting multiple negations. According to The American Heritage
Dictionary of the English Language, 2000, traditional grammar holds that double negations combine to form an affirmative.

In example 7, the double negation is converted into an affirmative. The double negation in the ST consists of *not* and the prefix *in-* in front of the adjective.

(7) His Lordship would *not* treat article 11, freedom of peaceful assembly and association, as *inapplicable*: if people only assembled to act in a certain way and that activity was prohibited, the effect in reality was to restrict their right to assemble.

The aim of the passive construction is to eliminate an active doer, and the construction is therefore commonly preferred in legal texts. According to both Tiersma and Svernlöv one of the explanations for this, is that the people of the courts do not act as persons but as the law. The statutes and court orders often use the passive construction. The legislators and judges want the statutes and court orders to appear as objective as possible, to give them a strong rhetorical force. Tiersma (1999:75) also proposes that an active construction might seem too personal, perhaps even vindictive, whereas a passive sounds more authoritative.

There are two different possibilities in terms of Swedish passives. One can express the passive construction with an s-ending or a paraphrase, for example: *blev kallad* (Josefsson, 2001:36).

(8) That requirement *was established* in the present case.                              Detta krav *fastslogs* i förevarande mål.

3. Analysis

In this section we will be looking at, first, the culture specific phenomena encountered in the translation. Some examples, along with a discussion on advantages and disadvantages with the solution, will be presented. Next, the different aspects dealing with the nature of legalese will be analysed, one at a time.

3.1 Culture specific phenomena

To solve the problems with culture specific phenomena and their equivalence in Swedish, some of the strategies developed by Vinay and Darbelnet were used. The strategy of
borrowing was employed when the word in its English form was reasonably well-known in Sweden. To determine how common it was to use the borrowed form in Swedish I did a google-search. The search for the term was made and “Sidor skrivna på svenska” was chosen. The relevant translated EU-texts were also consulted.

The use of the strategy of borrowing was, for example, made in the two instances accounted for below. The examples comprise words that could be categorised as judicial terminology. The first one is *solicitor*. There were two options considered in making the translation: either make use of the borrowing or the adaptation strategy. *Solicitor* could be adapted into Swedish and translated as *advokat* or *jurist*. However, those are not completely exact translations because there is a significant difference between a *solicitor* and a *barrister* in English law and this difference would go unnoticed if the term *solicitor* would have been translated into Swedish. Therefore the adaptation strategy was discarded. In the Swedish EU-texts there was an abundant use of *solicitor*, which constituted a strong reason for favouring the borrowing strategy. Another reason was that the precise implications made by the term *solicitor* were of no great significance to the relevant text, since it was mainly used in the decontextualised kind of context exemplified in example 9 rather than in the running text. The option of borrowing to Swedish inflection and use *solicitor* instead of *solicitors* could also be used. A google search revealed, however, that there was no use of *solicitor* in Swedish texts whereas *solicitors* was the preferred form. After selecting the form opted for in the present translation, the possibility to complement borrowing with an addition in the form of an explanatory footnote was considered. However, there were quite a few footnotes to explain other phenomena used already in the text and I wanted to avoid getting the text all too muddled and difficult to read. This is the preferred solution:

(9) *Solicitors:* Crown Prosecution Service, huvudkontoret; CPS, Liverpool; CPS, Nottingham; CPS, Reading.

The second legal term that I borrowed was *common law*. It can be argued that both the term *solicitor* and the term *common law* exist in a transit area between being English only, and being new borrowings into Swedish. It may take some time for new expressions to become fully accepted in Swedish, if they ever will, and it is therefore important to consider if it is wise to break the flow of a text by inserting an English word or expression. It is also important to recognise the intended reader when making the choice. I expect the reader of the
law reports to be fairly familiar with the concepts of the law, which I consider these notions to be, and I have the google-search and the EU-texts to support my statement.

(10)… which distinguished between judicial review grounds based on the 1998 Act and common law or conventional grounds not so based. Detta beslut gjorde åtskillnad mellan grunderna i domstolsprövning baserad på 1998 års lag och common law och de konventionella grunder som inte byggde på dem.

