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COGNITIVE CHALLENGES IN TRANSLATING LAWS: RUSSIAN EXPERIENCE

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Abstract- *Globalizing processes put legal aspects of economic, governmental, cultural, educational and other types of cooperation at the forefront of everyday activities; thus, the issues of quality translation of national laws are in the focus of academic studies. The article looks at difficulties arising from non-linguistic and linguistic properties of the Civil Code of the Russian Federation in terms of its translation into English. Under the focus are the translations by recognized specialists in civil and comparative laws, representing American law schools. Cognitive challenges they faced are linked with legal concepts that are differently interpreted in the continental European Civil laws, Anglo-American common law and in the Russian Civil Code. Critical analysis of certain terminology is suggested as an attempt 'to strike a trade-off' between the authentic Russian concept/meaning and the concept/meaning understandable to the target reader. Contrastive and contextual analysis along with the elements of statistical analysis contribute to reaching this aim. The findings of the research can be of practical implementation to those involved in legal translation or academic studies in comparative law.*

Keywords- *Russian Civil Code, legal concepts, literal translation, functional equivalence, descriptive paraphrase.*

JEL Classification: F 690, K 390, Y 800, Z 130.

I INTRODUCTION

The past two decades have seen a significant progress in increasing international cooperation between governments, states and non-governmental organizations, fueled by globalization, on-going expansion of the European Union, influx of international corporations on the domestic market, mergers and acquisitions, franchising, increased mobility of people involved in business and unprecedented development of information technologies where English is the language of communication. As states or legal entities of these states continuously enter into contractual obligations, the issue of accessibility of Russian legislation in foreign languages and the importance of properly concluded agreements as well as their unambiguous interpretation has been widely recognized both by linguists and lawyers. Translation of such instruments must correlate with the laws of the specific country of the target language. This forms the requirement for adequate legal translation which is feasible, provided that translators are equally knowledgeable in legal theory, language theory and translation studies.

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II MATERIALS AND METHODS

The research looks at the Russian normative acts as a separate form of legal language, where linguistic and extra-linguistic factors are of equal consideration in translation. It studies several most baffling cases for translation in the Russian Civil Code. The material for analysis is translations made by acknowledged specialists in comparative civil law to whom English is native. The analysis discovers some crucial discrepancies in legal terminology of the Russian and Anglo-American law and is aimed at finding best equivalents and translation techniques to provide accurate translation.

In the process of this work, the following methods have been applied: contrastive analysis, contextual analysis, and elements of statistical analysis method when consulting the British/American national corpuses for frequency of usage of technical lexis in the target language. Deductive methods as well as the method of analysis and synthesis have been applied in conclusions made by logical syllogism.

III RESULTS AND DISCUSSION

3.1. Historical background, reasons and goals of a legal norm.

Any text to be rendered into another language suggests a considerable preparatory work (Holz-Mänttäri 1984; Nord 2005). It should be looked at from the point of its nature, history, purposes and practice of use. Translation of legal texts stipulates additional challenges such as studying relevant legislative systems and legal language traditions and overcoming numerous discrepancies in terminologies of source and target languages. This is especially true of legislative acts characterized by their obscurity and abstract formulations. In order to provide an accurate translation it is sometimes recommended to look at the historical background, reasons and goals of a legal norm.

Civil law of European countries is known to derive from Roman constitutional law of Antiquity that was adopted by national legal systems (Barry et. al. 1996). Further development of European law resulted in formation of two different legal systems: continental, represented by all the countries of continental Europe and common law system represented by Great Britain.

Reduced to its simplest, the *continental legal system* is historically based on codified legal provisions that have highly abstract character. It is deemed to govern all possible legal relations. Adversely, *the common law system* rests on precedents, i.e. higher court decisions that are binding for lower courts when deciding concrete cases (Baker 1992). Different principles of development are the core reasons for cognitive gaps between those systems. Legal concepts that are traditional and natural in a country of continental Europe might be totally missing in Great Britain, the native country of the English language. Besides, similar legal terminology for both legal systems may significantly differ semantically. Thus, it is not wise to apply foreign legal concepts without taking into account distinctive shades of given meaning of terms in respective legal systems. Sometimes such a distinction lies deep and may not be evident for a translator that is unaware of the laws of both countries. This challenge suggests comprehending the original text within an adequate legal perspective and formulation communicatively adequate translation based on subject knowledge gained through research, since a merely intuitive, naïve

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interpretation of legal texts would be inadequate (Stolze 2013). In translating national legislations into a foreign language, a collaborative work of specialists in law who represent the source and the target languages seems to be most effective.

