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**Determining Eligibility of Legal Translators in Turkish Judicial System<sup>1</sup>**

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**ABSTRACT**

Regarding the importance of legal documents, it is of great importance that legal translators must have sufficient mastery of the relevant languages, necessary training background through which a translator may deal with legal texts and vast experience in legal translation. This study elaborates on the eligibility of legal translators<sup>4</sup> in Turkish judicial system<sup>5</sup> through firstly setting the nature of legal translation under focus; secondly, uncovering and publicising the current situation of the legal translators in terms of training they have received and the qualifications they have gained as a result of their training; lastly, presenting suggestions for revising the criteria of recruiting legal translators. The study is based on a descriptive qualitative research. Open ended questionnaires and face to face interviews have been employed in order to gather data.<sup>6</sup>The result of the study has showed that the current practice of legal translation services may be improved through strengthening the areas of weaknesses that might exist within the educational system specific to legal translators, and developing testing and certification programmes to select qualified translators, which must be governed by certain kinds of laws and/or regulations to be introduced to that effect.

**Key Words:** Legal translation, translator eligibility, translator training, law, procedure.

**1. Introduction**

Legal translation is generally regarded to be one of the most challenging types of translation due to the fact that a legal translator has to have a good grasp of a specific legal terminology and differences between law systems. According to Šarčević, translators must be experts in not only translation skills, but also law to settle on legal-linguistic issues came across in the process of legal translation.

<sup>1</sup>Prepared as a part of the PhD dissertation, being carried out at Gazi University, titled *Translation Services in Judicial System: Determining Eligibility of Legal Translators in Turkey*.

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<sup>4</sup> It should be emphasized that this study involves translators, rather than interpreters. Although most departments of translation studies provide students with a degree of both translation and interpreting, some offer training for either field in the last years of the undergraduate programs. One of the reasons is that translation and interpreting require different professional skills and training.

<sup>5</sup> The group to be taken as a sample is limited to the translators serving for the Ankara Courthouse under the Ministry of Justice in the Turkish Republic.

<sup>6</sup> The necessary permission has been taken from the Ministry of Justice in respect of the questionnaires and interviews.

Furthermore, she argues that legal competence necessitates an “indebt knowledge of legal terminology and a thorough understanding of legal reasoning and the ability to solve legal problems, to analyze legal texts, and to foresee how the courts will interpret and apply a legal text” (Šarčević, 1997: 112-113).

As an inevitable conclusion of this globalized age, translators competent in translating legal texts are head out after all the more. That is why legal translation has shined out not only for translators but also for lawyers and judges. However, Berteloot suggests that lawyers and judges that hold a different point of view from linguists should also take translators’ contributions into account (Berteloot, 1999: 101). This indicates that practicing legal translation requires to have linguistic background along with legal knowledge. Legal translation necessitates applying translation theories, especially within the framework of principles of hermeneutics<sup>7</sup>. Throughout the passing years, legal translators have employed different theories of translation on legal texts from Catford’s situation equivalence, Nida’s formal correspondence theory to Vermeer’s skopos theory (Newmark, 1981; Alcaraz Varo & Hughes, 2002). Having these aspects in mind, it is well to the point to mention that translating legal texts involves in blending the knowledge in respect of translation theories and legal systems. In legal translation that is supposed to be receiver oriented, the success of translator’s decision making process during the translation practice depends on whether translator have sufficient mastery of the relevant languages, necessary training background and experience in legal translation.

In this study, keeping in mind the need for such well-trained and experienced legal translators in the judiciary, the focus is on the current situation of legal translation services where the practice of translation may be improved through working on the criteria in determining the eligibility of legal translators. The main purpose of the study is to explore what qualities legal translators should have to improve the quality of legal translation services in Turkey. The main research question which will guide the study is *whether the criteria in determining the eligibility of legal translators in the Turkish Judicial System are sufficient*. The sub-questions are: (a) what the relevant criteria *are*; (b) what those criteria *must be*; (c) what must be done to *improve* the current practice of legal translation services/quality of legal translations.

