CIVIL-LAW REGULATION OF THE USE OF THE RUSSIAN LANGUAGE

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Civil law, just as any other branch of jurisprudence, is a body of laws which regulates a particular sphere of social relations. If there is a question concerning written civil standards, such standards are brought to the notice of the public in the Russian language. This basically follows from Art. 3 of the Federal law "On the State Language of the Russian Federation"№ 53-FZ[1], dated June 1, 2005, (hereinafter — The Law on Language), according to which the state language is subject to compulsory use, particularly, in case of official publication of laws and other normative legal acts. Moreover, the Russian language is the only language to be used for publication of civil legislation acts.

Under the Constitution civil legislation is under the exclusive jurisdiction of the Russian Federation. This means that the subjects of the Russian Federation cannot enact regulations and standards that either alter or complement the civil law. Consequently, according to art.12 of the Law of the Russian Federation "On the Languages of the Peoples of the Russian Federation" № 1807-1[2], dated October 25 1991, acts of civil legislation, being federal normative legal acts, are to be officially published in the Russian language only. Publication of respective acts in state languages of constituent republics of the Russian Federation shall not be considered official.

This issue becomes more complicated when it concerns customs, i.e. unwritten norms widely used to regulate civil

[1] Sobraniye zakonodatelstva Rossiyskoy Federatsii. 2005. № 23. art. 2199.

[2] Vedomosti Soveta Narodnykh Deputatov i Verkhovnogo Soveta RSFSR. 1991. № 50. art. 1740.

turnover. The most spread kind of a custom is a custom of business turnover deemed to be a rule of behaviour which has been formed and extensively applied in any domain of entrepreneurial activity and is not provided for by legislation irrespective of whether it has been fixed in any document (art. 5 of the Civil Code). A reference to customs of business turnover within regulation of civil turnover can be found in a number of articles of the Civil Code. In particular, customs of business turnover can be used to define performance of an obligation (art. 311, 314, 315 of the Civil Code), an acceptance when concluding a contract (art. 438 of the Civil Code), passage of the risk of accidental loss of and accidental harm of goods sold while they are in transit during transportation (art. 459 of the Civil Code), etc. This means that customs of business turnover applied in the Russian Federation can be formulated in a foreign language. In practice this is exactly what happens with customs of business turnover in the sphere of merchant shipping that have transnational nature. Such broad general acceptance was gained by the York-Antwerp Rules concerning General Average[3], a group of directives applied, in accordance with Art. 285 of the Merchant Marine Code, in a subsidiary order to define the kind of an average, calculation of general average losses and their distribution. The first edition of these rules appeared in the 19th century in England and, naturally, was formulated in English. Surely, later the rules were translated into Russian; however, such translation cannot be considered official, as the rules themselves being neither a legal act nor an international treaty are considered unofficial and applied a custom.

The accrual of customs in other languages but Russian is caused by the fact that the territory of the Russian Federation is populated by multiple peoples speaking different languages. Accordingly, as a rule, local customs are worded in the language of the people that inhibit the territory of their application. Here it is important to emphasize that civil law provides for certain cases when a local custom is given legal effect. For example, in accordance with art.221 of the Civil Code, a person who gathers berries, catches fish, or extracts other generally accessible things and fauna acquires the right of ownership in respective things if such gathering or extraction is permitted by law, general authorization by the owner or local custom. Application of a local custom is also legally sanctioned to regulate relations when among the parties there are indigenous minori-

[3] General average means losses resulting from intentional and reasonable contingency expenses or contributions made for the sake of general safety, protection of property involved in general marine enterprise with view to keep a vessel, freight, and cargo transported by the vessel.

ties of the North, Siberia and the Far East of the Russian Federation that have a traditional lifestyle; customs are applied on the territories of traditional residence and economic activity of those minorities (art.14 of the federal law № 82-FZ "On the Safeguards of the Rights of Indigenous Minorities of the Russian Federation"[4], dated April 30, 1999). This means that local customs that exist on such territories can, for example, regulate hunting carried out by representatives of these peoples for their own needs.

As it was mentioned earlier, the Law on Language does not stipulate any rules concerning the language of custom; that is why local customs may exist and be applied by participants in civil turnover relations without being translated into Russian. However, the situation is different when there is a legal argument between the parties that is to be settled by courts and their interrelations are governed by a local custom. In order for a court to pass a reasonable and lawful judgment, the fact pattern has to be correlated with the essence of a local custom. Indeed, to understand the essential meaning of a custom it must be translated into Russian. If the court examined the contents of a custom in its original language, this would mean that judicial proceedings are partially carried out in the language of a respective ethnical group, which does not comply with art. 3 of the Law stating that all judicial proceedings shall by carried our only in the state language of the Russian Federation, i. e. in Russian.

