

# **Legal Translation in Russia: Creating New Terminology**

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When the Cold War came to an end, most people in the West were delighted and ready to welcome Russia and Russians. Later, when the so-called 'perestroika' shook the entire structure of the seemingly stable socialist regime, most people in the former Soviet Union realized it was time to change everything for the future: economy, legislation, way of life, etc., as it was too late to save anything from the past.

Historically and politically, the Soviet Union and other socialism-oriented countries were practically totally isolated from the West for almost fifty years. The socialist system had to create everything on its own: legislation, economy and sciences, each with its own specific terminology. Due to peculiarities of the socialist political system, which rejected everything having to do with free market and commercial structures, some social institutions were merely impossible in the Soviet Union and thus in the Russian Federation.

When the President of the USSR Mikhail Gorbachev began the so-called democratic reforms in 1985, Russians faced a boom of economic, political, legal and other changes involving a great number of new laws and legislation. Some of the newly adopted legislation patterns copied those of the West, because similar political, legislation or social institutions did not yet exist in new Russia.

Democratic reforms in modern Russian society dictate urgent changes in the system of legislation, especially in the sphere of commercial law and, as a result, in the field of legal translation. So, taking into consideration the specific features of modern world legislation systems, we can state that the above factors make translators create new legal terminology and determine the results of the translation process.

The idea of inseparability of sciences and synchronous acquisition of information about different spheres of current life is universally recognized. But we do not always realize the importance of adequate terminology for thorough acquisition of true data. Today it is vital that more attention be paid to the accuracy of legal definitions and thus the precision of legal terminology.

In recent years, many books and dictionaries have been issued for both law students and practicing legal translators based on the experience of foreign counterparts and the research of foreign scientists. Yet, when dealing with the Russian language, this cannot solve the problem of training translators or the problem of intercultural communication in general. Most new terms translated into Russian were translated sporadically. The entire process of creating new legal terminology in the Russian language was spontaneous and beyond scientific and governmental control.

I do not intend to criticize the existing system of legal terms and on-going processes of creating new legal terminology, but aim at analyzing and generalizing the current tendencies of the phenomenon.

Any terminology is an integral system of notions about the main concepts and scientific research topics of the country in question, a system that allows us to associate the same information with a lexical unit as native speakers do, thus providing adequate communication.

Terminology is an inseparable and fundamental tool of any science. Modern legal terminology should be regarded in the following different aspects: as a semantic system, i.e. scientific expression of a certain system of concepts reflecting a certain scientific *Weltanschauung*; as a basis for the further development of modern legislation and economic systems; and as a starting point and support for the processes of world integration and globalization.

The process of creating modern legal terminology in the Russian language is a collision of opposing trends. On the one hand, Russia's building of a market economy urges the process of introducing new terms that reflect the phenomena of new reality and make up a basis for acquiring legal status and the opportunity for future development. On the other hand, the massive inflow of borrowed foreign terms may complicate matters, impeding the process of constructing the new economic and state system and hampering understanding in general.

The major causes of such conflicts can be categorized as general vs. specific, i.e. characteristic only of the practice of foreign languages; constructive vs. irremovable, i.e. permanently characteristic of the translation process.

The phenomenon of borrowing and the phenomenon of creating legal terminological neologisms caused by both general and specific reasons (fortunately, constructive), come into conflict for the following reasons:

- Simplicity of transcribing or transliterating legal terms as opposed to inventing new words or looking for an appropriate variant using some methods of translation;
- Relative simplicity of calquing in comparison with translation involving profound problems of creating new words;
- Considerably laborious creative processes;
- Ignoring the inevitable grave consequences of careless borrowing;
- Lack of governmental control and insufficient standardization over the process of creating new legal terminology;
- 'Natural selection' in most Russian terminological systems today and legal terminology.

Terminological differences, especially differences in translation traditions, are most evident in legal translation where they pose a serious challenge and make up the specific character of translation. Dialogue of cultures in its broad sense is mutual influence of cultural trends belonging to different nations, while in its narrow sense it is contacts between representatives of different nations aimed at the information exchange. Therefore, mere borrowing cannot provide intercultural communication. What matters is the nature of the translated information, its systematic character, and its ability to reflect the reality strictly and impartially.

