

German court names in English texts

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Following the contributions by Corinna Schlüter-Ellner (“CSE”; MDÜ 2/2000) on the translations of German court names into English, French and Spanish recommended by the German Ministry of Justice (Bundesjustizministerium, “BMJ”) and by Frances Mechansmidt (“FMS”; MDÜ 3/2000) on the translation of German court names into English, I would like to raise some additional points.

Using definitions

When I translate a German legal text into English, I prefer to use the German name throughout, with a definition in brackets or as a footnote the first time around. Here are some definitions that should work in AmE and BE:

Amtsgericht	(lower) trial court (and registration/ registry court), (lower) court of first instance (for civil and criminal matters)
Landgericht	(higher) trial court, (higher) court of first instance
Oberlandesgericht	intermediate court of appeal(s), appellate court, regional court of appeal(s)
Bundesgerichtshof	court of last resort, highest German court of appeal, Federal German supreme court
Bayerisches Oberstes Landesgericht	highest Bavarian court of appeal, Bavarian supreme court of appeal

Some of these descriptive phrases can be alternated with the German name in the text when the court is referred to. I’m thinking of judgments here: “the lower court / intermediate court / Landgericht held that...”.

It does depend on the kind of text whether I do this. In a newspaper report, it may be enough to write “the court”; in a text referring to matters of non-contentious jurisdiction, the

Amtsgericht may need to be referred to as “registration court”. It may be necessary to add “for civil and criminal matters”, as I have done for *Amtsgericht* above, depending on the context.

The above descriptions concentrate on the features of the German courts of civil and criminal jurisdiction that I regard as most important. I do not regard the “Land- / Bund” distinction as important: “Federal” is used only because it’s part of the name Federal Republic of Germany and I would prefer to do without it, because of its legal connotations in the USA. Even if “Land” were important, it is hard to render. They all deal with civil and criminal matters; some are wholly or mainly courts of first instance or courts of appeal.

Use the German name at least once

Before I turn to other approaches, it needs to be said that whatever tactic is used, the original German name of the court must come up in the text at least once (as the BMJ states). I’ve seen translations of court documents to be served on an English-speaking defendant living in Germany where even in the address to which the defendant was supposed to reply the name of the court had been Englished. How he was expected to send a reply to the court I have no idea. Sometimes, the first translation is the basis for a text that has to be translated into German. How can I be sure how to translate *Cologne Superior Court* into German (this actually happened)? It probably refers to the *Landgericht*, but I can’t be certain. Even if the text said *Regional Court* (BMJ), I still can’t be sure if the original translator got it right. In another case, I was translating a letter to a law firm in Canada for a lawyer in North Germany. The letter mentioned *Oberster Gerichtshof von Gibraltar*. On the Internet I found the following courts in Gibraltar: *Court of Appeal*, *Supreme Court*, *Court of First Instance* and *Magistrates’ Court*. I assume the *Supreme Court*, as in New York, is rather like the German *Landgericht*, and my court seemed to be a court of first instance. If so, then *Oberster Gerichtshof* was not a good translation into German. However, the North German lawyer will have known the correct name of the Gibraltar court and I left it to him. This is a reminder of how important knowledge of the source and target legal systems is. Had I not known about the New York *Supreme Court*, I might not have identified the problem.

Translating names

Let’s turn now to the tactic of translating names, before commenting on any concrete suggestions. This seems a widespread German sort of thing. I don’t see that it’s necessary, except perhaps for translators from languages that don’t use the Roman alphabet. I looked in a

1968 book, E.J. Cohn, Manual of German Law, Library of Congress Catalog Card No. 67-28195, before the 1974 BMJ suggestions, and found he was using Local Court (Amtsgericht), District Court (Landgericht), Court of Appeal (Oberlandesgericht) and Federal Supreme Court (Bundesgerichtshof), and he also used Revenue Court (Finanzgericht) and Social Insurance Court (Sozialgericht) (I mention the last two because I think the two BMJ suggestions are a bit iffy here). Do the French, Italians or Spanish do this too? And what happens with translations into German? Do people write “Grafschaftsgericht (county court)”, or do they write something like “das County Court (lokales erstinstanzliches Zivilgericht mit sachlich begrenzter Zuständigkeit)” (taken from Jürgen Bunge, Zivilprozeß und Zwangsvollstreckung in England, ISBN 3 428 08211 7)?

Standardizing names

But OK, andere Länder, andere Sitten (I won't say When in Rome, do as the Romans do, because that would narrow me down too much). If you are going to use a name, then why not attempt to standardize the suggestions, as the BMJ does? This will avoid problems such as confusing the natives (CSE's point) - problems that wouldn't have arisen if you had consistently used the German name in the first place, but never mind. I must admit, however, when thinking about the standardization of names, I wondered why the BMJ didn't also attempt to standardize the translation into German of foreign court names. This would be easier to ensure - even within Germany, these 1974 suggestions are not always used, to say nothing of the whole of the English-speaking world. One reason this hasn't been attempted is presumably because the BMJ isn't interested in translations of foreign legal texts into German. Another may be that if you list all the names of the courts in English-language jurisdictions, for example, you will have so many different ones that there is not enough vocabulary in the German language to distinguish them by name, and you will be forced to use my procedure of original name plus definition. (In addition, I can use my definitions for the Austrian and Swiss courts, also outside the BMJ's bailiwick, but sometimes needing to be handled in translations.)

