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Legal issues encountered by translators and interpreters in Romania, in their activity

Alexandra-Lavinia Istrate-Macarov¹ and Alina Buzarna-Tihenea (Galbeaza)²

¹ Assistant Professor, Faculty of Letters, “Ovidius” University of Constanta, Romania

² Assistant Professor, Faculty of Letters, “Ovidius” University of Constanta, Romania
E-mail: alina_buzarna84@yahoo.com

Abstract. This article is an analysis of the legal framework which regulates the activity of translators and interpreters in Romania. This is not an exhaustive analysis, since legislation is constantly changing and the activity of each translator is different. However, it covers the main aspects a translator should keep in mind when setting up shop. The article is organized around the main institutions which affect the authorization and the activity of translators and interpreters. The analysis focuses both on activity-specific requirements and on requirements targeting sole traders and companies, which cover, among others, health and safety, fire safety, financial statements and GDPR. Taxation is another point in the analysis. The article has a practical approach, discussing some of the difficulties a translator might face in their daily activity, when dealing with the requirements of the law.

1. Becoming a translator

Market conditions are changing at an increasing pace, which also means that legislation has to be constantly updated. The opposite is also true: the market changes due to the changes in legislation. Since nobody can invoke not knowing the law, following its dynamic requirements may prove to be a challenge for companies and especially for independent professionals, in which case the same person has to carry out the main profit-generating activity, as well as customer relations, contracting, invoicing, accounting, reporting, financial transactions etc. This article is based on the research of the main legal provisions which apply to translators and interpreters and is meant to provide a tool for those who would like to engage in this demanding activity.

There are several ways of becoming a translator and interpreter. First, when working for the general public and companies, no authorization is needed. A company may employ a person as translator based on documents such as bachelor's degree, competence certificates and translator's certificate.

Another way to become a translator is to pass an examination organized by the Ministry of Culture, in order to obtain a translator's certificate. Two ordinary sessions are organized every year. Based on the number of requests, extraordinary sessions may also be organized. Examinations are organized for different fields of activity, among which legal sciences, and for both directions – from Romanian into a foreign language and vice versa [1]. Aside from identity documents, the application form and the examination tax, the requirement is for the applicant to have a Baccalaureate diploma. The examination consists of the written translation of a text of approximately 2,000 characters and the use of bilingual dictionaries is allowed [1]. The translator's certificate may be used to register as an independent professional for taxation purposes or a company.

The highest regulated activity is that of translators and interpreters authorized by the Ministry of Justice. According to *Law no. 178/1997 for the authorization and payment of interpreters and translators used by the Supreme Council of Magistracy, the Ministry of Justice, the Prosecutor's Office attached to the High Court of Cassation and Justice [including the Directorate for*

Investigating Organized Crime and Terrorism], the National Anti-Corruption Directorate, the criminal prosecution bodies, the courts of law, notary public offices, lawyers and bailiffs, with the subsequent additions and completions, this authorization is required in order to work with the entities mentioned in its title [2, art. 1]. In order to obtain the authorization, a person must be a citizen of Romania, or of a state from the EU, the European Economic Area or of the Swiss Confederation, he/she must have a translator's certificate issued by the Ministry of Culture for legal sciences, from Romanian into a foreign language and vice versa, must be medically fit and must not have a criminal record [2, art. 3].

1.1. The procedure for the authorization of translators and interpreters by the Ministry of Justice

According to the procedure for authorizing translators and interpreters, in order to obtain the authorization the following documents must be submitted personally or by post/ courier: application form, the translator's certificate (copy certified by the receiving officer or legalized copy, if sent by post), criminal record certificate (original), identity document (photocopy), birth certificate (photocopy), marriage certificate or any document proving the name change (photocopy), medical certificate of fitness for work as a translator and interpreter (original), receipt for the payment of the stamp duty of 300 RON for each language for which authorization is requested, paid to the account of the local budget of the administrative-territorial unit in which the applicant resides (original) and the proof of knowing the Romanian language (for citizens of other states – copy certified by the receiving officer or legalized copy, if sent by post) [3]. Normally, within 30 days, but no more than 45 days from the application, an authorizing order of the Minister of Justice is issued, after which the authorization is sent to the applicant by registered mail [3]. There are similar procedures for cases such as name change, addition of another pair of languages and suspension of the authorization.