Civil standards serve as one of the preconditions for the accrual of civil matters that traditionally include such component elements as subjects, object and grounds for origin.

The parties in civil matters are natural persons and legal entities, as well as the Russian Federation, subjects of the Russian Federation and civic associations.

The right of a natural person to participate in civil turnover, i. e. to acquire and effectuate his/her rights and duties, is inter alia stipulated by the fact that he/she has a name in the broadest sense of this word. This includes surname and own forename, and also patronymic, unless it arises otherwise from a law or national custom (art. 19 of the Civil Code).

A person (a child) receives his/her surname, forename and patronymic at official birth registration. The procedure of official birth registration is stipulated by art. 47 of the Civil Code and is carried out by the entries of respective records in the books for the registration of acts of civil status (the documentary books) by the agency for the registry of acts of civil status and the issuance to citizens the certificates on the basis of these records.

Under art. 6 of the federal law № 143-FZ "On the Acts of Civil

[4] Rossiyskaya gazeta. 1999. May 12.

Status"[5], dated November 15, 1997, clerical work in agencies for registry of acts civil status is performed in the Russian language. In the case when a subject of the Russian federation (a republic) sets its own official language, clerical work is performed in both the Russian language and the official language of the subject of the Russian Federation (a republic). This means that the surname, the forename, and the patronymic of a person, as printed in a corresponding certificate, are to be given in the Russian language, or in both the Russian language and the official language of the respective republic.

The surname of a child is given after his parents' surname. If parents have different surnames, the child is given the surname of either the father or the mother, by the parents' consent.

The name of the child is registered by consent of the parents. The law does not limit the rights of parents in choosing the child's name, which has sometimes had weird circumstances. In the Soviet times children were often given eccentric names that had obvious ideological character. In fact such names were often formed as a result of abbreviation, i. e. Dazdraperma (the result of abbreviation of the first syllables from the slogan "Long Live the 1st of May" — "**Da zdra**vstvuyet **Per**voye **Ma**ya", the 1st of May being the International Labor Solidarity Day). A similar example is the name Donara (The daughter of the people — **Do**ch' **nar**oda). Recently there have been lots of talks about a law suit when a married couple insisted on giving their son the name HBO tVF 2600602, which, as suggested, is to be deciphered as Human Biological Object, type Voronin — Frolov, born on June 26, 2002. The civil bodies refused to register the child, as, in accordance to an agency for the registry of acts of civil status, the abbreviation suggested by the parents could not be considered a name, as it is accompanied by numerals. The individuals responsible for this decision understood the notion of "human name" in an intuitive and traditional way; though, strictly speaking, as the definition of a proper name goes, it is a particular designation expressed by any consequence of verbal signs (and a numeral in the language is at the same time a word). Thus, there are absolutely no grounds, including linguistic ones, to hinder the parents from giving their child such a name. Still, the unnatural essence of such a name is obvious, which makes the following issue highly topical: can the given name of the child be chosen so as to be an abbreviation or to be insulting for a child. In this connection one has to agree with the opinion expressed in a number of sources that limitations concerning the choice of the given name are to be adopted.

The patronymic of a child is chosen after the first name of his/her

[5] Rossiyskaya gazeta. 1997. November 20.

father, unless a national tradition states it otherwise.

It is important to emphasize that during one's lifespan a person has the right to change his/her name given at birth. The change of name, as well as its initial conferment, is carried out by agencies for registry of acts of civil status by entries of respective records in the books for registration of acts of civil status (the documentary books) and the issuance to citizens the certificates on the basis of these records.

Under art. 58 of the federal law "On the Acts of Civil Status", a person who is 14 and older has the right to change his/her name including first name, surname and patronymic. The change in name of an under-age citizen can be made only with the consent of both parents, adoptive parents or guardians. If such consent has not been reached, this can be achieved on the basis of a court decision, unless the under-age person has acquired full legal capacity prior to turning 14 years of age.

The change in the first name of a person under 14, as well as the change of his/her surname from that of one parent to that of the other, is carried out upon the permission of the agencies of trusteeship and guardianship issued on the basis of child's needs and the parents' joint request.

If parents live separately and the parent who lives with the child wishes they have the same surname, the agencies of trusteeship and guardianship resolve this issue depending on the child's best interest and the other parents' opinion on the matter. To take into consideration the opinion of the other parent is not compulsory if it is impossible to establish his/her location, if the other parent is deprived of parental rights, found legally incapable, and also if the parent evades raising and supporting the child without a proper reason.

