Researching and teaching specialized languages: New contexts, new challenges
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Researching and teaching specialized languages: New contexts, new challenges

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From Plain English to Plain Spanish? Proposals to modernise Administrative and Legal Language in Europe and Spain and its impact on Legal Translation

Maria Cristina Toledo Báez
Universidad de Málaga

Abstract

The paper examines the transformation and evolution of the administrative and legal language. After pointing out the main terminological, morphological and syntactical features of legal English, we analyse the impact that a movement called ‘plain English’ has had, above all, in the UK and the USA. This movement demands a clear and comprehensible language when the government or the administration communicates with the general public. We explain that this movement has extended to other countries such as France, Sweden, Italy or even Spain and we focus on the initiatives taken by the governments, specifically the Spanish one, in order to achieve a plain, straightforward language in all legal and bureaucratic documents. We analyze the impact of this plain language on legal translation by comparing a British sentence and a Spanish sentence. The possibility of having a ‘plain Spanish’ is then considered and studied.

Key words: administrative and legal language, plain language, legal translation, language for specific purposes, sentences.

Resumen

En el presente artículo investigamos acerca del lenguaje jurídico-administrativo y sus futuras y actuales transformaciones. Tras determinar las características terminológicas, morfológicas y sintácticas de de dicho discurso, analizaremos el impacto que, sobre todo en Reino Unido y
en Estados Unidos, ha tenido un movimiento de gran calado denominado ‘plain English’, mediante el cual el ciudadano medio exige un lenguaje claro y comprensible por parte de la Justicia y de la Administración Pública. Mostraremos que este movimiento se ha extendido a otros países como Francia, Suecia, Italia o, incluso, España y estudiaremos las distintas medidas ofrecidas por los gobiernos, en particular por el de España, para lograr una comunicación eficaz con el público en general. Analizaremos la influencia de esta búsqueda de un lenguaje claro y sencillo en la traducción jurídica mediante el análisis de una sentencia en las lenguas española e inglesa en aras de comprobar la viabilidad de un ‘plain Spanish’.

**Palabras clave:** lenguaje jurídico-administrativo, lenguaje llano, traducción jurídica, lenguas para fines específicos, sentencias.

**Introduction**

Legal language, as a Language for Specific Purposes (LSP), is a highly specialized discourse whose main characteristics are definiteness, conservatism, and painstaking attention to minute detail. In fact, legal English has been divided into officialese, the bureaucratic jargon used by the Administration, and legalese, used by jurists. However, legal language is more and more considered to be obscure, long-winded and confusing to the general public. Therefore, several movements and campaigns supporting Plain English (PE) in legal discourse proliferate in most Anglo-Saxon countries including United Kingdom, United States of America, Australia and Canada (Plain English Campaign, 1996). They crusade for a legal writing that the intended audience can read, understand and act upon the first time they read it. Surprisingly, these campaigns play an important role because, according to Alcaraz Varó (2002: 73), they have highly influenced on the writing of the Civil Procedures Rules 1998. Nevertheless, although the English-speaking world pioneers the PE campaign, several European countries, such as France, Sweden and Italy, have proposed a ‘modernisation’ of
Administrative and Legal English (Etxebarría, 1997). Regarding Spain, there have been some institutional initiatives to standardize the Administration language (MAP, 1990) as well as proposals by authors like Prieto de Pedro and Abril Curto (1987).

After studying the characteristics and current changes of legal language, translators may wonder how this impacts on English into Spanish translation. Does Plain English imply Plain Spanish? Should 'modernisation' be reflected in legal translated documents?

**Legal English and its characteristics**

Administrative and legal English is a complex type of discourse. As Alcaraz Varó and Hughes (2002: 4-11) point out, the main features of legal English are the following:

- Latinisms (*prima facie, writ of fieri facias, bona fide*, etc.).

- Terms of French or Norman origin (*profit à prendre, femme sole*, etc.)