3.2. Non-linguistic properties of the Russian Civil Code relevant in translation.

The Civil Code of the Russian Federation represents the pandectic system (specific organizational system of legal provisions). Such arrangement of the codified norms is useful in terms of avoiding multiple referencing and promoting uniformity in terminology throughout the entire legal act. However, traditionally this system employs highly technical and complicated language to achieve precise regulation (Stepanova 2016).

Civil law system of Russia relates to European legal system in general but is closer to the Civil Code of Germany in terminology. The Russian civil law historically borrowed a lot of from the German legal theory but was at the same time dramatically influenced by the communist ideology, economic and legal development in the Soviet times. The efforts to adjust the civil legislation to the market economy have significantly changed the structure and the wording of the Civil Code, but the heritage of the Soviet period is still difficult to overcome. As a result, most legal cognates have experienced terminological dispersion realized in considerable semantic discrepancies between Russian and Western legal terms (Stepanova 2016).

The process of adoption of the Code was far from being fast and simple. Currently, the Civil Code is one of the most extensive codified legal acts in Russia. As for the variety of legal relations it governs, it is the most comprehensive. The Code consists of four parts containing 1551 articles. The parts of the Code were adopted gradually with yearly gaps between them. Each part is devoted to a specific area of the civil law.

3.3. Critical analysis of translating key civil law terms into English.

Several attempts have been made to translate into the English language one of the most complicated and comprehensive Russian legal acts – the Civil Code of the Russian Federation. Those translations have been made by William E. Butler, Christopher Osakwe and Peter B. Maggs jointly with A.V. Zhiltsov. All of the translators are recognized specialists in civil and comparative laws and their contribution to opening up Russian civil legislation to foreign readers is highly appreciated.

Representing American law school, those translators have worked hard trying to strike the right semantic and legal balance between the Russian and English texts. They found themselves in a tough situation when their translation had to be loyal to legal concepts of the

Russian civil law and at the same time understandable for the target audience with their own national conventions within the genre.

As Christopher Osakwe noted “the Russian Civil Code embodies concepts that are endemic both to the continental European civil law and to Anglo-American common law (acoustic similarity), but have different meanings in both of these legal systems (linguistic illusion)” (Osakwe 2008). This observation correlates with the opinion of Professor Susan Šarčević who asserts that “legal terminology and the boundaries between the meanings of concepts of different legal systems are incongruent” (Šarčević 2000). It should be kept in mind when translating

continental civil law texts into the English language as there is a temptation to apply civil law terms that exist in the English language but do not coincide in meaning (also relevant in the Russian-English pair of languages).

Terminological ambiguities first arise from the initial and basic notions and then evolve into the legal concepts representing the difference and even the opposition of Russian civil law to the Western civil law.

There are concepts that are difficult to differentiate, for instance, the most frequently used words in the Code such as *prava* and *grazhdanskieprava*. Their meaning might seem obvious to anyone unaware of the specific difference attributed to them in the Russian Civil Code and international human rights law. Literal translation in this case is absolutely inappropriate since it is internationally acknowledged that *civil rights* are the rights of a human being in a broad sense, *i.e*. right to life, right to freedom, right to physical and mental safety, right to protection from discrimination on grounds of race, gender, national origin, sexual orientation, religion, or disability. Rights established by the Russian Civil Code refer restrictively to relations arising from contracts, mostly from economic activities. Therefore, the literal translation can prevent the reader from understanding clearly the scope of the regulation for which the Code has been designed. Such basic legal concepts should be rendered thoughtfully, with respect to the independent sphere of the Code's regulation and the designed framework of the Russian civil law. Evidently W. E. Butler did not see the difference as he chose to apply the literal term *civil rights.* The most appropriate formulation that would distinguish (civil) rights set out in the Russian Civil Code from international human rights terminology is *civil law rights* (*civil-law rights*) used by other translators.

