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ТЕРМИНОЛОГИЧЕСКИЕ АСПЕКТЫ ПЕРЕВОДА ГРАЖДАНСКОГО КОДЕКСА РОССИЙСКОЙ ФЕДЕРАЦИИ

В статье рассматриваются терминологические проблемы, которые встречаются при переводе Гражданского кодекса Российской Федерации. Авторами анализируются наиболее часто встречающиеся в процессе перевода сложности и ошибки и предлагаются способы их решения. На конкретных примерах в статье показывается чувствительность юридической терминологии к неудачному подбору терминологических эквивалентов.

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Филологические науки

This article covers some terminology problems that can be encountered during the translation of the Civil Code of the Russian Federation. It analyzes some difficulties and mistakes that are common for the translation process and attempts to give tips to avoid mistakes and solve the difficulties. The article shows by means of concrete examples the sensitivity of legal terminology to an inappropriate choice of terminological equivalents.

Key words and phrases: the Civil Code of the Russian Federation; translation; terminological problems; legal terminology; civil law concepts.

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TERMINOLOGICAL ASPECTS OF TRANSLATION OF THE CIVIL CODE OF THE RUSSIAN FEDERATION[©]

One of the most important tasks of any translation process is finding relevant terminology in the source language that matches the concept in the target language. It is especially important for legal texts where failure to find the right equivalent may result in ambiguity that causes impossibility of correct application of the legal act in question. To find terminology that is closer in meaning to the terminology in the source language is a challenge for any translator. Therefore, a translator should see the essence of the legal document and the legal systems of the countries of both languages.

As opposed to common opinion, the purpose of legal terminology is not to make legal texts obscure for laymen and, thus, to raise the influence of legal profession. Legal concepts have been elaborated during centuries to regulate human relations by means of written rules that would not form endless volumes and could be applied in an always changing society. Legal terminology is characterized by its established meaning that encompasses different legal concepts with complex but acknowledged meaning. It is possible to have some fluctuations in the legal concept meaning that reflect different doctrinal positions of lawyers. However, the possibility of these fluctuations refers to the legal doctrine and are not deemed to be authoritative. Any fluctuations are hardly possible when we deal with legislative tools. Their meaning is established by court practice and could not be arbitrary changed. Even courts are not free to change the meaning of any legislative act. It should be well reasoned when in specific circumstances courts interpret the provision in question differently. Moreover, even with good reasoning, this new interpretation is subject to revision procedure by the court of higher instance. Complex procedure for any amendments in a legislative act is prescribed for legislature as well. Any draft of amendments should go through the specific legislative procedure starting with legislative initiative and ending with promulgation. Therefore, with regard to legislative acts, translators should pay special attention to other.

Over the last ten years, several attempts were made to translate into the English language one of the most complicated and biggest Russian legal acts – the Civil Code of the Russian Federation. These comprehensive translations were made by William E. Butler, by Christopher Osakwe and by Peter B. Meggs jointly with A.V. Zhiltsov. All the translators are recognized specialists in civil law and comparative law and their contribution to opening up Russian civil legislation to foreign readers is widely acknowledged. Representing American law school and American legal concepts, these translators have worked hard trying to find the most appropriate way to render legal concepts of the civil law of Russia. 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)” [7, p. 14]. In addition, it would be fair to say that some Russian civil law concepts belong neither to common law tradition, nor to continental ones and stay somewhere in between and that makes the task of translating the Russian Civil Code even more difficult.

