



Research Article

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Translation in Terms of Law and Communication: Difficulties Regarding the Translation of Legal Texts from Albanian into German and Vice Versa

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Abstract

This article deals with the peculiarities of translating legal terminology from German into Albanian and vice versa. Legal texts constitute an important part of translation into both languages. Translations of legal texts in Albania have increased since the latter's attempts to join the EU. European Union translation materials are in large volumes and require a lot of work. Therefore, the request for translation of legal documents, such as provisions or court decisions into other languages of the Union, including German, has increased. Despite institutional efforts to draft a glossary of legislation with the cooperation of professionals led by the OSCE (Organization for Security and Cooperation), as well as some efforts made in compiling Albanian-German legal dictionaries, there are no genuine publications in the Albanian language that handle the problems of translation in this field. Since technical legal language is a practical or institutional language, it is characterized by a high percentage of technical terms as well as a standardized sentence structure. Legal language is characterized by accuracy and clarity.

Keywords: *legal language, terminology, legal translation, professional experience*

1. Introduction

Legal terminology is such an attractive and challenging field. Law and language are both disciplines that have caught the attention of scholars for research, but the challenge posed by their combination requires almost an innovative research. Legal terminology has a wide scope and as such can be divided into several sub-registers, such as legal terminology of laws, which can be further subdivided as follows: the terminology used in the fundamental law of the country, in constitutions, criminal laws, civil laws, laws of special fields, etc.; the spoken legal terminology which is used in courts; the legal terminology used in notarial acts, translations of legal terminology, etc. Each register would constitute a wide field

of study, which should be taken into consideration in order to have an in-depth study of legal language, as the legal terminology itself is used in different ways in different registers and can be specific to only one specific register (Vukaj, 2014 p.11).

German is increasingly in use and is playing a very important role in the communication between different nations around the world. It is used in many international political, economic, social, artistic, literary meetings, etc. In this context, diplomatic and political interaction between nations is increasing, as a result even the demand for professionalism in translation has increased. International law must be translated correctly in order to adapt to the national, cultural and political aspect of the country in whose language these laws are being translated.

This paper addresses the issue of translation of legal texts, which has recently received special attention.

The main research issues that will be addressed in this article are: What difficulties are encountered when translating legal texts? What are the translators' approaches to different aspects of legal translation, especially in relation to the preservation of the original text? What tools do translators use? What further training do they need?

To answer these questions, semi-structured interviews were conducted with nine translators of legal texts. The main hypothesis of this paper is mainly related to the difficulties of legal terminology, as this is discussed mostly in the theoretical literature. The article addresses two issues. The first issue treats the theoretical part and deals with the characteristics of legal language, its terminology and style. The second issue, *legal translation*, explains the special features of legal translation, focusing on terminology equivalents. This issue also describes the structure of the survey and mainly explains the difficulties encountered in legal translation.

Legal terminology is difficult to be isolated from natural language (Oksaar 1988, p. 87). A characteristic of legal language is that it contains words that also exist in everyday language, but that have a completely different meaning when used in legal context (Oksaar 1999, p. 203).

For example, in everyday language the word *adolescent* means a person in their teens. However, the legal definition also defines the age limits, respectively the age of the person must be between 14 and 18 years old.

The term *immunity* in everyday life is related to the human body, whereas in legal terminology it means the integrity of a diplomat or a member of parliament or the disobedience of a state to a court of another state.

In legal language, the word *billig* (e lirë) (inexpensive) is comparable to *convenient*, while in everyday language it means *e lirë* (cheap), *leverdi* (convenient) or *primitive* (primitive).

Tatsächlich (de facto) (në fakt) means that a circumstance is based on facts. In colloquial language, it makes sense *megjithatë* (however), *në të vërtetë* (in fact) and is often equated with *realisht* (in reality) or *në të vërtetë* (in fact).

The legal term *unmittelbar* (direct) refers to a legal relationship between two persons (natural or legal) without the involvement of a third party. The opposite is *mittelbar* (indirect). In standard language, the word stands for *immediately*, whereas the term *mittelbar* (*indirect*) is not used.

Legal language is characterized by a special style. A typical feature of legal style is a high level of abstraction (Funk-Baker, 2009). It is manifested mainly in the frequent use of the nominative style (Narits, 2002). Another feature of the German legal language is the complex form of expression, which is expressed mainly in the frequent use of the passive, the genitive, and the overly long sentences (Oksaar, 2002).