Another example includes Russian cognates with hardly distinguishable meanings: *obyazatel'stvo*(may be rendered by the English term *obligation*)*, obyazannost'(duty* and *responsibility*), and *otvetstvennos't'* (*responsibility, liability*). Since these English terms might be interchangeable, a translator should bear in mind the legal nature of the Russian concepts to overcome semantic hurdles in translation. In some provisions of the Civil Code, *i.e.* Article 322, these three terms come together in a single sentence. To sort things out it is wise to look at their semantic differences rather than common semantic properties. *Obyazatel'stvo*always arises from a contract, depends on free will of the parties, and could semantically be linked with the term *contract*. On the contrary, *obyazannost'* derives from a contract (after its execution) and from a relevant law and, therefore, does not depend on the parties' will. Both terms *responsibility* and *duty* seem to be equally appropriate for rendering it into English. In comparison, the terms *responsibility* and *liability* also belong to the same cognitive group, however we can argue that semantically the word *responsibility* is broader than the word *liability* in meaning (Kul'kova 2013). Though cognitively overlapping, only one of them is used in the meaning of Russian*otvetstvennos't'* in the Code context. This term is *liability* (compare: A chief executive *is responsible* to the shareholders. If things go wrong he/she can be blamed but will not be necessarily *liable*, which means being *legally* responsible. And: The partners are *liable* for the debts of the firm).

Coming back to the above-mentioned sentence we read the following translation by Maggs: "A joint and several obligation (liability) or a joint and several claim arises if the joint and several duty or claim is provided by a statute, in particular in case of indivisibility of the subject of the obligation" (Maggs and Zhiltsov 2003). Obviously, inconsistency in wording when the term *obyazannost'* is first translated as *obligation*, and then as *duty*, and the term *obyazatel'stvo*is rendered as *obligation*, has led to vagueness and ambiguity in meaning. Randomly chosen, these

terms should be clarified in translator's commentaries and used coherently. This also refers to W. E. Butler, who sometimes, without reasonable ground, replaces a commonly used term *obligation* with the term *duty*, which can as well mislead the reader and breach the coherent wording of the Code itself.

Another difficult issue is a subtle distinction between closely related Russian legal concepts *ushcherb, ubytki, vred*. The concept *vred* is used only in the Code provisions devoted to tort liability and can be well rendered with the English word *harm*. The broadest term in this semantic group is *ubytki*which incorporates a combined concept of *ushcherb*and *lost advantage* (Butler 2008), or *forgone benefit/lost profit* (Osakwe 2008), or, *missed profit* (in the version available on the site www.russian-civil-code.com). Christopher Osakwe applies the term *damage* when he speaks about *ubytki*whereas other translators refer to English term *losses* best coinciding in meaning with its Russian counterpart. Actually, both English words are appropriate in the Russian Civil Code context, however the term *losses* better contributes to linguistic concordance of source and target texts.

Further challenges in translation are also related to corporate law. Describing the types of legal entities the Civil Code of the Russian Federation defines amongst others *obshchestvo* that may be created in the forms of *obshchestvo s ogranichennojotvetstvennost'yu, akcionernoeobshchestvo, etc*. In British and American jurisdictions, they distinguish *a limited liability company* or *a limited liability partnership*, and *a joint-stock company*, respectively. *Company* or *partnership* are both relevant to the Russian equivalent *obshchestvo*. It must be noted however, that since Russian civil legislation introduces such type of legal entity as *tovarishchestvo*, the term *partnership* should be reserved for the case and all the translators are unanimous in this choice. To further differentiate Russian legal entities (*obshchestva*), the English equivalent *company* is commonly used. However, this Russian term still seems to be misleading for foreigners and some translators feel forced to use another word (*society*) following Spanish-speaking countries' terminology, (compare: *sociedad de responsibilidadlimitada*) (Legeais 2003). This practice does not seem to be appropriate though. In fact, the terminological phrases *limited responsibility society*, *additional responsibility society* or *joint-stock society*, suggested by W.E. Butler, seem to be far-fetched. This is yet another example when following continental traditions to describe Russian terms with their own acknowledged meaning is really misleading if not destructive. The term *obshchestvo s dopolnitel'nojotvetstvennost'yu*raised a broad debate in the translation community as it is culture-bound and has no direct equivalents in English due to specific concept of this type of legal entities and its legal capacity (https://www.translatorscafe.com/tcterms/ru-RU/question.aspx?id=80814). Russian translators into English are inclined to resort to literal formulation *additional liability company* or *supplemental liability company*; some suggest functional English equivalent *company limited by guarantee*, however, the term recommended by authoritative Russian ConsultantPlus company providing legal reference information is *double liability company* formulation (http://www.russian-civil-code.com/PartI/SectionI/Subsection2/Chapter4.html). The etymology of the term is unclear, but it has been accepted by the English-speaking professionals involved in business communication with Russian partners.