- Formal register and archaic diction

- Archaic verbs and prepositional phrases ('hereinafter', 'thereunder', 'whereby', etc.)

- Redundancy with 'doublets' and 'triplets' ('null and void'; 'last will and testament'; 'give devise and bequeath')

- Frequency of performative verbs ('undertake', 'swear', 'affirm', 'certify', etc.)

Apart from all these features, the second major source of difficulty in legal English is the peculiarity of its morphology and syntax. Alcaraz Varó and Hughes (*op. cit.* 18-21) emphasize the following characteristics:

- Unusually long sentences

- The anfractusoity of English legal syntax

- Abundant use of passive voice

- Conditionals and hypothetical formulations

- Active and passive parties in legal relationships
The technicalities of legal vocabulary present a serious challenge to the linguist while the tortuous syntax is equally baffling to those unfamiliar with forensic method. In fact, legal English has been divided into officialese, the bureaucratic jargon used by the Administration, and legalese, used by jurists (Alcaraz Varó et al., 2001: 91), and both are considered to be obscure, long-winded and confusing to the general public (Garner, 2002; Mellinkoff, 1982). It is arguable that a justice system genuinely concerned to safeguard ordinary people's rights should find some means of administering the law in a language that those people can understand, and this is precisely the aim of the pressure groups and lawyers who are behind the 'Plain English Campaign' (Plain English Campaign, 1996).

**Plain English and its evolution in different countries**

Redish (1985: 125) defines 'Plain English' (PE) as "Plain English means writing that is straightforward [...] It means writing that is unadorned with archaic, multisyllabic words and majestic turns of phrase that even educated readers cannot understand".

The plain English movement in the United Kingdom is not really new. His founder was Chrissie Maher, who in the 1970s started to bemoan the "gobbledygook" that flourished then in the bureaucracy and in the law. Then, many movements appeared such as, for example, 'Clarity', the organization founded in 1987 by John Walton, which has become a worldwide group of practising lawyers, judges, parliamentary and public service legal staff, teachers and professors, librarians, legal translators, linguists and plain language consultants. (McBeth, 2002: 9). According to PE (Plain English Campaign, 1996), the main ways to make writing clearer are the following:

- Keep your sentences short, with an average sentence length of 15 to 20 words.

- Prefer active verbs instead of passive forms.

- Use 'you' and 'we'.
- Choose words appropriate for the reader.
- Do not be afraid to give instructions.
- Avoid nominalisations.
- Use positive language.
- Use lists where appropriate.

The Plain English Campaign has had some effect on the British legislature and the judiciary, which have been forced to clarify and simplify legal language. (Alcaraz Varó & Hughes, 2002). Consequently, 1998 Civil Procedural Rules, which have been in place since 26 April 1999, were influenced by the chief principle of simplification, i.e., the attempt at a systematic-overhaul of legal English aimed at reducing the technicalities to coherent expression within the understanding of a majority of competent speakers not especially trained to the law and its subtleties. For example, a few classic legal terms deemed to make unfair demands on the understanding of the average person have been replaced with others thought to be more generally accessible. Thus, ‘claimant’ replaces ‘plaintiff’, as we have said; and ‘pleadings’ is ousted by ‘statements of case’.

Plain English Campaign has also influenced on other legal and administrative documents of other countries, such as the United States, Sweden, France or even Italy. In the USA, in Executive Order 12044 (24 March 1978), President Carter established a regulatory reform program. One part of that program was the requirement that all major regulations “[be] written in plain English and [be] understandable to those who must comply with [them]” (Redish, 1985: 129). Since the mid-1970s, a handful of government documents and many insurance and banking documents have been rewritten into plain English.

Nevertheless, the Plain English Campaign is not restricted to the Anglo-Saxon countries, but it also proliferates in other European countries. For instance, Sweden was one of the pioneers in PE when in 1974 it was proposed to use a plain language in all the legislation and later it
embraced all the government and bureaucratic documents. Nowadays, the ‘Plain Swedish Group’ constitutes a group of paramount importance given that all the government documents must be amended or validated according to its promoted crystal-clear language (Extebarria, 1997: 370).