Example of a long paragraph from Article 377 of the Code of Criminal Procedure: *With the withdrawal of the charge by the prosecutor the court could give the decision and dismissal of the criminal case or the verdict of innocence for the defendant in the cases provided by law and if the court deemed that it was not before these two alternatives then there were no legal cases to dismiss the criminal case or to acquit the defendant, it proceeded to return the acts to the prosecutor*

An interesting feature of the German legal language is that only the masculine form is used, even if the issue or law may affect only women (Funk-Baker, 2009). According to Simon and Funk-Baker,

the reason is that the simultaneous use of feminine and masculine forms would further complicate legal language (Funk-Baker, 2009). Understanding legal texts is made even more difficult by the frequent use of technical abbreviations referring to standard offenses or laws (Funk-Baker, 2009).

2. Legal Translation

Legal translation requires a high level of accuracy. It must correspond to the original both in general content and in the legal sense, i.e. should be as accurate as the original. Errors in terminology when translating legal texts can lead to the failure of legal proceedings or cause liability problems (Dumitrescu, 2014).

A misunderstanding of a term can also lead to a wrong choice. It can also be said that untranslatability is a problem, especially in legal translation. Inter alia, another issue is the nature associated with the legal terminology system, which means that legal translations must also overcome changes in different legal systems (Dumitrescu, 2014).

Difficulties also arise with terms related to culture. There are terms for which relevant translations can only be found in part in the target language.

Even the so-called *false friends* - i.e. words that are similar in form but have different content - pose problems when translating from German to Albanian. Such is the word *konkurs* (*competition*), which in the Albanian language means *competition between two or more participants, where knowledge and skills are tested for a job, or a higher education, etc.*, while the identical German word means the *bankruptcy of a company*, i.e. its *insolvency* (Duden, 51).

We also bring as an example the verb *reklamieren* (*reklamoj*) (*advertise*). In German the verb *reklamieren* has only one meaning: *to complain to the competent authority, to complain that something is not as it is expected to be in reality* (Duden) while in Albanian the verb *reklamoj* (*advertise*) has two meanings: 1. *advertise: advertise goods (fashion)*. 2. *return a product that does not meet the requirements*.

This problem can also occur within German, as the exact meaning of a word may vary in different German-speaking countries. In Germany, for example, *Havarie* means only an *accident by boat or plane*. In Austria it can also be understood as a *car accident*. In Switzerland, *Havarie* means an *accident by boat or plane* and a *car accident*.

In addition to the mentioned characteristic, another aspect of writing and translating legal texts is the standardization of terminology and uniformity at both the macro-text and the micro-text level. Legal language is also characterized by strict formal requirements. In literary texts for example, a word or phrase may be omitted for style or content purposes, in legal translation this is forbidden (Dumitrescu, 2014). The words chosen by the translator in legal texts should have no emotional charge or biased interpretation. Legal translators are required to have multiple skills. They should have knowledge of the legal system of the source language and the target language and should be familiar with the field of the text and its terminology.

Standardization of terminology is of course a necessity for all translators, as it facilitates their work, but on the other hand it is not the only needed tool and is not sufficient to perform the work as a translator. The legal world is different. Every law system is characterized by its essential features, which is conditioned by the fact that law is born and developed in a certain social context to respond to the specifics of a community. In this way, law expresses to a higher degree its culture, as it refers to various human institutions (Spaho, 2015).

The use of passive forms is characteristic of legal language, which contributes to the anonymity and distance of the author from the relevant statements, which enables the formulation of general statements and an objective, factual presentation.

In most cases the present tense is used, as it underlines the general validity of the assertions. The present tense is used to formulate states, representations and views (Mylbacher, 2010). Also in Albanian:

Kur nevojat e sigurimit rëndohen apo personi shkel detyrimet që lidhen me masën e sigurimit, gjykata, me kërkesë të prokurorit, mund të vendosë zëvendësimin e saj me një masë më të rëndë ose caktimin e një

mase sigurimi shtrënguese ose ndaluese shtesë. Për shkeljen e detyrimeve që lidhen me një masë ndaluese, gjykata mund të vendosë caktimin e një mase ndaluese shtesë ose zëvendësimin e saj me një masë shtrënguese (Neni 260. Kodi i procedurës penale i Shqipërisë).