Our next focus in regard to corporate law is the Russian word *fond*. In accordance with Article 118 of the Civil Code, it is interpreted as a non-membership non-profit organization, instituted by the citizens and/or the legal entities on the basis of voluntary property contributions and pursuing the public, charity, cultural, educational or the other socially useful goals (http://www.russian-civil-code.com/PartI/SectionI/ Subsection2/Chapter4. html). The

website version and translation made by Maggs employ the term *fund*, which is literal. Other translators (C. Osakwe and W.E. Butler) use the term *foundation*. Although the word *fund* describes the money to be administered and an organization that administers this money (Macmillan Dictionary), it is the term *foundation* that is traditionally linked with the non-commercial organizations in the English-speaking countries.

Certain translation difficulties are connected with the Russian legal term *obshchestvennyeorganizacii* prescribed by Article 117 of the Civil Code. This kind of legal entities are deemed to be voluntary amalgamations of citizens who have joined in the procedure established by law on the basis of their common interests in order to satisfy spiritual and other non-material needs. To be as faithful as possible to the original text of the Code interpreters resort to literal wording that can be rather confusing. For example, C. Osakwe and W.E. Butler replicated the Russian version introducing the term *social organization*. It may, however, emphasize the idea of specific social goals of the organization not implied by the Russian legislation. As we can see from the legal definition given in Article 117 of the Civil Code, the goals of such organizations may be of different nature and relate not to social but private interests of non-material character. Evidently, such interests may not have much in common with social needs. They may be directed not to the social integration but on the contrary, to social isolation. Besides, they may be of spiritual nature distant from social ones. Finally, the word *social* often relates in the English-speaking societies to poor and vulnerable groups, *i.e.*, elderly, unemployed, homeless, and physically disabled people

To describe the same category of legal entities Maggs applied the term *societal* to strengthen the idea of the place of this organization in the structure of society in spite of the mentioned goals of isolation (Maggs and Zhiltsov 2003). Similarly, the term *non-governmental* organizations, designed to describe non-commercial organizations, is also hardly appropriate because normally they are set up by other organizations and rarely by citizens. The variant *public organization* used on www.russian-civil-code.com, seems to be quite successful. With further description in the Article, it accurately renders the idea.

Another baffling case for translation is the legal concept *sub'ektRossijskojFederacii*. It stems from Section 1 Article 5 of the Constitution of the Russian Federation and has been developed ever after. The Constitution, as estimated by many legal scholars and politicians, was a compromised document that allowed preserving the country from disintegration after the USSR decay. This neutral wording helped to determine the parts of Russia that were created in the Soviet times on different basis, both administrative and national, under the single name emphasizing their equality to the federal center and in relations to each other. The word *subject* here is semantically closer to the words*member*, *participant*, rather than to the neutral *publichno-pravovoeobrazovanie*, *administrativno-politicheskayaedinica* that may be interpreted as *entity* and/or *constituent entity*. This misleading concept has baited many translators both native English speaking and those specializing in law (Butler 2008). Literal translation not only deprives the concept of the real and precise meaning but also confuses foreigners who are totally unaware of such a notion. The concept is still being discussed but the above-mentioned aspect has been taken into account in the official translation of the Constitution employing the strategy of cognitive equivalence in rendering (*constituent entity*) (The Constitution… 1993).

While dealing with legislative legal acts it is always tempting to translate terminology literally in order not to disturb the original meaning purported by legislature. Basically, this approach is correct since it keeps translators sensitive to legal and cultural traditions of the source country. There are cases, however, when this strategy fails. For instance, Article 409 contains the term *otstupnoe*, an old fashioned Russian word, which is used mainly in legal contexts. In fact, there have been many attempts to find an adequate English equivalent the most successful of which is the term *cancellation compensation.* Functional equivalent explains the legal meaning of the word in a clear to the target reader form. Among less successful results are *indemnity* (The Civil Code… n/d) and *accord and satisfaction*. The former is, no doubt, confusing as the term is polysemantic; the meaning under study is not very common. The latter, introduced by Osakwe, is an acknowledged English equivalent accepted in contract and common laws both in UK and in USA. Though used in its traditional and semantically unambiguous meaning it, to our mind, misses the stylistic peculiarities of its Russian counterpart.