In order to answer these research questions, the design of the study is qualitative research design. Open ended questionnaires and face to face interviews are the primary data collection methods for the study. The study is expected to provide positive contribution to improve legal translation services in Turkey through shedding a light on what should be the criteria in determining the eligibility of legal translators, to guide future studies regarding the fact that preliminary research and literature review reveal few studies on the subject, and, last but not least, to create an awareness in respect of the weaknesses of the training programs of the translation departments for legal translators. This study is significant due to the fact that there has been no such research before with regard to what the criteria in determining the eligibility of legal translators in Turkish Judicial system must be in order for the quality of legal translations to be improved.

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<sup>7</sup> Method of interpreting employed in order to determine the meaning of a given text (for example: legal or Biblical).

## 2. Relevant Legal Backgrounds of Legal Translation

### 2.1. Historical Background and Legal Basis of Legal Translation in Turkey

Despite the importance of legal translation for our country, a detailed literature review has showed that it is an underinvestigated area of research. There are few academic works dealing with legal translators in Turkey. Sakine Eruz indicates in her book entitled "Multiculturalism and Translation" (*Çokkültürlülük ve Çeviri*) that Turkey that has a history of thousands of years and has a chance to host a great number of peoples is a multicultural country (Eruz 2010:183). That is why translation has always been in the limelight throughout the history in Turkey. In the period of the Ottoman Empire, translators called "dil oğlanları" were chosen among young foreigners to be trained in special schools. Later in the Republican Turkey, a state-sponsored Translation Bureau was established in 1940, which is seen as a milestone in the translation history in Turkey (Gürçağlar, 2008). However, translational activities have always been on the agenda. Within the state, legal translation has had a great importance due to Turkey's strategic statue at the international arena. In this respect, the Bureau of Sworn Translation was established under the Foundation of Strengthening the Judicial Organisation<sup>8</sup> in order for correspondences delivered to the Ministry of Justice and Offices of Chief Public Prosecutors from foreign delegations to be translated in 1998. Before that date, translational activities could not be carried out in an organized and regular way. This Bureau was established with the initiative of Faruk Bal, the former General Directorate of Legal Affairs who was later served as the General Directorate of Personnel and lastly as the Minister of Justice, and 23 judges. The administration of this Bureau was later assigned to the Prisons and Detention Houses Workshop Institution under the Ministry of Justice in 2006. However, as legal translators serving for the Bureau have been entitled as court experts, they have been affiliated with the Department of Court Experts under the Directorate General for Legal Affairs in the Ministry of Justice. Certain legal legislation in respect to translators includes Article 276 of the Turkish Criminal Code no. 5237, Articles 263 and 375 of the Code of Civil Procedure no. 6100, Article 270 of the former code of Civil Procedure, Article 76 of the Notary Public Act no. 1512, Article 96 of the Regulation of Notery Public Act<sup>9</sup> and Level 6 National Occupational Standards for Translators. Last but not least, the Law on Court Experts no. 6754 and the Regulation dated 3 August 2017 were introduced with respect of the rules on determining the eligibility of court experts in general.

### 2.2. Current Criteria of Recruiting Legal Translators for the Courthouses in Turkey

Legal translators working in the Courthouses of Turkey are called "court expert translators". A Regulation on Organizing Lists of Translators was introduced under the Code of Criminal Procedure after published in the Official Gazette numbered 28578 and dated 5 March 2013. Pursuant to the relevant regulation, the relevant judicial commission in the courthouses makes announcements in September every year, receives applications and prepares lists of persons to serve as translators to the courts. Those persons take an oath<sup>10</sup> in December. The conditions to be included in the list are as follows:

<sup>8</sup> Adalet Teşkilatını Güçlendirme Vakfı

<sup>9</sup> Noterlik Kanunu Yönetmeliği

<sup>10</sup> "Görevimi adalete bağlı kalarak, bilim ve fenne uygun olarak, tarafsızlıkla yerine getireceğime namusum ve vicdanım üzerine yemin ederim/I swear on my honour and conscience to impartially fulfil my duty under laws and in line with science."