The era that came along with Gorbachev's 'perestroika' and later with Yeltsin's 'democratic reforms' brought with it the phenomena of rejecting and blackening everything of the past, i.e. everything native, home-made, and blindly worshipping everything foreign and Western (and thus undoubtedly modern, progressive and worth copying). These opposing tendencies could not but affect everyone in the country, and translators were on the forefront of the process. Translators tended to be greatly influenced and the era of blind borrowing began. Under blind borrowing, we witnessed the phenomenon of massive groundless and careless

introduction of transcribed or transliterated foreign words (legal terms) into a certain language system (here, Russian). This phenomenon is sure to be characteristic of the current linguistic situation of all languages in the former socialist countries.

As a result, many Russian legal terms have synonyms. Borrowed words—rarely used in the past—have become obsolete as of late, being replaced by their foreign synonyms. For example, ‘legitimacy’ has three counterparts in Russian: ‘zakonnost’, ‘zakonorozhdynnost’ and ‘legitimnost’. The first two are derived from the Russian word ‘zakon’ (‘law’) while the last is constructed from a borrowed root ‘legitim’ and the Russian suffix ‘nost’. Recently, the latter has become one of the most frequently used legal terms, although it was unheard of by general public in the past. In another example, Russian legal terminology has always had a term to name a murderer: ‘ubiytsa’, derived from the Russian verb ‘ubit’ (to kill). Some years ago, Russians borrowed the term ‘killer’, transliterated it and today use it widely in both legal and colloquial speech. Similarly, a long time ago Russian borrowed the French term ‘réviseur’ (‘revizor’ in Russian), meaning an auditor<sup>1</sup>. Today however we have not one single ‘revizor’ in Russia – everyone of them has become an ‘auditor’. Yet these borrowings, though rarely used, are somewhat justified as they were borrowed a long time ago and have existed alongside original Russian terms.

We can also come across a lot of borrowings that were made senselessly and are thus erroneous. For example, we have a strict classification of crimes in Russia which are categorized in accordance with the degree of their “heaviness” (severity): ‘heavy crimes’, ‘crimes of middle heaviness’, and ‘not heavy crimes’, including all kinds of crimes. Very suddenly, however, we have borrowed the English terms ‘felony’ and ‘misdemeanour’, transcribing them and adding a long explanation in brackets like in the dictionary. We have also borrowed and transcribed the term ‘burglary’, though Russian legal terminology too has a name for this phenomenon: it is ‘krazha so vzlomom’ meaning breaking in. What was the purpose of making these borrowings and many others of the kind? Who knows?

The phenomenon of blind borrowing through transcription or transliteration is no doubt improper and deleterious for the following reasons.

**Reason one:** Traditionally, Russian jurisprudence and Russian criminology used to be highly developed sciences. This tradition originated from theorists and practitioners (lawyers and police officers) from tsarist Russia and was continued by Soviet scientists under the socialist regime. The legal terminology system was quite clear and definite, with all types and kinds of crimes precisely classified.

**Reason two:** Russian legal terminology has always been a harmonious and quite logical system and introducing new terms naming the known phenomena (not lacunae) can only weaken or even destroy it.

**Reason three:** The phenomenon of blind borrowing is impossible in a stable economic and political situation, since it is language which primarily reacts to any changes occurring in the society, particularly when the changes are so drastic and fundamental as those going on in Russia. Blind borrowing can only add to the chaos aggravating and intensifying the situation.

Regardless of its quality, the translation of a scientific or specialist text is a scientific or specialist text. Accuracy is the main criterion of the quality of translation in such cases. On these premises, a new approach should be taken to the problem of modern legal terminology in Russia, one which does not encompass a trend of blind borrowing, but rather which creates

a new system of terms including many previously adopted and widely used terms as well as, to a lesser extent, newly-invented terms such as neologisms or borrowings.

Generally speaking, the difference between neologisms and borrowings is principal as neologisms are characteristic of highly developed languages while borrowings (in great numbers) are more typical of underdeveloped languages and cultures, which is not the case of Russia and other European countries.