Among financial technical terminology applied in the Civil Code there are a number of collocations related to *veksel'*. Article 815 of the Code contains provisions on its two types: *prostojveksel'* and *perevodnojveksel'*. Various respectful dictionaries apply different words to describe this notion: *bill, note, draft* and collocations *bill of exchange* for *veksel',promissory note, note of hand* for *prostojveksel'* and *draft, bill of exchange, foreign exchange, foreign bill of exchange* for *perevodnojveksel'*. However, Osakwe prefers to create new ones: *simple bill of exchange* and *transfer bill of exchange* respectively under the general heading *bill of exchange*. We can only guess why. Supposedly, he traced functional inequivalence between the terms or just wished to be most faithful to the original Russian wording. Anyway the translation technique he uses (we would call it *unification of terminology*) is of certain interest. In terms of criticism, we can assert that the desire to be loyal to the source text at the expense of clarity might cause confusion in the target culturally bound legal background. Surprisingly enough Maggs demonstrates the same approach.

The decision made by Butler is much more confusing since he titles the Article as *Bill of Exchange* and further on uses this term both for general notion *veksel'* and for one of its specific types (*perevodnojveksel'*). In this respect, the version of the Code presented at www.russian-civil-code.com may be described as logical and consistent (compare: *the bill, promissory note* and *bill of exchange*).

Sometimes translators choose to employ well-established Anglo-American terminology when rendering from Russian into English. Originally derived from Anglo-American common law system and seemingly close in meaning such concepts however relate to different legal regulation. Thus, the English concept *trust* should never be employed to translate the seemingly similar Russian concept *doveritel'noeupravlenieimushchestvom*. Since the regulation and elaboration of these concepts are completely different in Russian and English civil laws, translators settle on literal translation and render this Russian term as *trust management of property* (Blake 1996), *trust administration of property* (Maggs and Zhiltsov 2003), *entrusted management of property* (Osakwe 2008). This seems to be the best formulations with regard to the reasons mentioned above.

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IV CONCLUSIONS

Legislative acts is one of the most difficult spheres of legal discourse for translation. Translators are expected to have specialized knowledge of terminology in both languages and be ready for comparative research that may help to choose the right translation technique. Legal professional knowledge is required to identify authoritative English sources that contain internationally acknowledged translation and/or interpretation of Russian laws with all their specifics.

Translation of the Civil Code of the Russian Federation requires an interdisciplinary approach. Christopher Osakwe fairly notes that this kind of translation is a task for "a linguist-lawyer, with equal emphasis on both law and language" (Osakwe 2000). Indeed, during the process "a translator applies a double perspective to both the language structure and the content of meaning in order to produce an adequate translation apt for further interpretation by jurists" (Stolze 2013). Moreover, translation is the intercultural process evolving a combination of dimensions such as communicative, social, pragmatic, cultural, functional, linguistic and legal to produce the product accepted by the final audience as clear, coherent and consistent to norms and traditions of new culturally bound legal background.

The challenges encountered by legal translators are of different character but most baffling are cases emphasizing differences of legal systems. These differences embodied in concepts, notions, categories, principles, conventions, traditions and customs are often incompatible and hard to convey in the paradigm of another language. Huge arsenal of language means and translation techniques still does not make it possible to realize a cultural transfer from one text into another. Acting between the cultures interpreters just look for the best way to reconstruct the form and substance of the source text in the target language and to reach a linguistic and semantic concordance.

Literal formulations, if semantically viable, are preferable as they do not disturb the letter of law. However, this choice does not help when notions, conventions, or legal traditions described in the source text do not fit into the new legal reality. The recipient will have to give greater efforts to grasp the idea and interpret it into the sense he/she can comprehend.

This also refers to cases when legal practice and regulation are dramatically different. The possible strategies in this case are functional equivalence, target neologism and descriptive paraphrase. Borrowings are introduced to strengthen the legal specificity of the term and/or the relevance to the legal function of the text (Ramos 2014). Concepts that do not coincide due to different legal cultures may need a respective explanation. This technique has not been applied in the material under study, though.

Being faithful to the source text, especially of legal character such as laws, is essential, nevertheless rendering the idea in the language understandable to the target reader is more important than being loyal to the specific wording of the Code. The matter of balance or trade-off is the concern of interpreter and his/her expertise.

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