Law no. 178/1997 with the subsequent additions and completions also states the rights and obligations of translators and interpreters. While the rights mainly refer to the remuneration for services [2, art. 7], the payment of expenses incurred for traveling out of town [2, art. 10] and the possibility to suspend the authorization for legitimate reasons [2, art. 5¹], the obligations refer to the relation of the translator to the institutions mentioned in its title:

- The obligation to answer to the requests of the judicial and prosecution bodies. Two unjustified no shows within a year mean the cessation of the capacity of translator and interpreter [4, art. 4 paragraph (2)].
- The obligation to register with the county court in whose constituency he/she lives within 60 days from the date of the authorization, otherwise the activity cannot be carried out [2, art. 6¹ paragraph (1)].
- The obligation to notify the Ministry of Justice if the conditions for issuing the authorization are no longer fulfilled, within 30 days from acknowledgement, otherwise the activity cannot be carried out [2, art. 6¹ paragraph (1)].
- The obligation to notify the county court in whose constituency he/she lives within 60 days from the change of name, permanent address, residence address or phone number, otherwise the activity cannot be carried out [2, art. 6¹ paragraph (2)].
- The obligation to keep the confidentiality of the facts, information and documents with which he/she comes into contact with in the exercise of the profession [2, art. 6²]. Failure to comply with this obligation may lead to criminal charges, based on the prior criminal complaint of the injured party, based on article 227 of the *Criminal Code* on the offense of disclosing professional secrecy [5].

2. Conditions which apply in relation to notaries public

In addition to the conditions which apply in order to obtain and maintain the authorization, there are conditions which apply in relation to notaries public, stipulated in the *Law of notaries public and of the activity of notaries no. 36/1995* (republished) and the Regulation for the application of this law. The legalization of translations by the notaries public is an extra guarantee of the following: that the document presented for translation is of a type accepted by the regulation at article 319 paragraph (1), that the translator is duly authorized and that that translator signed and stamped the translation [6, art. 322 paragraph (1)]. Therefore, there are quite a few aspects which are subject to the notary public's

decision whether to legalize a translation or not. This may prove to be a serious problem for translators, who may find themselves in the situation in which they have to redo the document due to inadvertencies found in the certification formula, or in which they first have to ask the notary to make a legalized copy of the document and then translate the legalized copy or even in which they cannot legalize a translation.

Firstly, there are conditions concerning the document presented for translation. Article 319 paragraph (1) of the *Regulation* establishes the types of documents whose translation may be legalized: authentic documents, documents under a signature which was legalized or certified (by a notary public) and documents legalized or certified by the competent authority which holds the original in its archive. From here, we can deduce that not all translations may be legalized. For instance, if the translated document was concluded under a private signature or if there is no signature on the document, it cannot be considered for legalization. Moreover, there are rules which apply in determining whether a document may be considered authentic or not and there may be a difference of opinion among notaries in deciding the type of certain documents (for instance, documents issued by public authorities which are signed electronically). Here, the word 'authentic' is not used in the common sense, but in the sense given by the legislation in force and the interpretation of the notaries. The *Regulation* specifically allows notaries public to refuse the legalization of a translation: a) if the document written in Romanian does not contain sufficient information for the notary to be able to include it in one of the types allowed as discussed above [6, art. 319 paragraph (3)]; b) if the translation from a foreign language into Romanian does not contain sufficient information for the notary to be able to include the translated document in one of the types allowed for legalization, as discussed above [6, art. 319 paragraph (4)] and c) if the document presented for translation is a simple copy of an original document [6, art. 319 paragraph (6)]. Moreover, article 321 of the *Regulation* not only allows, but requires the notary public to refuse the legalization of a translation if the requirements of the law and of the *Regulation* are not met [6, art. 321].