A different solution was opted for concerning hare coursing. As well as borrowing, an addition was used. Hare coursing is a phenomenon with no counterpart in Sweden. I contemplated omitting the phrase as such and only use the explanatory addition to the notion in the text. Certain dog owners do, however, engage in lure coursing, a term fully borrowed into the world of dog sports in Sweden. Because of this fact the term hare coursing was also kept in the text. Half of the expression is already used in Swedish in the relevant area, i.e. hunting. Another reason for keeping the term unaltered was so that the reader would find it easier to do some research on the phenomenon itself. It is more convenient to google hare coursing than an explanation.

(11) The prohibition of hunting wild animals with dogs and hare coursing imposed by the Hunting Act 2004 was not incompatible with the European Convention on Human Rights or inconsistent with the treaty establishing the European Union. Förbudet mot jakt av vilda djur med hundar och hare coursing (dvs. hundjakt av harar på inhägnat område) infört enligt Hunting Act 2004, var inte oförenligt med den europeiska konventionen om skydd för de mänskliga rättigheterna och de grundläggande friheterna. Det överensstämde med fördraget om upprättandet av Europeiska gemenskapen.

There were a lot of titles used in the text. A translation strategy was to make them more general. Ingo (2007:91) discusses the hierarchical structure of word meanings. A word with a higher position in the hierarchy is called a hypernym and its hyponyms are the words lower in their hierarchy. The hyponyms carry more specific meanings than their hypernyms. As a translator one should try using the notions that are as specific or as general as the corresponding term in the ST (ibid). Sometimes, however, this is not possible. Consider the following example:

(12) In their Lordships’ view, there was, after a full examination of the provisions of the 2003 Act, no reason from the case law of the European Court of Human Rights to treat the cases dealing with absent and anonymous witnesses as the same. Domstolen fann, efter en fullständig granskning av bestämmelserna i 2003 års lag, att det inte förelåg några skäl baserade på rättspraxis i Europadomstolen för att behandla rättegångar gällande frånvarande och anonyma vittnen på samma sätt.
By translating *their Lordships'* into *domstolen* a hyponym was replaced by a hypernym. *Their Lordships'* indeed convey more information in its name than *domstolen*. *Their lordships'* is a notion with a high degree of specificity whereas *domstolen* is wider in its sense. *His Lordship* is a title used to show reverence to a person of high status, a person who is member of House of Lords. This also means that the difference in rank, and in the fields in which the different types of judge work within the court, goes unnoticed in the TT. This solution thus goes against Ingo’s recommendations (2007:91). However, I was not able to find an equivalent in the Swedish judicial system and therefore found it more appropriate to use the word *domstolen*. It may, furthermore, be argued that in this context the aspect of rank and status is of little significance anyway, and that what is important is rather the functional aspect of having the power of giving a verdict. From this point of view, *domstolen* conveys at least sufficient information as does *their Lordships*.

So far I have discussed borrowing and generalization, i.e. the use of hypernyms, as ways of dealing with references to culture-specific phenomena. As was shown in section 2, there is also another strategy that may be used to this end, namely adaptation. The first example of adaptation to be discussed in the following is one that, in fact, turned out not to be used in the final version of the TT:

(13)  Court of Appeal, Criminal Division
Published June 3, 2009
Regina v Horncastle
Regina v Blackmore
Regina v Marquis
Regina v Graham
Regina v Carter
Before Lord Justice Thomas, Lord Justice Hughes, Mr Justice Penry-Davey, Mr Justice Irwin and Mr Justice Wyn Williams

The translation used in this example is taken from one of the first drafts of the TT. Here the legal terms were replaced by their Swedish counterparts in accordance with a booklet called "Det svenska rättsväsendet – en kort introduktion”.