These difficulties arose from the initial and basic concepts and continued in the legal concepts representing the difference and even the opposition of Russian civil law to the Western civil law. In article 2 (3) of the Civil Code there is a confusing provision that «civil legislation is not applied to property relations based on administrative and other authoritative [power] subordination of one party to another, including tax and other financial and administrative relations unless otherwise provided by legislation» [6, p. 12]. It is necessary to be aware of the whole Russian legal system, not only of the civil law, to distinguish «административное подчинение» and «иное властное подчинение» that include tax and other financial and administrative relations. Considering that Western law traditionally treats the tax, financial and administrative relations as a single branch of law, these provisions sound overlapping. All translators chose the unambiguous collocations “administrative and other authoritative subordination” (“power subordination” – W. E. Butler [4, p. 28]) except Osakwe who used “administrative and other governmental subordination” [8, p. 25] that seems confusing since it could mean the relations ruled by governmental decrees but it is not the case.

One of the basic concepts of the Russian civil law is that defining individuals and companies – «физические лица» и «юридические лица». These concepts translated literally sound in English as «physical persons» and «juridical persons» that are quite understandable to follow this literal translation. However, since common law traditionally uses the term «natural person» and «legal entity» with corresponding meaning there is no point in translating the Russian example literally. Meggs and Zhiltsov followed this way though. Such collocations are occasionally used in English but «natural person» and «legal entity» still overwhelmingly prevail. Such a translation might be justified to show the actual wording of the Russian Civil Code, specificity of the Russian legal language. Nevertheless, no real necessity can be seen. However, there are some other provisions of the Civil Code of the Russian Federation that really need to be translated literally and sometimes it is absolutely unavoidable.

Some difficulties arise with translation of legal terms concerning corporate law. Describing types of legal entities the Civil Code of the Russian Federation defines amongst others «общество» that may be created in the forms of «общество с ограниченной ответственностью», «общество с дополнительной ответственностью», «акционерное общество». In English legal terminology there is a word that is widely used to name such types of legal entity. In British and American jurisdiction there are «limited liability company» or even more frequently used «limited liability partnership», «joint-stock company». «Company» or «partnership» are two relevant words for the Russian equivalent «общество». It must be noted here that since Russian civil legislation sets out such type of legal entity as «оварищество», the terms «partnership» should be reserved for the case. All the translators agree that it is the most suitable word for translation of the above-mentioned term. So to further differentiate types of Russian legal entities, we have one acknowledged word for the Russian legal term «общество» left, i.e. «company». However, this Russian term still seems to be misleading and some translators feel forced to use another terms «society» following the terminology Spanish-speaking countries. In the Spanish language there is a term «sociedad de responsabilidad limitada» [9]. However, since English contains this term «company» to specify a special group of people creating a legal entity, it is impossible to follow this example when translating into English. At the same time «ограниченная ответственность» may not be translated as «limited responsibility». The word «liability» is traditionally used in English for these purposes. Besides, «responsibility» should be reserved for a broader Russian legal concept «обязанность». In this way, the translation proposed by E. Butler for the case «limited responsibility society» [4 p. 82] as well as «additional responsibility society» [Ibidem, p. 91] and «joint-stock society» [Ibidem, p. 92] seems to be inappropriate.

Some concepts derived from Anglo-American common law system are still difficult for translation from Russian into English because they have different regulation. Thus, the English concept «trust» is never used to translate the seemingly similar Russian concept «доверительное управление имуществом». Since the regulation and the way of elaboration of these concepts are completely different in Russian and English civil law, all translators prefer literal translation and translate the Russian term as «trust management of property» [6, p. 345], «trust administration of property» [4, p. 356], «entrusted management of property» [8, p. 401]. A translator should have a clear idea of the regulation of trusts in American and British law and Russian corresponding provisions in order to translate the terms properly.

In Russian legal doctrine the regulation set out in Chapter 43 of the Russian Civil Code «финсирование под уступку денежного требования» is often compared with the regulation of factoring agreement in European countries and the USA [2, c. 267]. However, the specific regulation of factoring relations in the Russian Civil Code never allows using the word «factoring» in translation. The translator should stick to its literal translation again «Financing under assignment of voluntary demand» (W. E. Butler) and «Financing with assignment of a monetary claim» (Meggs and Zhiltsov) in order not to mislead the reader.