Example:

When the security needs are aggravated or the person violates the obligations related to the security measure, the court, at the request of the prosecutor, may decide to replace it with a more severe measure or to impose an additional coercive or prohibitive security measure. For the violation of the obligations related to a detention measure, the court may decide to impose an additional detention measure or to replace it with a coercive measure (Article 260. Code of Criminal Procedure of Albania).

Regarding the types of sentences, in the legal language, both in German and Albanian, dependent causal sentences as well as conditional sentences are used.

Regarding the features of the lexicon of legal language we distinguish:

- The lexicon of legal language is based mainly on the general lexicon. Legal language gives a word of general lexicon a specific legal meaning. The word "*Verurteilung*", for example, in the general linguistic sense means disapproval, *negative evaluation of an action*, while in the legal sense it means *the imposition of a judicial punishment*.
- Legal language is quite conservative and therefore, in contrast to other specific languages, has a higher degree of outdated words.

Example:

Die Klägerin und der Erblasser kannten sich aus ihrer gemeinsamen beruflichen Zeit und pflegten ein freundschaftliches Verhältnis, Gegen die Auslegung und Anwendung dieser Vorschrift durch die Fachgerichte ist verfassungsrechtlich nichts zu erinnern.

Legal language is also characterized by an increased use of phraseologies. Due to the importance attached to the accuracy of legal language, it is rich in multiple word combinations that are fixed and often have an abstract effect, e.g. *Klage erheben*, (file a lawsuit), *strafrechtliches Ermittlungsverfahren einleiten*, (initiation of criminal investigations) *auf Schadenersatz haften* (responsible for damages), *einstweilige Verfügung* (temporary availability)

- Use of Latin terms: *Inabsentia* (absent), *eo ipso* (as it happens from personal circumstances), *in dubio pro reo* (in doubt about the accused), *status quo* (currently), *prima facie* (at first sight, in appearance first), *ex officio* (according to official duty).

3. Methodology

This issue explains in detail the method used for the empirical analysis. Here we have presented the selection criteria of the sample and the description of the way in which the interview was conducted, including the structure of the survey. The research question on which the empirical analysis is based is: What problems arise during the translation of legal texts from Albanian into German and vice versa?

Based on the experiences of translators working in this field, we have tried to determine what problems are specific to translators of legal texts from Albanian into German and vice versa. The target language is almost exclusively the native language of translators and for this reason only Albanian translators who deal mainly or only with legal texts are included in the survey.

For the purposes of the study we contacted twelve translation studios located in different cities of Albania. These studios, according to their websites, are active in the field of legal translation and were contacted to participate in the survey. One of the studios refused to participate in the survey because it rarely translated legal texts. Two others did not respond. Thus, we established direct contacts with nine translators.

The names of the translators can be found through the publication on the website of the Ministry

of Justice. The interviews took place between 09.12.2020 and 22.01.2021. Two interviews were conducted in person, three by telephone, one by Skype and three by email. Different ways of communication were used because, on the one hand, meeting for an interview was sometimes impossible, and on the other hand, we wanted to fulfill the wishes of the respondents who wanted to respond in writing. We conducted semi-structured interviews with the participants.

We created a questionnaire for the purpose of the interview. Questions were divided into three categories. The first category was mainly related to the experiences of the respondents. The purpose of these questions was to find out what types of skills the participants could help avoid or solve potential translation problems. We included 8 questions in the first category. The questions in the second category focused on the problems that arise when translating legal texts. The second category consisted of 7 questions. The third category questions were regarding the professional development. The goal was to find out what further training would be needed. The third category contains 4 questions.

3.1 Professional experience of the respondents

This subsection describes and analyzes the answers to the first category of questions. The questions were mainly related to the level of training and professional experience of the respondents. The questions in the first part of the interview relate to the following topics: average workload, tools used for translation and training of translators.

The educational level of the translators interviewed in relation to the subject areas was similar. All respondents had at least a bachelor's degree and had studied law or German. Five of them had a bachelor's degree in German language and literature. One of the interviewees had a German teacher degree for high school level. Two respondents had bachelor's and master's degrees in law and one was about to complete a bachelor's degree in law. Two interviewees had studied translation and interpretation at the master level: one had a master's degree in interpretation and the other in translation.