As regards *Court of Appeal*, first, my source states that this is the equivalent of Swedish *hovrätten*. Consequently, *hovrätten* was the term opted for in the TT. As regards *Regina* next, this refers to the prosecuting party. The prosecuting party is the Crown in criminal
proceedings and this is indicated by having Rex (for a male monarch) or Regina (for a female monarch) versus the defendant as the standard for naming criminal trials. Regina is consequently the equivalent of Swedish staten, wherefore this is the word opted for in the example above. As for the titles of the judges, finally, the translations chosen in the above example are the titles used in Swedish hovrätten.

As already mentioned, the translation presented in example 13 is not part of the final TT. Rather, this was a mere first draft of the final product. Looking more closely at it, we see that it is problematic in various ways. The Court of Appeal consists of two divisions: the Civil Division and the Criminal Division. That division does not exist in hovrätten. There are occasional occurrences of a brottmålsavdelning on Google, but only in relation to Högsta domstolen. Consequently, it would be completely incorrect to do an adaptation in this particular case. When translating Regina into staten the fact that it is only used when referring to criminal proceedings went missing. The term Regina conveys information that is important in this context. The titles of the judges were equally unsuited since the adapted terms could give cause to misunderstanding. The posts in the ST may contain different work assignments; they may not be compatible enough.

In view of the problems just discussed, the adaptation technique was discarded altogether. The conclusion was made that it was not appropriate for this kind of judicial texts since they rely on a high degree of accuracy and the terms seemed all too incompatible.

The version in example 14 was the final version instead.
handlägga nästan alla typer av tvistemål, men i praktiken tar den huvudsakligen upp större och mer invecklade mål. Den består av tre avdelningar: Queen’s Bench Division, Chancery Division och Family Division.

In this version, Court of Appeal was translated as appellationsdomstolen. Appellationsdomstolen is a well known term in Swedish, and even though the Swedish ‘appellationsdomstol’ and the English court of appeal differ slightly from the point of view of administration; they are, nevertheless, basically equivalent in terms of function and rank. The English word Regina was kept but an explanation to the word was made in a footnote, and the same strategy was employed for the titles of the judges; the English titles were retained, but with an explanation added to the names. Since the explanations given with some of the judges involved the notion High Court, this, in turn, had to be adapted too. This was solved by means of a footnote. The combined strategy of borrowing and addition was the preferred solution as it has a higher degree of accuracy and precision, which is a trait very much sought to attain in judicial contexts. The version presented in example 14 will hopefully satisfy not only the reader with a lot of insight into the law but also the reader who may not be so familiar with judicial terminology.

The next example of adaptation concerns translation of the term County Council. Consider the following example:

(15) Connor v Surrey County Council  Connor mot landstinget i Surrey

In Norstedt’s dictionary County Council is translated into grevskapsråd with the addition that a ‘grevskapsråd’ loosely corresponds to a Swedish ‘landsting’. The decision to adapt the term County Council to landsting was due to the fact that both a ‘landsting’ and a ‘county council’ run some more specialised schools, schools with a certain profile (like naturbruksgymnasium). The school mentioned in the ST is a specialised school. To use the term grevskapsråd was an option ruled out since it has no significance to a Swedish reader and would have to be accompanied by an explanation. The explanation would have to be quite elaborate and hard to insert in the text. To use landsting which corresponds to a county council in at least this particular instance seemed to be the best choice. The similarities between the two terms are the features that were relevant in this context.
The last example when it comes to using the adaptation strategy is a sentence in which *local education authority* is translated with *barn- och utbildningsnämnden*:

> (16) A head teacher was entitled to damages for negligence because of the *local education authority's* failure to exercise a statutory discretion to replace the school’s governing body with an interim executive board.

En huvudlärare var berättigad till skadestånd för försumlighet som följd av att *barn- och utbildningsnämnden* underlåtit att utöva den skönsmässiga bedömning de enligt lag kunde begagnat sig av för att ersätta skolledningen med en interimistisk verkställande styrelse.

The name *barn- och utbildningsnämnden* serves as a specification of which field the authority is active in and which administrative level they are working on. The authority and power of a ‘local education authority’ and Swedish ‘barn- och utbildningsnämnden’ are similar enough to match each other and the existing disparities are of no importance in the context.