If the child was born out of wedlock and the paternity was not acknowledged legally, the agency of trusteeship and guardianship pursuing the child's best interests can allow the change of his surname from that of the father to the surname which the mother has at the moment of application.

It is important to add that the change of the forename or surname of a child older than 10 years old can be carried out only with the consent of the child.

Still the most widespread case of a name change is the change of one's surname upon marriage registration. Under art. 32 of the Family Code, when entering marriage spouses should agree upon the surname of one of them that will become their common surname. Otherwise, each spouse has the right to retain his/her premarital surname, or, unless the opposite is stated by the law of subjects of the Russian Federation, each spouse has the right to have a double-barreled surname. The formation of a double- barreled sur-

name is prohibited if the premarital surname of either of spouses was already double-barreled. Though this rule is not formulated as a general one, it is obvious that it restricts citizens from having triple or even longer surnames as a result of marriage registration or other circumstances.

Another subject in civil legal relations is a legal entity — an organization set up deliberately for participation in civil turnover. Under art. 48 of the Civil Code, a legal entity has the right to acquire and effectuate property and personal non-property rights, perform duties, be a plaintiff and a respondent in court. This means that a legal entity, as well as a natural person, has its own name. The law subcategorizes all legal entities depending on the type of their activities into profit-making and non-profit ones.

The name of a profit making organization is a trade name which is stipulated in its constituent documents and is included into the Uniform State Register of Legal Entities during state registration procedure. The trade name of a legal entity has to include both a reference to its organizational legal structure and the name of the legal entity proper which has to include other words but the ones designating its business activity status.

Under art. 1473 of the Civil Code, every legal entity shall have a full trade name in the Russian language. The law also says that a legal entity also has the right to have a full trade name or an abbreviated trade name in languages of the peoples of the Russian Federation and (or) in foreign languages, as well as an abbreviated trade name in the Russian language. Nevertheless, such additional trade names are optional.

The trade name of a legal entity in the Russian language and in languages of the peoples of the Russian Federation can include foreign borrowings in Russian transcription, or in the transcription of a respective language of peoples of the Russian Federation. This does not extend to terms and abbreviations denoting the organizational legal form of a legal entity.

At the same time it is illegal for a trade name to include elements that create an impression that the profit-making enterprise is a public law entity, international organization, or public association. Besides that, trade names cannot include words repugnant to the public interest, as well as to basic principles of humanity and morality.

The name of a non-profit organization also includes a reference to the type of its organizational legal structure and the type of activities it carries out. In accordance with the essence of the law this full name has to be in the Russian language. This stems follows from art. 4 of the federal law № 7-FZ "On Non-Profit Organizations"[6], dated

[6] Rossiyskayay gazeta. 1996. January 24.

January 12, 1996, which states that a non-profit organization shall have a stamp with the full name of this non-profit organization given in the Russian language. As a stamp is a mandatory element of a non-profit organization, and the full name of the organization given in Russian is a mandatory part of the stamp, it can be easily concluded that any non-profit organization must have a full name in the Russian language.

Public-law entities (the Russian Federation, subjects of the Russian Federation, civic associations participate in civil turnover under the same names as they do being the subjects of public law.

The law also makes several restrictions on the possibility to use as a part of a company name a full or abbreviated name of the Russian Federation and words derived from such names, full or abbreviated official names of federal governmental bodies, or governmental bodies of the subjects of the Russian Federation and local self-government organizations.

These restrictions are not applied to state unitary enterprises that are allowed to have a full name including a reference to their affiliation to the Russian Federation or a subject of the Russian Federation. Besides, according to a resolution of the government of the Russian Federation, a joint-stock company is also allowed to include the official name of the Russian Federation and its derivatives into its full name in case more than 75% of this joint-stock company is owned by the Russian Federation.

One cannot do without the Russian language not only when designating the subjects of civil matters, but also when referring to their objects. The objects of civil matters are different material (substantial) and non-material (ideal) values. Such objects are often referred to as objects of civil rights and their list forms a part of art. 128 of the Civil Code. Thus, the category of the object of civil matters coincides with the notion of an object of civil rights.[7]

According to art. 128 of the Civil Code, to objects of civil rights shall be relegated things, including money and securities; other property, including property rights; work and services; information; the results of intellectual activity, including exclusive rights to them (intellectual property); and non-material benefits.