In treating the problem of translatability, a great deal depends on the traditional culture-specific requirements imposed on translation and the normative criteria used in its evaluation. However, very often the process of selecting and fixing new legal terms is based on sporadic findings.

The process of forming the modern system of Russian terminology is developing gradually, step by step, which, from our point of view, coincides with the slow but gradual development of the new Russian economy and legislation systems. It is necessary to choose appropriate variants purposefully and to bring them into a system. The criteria in selecting appropriate variants can be the new reality, stability and also vividness and communicative relevance. The problem of resolving adequate legal translation is vital, and every legal translator, employed or freelance, plays a very important role in the process of creating and developing the system of legal terminology in Russia.

There are still some other serious problems to overcome before arriving at a perfect system of legal terminology in Russia, namely the temporal lack of a system of standardization and, as a result, the current inefficiency of modern Russian lexicography.

In the USSR lexicography had always been a leading branch of applied linguistics. Over the course only 44 years (1918 to 1962), over 9,000 types of dictionaries were drafted and issued in the USSR. Between 1962 and 1980, lexicography was further boosted with the broadening of language combinations: for the first time, bilingual dictionaries were made for languages of Asia and Africa, and a greater variety of dictionaries could be found. But from 1987 to the mid-1990s, Russia was in disarray with all its sciences being under-financed and neglected.

After a dozen years of abandonment and stagnation in sciences, things started to change for the better. Nowadays, scientific lexicography, being an integral part of quickly developing lexicology, has reached a new level of development in Russia. But a second problem remains: the lack of governmental control. Weird as it may sound, but the regular process of the description of new terminology and control for its development has been stopped for a number of years. Today's Russian terminology requires the previous strict system of standardization that used to exist in the era of the USSR, and to restore it would be a paramount task of Russian scientists.

On the whole, one may state that on the way to qualitative equivalent legal translation every specialist has to act in accordance with certain strategies. We believe that along with the strategy aimed at precision and accuracy of legal texts, translators and theorists must follow the strategy to their unambiguity and clarity, which is impossible when replete with transliterated foreign terms and barbarisms.

Only with the realization of these strategies will Russia, while preserving its originality and uniqueness, really be open to the whole world and the fruit of the intercultural dialogue appreciable.

To illustrate and clarify the current trends in modern legal terminology in Russia, let us analyze a Western law concerning some rather new phenomenon in today's Russia, particularly, "*LOI n° 87-571 du 23 juillet 1987 sur le développement du mécénat du Ministère de la Culture de la République Française*" and a variant of its translation made by a Russian professional not long ago. The officially supported institute of patronage has never existed in Russia. Before the Great October Socialist Revolution of 1917, the phenomenon of patronage was spread rather widely, and such famous patrons/Maecenas as Savva Morozov and the Tretyakov brothers came into history acquiring world fame. But the state did not officially develop, promote or support this institute. Thus, there is no surprise that when translating this law from French into Russian, translators face a lot of problems, beginning with the problem of equivalent legal terminology. "LOI sur le développement du mécénat" regards the phenomenon of offering gifts to the state (France in this case) as an act of patronizing that relieves companies from a certain part of the tax burden.

The terms used in it can be divided into three main groups:

1. general legal terms used in most laws;
2. special legal terms used in a great number of laws concerning economics and finance;
3. particular legal terms used in a narrow range of laws such as "LOI sur le développement du mécénat".

No doubt, there is not much problem translating the terms from the first or even the second group, it is enough to be an experienced translator having a good dictionary (in his bookcase or in his head) and knowing how to use it. Problems arise when translators come across terms from the last group, however.

The law itself is quite new for Russian legal and judicial systems, so the particular terms mentioned above do not exist in it yet. But they also can be divided into two sub-groups: terms easy to re-create in Russian (using some elements previously adopted); and terms difficult to create in Russian (only through making neologisms or borrowing). There are certainly a lot of borderline cases as well.

