

THE COURT SYSTEMS IN THE USA, THE UK AND ROMANIA- TRANSLATION ISSUES

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ABSTRACT: *Apart from the inherent difficulties arising when trying to translate from one language into another, the area of Law brings about further intricacies given by its specific terminology that bears the mark of certain systems of law. This paper presents the structure of the court systems in the USA, the UK and Romania and attempts to identify better ways of language transfer from one system into another.*

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When speaking about the court system in the USA, the UK and Romania, we have to bear in mind that we are dealing with two main systems of law, one of an Anglo-Saxon origin and one that follows the French line. Hence, different structures and subsequent problems arising when attempting to translate the names of the courts from Romanian into English and vice versa. The wise thing that should be done in these situations is to try to find the story that is behind every word, namely to learn about each system's peculiarities and only then to attempt to translate one system into the other. In some situations a translation is simply not possible and the only thing left is to explain in either language what that word stands for.

We should start with an outline of the three court systems, and then we will present the problems that arise when comparing them and the possible solutions that can be reached. Firstly, the judicial system in the USA is a dual system consisting of the federal court system and the state court system:

THE FEDERAL COURT SYSTEM	THE STATE COURT SYSTEM
The US Supreme Court	Highest State Courts (50)
U.S. Courts of Appeal (13)	State Intermediate Appellate Courts <i>(found in about half of the states)</i>
U.S District Courts (94)	State Trial Courts

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Secondly, the structure of the UK courts is as it follows:

<u>The House of Lords</u>		
The Court of Appeal		
<i>Criminal Divisions</i>	<i>Civil Divisions</i>	
High Court		
<i>Queen's Bench Division</i>	<i>Chancery Division</i>	<i>Family Division</i>
Crown Court		County Court
Magistrates' Court		
TRIBUNALS		

Finally, the structure of the Romanian courts:

The High Court of Cassation and Justice			
Civil Division	Criminal Division	Commercial Division	Administrative and Tax Litigations
The Court of Appeal (15)			
Civil Division	Criminal Division	Commercial Division	Administrative and Tax Litigations
Regional Courts (40+ Bucharest)			
Civil Division	Criminal Division	Commercial Division	Administrative and Tax Litigations
First Instance Courts			

Apart from major differences between the judicial systems of the USA, the UK and Romania, such as the principle of the **binding precedent** (the governing principle that is at the basis of the common law, by means of which the decision of a higher court is binding on a lower court)¹, or the existence of the JURY, another different point, one that can be visualized, is that of the structure of the courts in the USA, the UK and Romania.

It is true that they all follow the same pattern of trial courts and appellate courts, yet the dual judicial system of the USA with its federal and state jurisdictions and the specific competence of each UK court no longer ease the job of the translator when he/she attempts to translate the names of the Romanian courts into English. Thus, in the USA, at the level of trial courts, those having original jurisdiction², we identify both State Trial Courts and U.S. District Courts. The translator is left with no choice in this case, as there is no matching whatsoever

¹ This principle does not exist in Romania and the only thing that can be considered as common point would be the persuasive authority of the so-called statements of law made by judges. Thus, while case law is at the basis of the English legal system, in Romania we have only case reports published by judges at their own initiative, which do not have any binding authority

²Karen O'Connor, Larry J. Sabato, *American Government, Continuity and Change*, Ally and Bacon Printing Press, Boston, 1999, p.380

between the Romanian court system and the American one. Neither the phrase ‘State Trial Court’ nor ‘District Court’ are fortunate for the Romanian first instance courts which are to be found in each city and what is more their jurisdiction is different.

Going further to the UK, Magistrates’ and County Courts are called inferior courts. They are bound by the High Court, Court of Appeal and House of Lords. They are not bound by their own decisions and their decisions do not produce binding precedents. Compared to the court structure in Romania one can place the Magistrates’ and County Courts, yet only broadly speaking, on the same level with what is called *Judecatorie*- the **First Instance Court** (civil litigations up to 500,000 Lei- about 120,000 Euro, commercial litigations such as contract disputes up to 100,000 lei- about 25,000 Euro, divorces, recovery of land no matter the value; criminal cases: fraud, theft, forgery, violence, but not robbery or murder). However, one should have in mind that while the Romanian **First Instance Court** deals both *with criminal and civil cases*, the UK’s County Court hears only civil cases appealed from the Magistrates’ Court or complex first instance civil cases such as contract disputes, compensation claims, consumer complaints, etc. The competent court in the UK for criminal cases appealed from the Magistrates’ Court or for cases of more serious crimes, called indictable offences, is the Crown Court, which is bound by the High Court, the Court of Appeal and the House of Lords. The decisions of the Crown Court do not form binding precedents.