When referring to particular things, subjects of civil rights have to understand thoroughly the essence of an object that is becoming the focus of legal relations they are about to enter. If participants of civil turnover have different ideas of what

[7] *Grazhdanskoye pravo*. Uchebnik / Ed. A. E. Sukhanov. vol. 1.p. 393. M., 2004 . Though, some sources say the opposite: the subject of civil law and the subject of civil matters are two different notions. However, the deeper analysis of this discussion is beyond the scope of the current article.

the object of their future legal relations is, this often prevents the very establishment of any legal relations between them. In particular, according to art. 432 of the Civil Code, a contract shall be considered to be concluded when agreement regarding all the material conditions of the contract and has been reached in the form required in appropriate instances. Conditions concerning the subject of the contract shall be material. Thus, if one party believes that the object of the contract is one thing, and the other thinks that it is something different, one cannot speak of this part of a contract as of an agreed upon. Accordingly, if there's no agreement, the contract cannot be considered concluded.

Among the objects of civil rights listed in art. 128 of the Civil Code, most attention is given to things that most frequently become the matter of a legal transaction. In this connection it is vital to remember that the notion of "a thing" as a material substance is to be distinguished from a thing in legal sense of the word. Although characteristics of a thing as of a material entity and of an object of law generally coincide, the content of those characteristics differs. For instance, one of the characteristics of a thing is its discreteness[8], which is understood differently depending on the way a thing is interpreted: either as a material object or an object of civil rights.

Discreteness of a thing as a characteristic of a material substance is, as a rule, defined as detachment from other objects of the material world. On the contrary, in order to reveal discreteness of "legal" thing its physical detachment from other objects is not required. The sufficient property is that the thing under consideration can be individually described, i. e. it is capable of ascertainment. Ascertainment of a thing is needed in order to establish the right of ownership to a thing, which emerges only in case of defined and individualized items[9]. The right of ownership to a thing or, as it is sometimes put, a "legal bond" between a certain thing and a subject creates prerequisites to involve this thing into civil turnover. By virtue of various legal facts, the thing can be associated with other subjective civil rights (limited rights in rem or rights in personam) that are derivatives from the right of ownership.

The difference in interpretations of the notion of "thing" can be vividly illustrated using an analogy of an apartment house. A part of an apartment house represents a part of a thing as of a physical substance, as it is physically connected with another part of the same object, i. e. it is not discrete. At the same time, the same

[8] *Lapach V. A.* Sistema ob'ektov grazhdanskikh prav. St. Petersburg, 2002. P. 140.

[9] See e.g. : *Haskelberg B.L., Rovnyi V.V.* Individualnoye I rodovoye v grazhdanskom prave. M., 2004. Pp. 96–97.

part of an apartment house is a thing as an object of civil rights, given that it is described as an independent, i. e. it is given a particular cadastral number and there exists a certificate proving the right of ownership for this part of the house. In practice one can face a situation when several "legal" things can be "united" into one thing, e.g. just as it happens when one person buys out all rooms in shared apartment. In this case an apartment becomes a single thing and an independent object. Vice versa, one thing can be subdivided into several things without a necessary physical separation of the parts of the thing. Moreover, the fact that a thing is physically indivisible does not necessarily mean that it is indivisible legally. Legal partition is possible when constituent parts of a physical substance can be characterized as discrete, i.e. they can be legally described. An example of this process is subdivision of a dwelling house or a land parcel carried out through description of parts that are separated and through attribution of cadastral numbers to them. At the same time no physical separation of parts of a house or a land parcel is actually needed.

Besides, things as objects of civil rights are subdivided into movable and immovable. Immovable things primarily include land parcels and subsurface areas, as well as objects that cannot be relocated without causing disproportionate detriment to their purpose. Such a definition of immovable things quite accurately corresponds to the meaning of the word *immovable*. At the same time, by virtue of direct reference of the law, immovable things also include other objects that are movable by their nature: aircrafts and sea-going vessels, inland navigation vessels, space crafts. In this instance the notion of "immobility", as well as the notion of "thing", reveals its legal, but not physical meaning. Immovable things also include objects regular turnover of which is impossible or is hindered, due to the absence of state registration, though physically their relocation in space might not be difficult. In other words, the notion of "immovable thing" is necessary to define a group of objects which require state registration in order to establish ownership or carry out transactions in their respect.

State registration of legal rights to immovable property and transactions concerning it (hereinafter — state registration) is a legal act of cognizance and confirmation on behalf of the state of origination, restriction (encumbrance), transition or termination of rights to immovable property. Correspondingly, state registration is one of the activities of federal bodies of state power, thus, in accordance with art. 3 of the Law on Language, the Russian language is to be obligatorily used throughout the whole process of state registration. In practice it is reflected in the fact that entries made in the Uniform State Register of Immovable

Property Rights and Transactions, as well as the issued registration certificates, are to be in the Russian Language.