We will now move on to take a look at a significant problem area, namely the explanations. How much had to be explained and how much did the intended readers know? Initially, there were numerous explanations in the TT. To a high degree English law is based on the rulings of previous cases whereas Swedish law has its foundation in written statutes. Because of this I felt obliged to explain the background to and the reason for the rulings in the relevant court cases. The explanations became so elaborate that footnotes were preferred. This left the translation with a lot of footnotes, on occasion even more footnotes than actual text on some pages. The other strategy was then to keep the footnotes at a minimal level, to trust the readers’ knowledge and ability to look up themselves what they needed to know to comprehend. Consequently, only phenomena directly related to the differences between the English and Swedish judicial systems were explained. We have already seen two examples of this in the context of example 14 above. The example below is a further example of an instance when there was a need for explaining specific terms in footnotes.

(17) Summary judgment

> Inom engelsk rätt finns möjligheten till ett så kallad ”summary judgment” vilken är en form av beslut som näs i enskildhet och utan huvudförhandling och kan användas när ett svaromål enligt domstolen inte har en rimlig möjlighet att lyckas, och det inte föreligger andra skäl för att avgöra tvisten vid en huvudförhandling.
In other cases the explanations were very short hence they could be placed directly in the text. In example 18 the explanation consisted of a single noun before the explained term.

(18) Mr Rabinder Singh, QC and Ms Kate Cook for the RSPCA intervening by written submissions. Mr Philip Engelman, intervened by written submissions for Dr Z. Malik.

Rabinder Singh, QC och Kate Cook för djurrättsorganisationen RSPCA, intervenient som ingav skriftligt yttrande. Philip Engelman, intervenient som ingav skriftligt yttrande för Dr Z. Malik.

In the two following examples the explanations were placed right after the term explained instead of as in front of it. In example 19 the explanation could have been positioned in the front in the following mode: Handläggarna för de mindre invecklade tvistemålen, domarna i grevskapsdomstolarna... This translation could, however, imply that the judges were only an example of who could handle those cases. The chosen option enabled the explanation to be inserted in a relative clause, which put the focus on the judges and clarified the work assignment of their profession.

(19) County court judges should continue to follow the guidance given in Kay as more fully explained in his Lordship’s present opinion.

Domarna i grevskapsdomstolarna, som handlägger mindre invecklade tvistemål, bör fortsätta följa riktlinjerna givna i Kay som får en utförligare förklaring i domarens förevarande yttrande.

In the next example, an initial position of the explanation would have placed all the English words in a row: Domare i High Court, Mr Justice Collins and would have made the reading less fluent.

(20) Mr Justice Collins

Mr Justice Collins, domare i High Court

In the ST there are numerous references to various acts on which the court decisions are based. The names of these acts are not translated. The reason for this is that, even though there might exist an act that would be considered reasonably similar to its English counterpart, I have respect for the required precision of the law and deviations in the acts of the different countries could be vital.

(21) the Protection of Children Act 1978

Protection of Children Act 1978

3.2 Overly long sentences
As was shown in section 2, there is a strong tendency in legal writing to use overly long sentences.

Let us take a look at example 22, which gives a good illustration of an overly long sentence and the methods generally employed in translating such a sentence.

(22) Although the definition of a "protected site" in section 5(1) of the Mobile Homes Act 1983, in excluding Gypsies from the protection of that Act, was incompatible with an occupier's right to respect for his home in article 8 of the European Convention on Human Rights, incompatible primary legislation had to be enforced and an occupier’s defence to a local authority’s claim for possession should be remitted to the judge for examination of the question whether the council’s decision to seek possession had been reasonable.

The ST sentence in example 22 starts off with a subordinate clause introduced by the conjugation although. One method when dealing with the overly long sentences was to avoid starting the sentence with a subordinate clause in the TT. Therefore the subordinate clause in the example above was made into a clause by making romer into the head noun of the noun phrase and functioning here as a subject. The main verb undantogs was placed in direct connection to the head noun. This pattern of starting the sentence with a noun phrase, making it into a subject and followed closely by the main verb, was repeated in the following two TT sentences in the example as well.