All respondents were experienced in legal translation. The translator with the longest professional experience had translated legal texts for 17 years, and the translator with the shortest professional experience for 4 years. Two respondents worked as translators, one occasionally and the other continuously. All respondents have started their careers in legal translation and so far it has been the only or main field of translation for them.

The list of translated texts mentioned by the interviewees was very diverse. All translators during their professional experience had translated contracts and court documents, as well as birth certificates, articles of associations, etc.

Three translators also translated European Union documents. The most common European Union texts were court documents. Respondents were not able to provide any information about the usual or average monthly or weekly workload on characters or pages. Most respondents were of the opinion that the workload varied.

Regarding translation aids, all respondents rated electronic translation systems as the most essential. Other tools mentioned several times were Google and various European Union websites, including EUR-Lex.

4. Difficulty in Translating Legal Texts and the Survey Results

The questions of the second category addressed the problems that arise during the translation of legal texts and the solutions for overcoming them. Most respondents mentioned problems in translating legal terminology.

- They categorized as particularly difficult cases for which there was no direct correspondence in translation. E.g. if there are two terms in one language, but only one term can be found in the other to explain it or vice versa, or in cases where equivalents cannot be found in the

source language. Some of the examples given by the respondents are: *Regelunterhalt, Bagatelldelikt, Rechtspfleger, ordentliches Landgericht, Regelbedarf, Diebesgut, vorbehaltenene Sicherungsverwahrung*.

In these cases, there is no equivalent translation in the Albanian language and as a result it is left up to the translator to handle the translation, by selecting different translation variants. Difficulties also arise in cases when there are several translations of the German word into Albanian, such as *Vorsätzliche Tötung* 1. Albanian *-vrasje me paramendim* (premeditated murder), *vrasje me dashje* (premeditated murder), *Täter- keqbërës* (felonious), *kriminell* (offender), *hajdut* (thief), or cases when for a word in Albanian we have some equivalents in German: *Trial panel-Jury, Gremium, urteilendes Gericht: Defendant - Angeschuldigter, Angeklagter, Beschuldigter*.

- Another problem in legal translations mentioned by respondents is standardized formulas. They simplify information and recognize certain procedural aspects of the proceedings. For many years, lawyers have been presenting certain legal aspects using the same tried and tested formulas. This is why the translator has no freedom of reformulation. The translator uses the usual forms in the target language, regardless of the syntax in the text, in order to make the translation easier to be understood. Such formulations are:

Erteilten Auflagennachkommen	Të jenë në përputhje me kushtet e vendosura (in accordance with the established terms)
Vor mir dem unterzeichneten Notar	Para meje noterit (before me the Notary)
Die Erschienenen wiesen sich aus	Të pranishmit u identifikuan me (attendees were identified upon)
Für die Richtigkeit der Fotokopie	Për vërtetësinë e fotokopjes (For the certification of the copy)
Berufung gegen die Entscheidung einlegen	Apeloj vendimin (Appeal the decision)
Urkundsbeamter der Geschäftsstelle	Regjistruesi i zyrës (Registrar's Office)
Verschuldensprinzip anwenden	Zbatoj parimin e fajit (Apply the principle of guilt)
Zuständigkeitsmängel aufweisen	Mungesë juridiksioni (lack of jurisdiction)

- A difficulty often mentioned by the respondents is the close connection of the legal language with other technical languages, namely with the translation of technical terms found in legal texts. The alleged difficulty can be illustrated by the following statement of one of the interviewed translators:

“A legal translator is expected to have knowledge of every field. Often in texts there is also chemistry, technical terminology. We are expected to know everything. For example, yesterday I had [...] a text type that contained some names of chemical compounds and their equivalents simply do not exist”.

- Legal language is also characterized by the use of stereotypical phraseologies and sentences, as well as by macro-structural qualities, such as a complex syntax and certain rules of text construction. Most of the respondents mentioned difficulties in translating phraseologies such as *Klage erheben, strafrechtliches Ermittlungsverfahren einleiten, auf Schadenersatz haften, einstweilige Verfügung, höchstpersönliches Rechtsgut*.