When applied to a particular transaction concerned with specific types of things, legislation stipulates rules regarding the description of respective things in the Russian language. Under Governmental Regulation of August 15, 1997, № 1037 "On Measures to Provide Information on Non-Food Products Imported to the Territory of the Russian Federation in the Russian language"[10], it is prohibited to sell foreign non-food products without an attached description in the Russian language. Such description is to be printed on the package or on the label of the product, included into its technical (maintenance) documentation and presented in package leaflets that go with each individual product unit or by other means if it is customary for a particular type of products. In fact, this rule develops the provisions of art. 8 of the federal law of February 7, 1992, № 2300-1"On Consumer Protection"[11], which stipulates that consumers are to be provided with necessary information on the manufacturer (executor, vendor), their hours operating conditions, and on products (works or services) sold.

When a problem under consideration concerns regulation of relations in case of rendering different kinds of services, elaboration of the abovementioned provision finds development in norm of different laws.

In particular, such services include those associated with the contract of transit by rail freightage. According to art. 28 of the federal law of January 10, 2003, № 17-FZ "On Railway Transport in the Russian Federation"[12] business activity of companies and self-employed entrepreneurs working for public and non-public railways is carried out in the Russian language. This means particularly that information in railway stations, railway terminals, trains and other places intended for services for passengers, consignors (freight forwarders) and consignees (recipients) must be necessarily provided in the Russian language. Information provided for passengers in railway stations and railway terminals must include times of departure and arrival of passenger trains, costs of travel and luggage or cargo-luggage transportation, opening hours of railway ticket offices and other organizational units that run passenger services, and information on services offered to passengers.

According to art. 48 of the federal law of July 7, № 126-FZ "On Communication"[13], relations between communication service providers and consumers of their ser-

[10] Rossiyskaya gazeta. 1997. August 26.

[11] **Rossiyskaya gazeta. 1996. January 16.**

[12] **Rossiyskaya gazeta. 2003. January 18.**

[13] Rossiyskaya gazeta. 2003. July 10.

vices provided on the territory of the Russian Federation are to be established in the Russian language only. Addresses of senders and addressees of telegrams, postings and postal money orders sent within the territory of the Russian Federation are to be in the Russian language. Addresses of senders and addressees of telegrams, postings and postal money orders sent within territories of republics of the Russian Federation can be written in official languages of respective republics provided they are also dubbed in the Russian language. The text of a telegram message is to be written using letters of the Russian alphabet or the Latin alphabet.

In case of international communication transmitted through telecommunications networks and postal networks, the law, naturally, does not establish any requirements concerning obligatory use of the Russian language, referring to rules elaborated in international treaties of the Russian Federation.

Another area closely connected with language as a means of information exchange is protection of results of intellectual activity and of means of individualization set equal to the former. Indeed, any piece of intellectual property under protection is, as a rule, expressed in words. In this connection it is quite interesting to understand what languages can be used to give it the shape in the respective verbal form. First of all, it is important to remember that results of intellectual activity can be subdivided into two classes: objects from the first one are under protection from the moment of their creation, while objects from the second one receive protection only after state registration.

In particular, objects protected from the very moment of creation include works of science, literature and art, i. e. subject matter of copyright. Origin, effectuation, and protection of copyright do not require the work to be registered and do not involve any matter of form. The law does not set any restrictions concerning the language in which the respective work is written, if it has a verbal form at all. Quite the contrary, according to par. 1 of art. 1259 of the Civil Code, works of science, art and literature are subject to copyright protection regardless of the form they are embodied in. Thus, a work is considered to be a protected result of intellectual activity regardless of the language it is written in.

Tightly connected with copyright are the so-called neighbouring rights — rights for objects derived from results of intellectual activity currently or previously under protection. Objects of neighbouring rights include reproduction of a work, a soundtrack, messages in programmes of on-air and cable broadcasting organizations, data bases (protected from unsanctioned and repeated use of information comprised in them), and, finally, works released to pub-

lic after their transition to public property (in this case protection is concerned with the rights of those who published the work).

As objects of neighbouring rights are derived from certain works, the rules concerning language use applied to them are absolutely the same as in case of respective works. In other words, objects of neighbouring rights can be expressed in any language if the corresponding object has a verbal form.

The situation is largely different in case of objects of patent law. Exclusive rights for inventions, useful models and industrial designs are acknowledged if and only if they are certified by patents issued by a federal body of the executive power on intellectual property, or by patents that are in force on the territory of the Russian Federation in accordance with international treaties signed by the Russian Federation. As a patent is a document issued by a federal state body, under art. 3 of the Law on Language it is to be written in the Russian language.