Regarding the Romance languages, France’s active normalization and preservation of French also covers the administrative and legal documents. For example, the Centre d’Enregistrement et de Revision des Formulaires Administratifs (CERCA), created in 1996, has revised and corrected more than 30,000 administrative forms. The modernization of French language is one of the objectives of French Administration in order to achieve the complete democratization of public institutions (Extebarria, 1997).

However, even if the plain language movements and initiatives are worldwide, many lawyers continue to argue, with some justification, that technical accuracy is an essential prerequisite of good justice, and that if linguistic precision is watered down to suit the demands of an uncomprehending majority, legal certainty will all but disappear.

Despite all these objections, the use of a plain language that the intended audience can read, understand and act upon the first time they read it is really important in many countries, as we have already seen, and even it has had an impact on the changes of legislation as, for example, the British 1998 Civil Procedural Rules. However, what is the plain language situation in Spain? Is it similar to some of our European neighbours?

Legal and administrative Spanish and its modernization

Concerning our country, the cornerstone of the modernization of legal Spanish is the publication of a Manual de estilo del lenguaje administrativo [Manual on Style for Administrative Language] (I. N. A. P., 1993) and different government directives on the necessity of clarity and conciseness when writing administrative documents. According to
Prieto and Curto (1987), the proposals for modernizing administrative and legal Spanish are the following:

a) Improvement of legal and administrative language in order to ensure the trinomial 'legal language, democracy and culture'.

b) Changes without restricting the natural dynamism of a language.

c) Checking all administrative and legal forms addressed to the citizens.

It is worth pointing out that in Spain many initiatives have been launched at regional level in regions where there are two official languages, i.e., Catalonia, Basque Country and Galicia. Institutions from these regions watch over the modernization of their own languages and even have introduced a compulsory subject of legal writing techniques in Studies in Law (Extebarría, 1997: 376).

Nevertheless, regarding legal Spanish, things are changing quite fast. After the proclamation of the national Charter of Citizens' rights for justice in 2002, the State has founded institutions in order to achieve a modern and open to citizens justice. Consequently, in 2003 a Commission for the Modernization of Legal Language was created and aimed to analyse the administrative and legal Spanish and to propose improvements. Later, in 2005, the 'Transparency in Justice' Programme [Plan de Transparencia Judicial] was launched and its main is to achieve a complete transparency in legal processes and reinforce the principles of independence, impartiality, accessibility, efficacy, quality, equality and responsibility. The main actions of this Programme are the following:

- Having statistical methods in order to obtain reliable data about the legal system.

- Reorganizing the legal institutions.

- Clarifying and modernising the administrative and legal language in order to improve the communication with citizens.
Thus, the access of citizens to a clear and “plain legal Spanish” is of paramount importance according to the ‘Transparency in Justice’ Programme. The Spanish institutions have realized of the relevance of a crystal-clear communication and they are taking initiatives similar to the European ones. However, in a Spanish trial, would sentences, as examples of the communication of the justice with the general public, be clear enough?

"Plain Spanish" and its impact on the translation of a sentence

In the United Kingdom, the State is highly concerned about the necessity of having a plain language when citizens are involved. This idea has been translated into the civil and criminal courts and different measures have been taken. For instance, the Sentencing Guidelines Council was created in 2004 in order to frame Guidelines to assist Courts as they deal with cases across the whole of England and Wales. The purpose of this Council is not, therefore, to introduce a new policy but to promote consistency in sentencing by providing clarity for courts, court users and victims so that everyone knows exactly what to expect. An example of these Guidelines is the writing of a sentence for compensations (Theft and Burglary Guideline, 2008: 6).