*“Article 6 – (1) In order to be included in the list, translators;*

- a) must be a citizen of Turkish Republic,
- b) must have judicial capacity on the application date,
- c) must be a graduate of at least primary school,
- d) must be over 18 years old on the application date,
- e) must not be convicted for committing the offences against the State and courthouse, offences covered in the Anti-Terror Law numbered 3713 and dated 12 April 1991, and offences of summary and major embezzlement, extortion, bribery, robbery, fraud, forgery, abusing trust, fraudulent bankruptcy or smuggling, using trickery in formal auctions or commerce, even if the sentences are pardoned or suspended; or there must not be any deferment of the announcement of the verdict,
- f) must not be dismissed from civil service or ostracized from profession due to disciplinary issues or banned from performing any art,
- g) must live or fulfil a professional activity around the province of the Commission,
- h) must not be registered in the list of any other commission.”

Unfortunately, there is not any condition in relation to language proficiency in the article. Nonetheless, a written document on language proficiency –formal or not- is requested among the application documents by the commissions:

*“Application Documents*

...

4. Original document or approved copy of diploma, license or certification indicating language proficiency. In the event that there is no such document, written declaration indicating that enough language proficiency to carry out translational activities is present.”

...

Due to the need for more qualified translations of legal texts, making changes on these conditions has been on the agenda of the Department of Court Experts under the Directorate General for Legal Affairs (see interview with İzzet Başara<sup>11</sup>, Head of Court Experts).

### 2.3. Translator Training in Terms of Legal Translation in Turkey

The number of translation departments has increased remarkably beginning from the late 1990s. The 2018 Guidebook of Higher Education Programs prepared by the Student Selection and Placement System<sup>12</sup> includes more than 60 universities with departments of translation studies, which yields nearly 2000 students every year. Some aims of these departments are to enable their students:

- to know the language well;
- to recognize norms and use them correctly;
- to aware of linguistic diversity;
- to gain abilities to create functional and effective texts in certain contexts;
- to translate for different purposes;

<sup>11</sup> İzzet Başara was born in 19 June 1982 in Tokat. He graduated from the Law Faculty of Selçuk University. Later, he completed his master at the Special Law Department of Gazi University. He is currently working on his PhD dissertation at the same department. He served as a judge until he was appointed as the head to the Department of Court Experts in 7 December 2016.

<sup>12</sup> Öğrenci Seçme ve Yerleştirme Sistemi (ÖSYS)

- to have a good grasp of knowledge at least in one certain area;
- to do effective research;
- to know the framework, content and approaches in respect of translation practices;
- to compare and contrast languages, cultural factors and different linguistic usages; etc.<sup>13</sup>

The departments of translation studies offers courses in specific areas to students such as law, EU texts, economics and administrative sciences, medicine, social sciences and international relations and diplomacy. However, they generally last for one school term<sup>14</sup>. Students have very limited time to study on special topics in translation as seen.

Despite lack of researches on this area, an experienced translator can easily observe that legal texts are one of the most encountered text types in the translation market. Therefore, it would be tremendously beneficial for students to be offered more courses on legal translation in universities. It should also be noted that as will be seen in the findings part of this study, Prof. Dr. Ayfer Akansel Altay<sup>15</sup>, whose lectures on legal translation students have benefited from at Hacettepe University, put emphasis on importance of legal translation and growing need for translators specialized on this area.

