

Emlékkönyv Dr. Heka László egyetemi docens
65. születésnapjára

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SÁNDOR HETTINGER*

The Requirement of Clarity, Intelligibility and General Comprehensibility When Translating Contracts with General Terms and Conditions into Hungarian

1. Introduction

From time to time, the relationship between legal language and the vernacular or colloquial language used in everyday discourse comes to the fore in legal and translation studies. This is precisely because law is brought to life through language, of which the vernacular is a part, and from which it is distinguished by its normative content. These two forms of language and language use overlap in many respects, since law is also forced to use elements of the vernacular of everyday speech, although it often imbues vernacular expressions with specific legal and semantic content, often as a technical term. Another characteristic is that legal language can be described in terms of its inert, static and immutable nature, while colloquial language can be described in terms of its fluidity and dynamism. Given these characteristics, it is not difficult to imagine that the comprehensibility of legal language, which is one of the pillars of the voluntary compliance with the law, is not always fully achieved. On the one hand, it is not always the case when the recipient of the normative content is a party who is not familiar with the law and is not familiar with the legal language and terminology. On the other hand, even if the recipient is familiar with the technical language, terminology and underlying legal concepts, the text lacks coherence. This lack of or impaired clarity creates an impediment to access to the law and not only frustrates the objective of substantive and procedural law, but may also significantly impair freedom of contract. If, on the other hand, the normative content reaches the recipient through linguistic mediation (legal translation), the preservation or, even more so, the re-establishment of intelligibility becomes of the utmost importance and raises the responsibility of the translator to choose translation strategies that preserve the meaning of the source text as clearly as possible, so that it may be fully reproduced in the target text with the minimum possible effort.¹ This study sees the problem of intelligibility through the lens of the translation into Hungarian of contracts concluded by means of a general contractual clause (GTC or general terms and conditions). The reason for this is that, in

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¹ NIDA, Eugene A. – TABER, Charles R.: *The Theory and Practice of Translation*. Brill, Leiden, 1969. 34. p.

today's accelerating world of globalisation, technological progress and digital solutions, the practice of waiver, particularly in the online space, is increasingly widespread; thus, the party who uses a standard contract term becomes a party to the obligation as a lay consumer when purchasing a product or using a service, with the possibility of waiving the contract, and it is therefore in this area that the guarantee of the intelligibility of the contract creating the obligation is most prominent. The study will first consider the problem of intelligibility from a theoretical perspective from the dual standpoints of linguistics and jurisprudence, and then from a practical perspective from the point of view of the translation of contracts with a GTC clause into an intelligible form, pointing out some important lexical and grammatical translation choices that can be made to make the resulting target-language legal text more intelligible.

2. The theoretical background

2.1 *General stance of GTC clauses*

The more prevalent it is for a document to cover a pre-designed content, in a template form, the more the basic requirement of comprehensibility becomes pronounced. This is particularly the case where, in a contractual relationship, one party unilaterally applies, without the involvement of the other party, a predetermined clause, a GTC, to the conclusion of several contracts, which has not been individually negotiated by the parties.² For the party who unwillingly accepts the GTC, this practice is disadvantageous in several respects: the party's contractual will is impaired or simply absent, the subject matter of the contract is often of high material value, and there is psychological pressure on the party's contractual will, since the mass presence of blank forms in contractual relations gives the impression that its provisions are present in all contracts, and that they are customary.³ Moreover, these contracts are not only concluded between parties using the same language, but it is increasingly common for consumers to buy goods or services from abroad, and the resulting cross-border contract between the parties is not written in accordance with Hungarian law, the general terms and conditions of the contract are drafted in a foreign language, usually English, and therefore translation into Hungarian may be necessary.