BMJ suggestions

The BMJ's suggestions are well thought-through and I agree with many of the points made by CSE in their support. For instance, the terms avoid confusion with any existing courts in England or the USA, or any jurisdiction I am aware of. They also convey some meaning: a *local court* sounds like one of limited jurisdiction; a *regional court*, at least when read in

conjunction with *lower court*, suggests a court of a higher level. They create a hierarchy, that is, although they convey less of their relative importance when encountered individually. I must admit I would therefore slightly prefer *regional court of appeal* or *intermediate court of appeal* for *Oberlandesgericht*. Of course, these terms will be linked with the original German court names at least once, as the BMJ suggests. I have never much liked *Federal Court of Justice*, but it seems a common international practice to translate *Gerichtshof* as *Court of Justice*. I can't help feeling that *Gerichtshof* conveys more of the sense of a supreme court than *court of justice* does. (There is a problem with the term *supreme court*, of course, because it may suggest the *Bundesverfassungsgericht*, to say nothing of its peculiar meaning in the UK).

When I became a court-certified translator in Bavaria in 1987 (the term "öffentlich bestellte und allgemein beeidigte Übersetzerin für die englische Sprache" is so long that the word "allgemein" has to be omitted on the round seal to keep its size down), I too received the BMJ suggestions, but since I confirm that my translation is in order, I don't feel obliged to use the BMJ terms. CSE says, I'm sure correctly, that this list is not obligatory.

DIN 2345

BMJ suggests that the German name should be put in brackets after the first use of the English name, e.g. "Local Court (Amtsgericht)". Thus *Amtsgericht* acts as a definition of Local Court. I have often used the reverse procedure: "Amtsgericht (Local Court)". However, this is not very logical, because if I use *Amtsgericht* as a name, what I need in brackets afterwards is a definition rather than an invented name.

DIN 2345 (6.4.1) - I quote the English version - recommends that names "are not to be translated except where there is an established form in the target language...A translation should be added in parentheses the first time untranslated names ... appear, if this will help the reader to understand the text better". I understand this to mean that if *Federal Court of Justice* is an established form in English for *Bundesgerichtshof*, then I need use neither the German name nor the translation. The German version of DIN 2345 says "erklärende Übersetzung". I find this unclear, and the English translation is surprising because it appears to differ from the German original. Is *Local Court* an "erklärende Übersetzung"? It is certainly a translation. *Lower court of first instance*, however, would be an explanation but not a translation. But why should I use a term like *Local Court* in brackets if I only need to use it once?

Alternative English names

FMS presents a whole selection of alternatives to the BMJ suggestions. She does justify her dissatisfaction with *Finance Court (Finanzgericht)* and *Social Court (Sozialgericht)*. These are my main objections to the BMJ terms too - I would say Tax Court and Social Security Court or Social Insurance Court. Just because the Germans got the name *Sozialgericht* wrong doesn't mean I have to follow them. FMS also has *Federal Appeal Tribunal* for *Bundessozialgericht*, which is odd: I presume the words "social security" were accidentally omitted.

Apart from that, FMS agrees with the BMJ that "general terms" are best, but many of her suggestions are the names of specific existing courts in England and Wales, Scotland, or the USA. I do believe confusion is going to be caused if we use the name of an English court to translate that of a German court and vice versa. In one case, but one alone, FMS writes "(approx.)", although I think no suggestions of actual court names can be anything but "approx."

FMS uses separate terminology for the UK and the USA. I think it would be better to avoid this. For one thing, some texts go to Britain and the USA. Apart from that, it is possible to find terms understood in both areas, and probably all over the English-speaking world.

Some of FMS' courts are very specific: a *magistrates' court* in England and Wales usually has only lay magistrates as judges and deals mainly with crime, together with a few other matters. A *sheriff's court* (Scotland) does deal with both criminal and civil matters, but its namesake seems an un-German figure and might cause confusion in the USA too; moreover, its civil jurisdiction may be like that of the *Amtsgericht*, but its criminal jurisdiction is closer to that of the *Landgericht* (only the most serious matters "lie outwith the Sheriff's jurisdiction", as they say there). We have stipendiaries in England and Wales, at some magistrates' courts, but the only *Stipendiary Court* I know of is in Glasgow (FMS places it in London, probably thinking of the magistrates' courts in London and other big cities where one legally-qualified stipendiary magistrate replaces the three lay magistrates, but only in some chambers, not in a whole magistrates' court). Even a term like *county court* is unsuitable for translation, as it is a purely civil court, whereas the *Amtsgericht* has both civil and criminal matters. It certainly won't work for courts at two different levels.

Some of FMS' terms are very widely generic, e.g. Civil Court or Criminal Court. Her State Court for the USA is particularly problematic. A state court is a court that deals with state law, contrasted with a federal court, which deals mainly with federal law but also with some state law. Thus state courts include courts of all levels.