A patent for invention, useful model or industrial design is issued on the basis of an application. According to par. 2 of art. 1374 of the Civil Code, a petition for a patent for invention, useful model or industrial design is filed in the Russian language. Other documents of the application can be in Russian or in any other language. If the documents of the application are written in other language, the application must include their translation into Russian. The same rules are applied in case of an application for a selection patent.

In a number of cases patenting of one and the same object of industrial property is processed not only on the territory of the Russian Federation, but also on territories of other states. Moreover, frequently the initial application for patent issuance is filed in a different state. If this state is a member of the Paris Convention for the Protection of Industrial Property, then the applicant has the right to use convention priority. This means that the applicant can apply to a federal body of the executive power on intellectual property to ask for the priority of invention, useful motel or industrial design from the date of the initial application filed in a member-state of the Paris Convention for the Protection of Industrial Property. In order to exercise this right the applicant has to provide the federal body of the executive power on intellectual property with the certified copy of the initial application. At this the respective body has the right to claim a translated copy of the initial application only if the case under consideration has to do with an application for an invention and the test of validity of a claim for priority is connected with determination of invention patentability. In other words, according to common rules, translation of the application is not necessary.

According to art. 1434 of the Civil Code the priority of selection can be determined from the date of application filed in a foreign country, which has an agreement concerning protection of selection with the Russian Federation. This happens in case the applicant files an application to a federal body of the executive power on intellectual property within 12 months from the initial application in a foreign country.

At the same time the applicant is to provide the copy of the initial application certified by a relevant authority of a respective state, as well as the translation of this application into the Russian language.

In the sphere of patenting of inventions and / or useful models there is a number of agreements aimed at simplification of applying for protection of one and the same invention in different countries and at reduction in duplication in the work of patent authorities. International patenting introduced by these agreements inevitably raises the issue of language used in respective procedures.

In particular, patent cooperation treaty stipulates the possibility to compile and file a so-called international application to a national patent authority in cases when the applicant wishes to protect his/her developments in several countries. A federal body of the executive power on intellectual property initiates the consideration of an international application where the Russian Federation is specified as a country where the applicant wishes to obtain a patent for an invention or a useful model upon the expiry of thirty one months after the day of priority claimed in the international application. Upon a specific applicant's request an international application can be considered earlier if one of the two conditions is fulfilled:

1) the application is filed in the Russian language;

2) before the specified date of expiry the applicant provided a federal body of the executive power on intellectual property with the translation into the Russian language of the petition to an international application for issuance of a patent for an invention or a useful model filed in a language other than Russian.

It should be noticed that providing a federal body of the executive power on intellectual property with the translation into the Russian language of the petition to an international application for issuance of a patent for invention or a useful model can be replaced with providing a petition for patent issuance in the form set for filing international applications.

Still, let us now return to the role of the Russian language in connection with objects of intellectual property other than trademarks. Exclusive right for a trademark in the Russian Federation is granted only if it has been registered by a federal body of the executive power on intellectual property and in other

cases stipulated by an international treaty of the Russian Federation. According to par. 6 of art. 1492 of the Civil Code, an application for a trademark if filed in the Russian language. Documents attached to the application are prepared either in Russian, or in a different language. If the supporting documents are in a different language, the application must also include their translation into Russian. The translation may be filed by the applicant within two months following the day when a federal body of the executive power on intellectual property sends the applicant a request for the respective translation.

As for trademark itself, as a registered name it can include words, images, volumetric and other kinds of symbols and their combinations. The law does not call for any limitations in terms of words and verbal symbols in foreign languages and languages of peoples of the Russian Federation. Consequently, the use of the Russian language in a trademark that is a verbal symbol is not obligatory.

The name of the place of the commodity origin, being a designation that has contemporary or historical, official or unofficial, full or abbreviated name of the country, urban or rural area or location, or another geographical object, as well as designation derived from such name, must be expressed in the Russian language. This conclusion can be drawn from provisions of art. 3 of the Law on Language, according to which one must provide names of geographical objects in the state language of the Russian Federation, i. e. in Russian.

The application for a change of the place of commodity origin is filed in the Russian language.

Documents attached to the application are to be in Russian or in a different language. If these documents are filed in a different language, the respective translations into Russian must be attached to the application. The translation may be filed by the applicant within two months following the day when a federal body of the executive power on intellectual property sends the applicant a request for the respective translation.

Another element in civil law relations is the grounds for origination of such relations. Such grounds include real life facts and situations referred to as legal facts in the theory of law. Legal facts are varied and can be classified on various grounds. Firstly, legal facts are subdivided according to their dependence on the will of their subjects — thus, events and actions are separated.