From a legal point of view, contracts concluded by means of a GTC clause cover the following areas: The area of consumer contracts, already mentioned, which is the preferred area for service companies and businesses in the competitive sector, as well as in the online space. They also concern unfair terms, the invalidity of contracts and the formation of the will to deal, termed as the 'consensus issue'. When the need for linguistic mediation is added to this area, which in practice means that a contract drawn

² Act V of 2013 on the Civil Code Section 6:77

³ NÉMETH, Gabriella: *A közérthetőség etikájának jelentősége a jogalkotásban és a sablonizált szerződési feltételek*. In: Szoatak, Szilvia (ed.): *Az állami fordítószoftalkotás 150 éve. Országos Fordító és Fordításhitelesítő Iroda Zrt., Budapest, 2019.* <https://www.offi.hu/sites/default/files/media/files/7-nemeth-gabriella.pdf>

up by means of a GTC in English has to be translated into Hungarian, the translator is faced not only with linguistic problems but also, where appropriate, with problems of legal systems, in some cases arising from differences between *common law system* and its civil law counterpart. The requirement of comprehensibility therefore has a dual role to play in legal translation: not only must comprehensibility be ensured in the course of linguistic mediation, but the translator may even face an ethical dilemma as to whether he should strive to produce a better text than the original text if the source text is not comprehensible. Ensuring, maintaining or creating clarity also promotes a non-litigious relationship between the parties, since it is desirable and a primary objective that the parties to a contract should not respect the legal norms governing their contractual relationship for fear of being penalised, but that the clarity of the legal norm and of the wording of the contract based on it should promote voluntary compliance with the law by facilitating understanding.⁴ This must be achieved in such a fashion as to preserve as far as possible the delicate balance between the quest for clarity and the technical nature of the language.

2.2 Simple language use

A theoretical starting point for achieving comprehensibility could be the practical need for efficiency in common law legal systems. The 1950s saw the birth of the *Plain Language Movement* in the English-speaking world, which can be translated as the most sophisticated manifestation of the commitment to plain language. In the pragmatic approach of the common law systems, the fundamental need to make legal communication as effective as possible⁵ was the goal, and therefore encompassed all groups using a specialist language where the recipient of the communication did not necessarily have the necessary expertise in the relevant profession.

The common law intelligibility movement has thus set itself the goal of achieving *plain* language in all areas of professional life, depending on the linguistic level of the text to be made intelligible (lexis, syntax, semantics), the form of the text (editing, form), the avoidance of superfluous *terminus technicus* and the type of text it covers.⁶

The above approach does not focus on the medium of linguistic mediation, but it assumes that the Hungarian target-language legal text produced in the course of legal translation has properties that seem to be further accentuated – typically in the English-Hungarian context – by the mediation of the often irresolvable differences between the two languages. Generally speaking, it can be said that, like legal texts produced without mediation, the mediated, in other words, translated, Hungarian target-language legal

⁴ MINYA, Károly – VINNAI, Edina: *Hogyan írjunk érthetően? Kilendülés a jogi szaknyelv komfortzónájából.* Magyar Jogi Nyelv, 2018/1. 13–15. p.

⁵ HELTAI, Pál – NAGY, Róbert: *Nyelvművelés Angliában és Amerikában. A Plain English Campaign.* Magyar Nyelvőr, 1997/4. 405–407. p.

⁶ SOBOTA, Anna: *The plain language movement and modern legal drafting.* Comparative Legilinguistics. International journal for legal communication, 2014/20. 19. p.

text does not always have a clear form: it is characterised by a lack of clarity, Germanisms (*noun + kerül, foganatosít, eszközöl*, etc.), and tendentious expressions.⁷ Excessively long sentences and the unnecessary use of pronouns make the style manners. There are also elements of jargon that are ungrammatical and often unnecessary. To avoid this, we can use the methods and tools that have been developed in translation studies and in the practical teaching of translation.

2.3. *The benefits of translation in conveying legal content*

In order to solve the problem, in other words, to avoid the resulting „unintelligibility”, it is worthwhile to apply the theoretical considerations of jurisprudence and the achievements and practical solutions of general translation science in order to preserve and create intelligibility. Generally speaking, consistent use of the necessary and sufficiently technical elements of the terminology helps understanding in that, even if the layman is not familiar with the term, consistent use at least helps to formulate the questions that help understanding.⁸

Complex lexicon (technical vocabulary) and syntax (grammar) can be simplified through lexical and grammatical conversion, logical arrangement and consistent use, in other words, by creating text cohesion. This is because it is often hampered by inconsistent vocabulary, disorder without logic and the interpretation of a text which often contains multiple complex sentences.⁹ The question arises as to whether there are conversion operations at the level of the text, above the sentences, which can be used to overcome the final obstacle to comprehensibility. If it is possible to formulate and organise them, we can reach the point where mediation no longer takes place in the arena between the two languages¹⁰ but in the target language, in what is known as intralingual translation. Translation science can therefore be used to make legal texts accessible to the public, even if they are drafted without the use of foreign language mediation.