(ii) Compensation orders

20. Under section 130 of the Powers of Criminal Courts (Sentencing) Act 2000, the court must consider making a compensation order in any case where an offence has resulted in personal injury, loss or damage. Compensation can either be a sentence in its own right or an ancillary order.

21. Compensation should benefit, not inflict further harm on, the victim. Any financial recompense from the offender may cause distress. A victim may or may not want compensation from the offender and assumptions should not be made either way.
The language used in this sentence is quite clear, straightforward and understandable. The sentence is divided into sections and its macrostructure is clear. Consequently, we may accept that this sentence is written in plain and understandable English.

Let us have a look at a Spanish sentence (Rodríguez Achútegui, 2005: 7):

F.J. UNICO: "A las consideraciones de la instancia, las cuales hacemos nuestras, afirmando responsabilidad de la codemandada «Supermercado S. SA» con traslado de obligación indemnizatoria a su compañía de Seguros «B.P.S.R. SA», con toma de decisión basada en análisis de la culpa desde un punto de vista casi objetivo, obligando a indemnizar a aquel que saca un provecho derivado de actividad empresarial, bajo la premisa de ocurrencia de accidente en la propiedad donde desarrolla el negocio y siempre que no exista culpa exclusiva de la víctima, añadir, que en el presente caso no sólo existe obligación resarcitoria por la teorización expuesta, sino que es tangible negligencia en el proceder de la demandada.

Is that a good example of clear and straightforward Spanish? It seems that the intention of the writer is confusing and puzzling the reader. So, if we need to translate this sentence to plain English, what would we do first? Just translating the sentence into a plain Spanish and, then, translating into English. This would be the result of the 'plain legal Spanish' sentence (Rodríguez Achútegui, 2005: 10-11):

FUNDAMENTOS JURIDICOS

PRIMERO.- Sobre la negligencia de la demandada

Hay que [añadir] a las consideraciones de la instancia, que (las cuales) hacemos nuestras, que afirma (afirmando) la responsabilidad de la codemandada «Supermercado S. SA» y de (con traslado de obligación indemnizatoria a su compañía de) Seguros «B.P.S.R. SA», tras analizar (con toma de decisión basada en análisis de) la culpa desde un punto de vista casi objetivo, y obliga(n) a indemnizar a (aquel que) quien saca un provecho derivado de actividad empresarial (bajo la premisa de) cuando ocurre(n) un accidente en la
propiedad donde desarrolla el negocio y siempre que no exista culpa exclusiva de la víctima, (añadir), que en el presente caso no sólo existe obligación resarcitoria por (la teorización expuesta) *lo expuesto*, sino que (es angible) *existe* negligencia en el proceder de la demandada.

After this transformation from ‘obscure legal Spanish’ to ‘plain legal Spanish’, we are able to translate to ‘plain English’. This implies that Spanish legal texts should be revised and analysed in order to be accessible to citizens and to achieve the trinomial of ‘legal language, democracy and culture’.

**Conclusions**

The traditional anfructuosity of legal languages is being questioned. Different movements in UK and USA demanding a clear, straightforward and comprehensible administrative and legal language have had the result of the modification of some laws and orders, such as, for instance, the 1998 Civil Procedural Rules in the UK. Other European countries such as France or Sweden have taken initiatives to modernise and clarify their legal and bureaucratic documents for the general public. In Spain, a ‘Transparency in Justice’ Programme has been implemented in order to improve the whole legal system, and, specifically, the communication with citizens. Nevertheless, after analysing a Spanish sentence and comparing with a British one, it is worth pointing out that there is a long way to go for achieving a ‘plain legal Spanish’.

**References**


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Notes

1 The research reported on this paper has been carried out in the framework of R&D project La contratación turística electrónica multilingüe como mediación intercultural: aspectos legales, traductológicos y terminológicos. [Multilingual Tourism E-contracts: legal, translational and terminological aspects]. Andalusian Ministry for Education. (Reference no.: HUM-892).