At times, a single ST sentence was split up into several TT sentences as a method to enhance the readability and understanding. In example 22, the TT consists of three sentences instead of one, as in the ST. This procedure of dividing one sentence into several sometimes involved a repetition of a noun, in this case definition that is mentioned for the first time in the first sentence, and then repeated in initial position in the second sentence. The option to the repeated noun would have been referred back to by means of a pronoun. That process could, however, more easily have resulted in ambiguity.

Some sentences were even more cluttered due to parenthetical insertions and embedded modifiers. Let us look at the example below:
(23)The Court of Appeal so held, dismissing the appeal of the Secretary of State for Defence against, inter alia, the grant by Mr Justice Collins (The Times May 30, 2008; [2008] 3 WLR 1284) of judicial review to the claimant, Mrs Catherine Smith, the mother of the deceased soldier, Jason George Smith, of the inquest by the assistant deputy coroner for Oxfordshire into Private Smith’s death, and in particular his decisions that (i) a British soldier was subject throughout Iraq to United Kingdom jurisdiction and accordingly the deceased was protected by the Convention, and (ii) the new inquest ordered was to conform to article 2 of the Convention. The assistant deputy coroner took no part in the appeal. Permission to appeal was granted.

Detta fastställde appellationsdomstolen när de avslog försvarsministerns överklagande. Försvarsministern bestred, bland annat, High Court-domare Collins beviljande av lagprövning av den undersökning som gjordes för att fastställa dödsorsaken för och omständigheterna kring menig Smiths död (The Times den 30 maj, 2008; [2008] 3 WLR 1284). Den assisterande biträdande undersökningsdomaren för Oxfordshire genomförde undersökningen. Catherine Smith, modern till den avlidne soldaten, Jason George Smith, väckte käromålet. Frågor att särskilt beakta var undersökningsdomarens beslut att:

(i) en brittisk soldat lydde under brittisk rätt i Irak och följaktligen var den avlidne skyddad av Europakonventionen, och:
(ii) den ålagda nya rättsliga undersökningen av dödsorsaken skulle anpassas till artikel 2 i Europakonventionen.

Assisterande biträdande undersökningsdomaren deltog inte i överklagandet. Begäran om överklagande beviljades.

Firstly, I tried to restore some order by making new paragraphs and highlight numerical information in these exceptionally long and messy sentences. Secondly, the ST sentence was, again, broken down into several sentences. A typical feature of the overly long sentences in the ST was that the head noun often was separated from the main verb by embedded post-modifiers and/or pre-modifiers. Catherine Smith was made into a head noun in a noun phrase serving as the subject of the sentence. In the ST, Catherine Smith is accompanied by a pre-modifier, namely the claimant, and a post-modifier; the mother of the deceased soldier. In the TT, the noun is followed by a literal translation of the ST modifier: modern till den avlidne soldaten, whereas the pre-modifier is by means of transposition made into a verb phrase in the TT; väckte käromålet.

As seen in section 2, EU state in their guidelines that inaccuracies, approximations or mistranslations can be the result when an original text is unnecessarily complex. The measures made in the example above were done in order to clarify the meaning of the statement.

Consider example 24, which in the ST contains a sentence packed with information:
(24) LORD BINGHAM said that the purpose of article 8, the right to respect for private and family life, his home and correspondence, was to protect the individual against intrusion by state agents, unless for good reason, into the private sphere where individuals expected to be left alone to conduct their personal affairs and live their personal lives as they chose.

Lord Bingham sa att syftet med artikel 8, rätten till skydd för privat- och familjeliv, hem och korrespondens, var att skydda individen mot en offentlig myndighets inkräktande. En myndighet har endast rätt att ingripa i den privata sfär där individen förväntas få vara i fred att sköta sina personliga angelägenheter och leva sitt liv på det sätt han eller hon själv väljer om det finns goda grunder.