2.4. *Conversion operations to ensure and preserve clarity*

The *system of transfer operations*, as developed by Kinga Klaudy, who introduced the Hungarian system of *transfer operations*, is a generic term used to describe the operations used in translating from Indo-European languages, including English, into Hungarian,

⁷ CHIKÁN, Zoltánné: *Jelentésváltozások a jogi nyelvben*. In: Kiss Jenő – Szüts László (ed.): *A magyar nyelv rétegződése*. I. köt. Akadémiai Kiadó, Budapest, 248–250. p.

⁸ VINNAI, Edina: *Harc a szavakért. Közérthetőség a jogban*. Alkalmazott Nyelvészeti Közlemények, 2017/1. 50–52. p.

⁹ KISS, László: *A jogi nyelvről, alulnézetben*. In: Balázs Géza (ed.): *A magyar nyelvi kultúra jelene és jövője*. MTA Társadalomkutató Központ, Budapest, 2004. 296. p.

¹⁰ DOBOS, Csilla: *Nyelven belüli fordítás és tisztességes jogi eljárás*. In: Szabó Miklós (ed.): *A jog nyelvi dimenziója*. Bíbor Kiadó, Miskolc, 2015. 220–223. p.

in order to better understand what the translator is doing when translating. Klaudy typifies them according to lexical and grammatical conversion operations.¹¹ Lexical and grammatical operations include, but are not limited to, merging, splitting, inserting, omitting, transposing, and translating with a pair of opposites, known as antonym translation. The grammatical operations also include methods of splitting, merging, inserting, omitting and transposing, together with raising and lowering of sentence units and grammatical substitutions. Text coherence to promote comprehensibility must be created by the appropriate use of lexical and grammatical substitution operations. The requirement of intelligibility, on the other hand, moves the conveyance of meaning from the level of sentences to the level of the text. If, on the other hand, there is no other method of producing the target language text than the editing of lexical choices and sentences, it is necessary to be aware of the lexical and grammatical choices that have an effect at the level of the text.

When reading and interpreting legal texts – and not only among the lay parties to the contract or the recipient – the following symptoms of lack of clarity are most often observed: losing the thread while reading, not being able to follow the text; not knowing what the author of the text is trying to achieve; no logical flow of thought; the sentence in question is not connected to the previous one or, if it is connected at all, the connection is not unbroken; the clues for understanding the sentence are only given late; the sentence stress is missing or in the wrong place; there are vague passages in the sentence, it is not known what belongs to what and what will be the continuation; the list is heterogeneous or the elements of the list do not fit into the head sentence, etc. Assuming that the legal terminology has been properly conveyed and there is no doubt as to their interpretation, the above dysfunctions remain an impediment to the intelligibility of the legal text.

The following is an attempt to apply the theoretical knowledge in practice, using the example of the translation into Hungarian of some of the „standard” clauses in contracts with a general contractual term. As mentioned above, the legal terminology found in the GTC clause is left out of the analysis, and textual choices are made to illustrate translation strategies that help to preserve clarity.

3. The exercise

3.1. The problem of language mediation with clarity

As a general statement, meaning is the invariant of translation (more simply: the part of the content that remains unchanged during a mapping, transformation or other linguistic operation). This becomes particularly important when translating texts of a legal nature. It is not only that the translator is confronted with the fact that the text to be translated has specific characteristics, but also that he or she must take into account for whom, how and for what purpose the translation is being done. The flexibility of the translator's

¹¹ KLAUDY, Kinga: *Az átváltási műveletek rendszere*. Modern Nyelvoktatás, 2018/2–3. 5–15. p.

margin of manoeuvre, in other words, the recognition that, in order to preserve meaning as fully as possible, the transfer of the text in question from the source language to the target language may narrow or even broaden the meaning, is not as great in the case of legal texts as it is, for example, in the case of literary texts. In the case of contractual legal content, avoiding the loss of rights and obligations existing under the agreement is the very essence of the meaning of contracts, and this must be transformed without loss of information when translating. While in translation we can choose from a wide range of stylistic devices, and while the aesthetic must be restored or even enhanced, in the translation of contracts the style is bound up with the fixed terminology and the multitude of established idioms that surround the translation of legal texts.