Besides, there are concepts that are difficult to differentiate. For instance, these most frequently used words in the Code – «права» and «гражданские права», as well as «обязанности», «обязательства» и «ответственность». First terms might seem obvious for anyone unaware of the special meaning attributed to it in the Civil Code of the Russian Federation and international terminology on human rights. Here literal translation is 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. Civil rights established by the Russian Civil Code refer restrictively to rights arising from contracts and mostly from economic activity. 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 translated carefully to render the independent sphere of the Code's regulation and the designed framework of the Russian civil law. Unfortunately, W. E. Butler chose to apply the literal term «civil rights». Although, many translators attempted to find the collocation that would distinguish civil rights set out in the Russian Civil Code from internationally acknowledged terminology, e.g. «civil law rights» («civil-law rights»).

Russian civil law used several terms of hardly distinguishable meaning: «обязательство» (may be rendered by the English term «obligation», «duty», «debt» («duty»), «обязанность» («responsibility», «duty») и «ответственность» («responsibility», «liability»). Since these concepts might be interchangeable, a translator should bear in mind the legal nature of the Russian concepts. «Обязательство» always arises from a contract and depends on free will of the parties, while «обязанность» derives from a contract after its signing and from a law and, therefore, does not depend on the parties' will. Both «responsibility» and «duty» can be chosen to translate the term «обязанность». As for the term «ответственность», it is advisable to use the term «liability» and never «responsibility» [3, c. 81]. Conventionally chosen, these terms should be clarified in translator's commentaries and used coherently. Some translators find it difficult to keep coherency in wording. W. E. Butler sometimes without reasonable ground replaces a commonly used term «obligation» with the term «duty» that can as well mislead the reader and breach the coherent wording of the Code itself.

Undoubtedly, the translation of the Civil Code of the Russian Federation requires an interdisciplinary approach. Christopher Osakwe fairly noted that this translation is a task for «a linguist-lawyer, with equal emphasis on both law and language». It is advisable to use literal translation to render an idea that is not obviously similar in the target and source legal terminology rather than to show the specific wording of the Code. Some concepts should be studied thoroughly and sometimes render conventionally with respective explanation. In any case, the terminology once chosen must be applied coherently throughout the translation.

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В статье рассматриваются терминологические проблемы, которые встречаются при переводе Гражданского кодекса Российской Федерации. Авторами анализируются наиболее часто встречающиеся в процессе перевода сложности и ошибки и предлагаются способы их решения. На конкретных примерах в статье показывается чувствительность юридической терминологии к неудачному подбору терминологических эквивалентов.

Ключевые слова и фразы: Гражданский кодекс Российской Федерации; перевод; терминологические проблемы; юридическая терминология; понятия гражданского права.

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Филологические науки

*В данной статье рассматриваются актуальные проблемы классификации отрицательных предложений в разноструктурных языках. Проводится критический анализ традиционной теории «общего» и «частного» отрицания, затрагиваются вопросы позиции отрицательной частицы *not/ne* в предложении. Рассматривается более универсальная классификация отрицательных конструкций, основанная на формально-синтаксических и семантических критериях, а также демонстрируются результаты ее применения к английскому и русскому языкам.*

Ключевые слова и фразы: категория отрицания; негатор; отрицательная частица; отрицательное предложение; общеприцательное / частноотрицательное предложение; обобщенное отрицание; необобщенное отрицание; приглагольное / приименное отрицание; семантико-синтаксическая классификация.

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СТРУКТУРНО-СЕМАНТИЧЕСКИЙ ПРИНЦИП КЛАССИФИКАЦИИ ОТРИЦАТЕЛЬНЫХ ПРЕДЛОЖЕНИЙ (ТИПОЛОГИЧЕСКИЙ АСПЕКТ)[©]

Отрицание является одной из поливекторных универсальных категорий, на которую в течение длительного времени обращали внимание многие исследователи. В той или иной форме она присутствует во всех