Secondly, there are conditions which apply to the translation, as follows:

- The translator has the obligation to translate the presented text in full, without omissions and without changing its meaning and significance. The text presented for translation may be a document in whole or in part [6, art. 319 paragraph (2)];
- The copy of the original document has to accompany the translation. All pages have to be numbered and attached together (copy of the original document, translation, translator's certification, legalization). The translator's signature and stamp should be applied at the binding between two adjoining pages [6, art. 319 paragraph (5)].

Thirdly, there are conditions which apply to the translator's certification: At the end of the translation, a certification formula should be added, by means of which the above-mentioned obligation is acknowledged and certified [6, art. 319 paragraph (2)]. The certification formula is given at article 320 paragraph (1), while paragraph (2) of the same article forbids any changes from being brought to the formula [6, art. 320 paragraph (2)]. The formula in Romanian is the following:

"Subsemnatul, (nume, prenume astfel cum sunt menționate în autorizație), interpret și traducător autorizat pentru limba/limbile străină/străine ..., în temeiul Autorizației nr. ... din data de, eliberată de Ministerul Justiției din România, certific exactitatea traducerii efectuate din limba în limba, că textul prezentat a fost tradus complet, fără omisiuni, și că, prin traducere, înscrisului nu i-au fost denaturate conținutul și sensul.

Înscrisul a cărui traducere se solicită în întregime/în extras are, în integralitatea sa, un număr de pagini, poartă titlul/denumirea de, a fost emis de ... și mi-a fost prezentat mie în întregime/în extras.

Traducerea înscrisului prezentat are un număr de pagini și a fost efectuată potrivit cererii scrise înregistrate cu nr. /zz.ll.aaaa, păstrate în arhiva subsemnatului. S-a încasat onorariul de lei, cu chitanță/bon fiscal/ordin de plată nr. /zz.ll.aaaa.

INTERPRET ȘI TRADUCĂTOR AUTORIZAT (semnătura și ștampila)" [6, art. 320 paragraph (1)]

In case the document is translated from Romanian into a foreign language, the formula will be written in both languages. There is no official translation of the formula.

Fourthly, there are conditions which apply to the legalization of the translator's signature:

- For a translation to be legalized, the original document and the certified translation have to be presented to the notary public's office [4, art. 319 paragraph (7)];
- The legalization of the translator's signature shows that the essential conditions for legalization were met, which are: the date, the full name of the authorized translator and interpreter and either his/her presence in person at the notarial office or the prior submission of the translator's signature and stamp specimens to the notarial office [6, art. 322].
- The formula of legalization in Romanian is presented below. If the document is translated from Romanian into a foreign language, this formula also has to be translated into that foreign language.

"ROMÂNIA

Uniunea Națională a Notarilor Publici

Birou notarial

Licența de funcționare nr. ...

Sediul

ÎNCHEIERE DE LEGALIZARE A SEMNĂTURII TRADUCĂTORULUI Nr.

Anul luna ziua

....., notar public, în temeiul art. 12 lit. j) din Legea notarilor publici și a activității notariale nr. 36/1995, republicată, cu modificările ulterioare, legalizez semnătura de mai sus, aparținând lui, interpret și traducător autorizat, în baza*1), de pe cele exemplare ale înscrisului, care are ca parte integrantă o copie a actului tradus.

Înscrisul a cărui traducere se solicită este un înscris*2)

S-a încasat onorariul de lei, cu chitanță/bon fiscal/ordin de plată nr.

Notar public,

.....

L.S.

Notă

*1) Semnăturii date în fața mea/specimenului de semnătură depus la biroul notarial.

*2) Se va menționa forma actului:

- act autentic;
- copie legalizată;
- cu legalizare de semnătură;
- cu dată certă.

Înscrisul tradus poate fi și în extras." [6, anex no. 22]

Finally, one translation remains in the archive of the notary public. The notary public may issue legalized copies of the translations located in its archives [6, art. 324].

Since most documents issued by notaries public must be in Romanian, interpreters may be used to assist foreign citizens. In this situation, the interpreter reads the contents of the document to the foreigner and certifies before the notary public that the person understood and accepted it. The interpreter's personal data will appear on the final document, while the interpreter's signature and stamp will only appear only on the original remaining in the archive of the notary public office (and not on the duplicate(s) issued to the parties). Interpreters may be used before the Register of births, marriages and deaths, before the authority for aliens, as well as before any other public or private entity, as needed.