The information consists of explanations of both the content and purpose of article 8. The second part of the sentence gives a rather lengthy definition of the notion ‘private sphere’. In the TT these two parts are separated and made into two sentences. In the second sentence the translation of the phrase state agents have been made the subject of the clause. By using two separate sentences, the relationship between the different grammatical elements of the sentence is clearer.

In the translation process the text in the examples in this section was broken apart into smaller units in order to understand the meaning and the grammatical relationship between the different parts of the sentence. Initially, the units were reassembled with only the head noun of the subject noun phrase and the verb connected to it. The various phrases and sub clauses belonging either to the noun or the verb were then added.

3.3 Double negations

It is generally agreed that multiple negations make the text difficult to understand. The ST used for the present work is no exception to this.

In example 25, the double negation consisted of the negative not and the prefix in- attached to the adjective compatible. In an attempt to change the sentence into conveying a positive sense without two negatives, the Swedish adjective förenligt was first used:

(25) Mr Doherty relied on his right to respect for his home under article 8 and on the council’s duty under section 6(1) of the Human Rights Act 1998 not to act in a way that was incompatible with that right.

By turning the double negative into a positive, however, the meaning of the sentence was slightly altered; that the council does not act in a certain way (which would be the meaning of the original) does not entail that it does act in another way (which would be the meaning of the translation). This observation is in line with Svernlöv’s argument that changing a double negative into a positive may result in a difference in degree (2008:78). In such cases, Svernlöv argues, one should use a different translation altogether. The difference in meaning was taken into consideration when rejecting the translation in example 25.

Still, with the intention of still trying to denote the positive sense, I considered other options for the translation of example 31, such as att agera i enlighet med. Even though att agera i enlighet med came out as a simpler version compared to the rather formal på ett sådant sätt som var förenligt med it still did not quite capture the meaning of the ST. When I searched for alternatives, inte started to sneak its way into the sentence: inte bryta mot. This option was deemed the better choice due to its closeness in concurrence with the original and with its simpler construction with only one negative. Example 26 shows how it finally turned out:

(26) Mr Doherty relied on his right to respect for his home under article 8 and on the council’s duty under section 6(1) of the Human Rights Act 1998 not to act in a way that was incompatible with that right.


The double negation in example 27 consists of no and not. This double negative sense was changed into a positive:

(27) There was no sensible reason for not holding that there was a sufficient link between the soldier as victim and the United Kingdom whether or not he was at a base.

Det fanns goda skäl att godta att det existerade en tillräckligt stark anknytning mellan soldaten i egenskap av drabbad och det Förenade kungariket vare sig han befann sig på basen eller inte.

In example 28, the double negation was kept.
The prohibition of hunting wild animals with dogs and hare coursing imposed by the Hunting Act 2004 was not incompatible with the European Convention on Human Rights or inconsistent with the treaty establishing the European Union.

The reason for keeping the double negation in this case was due to the preceding context, where the argument dealt with the Hunting Act being incompatible with human rights. Therefore, it made more sense here to say that it is not incompatible, than to say that it is compatible.

In example 29, the Swedish version of the English original is a literal translation:

(29) There was nothing in Bankovic v Belgium (Application No 52207/99) ((2001) 11 BHRC 435) or Al-Skeini to lead to the conclusion that there was no sufficient link between a British soldier and the United Kingdom.

This translation was judged as not good enough. It was hard to understand and did not conform to the aim of the TT; a clear and simple language. Therefore another attempt was made, this time with the intention of turning the sentence into a positive one. In doing so, the sentence had to be changed quite dramatically to avoid the multiple negations. A structural change, with consequent modulation was made by turning the object slutsatsen into the main subject.

(30) There was nothing in Bankovic v Belgium (Application No 52207/99) ((2001) 11 BHRC 435) or Al-Skeini to lead to the conclusion that there was no sufficient link between a British soldier and the United Kingdom.