Difficulties most often encountered in the adjective + noun combination, e.g. *einstweiliger Rechtsschutz, elterliche Vorsorge, gesetzlicher Vertreter, eidesstattliche Erklärung, rechtliches Gehör, arglistige Täuschung*, (temporary legal protection, parental provisions, legal representative, affidavit, legal hearing, fraudulent action). They are characterized by an absolute consistency and are not translatable without loss of meaning

- In terms of word formation the composition is widely used in legal language. In German we have very long formations like *Krankenhausfinanzierungsgesetz, Zeugnisverweigerungsberechtigte, Ordnungswidrigkeitenvorwurf*. The descent is also widely used. The suffixes *-ung, -heit, -keit, -nis* und *-nahme* (eg *Verfahrenseinstellung, Sachverhaltsaufklärung, Beweisaufnahme*) are

especially distinguished in the formation of nouns. These long formations often make it difficult to translate into Albanian

- Another feature is contrasting sentences, which are elements or units of meaning placed in a sentence to make it more complex. These units can be noun phrases, and pronouns which separate the verb from the predicate, creating difficulties in the way of understanding the sentence and consequently in translation.

Example:

"Ligj" në kuptim të nenit 6 paragrafi i parë i KEDNJ – sipas jurisprudencës së Gjykatës Europiane të drejtave të njeriut – përfshin në veçanti jo vetëm legjislacionin që përcakton krijimin dhe funksionimin (kompetencën) e organeve gjyqësore por edhe çdo dispozitë ligjore të legjislacionit të brendshëm që nëse shkelet do ta shndërronte pjesëmarrjen e një ose më shumë gjyqtarëve në shqyrtimin e një çështjeje konkrete në një pjesëmarrje të paligjshme.

["Law" within the meaning of Article 6, first paragraph of the ECHR - according to the jurisprudence of the European Court of Human Rights - includes in particular not only the legislation defining the establishment and functioning (competence) of judicial bodies but also any legal provisions of the legislation internal that if violated would turn the participation of one or more judges in the consideration of a concrete case into an illegal participation.]

"Recht" im Sinne von Artikel 6 Absatz 1 EMRK umfasst - nach der Rechtsprechung der EGMR- insbesondere nicht nur die Rechtsvorschriften, die die Einrichtung und Funktionsweise (Zuständigkeit) von Justizbehörden definieren, sondern auch alle gesetzlichen Bestimmungen innerstaatlicher Rechtsvorschriften, die verletzt werden Die Teilnahme eines oder mehrerer Richter an der Prüfung eines konkreten Falls wurde zu einer illegalen Teilnahme. (Europäischer Gerichtshof "für Menschenrechte und Grundfreiheiten" Pandjigidze and others v Georgia Nr. Antrag 30323/02 vom 27. 01. 2010 Absatz 104.)

- The use of the verb in the uncomplicated form in German (the infinitive whose in Albanian corresponds to the subjunctive form) which in the translated version corresponds to the verb in the conjugated form in the conjunction has a binding role:

Example Jede Person, die festgenommen oder der die Freiheit entzogen ist, hat das Recht zu beantragen, dass ein Gericht innerhalb kurzer Frist über die Rechtmässigkeit des Freiheitsentzugs entscheidet und ihre Entlassung anordnet, wenn der Freiheitsentzug nicht rechtmässig ist. (Konvention zum Schutze der Menschenrechte und Grundfreiheiten, Artikel 5 Pkt. 4)

Çdo person i cili është arrestuar ose privuar nga liria ka të drejtë të kërkojë nga një gjykatë të vendosë mbi ligjshmërinë e heqjes së lirisë brenda një periudhe të shkurtër kohore dhe të urdhërojë lirimin nëse heqja e lirisë nuk është e ligjshme.

[Any person who has been arrested or deprived of his liberty has the right to request a court to rule on the lawfulness of his deprivation of liberty within a short period of time and to order his release if deprivation of liberty is not lawful.]