3. Registration of an entity

3.1. Registered entities which may opt for single-entry bookkeeping

For taxation purposes, a translator may either organize as an independent professional or he/she may set up a company. The most common options are: the liberal profession of translator and interpreter, freelance translator, sole trader and limited liability company.

If the translator chooses to work as a liberal professional (a situation which is assimilated to the freelancer status for taxation purposes), a simple declaration of registration (declaration 010) is submitted to ANAF (the Romanian tax administration authority), based on which the registration

certificate is issued within a few days. This is not the same as the certificate issued by the Trade Register, but a basis for taxation.

As a freelancer (persoană fizică autorizată), the translator may register with the Trade Register. In this case, the specific declaration is accompanied by more documents, the main difference from the first option being the provision of the neighbors' accord, in case the activity will be carried out in an apartment building. In this case, up to 5 classes of NACE codes may be registered, that is up to 5 types of activities may be carried out, some of which require the existence of diplomas or certificates.

If a translator wants to carry out more than 5 activities, he/she may opt to become a sole trader (întreprindere individuală), which allows for the registration of up to 10 classes of NACE codes. The registration is made with the Trade Register and is similar to the registration of a freelancer.

In all three situations described above, one can opt for the single-entry bookkeeping system, in which case the accounting is fairly easy to keep, based on the issued invoices and receipts/ cash register receipts and on the invoices and receipts collected from providers. While the liberal professional may issue simple receipts to natural persons, the entities registered with the Trade Registry must have a cash register. The newest requirement is for this cash register to have an electronic journal, which can be read directly by ANAF [7]. Aside from invoices and receipts, the registration of the three types of activities described above is made by means of the following documents: Registrul de evidență fiscală (the tax record register), which is edited yearly or upon the request of the tax authorities, Registrul jurnal de încasări și plăți (the register of receipts and payments), which is edited monthly, and Registrul inventar (the inventory register), which is edited upon the purchase of inventory items (items which are not supplies and which cost less than 2,500 RON). These registers may be kept electronically.

If a cash register is in place, a daily report must be printed from the cash register or, in case of malfunction, a special register must be kept. Also, every month a declaration has to be uploaded on <http://e-guvernare.ro/>. If there are no receipts issued from the cash register, the declaration to be submitted is 4109, otherwise declaration 4200 must be submitted, both by the 20th day of the following month. In order to upload these declarations, an electronic signature must be purchased from an authorized provider and registered with ANAF. This signature is renewable every year.

For taxation, in 2018 was introduced the Single declaration regarding the income tax and social contributions due by natural persons (Declarație unică privind impozitul pe venit și contribuțiile sociale datorate de persoanele fizice), which has to be submitted by 15 March.

It is also worth mentioning that in the past few years the taxation regulations which apply to liberal professionals, freelancers and sole traders has changed significantly. For instance, in 2017 was added a new document: the tax evidence registry (registrul de evidență fiscală) [8]. In 2018 the Single declaration was introduced to replace declarations 200, 220, 600 and others [9], the number of NACE classes was limited to 5 in the case of freelancers and to 10 in the case of sole traders [10, p. articles 16 & 24] and, most importantly, the level of taxation has changed, along with the changes in the level of taxation for employees.

The main taxes and social contributions paid are: pension (CAS) – 25% for the gross salary, health insurance (CASS) – 10% of the gross salary, and income tax – 10% of the gross salary, of which are subtracted first the deductible expenses. The same applies to regular employees, but in the case of the independent professions, if in a year the total amount earned by the liberal profession is not higher than 12 minimum gross salaries, only the income tax is due, with the specification that the professional may opt to pay the pension and health contributions anyway.

The three above-mentioned types of organization are included under independent activities, along with family enterprises (întreprinderi familiale), liberal professions authorized to function by the body which regulates that specific profession and people which capitalize on copyright [11].