It is the legal terminology, the legal content of everyday words and expressions, which is one of the obstacles to the translator's comprehension. For reasons of space, we will not examine these in this paper, but will look more closely at the other strategies that overcome the final obstacle to comprehensibility, namely the translation choices that can be made at the level of the text and their demonstration in practical examples.

3.2. Textual choices when translating certain general terms and conditions

By adapting the following text-level translation choices typified by Kinga Klaudy to legal texts, we can get a fairly good idea of what actually constitutes an obstacle to preserving intelligibility at the level of the legal text.¹²

The examples presented are selected from the general terms and conditions of an original service framework contract and its Hungarian target language translation, and are presented in the following way: first the original English clause is quoted, then its Hungarian translation, which prevents its comprehensibility. The part of concern is indicated in italics. Finally, we propose a possible translation that preserves or improves the clarity of the text, in which the corrected parts are also in italics. For data protection reasons, the examples are given without details of the parties that can be identified. The letter 'A' indicates the party applying the standard contractual clauses, while the term 'Customer' indicates the party accepting the GTC.

a) Implicit or explicit reference back at the beginning of the sentence?

In texts of a legal nature, in order to promote precision, there are often repetitive passages that serve as a reference point for easier understanding. Often, however, these repetitive passages in the source language text not only do not aid comprehension, but actually hinder it, making it difficult to read with comprehension and causing the dysfunctions listed by way of example above. In the example below, it can be seen that the part of the sentence which does not impede intelligibility, when viewed in the context of two sentences, is already symptomatic (in other words, shows signs of symptomatism) of impaired intelligibility. In such

¹² KLAUDY, Kinga: *Szövegszintű műveletek a fordításban*. In: Galgóczy, László – Vass, László (ed.): *A mondat kaland*. Hetven tanulmány Békési Imre 70. születésnapjára. JGYTF Kiadó, Szeged, 2006. 204–207. p.

a case, it is up to the legal translator to decide, by means of a textual choice, whether to refer back to the previous sentence implicitly at the beginning of the sentence, avoiding repetition, or to refer back to the previous sentence explicitly, retaining the repetition. Given the anaphoric (referring back) nature of legal texts, the use of implicit, hidden referring back greatly enhances the creation of intelligibility in the target language product. So let us look at a school example of the above phenomenon:

Example

Source language clause:

Usage. 'A' permits 'Client' to use the *Services within the scope of use set out in the Master Terms and the relevant Schedule and/or Order Form*. Materials and communications facilities or networks in connection with the *Services within the scope of use as set out in the Master Terms and the relevant Schedule and/or Order Form*, may only be used to access the Services and benefit from the rights granted under the Agreement.

Target language translation (in Hungarian):

Használat. „A” az Ügyfél számára az *Általános feltételekben, az irányadó Mellékletekben és a Megrendelő dokumentumban meghatározott felhasználási körben engedi igénybe venni a Szolgáltatásokat. Az irányadó Mellékletekben és a Megrendelő dokumentumban meghatározott felhasználási körben szereplő Szolgáltatással* összefüggő Anyagokat, kommunikációs eszközöket és hálózatokat kizárólag a Szolgáltatáshoz történő hozzáférés, valamint a Megállapodásból eredő jogok gyakorlásához lehet felhasználni.

The proposed target language translation is intended to preserve clarity (in Hungarian):

Használat. „A” az Ügyfél számára az *Általános feltételekben, az irányadó Mellékletekben és a Megrendelő dokumentumban meghatározott felhasználási körben engedi igénybe venni a Szolgáltatásokat. Az e dokumentumok szerint igénybe vett Szolgáltatásokkal* összefüggő Anyagokat, kommunikációs eszközöket és hálózatokat kizárólag a Szolgáltatásokhoz történő hozzáférés, valamint a Megállapodásból eredő jogok gyakorlásához lehet felhasználni.

