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THE TRANSLATION AND COMMENTARY ON TITLE I BOOK IV OF THE ITALIAN CIVIL CODE OF 1942 BY DANIIL TUZOV AND ANNA SARGSYAN

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Italian civil law is an exotic subject for most Russian lawyers, except for those rare Romanists who regard it as the living Roman legacy. Now the relevant evidence can be found in the recent Translation and Commentary on Title I Book IV (art. 1173-1320) of the Italian Civil Code, published in three installments in the well-established Russian journal on civil law, The *Herald of Economic Justice of the Russian Federation* (1.3 [2021]). It was carried out by Daniil Tuzov, Professor of Roman and civil law at the Law faculty of the Higher School of Economics (Saint Petersburg), Doctor of Juridical Sciences, dottore di ricerca in Diritto civilromanistico (Rome, La Sapienza), and Anna Sargsyan, a master's student of the Law faculty at Saint Petersburg State University.

The Roman perspective on Italian civil law and its translation calls for some justification. The translation under review came out just few months after another Russian academic journal published an article by Professor of Warsaw University Tomasz Giaro, *Roman law always dies with a codification*[1]. The author argues that Roman law has always been adapted to the changing fate of Europe, experiencing and reflecting its ups and downs, but in the end of the day it has always withered away as a result of a codification. It happened because the gist of Roman law lay in its diverse casuistry that, although bitterly criticized by orators like Cicero, secured the need for jurists to find what was just and useful in particular cases. Enshrined in the Digest, it fueled intellectual debates between medieval professors of law and, subsequently, the reception of Roman law in Europe as 'scientification' (*Verwissenschaftlichung* as Franz Wieacker put it) of its multiple particular laws.

[1] The Russian translation of the article, carried out by A. Zezekalo and D. Tuzov, is published in: Zakon 9 (2020) 185-199 (in Russian). The article was first published in: DEBINSKI A., JONCA M. (eds), *Roman law and European legal culture*,15-26 (in English).

In the broader sense, Roman law spread beyond Western Europe and affected to a considerable extent the Russian legal scholarship, most notably in the period from the great reforms of Tsar Alexander II until the October Revolution of 1917. Some enthusiasts dare to claim that during that period Russia borrowed not only the spirit of Roman law but also the basic structures of the law of obligations[2].

The revival of private law in the post-Soviet Russia paved the way to the modern codification of its civil law in the 1990s. The Civil Code of 1994 was drafted with the help of comparative legislation, especially with regard to the Civil Code of the Netherlands of 1992 which went beyond not only the Romanist but also the civil law tradition[3]. Yet, one of the drafters, Evgeny Sukhanov, together with the chief editor of the first post-Soviet academic journal on Roman law, Leonid Kofanov, claimed a substantial influence of Roman law on the new Civil Code of Russia: «… in most institutions of [modern] Russian civil law we discover direct or indirect influence of Roman private legal models and techniques. Hence, Russian civil law can be classified as belonging to the civil law legal system»[4]. The authors pointed at the general principles of civil (private) law and its differentiation from public law (art. 1), the general structure of the code (dealing with persons, things and obligations), but also at specific institutes of rights *in rem* (legal powers of the owner in art. 209, the modes of its acquisition, land servitudes in art. 274-276 and superficies (art. 271-273), *bona fide* possession (art. 301)), as well as the Roman concept of obligation as *vinculum iuris* (art. 309), its types, sources, and the surety (art. 329), the subdivision of contracts into consensual and real ones (part II of the Civil Code), the rules on *negotiorum gestio*, the concept of fault and the fault-based liability for damages, etc.

So, is there a way to 'happily marry' Roman law with modern codification? The reviewed translation and the commentary on the Italian Civil Code of 1942 provide evidence in favor of this continuity.

In the foreword (15 pages), Daniil Tuzov, together with Paolo Garbarino (Professor of Roman Law at the University of Eastern Piedmont, Vercelli, Italy), places the Civil Code into the context of Romanist legal tradition and argue for its relevance for Russian lawyers. To some extent, they develop the perspective of senator Sergey Zarudny (1821-1887) who carried out the first full translation of the Italian Civil Code of 1865 in the framework of ju-

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2 E.g. see LETYAEV, *Reception of Roman law in Russia*; LETYAEV, *Reception of the Roman legal heritage*.