For example, the phrase "lorsqu'elle a été acceptée, l'offre de don devient irrévocable" is not very difficult to translate though it contains terms from Groups 2 and 3 above. The term "irrévocable" is rather frequently used in laws and instructions concerning economics and finance and so it undoubtedly has a counterpart in the Russian language - 'bezotzyvny'. The word combination "offre de don" can also be considered a legal term (terminological word combination), and though it is used rather seldom (probably just in the analysed law), it is not very difficult to translate as a "gift offer" or "offer of a gift" - 'predlozheniye dara' into Russian.

As is known there are several ways of translating phenomena, the names of which have no counterparts in the language of translation. They are:

- borrowing (using transcription or transliteration);
- calquing (reproducing the morpheme structure of a foreign lexical unit with the means of the purpose language);
- using analogues (partial counterparts in the language of translation);
- substituting (using lexical transformations, either complete substitutions, partial substitutions, etc.);
- periphrasis, i.e. describing (rendering the meaning of the translated phenomenon having no counterpart in the language of translation) [the classification of V.Komissarov. 1990].

We would also add the method of constructive translation frequently used when translating terminological word combinations, if the whole terminological word combination names a phenomenon absent in the practice (in our case legal practice) or in the culture of the country into which language the translation is being done. The method consists in selecting a proper equivalent for each part of the terminological word combination and constructing them into a terminological word combination (a term) proper for a certain terminological system.

In any case, using this or that method when translating judicial phenomena non-existent in the aimed culture (practice) and thus in the language of translation, every translator takes part in the process of creating new legal terminology.

In the above example we used the method of constructive translation and it is one of the simplest cases. Things get much more complicated when we have to deal with terminological word combinations consisting of terms belonging to different terminological systems (in the purpose language, i.e. the language into which we translate). With both elements of a terminological word combination being terms, there is a considerable danger of using literal or “word for word” translation. e.g. The term “plafond de déductibilité” cannot be translated literally, using “word for word translation” as “ceiling of deduction” into Russian - ‘potolok vycheta’. The method of constructive translation does not work here due to the following reasons. The word “ceiling” being a term from another terminological system (“building and construction”) is used in Russian figuratively when the maximum level of some phenomenon is meant, e.g. “the ceiling of one’s salary in a certain established post”, but the use of the word “ceiling” in such cases is not scientific, it is colloquial. So the whole terminological word combination ‘potolok vycheta’ will sound quite colloquial. Here we have to use some other method, e.g. the method of periphrasis or “sense rendering” and translate “plafond de déductibilité” into Russian as the “upper limit of deduction” - ‘verkhniy predel vycheta’.

When dealing with new, previously unknown laws for a certain country, there is a danger for translators to perceive most of the terms used in them as new words having no counterparts in the terminology of the purpose language or, quite opposite, a translator may seem to remember a term of the kind and, without consulting a dictionary, can create “something” between a new borrowing and an existing term.

e.g. The term “bénéficiaire” used in the above mentioned law exists both in English and Russian legal systems as it was borrowed from Latin. In Russian it has two counterparts: an international borrowing proper ‘benefitsiariy’ and a translated term – a “benefit-receiver” in Russian ‘vygodopriobretatel’. Nowadays there is a general tendency in Russian terminology that consists of deviating from using borrowings from Latin and preferring those from English, many of which are nouns ending with the suffixes -or, -er, -ar. For example, translators use a variant ‘benefitsiar’ which I believe to be improper since there are already two previously adopted variants. Creating one more, even in accordance with modern tendencies, would introduce confusion into the system of Russian legal terminology.

There is another problem arising within the process of creating new legal terminology. This is the danger of using an existing term from another terminological system: e.g. translating the term “redressement (des entreprises)” the translator has yielded the temptation and used the term ‘sanatsiya’ (“sanitation”). In the Russian language the sphere of using this term is medicine, and even narrower—stomatology. Though the terminological word combination ‘sanatsiya (predpriyatiy)’ sounds very scientific, it makes very little sense in Russian and the reader has only to guess what it can mean. A better variant in this case would be ‘ozdorovleniye’ or ‘vosstanovleniye’.