From the example above, we can see that by a simple grammatical conversion (omission), the repetitive part was made more comprehensible by the use of the pronoun adjective structure '*ebben a körben*', which has an anaphoric function, thus reducing the expansiveness of the text. It is worthwhile to be aware of the clarifying effect of the back indicative pronoun during the translation process.

b) Should we use a possessive personal sign or not?

A unique solution in Hungarian is to refer back to the possessor in the possessive relationship by the possessive sign only. This is the so-called possessive referring back, the marking of the possessive relationship by possession, which the translator should take advantage of, if given the opportunity.

Example

Source language clause:

Third Party Providers Instructions. Third Party Providers may have the right to require that „A” restrict, suspend or terminate “*Client’s*” access to that Third Party Provider’s Information, Materials, or services. If ‘A’ restricts, suspends or terminates ‘*Client’s*’ access to that Third Party Provider’s Information, Materials, or services, it will (a) use reasonable efforts to provide ‘Client’ with notice; and (b) not be liable for any resulting Damages „Client” may suffer.

Target language translation (in Hungarian):

Harmadik személy szolgáltató által adott utasítások. A Harmadik személy szolgáltató előírhatja, hogy „A” korlátozza, függessze fel vagy szüntesse meg az „Ügyfeleknek” a Harmadik személy szolgáltató Tájékoztatásaihoz, Anyagaihoz vagy szolgáltatásaihoz történő hozzáférést. Amennyiben „A” korlátozza, felfüggeszti vagy megszünteti az „Ügyfeleknek” a Harmadik személy szolgáltató Tájékoztatásaihoz, Anyagaihoz vagy szolgáltatásaihoz történő hozzáférést, (a) észszerű erőfeszítést köteles tenni annak érdekében, hogy az „Ügyfeleket” erről értesítse; és (b) nem tartozik kárfelelősséggel az „Ügyfeleknél” ezzel kapcsolatban felmerülő Károkért.

The proposed target language translation is intended to preserve clarity (in Hungarian):

Harmadik személy szolgáltató által adott utasítások. A Harmadik személy szolgáltató előírhatja, hogy „A” korlátozza, függessze fel vagy szüntesse meg az „Ügyfeleknek” a Harmadik személy szolgáltató Tájékoztatásaihoz, Anyagaihoz vagy szolgáltatásaihoz történő hozzáférést. Amennyiben „A” hozzáférésüket korlátozza, felfüggeszti vagy megszünteti, (a) észszerű erőfeszítést köteles tenni annak érdekében, hogy az „Ügyfeleket” erről értesítse; és (b) nem tartozik kárfelelősséggel az „Ügyfeleknél” ezzel kapcsolatban felmerülő Károkért.

The above example clearly shows that the term ‘*hozzáférésüket*’ (*their* access) with the possessive personal sign simplifies the target language text, since the bit sign alone is a sufficient means in Hungarian to refer back to the previously mentioned possessor, in this case ‘Customers’, thus making the repetition of the access extensions redundant, which clearly improves the clarity of the GTC clause.

- c) Should long adjectival extensions be translated with a yes structure or with an adjectival adjective?

When translating a legal text into Hungarian, the insertion of continuous or completed adjectival infinitives missing from the English source text into the target text is a natural part of the dynamics of the translation relationship between the two languages. What English can express *with* a simple preposition (*with*), a completed adjectival adverbial phrase (*provided by*) or even without any special marking, we have to expand in Hungarian and can choose between expressing the more corporeal adjectival phrases in the target language with an adverbial structure similar to English or with an expanded and thus more comprehensible adjectival adverbial phrase.

Example

Source language clause:

Support Provided. To assist in resolving technical problems *with* the Services, „A” may provide telephone and/or online access to its helpdesk, or may provide self-help tools. Additional information *related to* the support *provided by* „A” may be described at [https://\(...\).com/content/mvtr/en/policies/statement-of-service.html](https://(...).com/content/mvtr/en/policies/statement-of-service.html).