### 3. Method

The design of the study is qualitative research design to explore answers for the research questions stated above (see p. 2). In this research, two kinds of data collection were employed; interviews and questionnaires as data collection instruments of the qualitative research design (Strauss & Corbin, 1990; Patton, 1987; Yıldırım & Şimşek, 2003). This study required qualitative data that reveal in-depth information and descriptions through direct quotation to explore answers to the research questions, for which purposeful sampling was preferred in respect of the participants of the study. The participants comprised 86 legal translator court experts from Ankara Courthouse, the head of Translation Studies Department at Hacettepe University and the head of Department of Court Experts under the Directorate General for Legal Affairs. Data were collected through interviews and questionnaires.

#### 3.1. Data Collection Instruments and Procedure

##### *Interviews*

Among three types (informal conversational interview, the general interview guide approach and the standardized open-ended interview) of gathering data via open-ended interviews, the approaches may be mixed as they are in this study (Yıldırım & Şimşek, 2003). Interview questions were determined in accordance with the opinions taken from two experts (see Annex 1).

*-Interview with Prof. Dr. Ayfer Akansel Altay*

<sup>13</sup> See for example; <http://www.mtb.hacettepe.edu.tr/vizyon.php>

<sup>14</sup> See for example: <https://www.emu.edu.tr/tr/programlar/mutercim-tercumanlik-lisans-programi/890?tab=curriculum>

<sup>15</sup> Ayfer Akansel Altay was born in 1959 in Ankara. She is a Turkish translator. She studied primary, middle and high school at TED Ankara College. She completed her university education in the Department of English Language and Literature at Ankara University in 1980. In the same year, she started to work as an English lecturer at Hacettepe University Foreign Language Higher School. In the meantime, she completed her Master's in English Language and Literature in 1983 and her PhD in 1988 in the same department. At the time of the interview, she worked as the head of the department of interpreting and interpreting at Hacettepe University.

The interview type was semi-structured and involved open-ended questions. The interview was developed regarding the research questions and had three main focuses; background of the graduates to be legal translators, the need for detailed and comprehensive courses in legal translation and the importance of experience and interviewee's advices. The face-to-face interview was carried out in September 2016.

*-Interview with İzzet Başara, Head of Department of Court Expert under the Directorate for Legal Affairs in the Ministry of Justice*

The interview type was also semi-structured and involved open-ended questions. The interview was developed regarding the research questions and had three main focuses; present drawbacks in the judicial translation services in Turkey, the need for more qualified and experienced legal translators and what the new criteria must be in determining eligibility of legal translators. The interview was carried out in June 2017.

#### *Questionnaires*

Another data gathering method employed during the study was questionnaires (see Annex 2). The necessary permissions and approvals were taken from the Ministry of Justice and the Ethical Commission of Gazi University. In the questionnaires, the main aim is to establish the current situation and background of legal translators working in the courthouses. The participants' names were not revealed. 86 legal translators from the Ankara Courthouse accepted to make contributions to the study. The questionnaire was concluded in December 2017.

#### *Written Documents*

After taking permission from the Ministry of Justice, written documents were collected in respect of the translation services in the judiciary such as information about the translators' contact information, the legislation, and oath text for the translators, etc.

### **3.2. Validity and Reliability of the Study**

As Yıldırım and Şimşek indicated, reliability may conflict certain aspects of a qualitative research whereas such research is advantageous to attain validity. In a qualitative research, new questions can be asked to interviewees, reach details and in-depth information by making face-to-face interviews and applying a number of different sources to check data; which provides flexibility to researchers who would like to reach validity. As social conditions change according to people, groups, places, events and time, external validity is hard to meet in qualitative research (Yıldırım & Şimşek, 2003).

Using multiple data gathering methods such as questionnaires, written documents and interviews, and reporting data gathering instruments and the way findings are obtained, the researcher tried to meet the validity. In respect of the external reliability, the researcher expressly noted the participants of the study and under which circumstances the study was conducted; whereas for the internal reliability, results gained at the end of the study was supported by using direct quotations. Lastly, the researcher took opinion of 2 experts in respect of the findings of the study.