One more question to discuss, and a very important one. That is the problem of connotation. When translating, a professional cannot avoid taking into account the connotation of the original and the newly-invented terms. Traditionally, scientific terms are believed to be void of connotation. But according to the theory of connotative fields [O. A. Burukina. 1998], every lexical unit has a connotative field and thus connotation. It is clearly proved when analyzing newly-created terms. For example, the above mentioned “pseudoterm” mistakenly used by the translator - ‘sanatsiya (predpriyatiy)’. Its meaning is not clear while its connotation is quite negative. Coming across such an ‘awkward’ term, the reader tries to guess its meaning. We suppose that in the process of ‘guessing’ the connotation determines the meaning of the ‘term’ in general. And ‘sanatsiya (predpriyatiy)’ stating something bad can mean the total “sanitation” of enterprises or, in a more general context, their complete liquidation.

When dealing with terminological word combinations, we may face yet another difficulty. Sometimes they may seem very easy to translate using the method of constructive translation. But the danger lies in mixing the method of constructive translation and literal translation, when one component of the word combination is translated properly (a proper counterpart is found or constructed in the terminological system of the language of translation), but the second component seems so simple that it is translated literally. It frequently gives birth to “pseudoterms” which cause misunderstanding.

e.g. The terminological word combination “les dons en nature” was translated into Russian as ‘dareniya v nature’ (“gifts in nature”, probably meaning ‘in a material form’). But alas, this variant was unfortunate, just as mixing translation proper and literal “word for word” translation. The word combination ‘v nature’ – “in nature” (apart from natural surroundings) in today’s Russian belongs to the vocabulary of so-called “new Russians” (very rich but mostly poorly educated businessmen originated from criminal circles) for whom it means “indeed, really”. So the whole translated expression does not sound as a term but as a colloquial-jargon unit and its connotation is also quite negative.

Another translation problem is the phenomenon of terms’ polysemy, particularly when a term (or close-to-term lexical unit) means quite different legal statuses or structures simultaneously, e.g. “les établissements publics de culte” with the word “public” meaning at the same time “state”, “municipal”, “social” and “public-service”. This phenomenon is likely to be ignored in Western countries with their unified political and social structures, but for the Russian Federation the difference is considerable and principal. Thus, the phrase “les établissements publics de culte” is impossible to translate into Russian as ‘gosudarstvennye uchrezhdeniya kulta’ - “state institutions of cult” because Russian Orthodox Church is officially separated from the civil power and the state. A better variant here could be ‘ofitsialnye religioznye organizatsii’ – “official religious institutions”.

One more example: “agrément préalable” was translated into Russian as “preliminary consent” - ‘predvaritelnoye soglasiye’ as “agrément” means both “consent” and the act or the process of agreeing, but the right variant here would be “preliminary agreeing” - ‘predvaritelnoye soglasovaniye’, meaning “an act of discussing and solving disagreements”.

## **Conclusion**

Both in the theory and practice of translation a demarcation line is drawn between the language of poetry and prose (expressive language) on the one hand and the language of scientific, official, commercial, legal and other texts (communicative language), the former has a tendency towards a wealth of nuances while the latter, towards precision and

definiteness, eschewing indeterminacy of meaning. Official, commercial, legal texts when translated constitute the basis for the corresponding types of translation, with them all united into utilitarian translation.

Utilitarian translation, as is clear from its name, is aimed at deriving benefit– it's beneficial to the economy, it promotes the development and dissemination of science and technology, it helps people who speak different languages to work together and participate in large-scale undertakings. Utilitarian translation is inevitable and essential and its role over the past a half century has been growing ever more rapidly. This profession is on the rise and those who practice it, constitute a growing social force.

Although the artistic translator feels joy at the emergence of a work of art with his participation to a greater extent than his fellow translator in technical fields, the selfsame translator of scientific and technical text feels a no lesser joy when he manages to render the text, which contains useful and important ideas, in another language fully and accurately, thereby providing his contemporaries with a working tool equal in quality to the original.

Similar considerations apply to the translation of legal texts as well. Russian professional legal translators and theorists believe that legal translation in Russia is sure to overcome all the current difficulties and problems and obtain the high professional level it always used to have. Russian translators and scientists have been doing their best to achieve it while contributing to the process of creating new legal terminology.

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<sup>1</sup> Remember the famous play "Revizor" by Nikolai Gogol.

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