The version in example 30 changed the meaning into something entirely different from the original though. The fact that there was nothing in these cases to support a certain conclusion does not entail that these cases confirmed the opposite conclusion. This was yet another example of how hard it was to deal with the multiple negations in terms of understanding.
A third version was made. This version came with some additions necessary to obtain a correct construction of the sentence. The cases were made the main subject, or was substituted by och and an extra noun, underlag, had to be inserted. It did not eliminate the negative, but instead of two negations, this version made do with one, enabling a better understanding.

(31) There was nothing in Bankovic v Belgium (Application No 52207/99) ((2001) 11 BHRC 435) or Al-Skeini to lead to the conclusion that there was no sufficient link between a British soldier and the United Kingdom.

Rättsfallen Bankovic v Belgium (Ansökan nr. 52207/99) (2001) 11BHRC 435 och Al-Skeini saknade underlag som skulle kunna leda till slutsatsen att det inte fanns tillräcklig anknytning mellan en brittisk soldat och Förenade kungariket.

3.4 Passive constructions

We saw in section 2 that legal language aims to de-emphasise the actor and we also saw that this tends to be achieved by using a passive construction. Let’s take a look at the passive construction, which was translated by different means. In most cases, though, it was translated into a corresponding passive construction in the TT by using an s-ending as in example 32:

(32) They included whether the death was caused by a defective system operated by the state…

En av dessa frågor var om dödsfallet orsakats av att staten brustit i organisationen.

In quite a substantial amount of the translations the passive was rendered by using the Swedish perfect participle:

(33) The question remained whether it was open to the court to reach those conclusions or whether the court was bound by the House of Lords in R (Gentle) v Prime Minister (The Times April 10, 2008; [2008] 1 AC 1356) to hold that a British soldier who lost his life outside a British base was outside the jurisdiction of the United Kingdom for the purposes of article 1.

Frågan kvarstod om det ankom på domstolen att nå dessa beslut eller om domstolen var bunden till överhusets avgörande i R (Gentle) v Prime Minister (The Times 10 april 2008; [2008] 1AC 1356) där det fastställdes att en brittisk soldat som miste sitt liv utanför en brittisk bas inte lydde under Förenade kungarikets jurisdiktion enligt artikel 1.

The use of an s-ending in the TT in the example above would have meant using the form bands instead of bunden. The passive verb bands, however, came out pretty odd in the TT context. Another option was to use the form förbands as corresponding to was bound. On the other hand, förbunden is somewhat more formal than bunden and by following the intentions of simplicity in the translation of this paper; bunden seemed to be the better choice.
In example 34, the passive construction in the ST was changed into an active construction in the TT:

\[(34)\] Two independent questions were raised by the appeal… Överklagandet väckte två av varandra oberoende frågor…

The transition of passive into active was very hard to make from the ST, mainly due to the fact that the use of the passive in the ST was very intentional. It aimed at eliminating any active agent. Another factor, which contributed to the difficulties in transforming the passive to active, was that the agent very seldom was a human being. This is exemplified in 35:

\[(35)\] That situation was emphasised by the claim of the Roman Catholic Church to be the authoritative source of Christian values. Den romersk-katolska kyrkan gjorde anspråk på att vara en auktoritet när det gällde kristna värderingar vilket gav eftertryck åt den aktuella situationen.

The passive was in this case translated into an active verb. This transition was made possible by making the Roman Catholic Church into the subject. The same option was first used in example 36. That action rendered in Swedish the expression erhöll skydd with the addition of the preposition genom:

\[(36)\] A British soldier on military service in Iraq was subject to the jurisdiction of the United Kingdom within the meaning of article 1 of the European Convention on Human Rights and was protected by the Convention rights guaranteed by the Human Rights Act 1998. En brittisk soldat som gjorde militärtjänst i Irak lydde under brittisk jurisdiktion enligt artikel 1 i den Europeiska konventionen om skydd för de mänskliga rättigheterna och de grundläggande friheterna och erhöll skydd genom konventionsrättigheterna garanterade i Human Rights Act 1998.