## 4. Findings

This study, as stated above, basically intends to explore whether the criteria in determining the eligibility of legal translators in the Turkish Judicial System are sufficient and what qualities legal translators should have to improve the quality of legal translation services in Turkey. Through using the methodology mentioned above, data was collected as a result of the interviews<sup>16</sup>, questionnaire and written documents.

Prof. Dr. Ayfer Akansel Altay stated that legal translators must have in-depth knowledge of language and law along with experience of legal translation practices.

“I have given lectures on legal translation for years. Legal translation requires not only in-depth knowledge of language, but also an interest and experience in legal world. Translators should employ legal terms correctly and effectively to create a text with the same legal effect.”

She also indicated that translation Studies in Turkey have been increased in number especially for the past 20 years. The more the importance of legal translation is realized, the more well-trained and experienced legal translators are looked for. It would be better for the students to be legal translators to receive more courses specifically on legal translation. However, training alone is not sufficient as experience is the key for qualified legal translation. When language power is put together with legal knowledge, the chance to achieve the desired effect in legal translation arises.

İzzet Başara, Head of Department of Court Experts at the Directorate General for Legal Affairs under the Ministry of Justice stated that they, as the Department of Court Experts has acknowledged the importance of legal translation and tried to re-organize the criteria in determining the eligibility of legal translators to be serving in the courthouses:

“Legal texts can be of vital importance for the sake of justice at the both national and international arena. We have tried to re-organize the criteria to be met in order to be a translator court expert. It is necessary to reach qualified and experienced translators to attain the desired effect in legal translation of important texts for our country in respect of legal issues.”

He also stated that the former criteria do not contain the condition of being a graduate of linguistics or translation studies. Nor does it contain the condition of having a certificate indicating the language level that the translator candidate holds. The criteria changing process is on a transitional period at the moment. It is considered that the following conditions may be included to the criteria in determining the eligibility of legal translators:

- a. Having a university degree of translation studies, linguistics, language and literature, language and cultural studies and foreign language teaching in prevailing languages such as English, French and German.
- b. Holding at least B level certificate of language, such as Foreign Language Exam (YDS) or its equivalent.
- c. Having at least 5-year experience of translational practices.

<sup>16</sup>For the whole of the interviews, please see the Ph.D. dissertation titled *Translation Services in Judicial System: Determining the Eligibility of Legal Translators in Turkey*.

- d. Holding a certificate indicating the proficiency in translating legal texts (It is preferable to have received at least 6 month-legal training or to prove at least 3 year experience of legal translation.

The review of the interviews indicated that legal translation requires strong knowledge of language and law, along with experience on this area. Legal translators should be graduates of language related departments and have received law courses. Moreover, through the necessary legislative amendments, the conditions to be fulfilled to become a legal translator court expert must be re-organized.

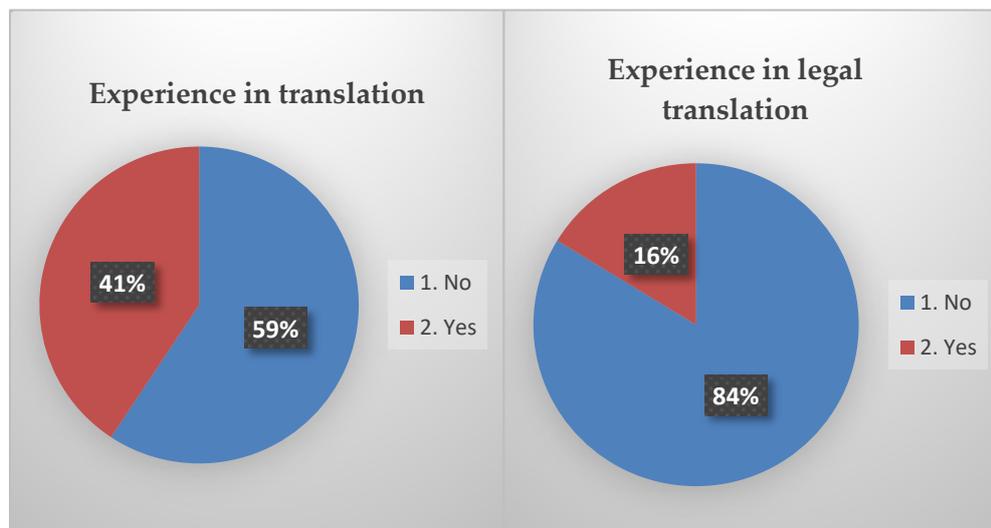
Furthermore, when we look at the results of the questionnaire<sup>17</sup>concluded in December 2017 (see Annex 2), we observe that the participants of the questionnaire are mostly graduates of irrelevant areas and do not have any legal background as given below<sup>18</sup>:

Table 1: Educational background of the participants

Educational Background	Number	Percentage
Graduates of language departments	38	44%
Graduates of irrelevant departments	47	55%
Graduates of high school	1	1%

38 (44%) out of 86 persons are graduates of language departments such as translation studies, language and literature, linguistics and English language teaching whereas 47 (55%) are graduates of irrelevant departments such as Math, Pedagogy, Chemistry, Statistics, and Child Development, etc. Even though graduates of primary school can become translator court experts, the group of participants are mostly graduates of university. Only 1(1%) of them is graduate of high school.

Graphic 1: Experience in translation and Experience in legal translation

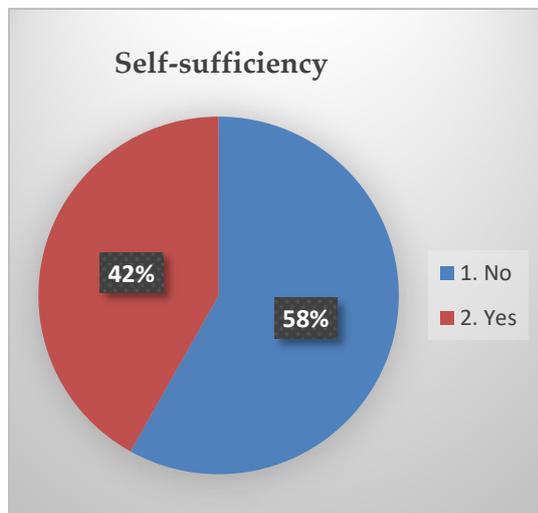


<sup>17</sup>The participants of the questionnaire are limited to the legal translators of English, as those of other languages are minority in number and some did not want to participate in the questionnaire.

<sup>18</sup>For the whole of the questionnaire results, please see the Ph.D. dissertation titled *Translation Services in Judicial System: Determining the Eligibility of Legal Translators in Turkey*.

As seen from the Graphic 1, 35 (41%) of 86 participants indicated that they have no experience in translation whereas 51 (59%) of them stated to have experience in translation from 1 month to 22 years. 72 (84%) of 86 participants unfortunately do not have any experience in legal translation while 14 (16%) of them said to have experience in legal translation from 2 months to 22 years.

Graphic 2: Participants' self-perception about their self-sufficiency in legal translation



The findings from the Graphic 2 indicate that legal translators serving in the Courthouse generally do not consider themselves having sufficiency in legal translation. 50 (58%) of 86 participants stated to perceive themselves not to have self-sufficiency in legal translation whereas 36 (42%) of them said to have self-sufficiency in this respect.<sup>19</sup>

As observed from the table and the graphics above, the legal translator court experts generally do not have the necessary educational background, and experience in translation (even in legal translation) and the majority of them do not even consider themselves self-sufficient in legal translation.