- In addition, they also mentioned problems related to the original text, e.g. texts contain inaccurate or incomprehensible parts or e.g. in documents issued by state institutions certain parts of speech are missing, such as. Among other problems, in Bachelor or Master diplomas the verb is missing and in order to be translated into German, the translator must find, invent, adapt the verb, which he must use.
- In addition to the problems mentioned above, translators also encounter the problem of finding and using the right syntactic and stylistic structure, so that through the best possible combination of aspects such as: semantic, lexical, grammatical and stylistic, they can achieve a translation that is as accurate and understandable as possible for the recipients.
- Even the micro and macro structure of a text is a problem in translation, as the translator often has to ask how he should adapt the translation structurally. Should it preserve the structure of the source text or that of the final text.
- Although accuracy is undoubtedly important in legal language, the translator often encounters metaphors, which brings translation difficulties. Example: Geldwäsche (pastrim parash) (money laundering), Schleierfahndung (hetim i mbuluar) (covered investigation)

Güterstandsschaukel (Lëvizja e mallrave) (transport of goods). Another example is the term *hinkende Ehe* (limping marriage) which is actually used to describe a marriage between spouses from different countries known only in one of the countries of origin.

- Another stylistic tool that can occur in legal language is synonymy, though less frequently. As a rule, many words that are synonymous in everyday language cannot be used as such in legal language. For example, there are very clear differences in legal language between *wage (Lohn)*, *income (Einkommen)*, *salary (Gehalt)*.

All these problems certainly complicate the work of the legal translator. Respondents also emphasized the fact that the translator must consider three aspects of the text during the translation process: the semantic meaning of the text, the for the creation of a legal text that includes context and non-linguistic competencies. By non-linguistic competencies we mean the situation in which the text is created, the technical language as well as the reader to whom the text is addressed. It should also include the culture of both texts: the source and target language.

4.1 The need for further training

The following subsection describes the answers to the questions in the third category. The questions of the third category are focused on professional development, respectively on the courses or seminars that the respondents need or in which they want to participate. Respondents highly valued professional experience and further training courses. One respondent expressed the need for training courses aimed at judges to know the terminology. Two respondents expressed the will to participate in advanced training courses of the Bar Association. Respondents were of the opinion that IT courses also make their job easier. Furthermore, they mentioned the following courses: training course, e.g. on the topic of German entrepreneurs, a monthly internship in technical language testing, a training course on the exact language of documents and a training course by experienced translators. Furthermore, one interviewee wanted to learn more about the circulation of documents in the European Union. The reasons for this were the frequent changes and incomprehensibility of the system.

5. Discussion and Conclusions

This article addresses the peculiarities of the translation of legal terminology. The main question of the empirical part had to do with the difficulties in translating legal texts. We conducted interviews with 9 translators working in the legal field. Interviews were divided into three parts: From the answers to the first set of questions, it turned out that all respondents had studied German or law. In addition, they all had many years of professional experience. In the second part of the interviews, *terminology* was highlighted as the most common problem in translating legal texts.

Some labels do not always find a correspondence in the other language because they do not exist that way; Likewise, apparently the same terms in two languages do not always have the same content. In the answers of the respondents e.g. it was mentioned that the same expression in the legal context takes on a different meaning. In addition to the cases mentioned in the text, we bring here another case cited by them: *Public service* means not only "öffentlicher Dienst", but also "öffentlich-rechtliche Einrichtung", "Versorgungsunternehmen", "Anstalt", "Stiftung". ("*institution of public law*", "*Communal services*", "*Foundation*").

Phraseologies appear more often in German legal language than in Albanian. Especially solid expressions and noun + noun and adjective + noun connections present difficulties in translation.

Traditional styles, such as the abstract expression and the impersonal style in both languages, serve to emphasize action and highlight the function of the persons acting. The instructions in the past participle and conjunction (in Albanian) and the infinitive (in German) are more general. Nominal style also emphasizes objectivity. The long formation of words in German (compound nouns) which present difficulties in translation was also noted.

The text in the source language must be parsed in order to filter out all the features. In this way, the translator must decide what kind of translation should be done, what kind of text should be created in the target language, and what elements should be preserved if the translation will achieve its purpose or goals.

The lexicon of legal terminology is characterized by different levels of abstraction. In legal texts, for example, the translator finds both specific terms and indefinite legal terms that characterize different legal systems. His task remains to formulate correctly to overcome obstacles in understanding.

The third part of the interview is related to the training courses in which the interviewees participated. All stressed the need for further training. It is already clear that the process of translating legal documents involves several disciplines: language competencies, legal competencies and intercultural communication.

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