After some re-consideration the option was discarded for the sake of simplicity. The verb erhöll seems unnecessarily formal. The preferred solution was instead to use the passive skyddades followed by the regular passive preposition av. This solution is shown in the example below:

\[(37)\] A British soldier on military service in Iraq was subject to the jurisdiction of the United Kingdom within the meaning of article 1 of the European Convention on Human Rights and was protected by the Convention rights guaranteed by the Human Rights Act 1998. En brittisk soldat som gjorde militärtjänst i Irak lydde under brittisk jurisdiktion enligt artikel 1 i den Europeiska konventionen om skydd för de mänskliga rättigheterna och de grundläggande friheterna och skyddades av konventionsrättigheterna garanterade i Human Rights Act 1998.
The passive construction could in some cases be translated into an adjective:

(38) … in the third (Carter) the evidence sought to be introduced was the product of business records in a large public company.

(39) Until the Strasbourg court had developed principles that could be relied on for general application the only safe course was to take the decision in each case as it arose.

The transformation of the passive into an adjective was possible to because of the construction of the passive in the ST. The passive constructions in the examples above lacked the typical passive preposition by. Instead of using an adjective in the TT, a relative clause could have been an option: beviset som åberopats bestod av... in example 38 and normer som var tillförlitliga in example 39 respectively. In comparison to these options, the adjective construction appeared simpler and more reader friendly.

According to Sager and Svartvik (1977:77) an English passive construction without an agent often corresponds to a Swedish active clause with ‘man’ as a subject. This option was not used at all in the TT. It did not seem appropriate stylistically.
4. Conclusion

The aim of the paper was to analyze some of the strategies used when translating English law reports into simple and clear Swedish, following the guidelines promoted by several organisations and institutions in Europe.

The cultural aspects, first, consisted mainly of the titles of the different judges and the instances in the courts handling the cases. The favoured strategy when transferring these terms into the TT, was borrowing. The strategy of borrowing competed initially with the strategy of adaptation. The adaptation strategy was, however, used less than expected beforehand. Since I had acquired some knowledge of the Swedish judicial system, the idea was to incorporate the Swedish terminology more frequently than the end result showed. The reason that the strategy of borrowing was preferred was due to accuracy. The law has to be very precise and specific in order to avoid misinterpretations. The corresponding Swedish terms did simply not correspond to a satisfactory degree. The Swedish terms did not denote the same concepts as in the ST. Therefore the adaptation strategy was predominantly used when the cultural aspects were non-legal.

Since borrowings might hinder the flow of reading a bit, the adaptations were chosen when the notions were considered equal enough to enable understanding of the concept in the particular context of the ST.

The borrowed terms were sometimes accompanied by explanations. The ideal was to place them in the running text, either before or after the explained word. The position depended mainly on the length of the explanation, the longer the explanation, the likelier it was that it was placed after the word. A position in front of the relevant word turned out unnatural and clumsy in cases of long explanations. When deemed absolutely necessary, the explanation was put in a footnote. That action was avoided when possible, since a footnote effectively hinders the flow of reading. Still, there was a need for quite a substantial amount of footnotes in the TT. In deciding between borrowing and adaptation, Google provided an efficient tool for recognizing the word in the target language.

Another problematic area explored was about the grammatical structure of the ST. The ST was fairly often hard to comprehend, mainly due to the sentence structure. As for the matter
of overly long sentences, these were often packed with information. When possible, overly long sentences were split up into smaller units.

The passive constructions, next, were also considered for optional translations. They were usually turned into constructions which made the sentence active instead.

The double negations proved to be a particular nuisance, I considered and re-considered them in order to truly understand their meaning and render it correctly in the TT. The double negations were transferred into sentences with a more positive sense. In assisting me with simplifying the grammatical structure, the directions in *Att översätta EU-rättsakter* (www) were invaluable.

All the traits mentioned above were dealt with in the same manner: simplification. The struggle for a simpler and clearer language in official documentations seems to prevail. The ambitions are to include, rather than exclude, the reader by means of style. Further studies on what constitutes a readable text could be made; including what importance other devices have on readability, such as graphics, tables and highlighting numerical information.
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