For a person to keep the independent status and not to be included as carrying out dependent activities, at least 4 of the following 7 criteria have to be met:

“He/she can freely choose the place and method of organization of his/her activity and working hours;

Can choose to work for several clients;

All the risks pertaining to that specific activity revert to the natural person;

The activity is carried out using the patrimony of the natural person;

The activity is carried out by the natural person, using his/her intellectual and/or physical abilities;
The natural person is part of a professional organization with the role to represent, regulate and supervise the specific professions, based on the legislation in force;

The natural person can carry out the activity directly, by using employees or by collaborating with third parties, as per law.” [11, our translation]

In the three cases discussed above, the suspension or cessation of the activity is done fairly easy, by filling in specific forms provided by the authority with which the entity is registered (ANAF or Trade Register).

3.2. Registered entities which have to keep double-entry bookkeeping

The easiest to handle company type (dependent activity) is the limited liability company. This allows for most NACE codes to be activated at once, but the accounting has to be kept by a chartered accountant. Moreover, even if it is a one-person company, in order for the social contributions to be paid, an employment contract or a contract of administration has to be concluded, unlike in the three cases described above, where the social contributions are paid directly for the respective personal identification number.

In terms of the possibility of using the money, all cash withdrawals have to be justified and receipts provided for every expense, whereas in the three cases described above the titular may withdraw any amount of money, when needed, only registering the expenses incurred for the purpose of the profit-generating activity. Moreover, in order to close a company down, the formalities include the publication of the liquidation procedure in the Official Gazette and a deadline given to any opposing parties to act, which may require more time than in the case of independent professions.

4. VAT and VIES

VAT is a very important aspect which concerns all types of entities. Companies whose turnover is below 88,500 euros are exempt from the payment of VAT [12, art. 1 paragraph (5)]. Nevertheless, all entities which sell either services or goods whose value exceed 10,000 euros in a year have to register for VAT purposes.

If an entity wants to sell such products and services to entities in other EU countries, it has to apply for the VIES code [13], in order to be legally allowed to carry out such transactions. Basically, an entity could be VAT exempt in Romania and a VAT payer for intra-community transactions at the same time. The registration is made by submitting declaration 091 to the local tax administration office, on the basis of which a second registration certificate is issued, for intra-community operations. This registration also comes with the obligation of submitting declarations 300 and 390 by the 25th day of the next month.

5. Other legal requirements

A profession-specific requirement is for the translator has to keep a register of all the requests received from clients, as well as to archive these requests.

There are non-specific documents which the translator has to keep, which are connected to the financial aspect of the business. For instance, all Romanian entities have to purchase and keep Registrul unic de control (the single control registry) at each of their offices. This document is purchased from the county tax administration and carries its stamp.

There are also legal requirements which apply to all types of entities, such as those referring to health and safety, fire safety, environmental protection and the protection of personal data. Special attention must be given to the GDPR [14], which defines personal data as “any information relating to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person” [14, art. 4 paragraph (1)], and processing as “any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination,

restriction, erasure or destruction" [14, art. 4 paragraph (2)]. Given these broad definitions, any data is potentially sensitive data in the activity of translators. Therefore, consent for the processing of personal data is most of the times required. This also makes working with translation agencies more complicated, as it is necessary to first understand who requires consent from whom and for what. GDPR is a strict regulation which, if not applied or if wrongly applied, may engender the payment of a penalty of 4% of the turnover or 20 million euros or may lead to criminal charges, as mentioned above.

Irrespective of the organizational type, translators and interpreters may become part of a professional organization which, among others, has the role to support its members with legal changes and to lobby for this profession, all for a membership fee. Translators may also work with translation agencies, which exempt them from wasting time with legalizations and negotiations with clients, but which sport low fees.

6. Conclusion

In conclusion, the legal provisions which apply to translators and interpreters are diverse in nature. Moreover, in the past years there have been several changes in the status and taxation regimen of liberal professionals, freelancers and sole traders, which are some of the more common forms of organization for translators. These changes, together with the fact that there is no single source of reliable information for translators and with the fact that these professionals, along with the main profit-making activity, have to perform themselves all of the other tasks required by the law, often encumber their activity. Nevertheless, no one can use the lack of knowledge of the law to their defence.

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