This distinction between civil and criminal cases in terms of the existence of specialized divisions of courts works in the Romanian court system only from the level of the **Regional Court**³ (in Romanian “Tribunal”) whose four divisions, Civil Division, Criminal Division, Commercial Division and Administrative and Tax Litigations Division are to be found in the following higher courts, **Court of Appeal** and the **High Court of Cassation and Justice**.

The Regional Court (Tribunal) hears civil cases- over 500,000 Lei, commercial cases over 100,000 Lei, labor disputes, administrative and tax litigations, intellectual property, adoption, legal errors remedies, appeals against decisions of the First Instance Court. The Court of Appeal hears administrative and tax litigations, appeals against decisions of the Regional Court and appeals against decisions given by the Regional Court in appealed cases. The High Court of Cassation and Justice hears appeals against decisions of the Court of Appeal, appeals in the interest of law which create the so-called precedent of interpretation, which is anyway different from the Anglo-Saxon binding precedent: when case law is not unitary, the General Attorney of the HCCJ, at his own initiative, or after being noticed by the Minister of Justice, notifies the HCCJ and the court establishes which interpretation of law is correct.

Going back to the lower level in the hierarchy of the Romanian courts, I think it is necessary to bring arguments to justify the choice of the phrase **Regional Court**. First of all, there are about 40 Regional Courts in Romania, one for each Romanian county/ region (the term ‘county’ may be confusing as the UK County Courts deal only with civil cases⁴). Secondly, the term ‘district’, synonymous to ‘county’ is also misleading, as

³ Regional – still with the mention of its jurisdiction as stated in the Article 36 of Law no. 304/2004, namely, courts with judiciary capacity that are organized on the level of each county and the city of Bucharest.

⁴ The Official portal of the Romanian Courts does not have an English version (<http://portal.just.ro/>) and Wikipedia uses the misleading word ‘county’ (<http://simple.wikipedia.org/wiki/Romania>)

the US District Courts' jurisdiction is far more complex than that of the Romanian Regional Courts. It may involve the federal government as a party, it may present a federal question based on a claim under the U.S. Constitution, a treaty with another nation, or a federal statute, it may involve civil suits in which citizens are from different states and the amount of money at issue is more than \$50,000⁵). Finally, the Romanian word 'tribunal'⁶ may be confused with the English "tribunals" which are distinct from the courts as they are bodies specialized in a particular area, supplementing the system of courts and deciding the rights and obligations of private citizens towards each other and towards a government department or public authority. Examples of Tribunals: Social Security Appeal Tribunal, Employment Tribunal, Immigration Appeal Tribunal, Lands Tribunal. Many claims and disputes are settled by these Tribunals in the UK (almost half of million cases every year⁷).

As we ascend on the courts hierarchy we identify the same levels in all systems: courts of appeal and high courts at the top of each pyramid. In the USA, at the appeal court level there are State Intermediate Appellate Courts in the state court system and Courts of Appeals in the federal system, followed by Highest State Courts and The US Supreme Court, respectively. The distinction between civil and criminal cases as it is in the Romanian Court of Appeal can be noticed in the structure of the two higher courts in the UK, namely, The High Court and The Court of Appeal. The High Court is divided into the Divisional courts (Queen's Bench Division- criminal appeals and judicial review; Chancery Division and Family Division- civil appeals) and the ordinary High Court. The two civil Divisional courts are bound by their previous decisions. The Queen's Bench Division is more flexible about this. The Divisional Courts bind the ordinary High Court, which can produce precedents for the lower courts. The Court of Appeal is in its turn divided into Civil and Criminal Divisions. They do not bind each other and the House of Lords bind both. The House of Lords is the highest appeal court on civil and criminal matters and all other English courts are bound by it.

To conclude, I would say that the translator has to bear in mind that when trying to make the transfer from one language into another he/she does not deal with words but with worlds and that each word cannot be stripped of its meanings and connotations that have been acquired throughout its existence in that very world. The same is with the world of the language of law which prides itself by being so cryptic at times, a world where each word reveals its meaning only when the story behind is revealed.

⁵ Karen O'Connor; Larry J. Sabato, *American Government, Continuity and Change*, Ally and Bacon, Boston, 1999, p.382

⁶ The translation of the Law no. 304/2004 concerning the judicial system republished with subsequent amendments and additions uses the misleading word 'tribunal'. The same misleading translation is used by the European Judicial Network which, apart from using the word 'tribunal' for the Regional courts, it also uses the term 'district' court for the Romanian First Instance Courts (http://ec.europa.eu/civiljustice/org_justice/org_justice_rom_en.htm). The only site with a good translation is <http://www.lexadin.nl/wlg/courts/nofr/eur/lxctrom.htm>

⁷ Elliott Catherine, *English Legal System*, Pearson Education Ltd, London, 2006, p.486

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Internet Resources:

<http://portal.just.ro/>

http://ec.europa.eu/civiljustice/org_justice/org_justice_rom_en.htm

<http://simple.wikipedia.org/wiki/Romania>