Digressing for a moment, I'd like to add that in the USA, the term high court is sometimes used in newspapers, especially in headlines, to refer to the U.S. supreme court, whereas in England and Wales it is the civil court of first instance for more weighty matters (although it has some other jurisdiction too).

Some other problems need mentioning: *District court* is a term very widely used, not only by FMS. For instance, materials I saw at the "Tag der Justiz" in Nuremberg issued by the US Army rendered the German courts as follows: *Higher Regional Court*, *Regional Court*, and *District Court*. It was clear in context that *District Court* must be used to mean *Amtsgericht*, but why? In the USA, the term *District Court* first of all evokes a federal court, because whereas all states have one or more federal district courts, only a few states have state district courts. All these district courts, both state and federal, in addition, are more like the *Landgericht* than the *Amtsgericht*. In Scotland, of course, the district court is the equivalent of the *Amtsgericht*, dealing with petty criminal matters. I would not use the term *district court* at all, to avoid confusion.

Then there is FMS' suggestion of *Employment Tribunal* for *Arbeitsgericht*. In England and Wales, and in Scotland too I think, "tribunal" is a problematical word. A tribunal may be more like a court, with full rights of appeal (an *industrial tribunal* with appeal to the *Employment Appeal Tribunal*), or more like an administrative body (*rent tribunal*). The word "tribunal" is therefore one to avoid, as it suggests the court is not really a court. Of course it can also be used in special circumstances to mean any court at all. The term labo(u)r law is very widely used for "Arbeitsrecht": employment law sounds more like "privates Arbeitsrecht", leaving out "öffentliches Arbeitsrecht". Still, I think the term employment court would work. (I am not sure why the Employment Appeal Tribunal should be used to denote a court that is not the highest court of labour law in the country, however).

Equivalent courts

Having said I do not believe in using the name of an existing English court to render a German court, I would still like to remind translators that some courts are better equivalents

than others. Even CSE suggests that a translator may want to add a footnote mentioning an equivalent court in the target jurisdiction. Our jurisdictions are many in number, including fifty US states (the federal system is not really comparable with the German civil and criminal courts), England and Wales, Northern Ireland, Scotland, the Republic of Ireland, the Channel Isles, the Isle of Man, Australia, New Zealand and Canada. I tend to narrow my thoughts to England and Wales and the USA.

It might appear that some of my objections above are harsh or unsubtle. However, over the years I've encountered so many peculiar attempts to "translate" German court names into English that I feel happier spelling out all the reasons for my opinions. For instance, some translators translate *Landgericht* (in a criminal matter) as *Crown Court*. The *Crown Court* in England and Wales is a court where a jury decides the verdict and a judge the sentence. I've also seen this, or jury court, as an equivalent for *Schwurgericht*. The *Schwurgericht* is a *Landgericht* chamber, a form of *Große Strafkammer*, dealing with the most serious crimes, composed of three professional judges and two lay judges. There is no jury in Germany. Nor do I think the word "Crown" should be used in reference to a German court, even if Germany does have the word "Kronzeuge".

In conclusion, I append a list of the names of state courts in various states in the USA, to give some idea of the problems in finding equivalent court names in English-speaking jurisdictions.

State Courts in the United States

Trial Courts in Various States (cf. Landgericht)

Circuit Court	Alabama, Arkansas, Florida, Hawaii, Illinois, Indiana, Kentucky, Maryland, Michigan, Mississippi, Missouri, Oregon, South Carolina, South Dakota, Tennessee, Virginia, West Virginia, Wisconsin
Court of Common Pleas	Ohio, Pennsylvania
District Court	Colorado, Idaho, Iowa, Kansas, Louisiana, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Texas, Utah, Wyoming
Superior Court	Alaska, Arizona, California, Connecticut, Delaware, District of Columbia, Georgia, Maine, New Hampshire, New Jersey, North Carolina, Rhode Island, Vermont, Washington
Supreme Court	New York
Trial Court	Massachusetts

Intermediate Courts of Appeal in Various States (cf. Oberlandesgericht)

Appeals Court	Massachusetts
Appellate Court	Illinois, Connecticut
Appellate Division of	New Jersey

Superior Court	
Appellate Division of Supreme Court	New York
Commonwealth Court	Pennsylvania
Court of Appeals	Alaska, Arizona, Arkansas, California, Colorado, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Missouri, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, Tennessee, Texas, Virginia, Washington, Wisconsin
Court of Civil Appeals	Alabama
Court of Criminal Appeals	Alabama, Tennessee
Court of Special Appeals	Maryland
District Court of Appeals	Florida
Intermediate Court of Appeals	Hawaii
Superior Court	Pennsylvania

Courts of Last Resort in Various States (cf. Bundesgerichtshof)

Supreme Court	Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin, Wyoming
Court of Appeals	Maryland, New York
Supreme Judicial Court	Maine, Massachusetts
Court of Criminal Appeals	Oklahoma, Texas
Supreme Court of Appeals	West Virginia