Events are legal facts that occur regardless of the subject's will. Accordingly, events cause legal consequences regardless of the expression of will, including a verbal statement, by a participant of the civil turnover. This means that the matter of the Russian language use does not emerge in this case.

The case is different when *actions* are under consideration. Actions are normally subdivided into lawful and unlawful. Lawful actions, in their own turn, include legal acts, as well as civil-law, administrative-law, and legal actions.

The most widely spread type of civil-law legal acts is a transaction, i.e. an action by subjects of civil law aimed at origination, alteration, or termination of civil rights and obligations. In terms of will expression, i. e. in terms of form, several kinds of transactions are distinguished. In literature one can come across references that transactions may be concluded in oral or in written (simple or notarized) form. The status of transactions concluded by means of implied actions[14] is not clearly specified in the majority of cases. Sometimes the claim is made that such transactions are largely similar to ones concluded orally[15].

Still a more persuasive classification of transactions was suggested by F. S. Heifetz. In his opinion, the law marks out that will can be expressed verbally and subdivides the means of will expression into oral and written (simple and notarized). Within a transaction words are a means of putting the meaning through: in this way other persons can understand what decision was made by the subject. Transactions that do not obligatorily require a verbal expression resort to implied actions.[16]

If a transaction was closed in a "silent" form, the question concerning the use of the Russian language does not emerge.

The case is different if a transaction was closed verbally. In general the law does not stipulate any restrictions in terms of language used to conclude a transaction. This means that the expression of will of the parties can be voiced in any language; and the use of language other than Russian cannot be used as a reason to consider a transaction invalid or non-existent. This conclusion follows from a permissive rule principle which serves as a foundation for civil law: anything that is not forbidden shall be permitted.

Still one has to consider "restrictions" set for transactions concluded in written form that need to be notarized. According to art. 10 of Fundamental Principles of Notariat Legislation, notarial clerical work is carried out in the language stipulated by the legislation of the Russian Federation, republics of the Russian Federation, autonomous oblasts and areas. Practically this means that a notary also has the right to notarize a transaction concluded in an official language of a republic of the

[14] Implied action is a behaviour pattern revealing the wish of a person to enter a transaction.

[15] *Grazhdanskoye pravo:* Uchebnik // Eds. A. P. Sergeyev, Yu. K. Tolstoy. vol. 1. M., 1999. P. 249.

[16] See: *Heifetz F. S.* Nedeystvitelnost sdelok po rossiyskomu grazhdanskomu pravu. M., 2000. P. 29.

Russian Federation where he/she works. Nevertheless, under art. 19 of the Law of the Russian Federation "On the Languages of the Peoples of the Russian Federation", if a citizen who asks for notarization of a transaction does not speak this language, then a transaction is to be closed and notarized in the Russian language.

If a person who asks for notarization of a transaction does not have a command of Russian, then the text of the document under consideration is to be translated to him by either a notary or a translator.

The use of a language other than Russian can also cause certain difficulties within the conclusion of transactions in oral or simple written form. For example, in case of a unilateral transaction in a foreign language or in languages of the peoples of the Russian Federation encumbrance may arise for those whose rights are created by this transaction, as well as for those third parties who might consider documents concluding a transaction as a proof of its existence. Particularly, if a power of attorney is drafted in a simple written form in a language that is unfamiliar to the agent, he / she has to trust the principal or to have recourse to a translator for help. Similar difficulties may emerge for the third parties that are going to enter into civil law relations with the principal, who is represented by the agent by virtue of a power of attorney. Without the translation of the power of attorney the third party cannot be sure of the authority of the agent.

This also fully applies to transactional contracts. For example, when concluding a purchase/sale agreement for a thing, the purchaser wishes to make sure that the seller has the right of ownership to it. One of the possible proofs is the text of an agreement upon which the thing was previously purchased into ownership by the seller. If a respective agreement was drafted in a foreign language or in languages of the peoples of the Russian Federation, the purchaser would have to trust the seller or to turn to a translator for help.

At the same time, one has to take into consideration the fact that, beside the aforesaid "common" inconveniences, the conclusion of a bilateral or multilateral transaction in a foreign language or in the languages of the peoples of the Russian Federation can also cause legal consequences. According to par. 3 of art. 154 of the Civil Code, for the conclusion of a contract, an expression of the *agreed* will of the two parties (a bilateral transaction) or of three or more parties (a multilateral transaction) is necessary. The agreed will of the parties is expressed outside by means of declaration of their will. It is presupposed that the declaration of will corresponds to the wish and will of the party. However, in practice the opposite frequently occurs. In particular, contradiction between

wish and the declaration of will can take place when the parties misestimate the essence of the transaction they are closing. For example, this may be the case when the parties misunderstand one another because of a language barrier. If such misunderstanding concerns essential conditions of the contract, then the agreement on the transaction cannot be considered reached, and the transaction is then unconcluded (art. 432 of the Civil Code). Nevertheless, in practice it turns out rather problematic to prove the fact of "a mistake" concerning understanding on the part of the transaction parties if its conditions as a result of lack of knowledge of the language.