## 5. Conclusion

In this study, which was a qualitative research, the aim was to explore whether the criteria in determining the eligibility of legal translators in the Turkish Judicial System are sufficient and what qualities legal translators should have to improve the quality of legal translation services in Turkey. The research was conducted between November 2016 and May 2018. In order to gather data, interviews, questionnaire and written documents were used as data sources. Data was analyzed through descriptive and content qualitative analyses.

The main research question investigated in the study was *whether the criteria in determining the eligibility of legal translators in the Turkish Judicial System are sufficient*. Considering the findings of the study, the legal translator court experts generally do not have the necessary educational background, and experience in translation and the majority of them do not consider themselves self-sufficient in legal translation. These findings indicate that the criteria in determining the eligibility of legal translators in the Turkish Judicial System are insufficient in many aspects. In other words, the current practice of legal translation services is insufficient to meet the high standards as required on the

<sup>19</sup>Due to compact nature of the article, all findings were not included here. Only some relevant aspects were emphasized. For the rest of the findings, please see the Ph.D. dissertation titled *Translation Services in Judicial System: Determining the Eligibility of Legal Translators in Turkey*.

national and international legal arena. Unfortunately, as seen from the results of the questionnaire, some of the translators serving in the system do not have a relevant university degree, legal training and experience in legal translation.

The sub-questions were: (a) *what the relevant criteria are*; (b) *what those criteria must be*; (c) *what must be done to improve the current practice of legal translation services/quality of legal translations*. The first sub-question was about revealing the present criteria and the second one was about establishing new criteria in determining the eligibility of legal translators in the Turkish Judicial System. The review of the interviews indicated that legal translation requires a strong command of language and law, along with experience in this field. Legal translators should be graduates of language related departments and have received law courses. Moreover, through the necessary legislative amendments, the conditions to be fulfilled to become a legal translator court expert must be re-organized. The relevant criteria do not include any obligation to be a graduate of university, to hold a certification of a language or to have experience in legal translation (see the sub-heading 2.2 for the whole criteria). Regarding the findings of the data collection methods, it may be suggested that the following criteria should be added to the former ones: a degree of any language departments such as language and literature, translation studies, etc; legal translation training, and experience in legal translation. The last sub-question was on the search for how the quality of legal translation services can be improved.

Considering the suggestions and opinions of the participants of the study, it would be better for the students of translation studies receive more courses on legal translation and they should gain knowledge on basic topics of law. Moreover, legal translation services would attain more qualified translations if translator court experts are chosen according to their education and training background and experience in legal translation. Also, it may be suggested that in order to improve the practice of legal translation services in Turkey, the translators must be graduates of relevant departments, to hold certain exam scores in language, legal training and experience in legal translation, when considering the importance and difficulty of creating parallel legal texts during the legal translation process.

All in all, this study provides positive contribution to improve legal translation services in Turkey by shedding a light on what the criteria should be in determining the eligibility of legal translators, and it aims to pave way to future studies regarding the fact that preliminary research and literature review revealed almost no studies on the subject.

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## Annexes

### Annex 1

*Interview with Prof. Dr. Ayfer Akansel Altay*

1. Do you find the background of the graduates to be legal translators sufficient for qualified translations?
2. How can translator training programs be strengthened?
3. Is there a need for more detailed and comprehensive courses in legal translation?
4. How important is experience in terms of legal translation?
5. Do you have any advices for the drawbacks in respect of the relevant topic?

*Interview with İzzet Başara, Head of Department of Court Expert under the Directorate for Legal Affairs in the Ministry of Justice*

1. What are the present drawbacks in the judicial translation services in Turkey?
2. Is there a need for more qualified and experienced legal translators?
3. What must the new criteria be in determining eligibility of legal translators?

**Annex 2***Questionnaire for the Translator Court Experts*

1. Which university/department did you graduate from?
2. What are the languages you speak/at what levels?
3. Do you have any certificate of language? What are their scores?
4. How many years of experience in translation do you have?
5. Have you received any legal training?
6. For how long have you worked as a legal translator?