Target language translation (in Hungarian):

Műszaki támogatás nyújtása. A Szolgáltatással kapcsolatosan *felmerülő* műszaki problémák megoldásának érdekében „A” telefonos vagy online hozzáférést nyújthat helpdesk szolgáltatásához, vagy önszolgáltató eszközöket adhat. Az „A” által nyújtott műszaki támogatáshoz *kapcsolódó* további tájékoztatás az alábbi internetes webhelyre mutató címen található meg: [https://\(...\).com/content/mvtr/en/policies/statement-of-service.html](https://(...).com/content/mvtr/en/policies/statement-of-service.html).

The proposed target language translation is intended to preserve clarity (in Hungarian):

Műszaki támogatás nyújtása. Annak érdekében, hogy „A” megoldja *azokat a műszaki problémákat, amelyek* a Szolgáltatással kapcsolatban *merülnek fel*, telefonos vagy online hozzáférést nyújthat helpdesk szolgáltatásához, vagy önszolgáltató eszközöket adhat. További tájékoztatás, *amely ahhoz a műszaki támogatáshoz kapcsolódik, amelyet „A” nyújt*, az alábbi internetes címen található meg: [https://\(...\).com/content/mvtr/en/policies/statement-of-service.html](https://(...).com/content/mvtr/en/policies/statement-of-service.html).

d) Translation without levelling or with levelling?

Nouns are a common device in Indo-European languages, of which English is one. Nouns are used to avoid the situation in which a text can present its meaning without a main clause-subordinate clause split, in a simple extended sentence, in other words, without raising the level. In the case of translation into English, our language does not favour nouns, as their accumulation would condense the meaning of the text, thus, in order to preserve intelligibility, it is worthwhile to use the example of the noun structures with levelling.

Example

Source language clause:

Severability. If any part of the Agreement that is not fundamental is illegal or unenforceable, it will be deemed modified to the minimum extent necessary to make it legal and enforceable. *The impossibility of such modification* will stress the *necessity of* such part to be deemed deleted. Any such modification or deletion will not affect the validity and enforceability of the remainder of the Agreement.

Target language translation (in Hungarian):

Részleges érvénytelenség. Amennyiben a Megállapodás nem lényeges része jogszabályba ütközik vagy nem érvényesíthető, a részt jogszabálynak való megfeleléshez vagy érvényesíthetőséghez szükséges legkisebb mértékben módosítottak kell tekinteni. *A módosítás lehetetlensége* az érintett rész töröltnek

való *tekintése szükségességét* vonja maga után. A módosítás vagy törlés azonban nem érinti a Megállapodás fennmaradó részének érvényességét vagy érvényesíthetőségét.

The proposed target language translation is intended to preserve clarity (in Hungarian):

Részleges érvénytelenség. Amennyiben a Megállapodás nem lényeges része jogszabályba ütközik vagy nem érvényesíthető, a részt jogszabálynak való megfeleléshez vagy érvényesíthetőséghez szükséges legkisebb mértékben módosítotttnak kell tekinteni. Az érintett részt törölnék *kell tekinteni, ha módosítása nem lehetséges*. A módosítás vagy törlés azonban nem érinti a Megállapodás fennmaradó részének érvényességét vagy érvényesíthetőségét.

4. Summary

The preservation or, where appropriate, the creation of clarity in legal texts is a priority in all cases, in particular for contracts where a party enters into a contract with a third party by means of a standard contract term drawn up without the involvement of the other party. It is therefore very important that, when translating such contracts into Hungarian, the legal translator, after having carried out the basic lexical and grammatical transformations that are also characteristic of legal language, goes beyond the level of the sentences and looks at the lexical and grammatical transformations made from the textual level, in the light of the textual cohesion. He or she can then decide which lexical and grammatical changes to make in order to preserve the legal content and the contractual rights and obligations, which also affect the textual level, in order to meet the requirement of clarity. Consider what can be omitted from the infinitive expansions of the verb (to be, is, being, etc.). Use an explicit demonstrative pronoun backreference instead of an implicit, repetitive backreference. The translator should make use of the possessive personal pronoun referring back, which is a possibility only in Hungarian. By following these tips, legal translation will make the target language text more comprehensible and will also facilitate voluntary compliance.