Within civil turnover execution of transactions in a foreign language or in languages of peoples of the Russian Federation also creates difficulties for their "interaction" with government authorities. The law does provide a unified approach to the solution of such problems. In particular, according to the tenor of par. 9 of art. 69 of the Tax Code, during a visiting tax audit the translation of documents provided by a tax-payer in a foreign language is performed by a taxation bodies. At the same time, documents drafted in a foreign language that are used as a proof of the application of tax rate of return received as dividends are to be duly legalized and translated into Russian by a tax-payer. According to art. 72 of the RF Customs Code, when goods or vehicles arrive to the customs territory of the Russian Federation, the carrier is to provide a customs authority with documents and information stipulated by the law. If goods or vehicles are imported into the Russian Federation by water, these documents include a consignment note and other documents that provide for the presence and the contents of a contract for carriage of goods by sea (river). If these documents are provided in a foreign language, customs authorities have the right to request certain information stipulated by law to be translated into Russian.

In spite of these examples, it is worth mentioning that the current legislation does not include universal rules on the procedure of filing texts of transactions or other agreements concluded in foreign languages or languages of the peoples of Russia to government bodies. As a consequence, in many cases there are no specific rules of behaviour that stipulate necessity and the volume of translation of documents into Russian, distribute a burden of translation, etc.

Civil legal relations can originate, alter and terminate on the grounds of administrative acts. Those include non-normative acts of government and local self-government authorities aimed at origination of civil rights and obligations of a specific person — act addressee.[17] Admin-

[17] *Grazhdanskoye pravo:* Uchebnik / Ed. E.A.Sukhanov. P. 433.

istrative act is a specific individual decision (law enforcement act) that includes authoritative expression of the subject's will[18]. Far back are the times when authoritative orders were only oral. Now such an order must be expressed in written form and in the Russian language. At the same time, according to art. 15 of the Law of the Russian Federation "On the Languages of the Peoples of the Russian Federation", activities of government authorities of the Russian Federation can be processed in Russian and in other official languages of the republics and of the peoples of the Russian Federation. This means that an administrative act can be simultaneously published in Russian and in a state language of a respective republic or any other language of the peoples of the Russian Federation.

Legal actions are lawful actions of subjects that, according to law, have certain legal consequences irrespective of the fact whether subjects aimed at a specific legal result or not[19]. Such legal facts include, for example, the finding of a lost thing or excavation of buried. In other words, in the majority of cases legal actions are actions that do not have a verbal expression. One may say that the only legal action expressed verbally is creation of a written work.[20]

Finally, reasons for origination of civil legal relations include unlawful actions that might have contractual or extra-contractual nature. As a rule, unlawful action (violation of law) does not have a verbal expression, for example, damaging property, breach of contract obligations, etc. At the same time, the contrary could be true: the essence of an unlawful action can be expressed in words — orally or in writing. Such cases include attack upon one's honor, dignity and business reputation, which includes dissemination of untrue defaming communications (art. 152 of the Civil Code). The Law does not stipulate the language in which such communications is disseminated in order for this action to be considered unlawful.

Presumably, in order to answer this question one has to account for par. 7 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of February 24, 2005, "On court practice of cases on honour and dignity protection of citizens, as well as business reputation of citizens and legal entities"[21]. According to this paragraph, dissemination of communications defaming honor, dignity and business reputation of citizens and legal entities is understood as disclosure of such

[18] *Panova I.V.* Kurs administrativno-protsessyalnogo prava Rossii. Saratov. 2003. P. 167.

[19] *Grazhdanskoye pravo:* Uchebnik. / Ed. E.A.Sukhanov. P. 435.

[20] The language of a work of literature has been discussed above.

[21] Rossiyskaya gazeta. 2005. March 15.

information in any form, including oral, *to at least one person*. Thus, when studying the aforementioned category of cases, the plaintiff has to prove that there exists at least one person to whom information to be refuted was disclosed. Obviously, the information can be considered disclosed if it was apprehended by the addressee, i. e. understood. This means that, if such information was shared in the Russian language with a person who does not have a command of Russian, such information cannot be considers disseminated. So it is only natural that, when considering legal controversies of this kind, the issue of the use of language is studied very carefully.

Translated by V. Gor