3 See MAKOVSKY, *On the codification of civil law* (in Russian).

4 KOFANOV, SUKHANOV, *The influence of Roman law*, 7-20 at 19 (in Russian).

dicial reform and drafting the Civil Code of the Russian empire. It was him who called it the modern manifestation of Roman law. Garbarino and Tuzov present the Civil Code of 1942 as a synthesis of the Roman, French, and German models by guiding the Russian reader through the history of the Italian codification. They also highlight the Roman elements in the structure of the Civil Code (e.g. the title 'On obligations'), as well as in the definition of a contract in art. 1321 (mirroring the classical Roman concept of *vinculum iuris*), and in the list of the sources of the obligation according to art. 1173 (inspired by *variae causarum figurae* of Gaius in D. 44.7.1pr.). The choice of the substantially Romanized law of obligation seems natural for anyone familiar with the basics of the reception of Roman law in Europe.

The translation of Title I Book IV of the Italian Civil Code, like any translation, rases the issue of adequacy of the destination language to convey the meaning of the original. It revolves around linguistic and hermeneutical challenges, elegantly outlined by Antonio Gambaro and Rodolfo Sacco in the textbook *Sistemi giuridici comparati* (4th ed. 2018). The main challenges are the lack of linguistic equivalents and misunderstanding of the legal meaning of some foreign terms. The difficult '*traduttore traditore*' problem was successfully resolved with the help of Daniil Tuzov's experience as the contributor of the first full Russian translation of the Digest of Justinian back in the early 2000s, edited by Leonid Kofanov. The team of translators found themselves involved in multiple internal debates between historians, linguists and lawyers. Some unresolved frictions spilled over to critical publications[5].

On one occasion Tuzov challenged the Russian translation of *exceptio in factum* as '*exceptio* on the committed fact' in D. 44.1.14; D. 44.1.23; D. 44.4.2.5; D. 44.4.4.16; D. 44.4.4.32. As an alternative, he suggested four other options to deal with *exceptio*: to transliterate or transcribe the Latin term in the absence of its linguistic equivalents in Russian (as was the case with the English translation of the Digest by Allan Watson); to stick to the literal translation of the term (as in the Italian translation edited by Giovanni Vignali); to combine the translation with a partial explanation ('*exceptio* [which is given] on the basis of the facts of the case'); to use the closest linguistic equivalent, if any (strict phenotype or flexible genotype). All those options are valid as long as the legal translation conveys legal arguments and mean-

[5] TUZOV, *Concetti e terminologie romani*, 79-95 (in Italian); TUZOV, *Categories of Roman law*, 117-131 at 124 (in Russian); TUZOV, *Poęcia i terminologia prawa rzymskiego*, 263-295 (in Russian). See also the reply: KOFANOV, *On the issue of the categories of Roman law*, 126-136 (in Russian).

ings without misleading the reader.

Luckily, the challenge of translation from modern Italian to modern Russian is not as formidable, since both Italian and Russian legal systems have many aspects in common and, as the commentator puts it, the mentality of Russian lawyers is closer to that of the Italians than either to the German or French. The accomplished translation bridges the language gap, since very few Russian lawyers are familiar with the Italian language. The translators have consistently stuck to the principles of respecting the literal meaning, not replacing the original text, and adding only necessary modifications and explanatory words in round parentheses. All that allowed, as far as it possible, to preserve the original style and to provide a literal translation of Italian legal terms. Despite this, the literal translation of Italian terms occasionally looks odd. For example, the transliteration of *confusione* (art. 1253 sqq.) sounds to mean 'embarrassment' in common Russian.

Each article is followed by the commentary by Daniil Tuzov that strikes the right balance between concise and necessary explanations (191 pages) with a brief introduction to most chapters. It assures the adequate understanding of the translation by providing the reader with the essential context of each article of the Civil Code of 1942. The commentator relies heavily on historical and comparative explanation which requires references to Roman law and Romanistic tradition, similar to the approach of Italian legal scholars, like Carlo Cannata, who once traced three different modes of transferring the ownership title in § 380 ABGB, § 929 BGB, and art. 1583 of *Code Napoléon* to the common Roman archetype (i.e. *traditio*).[6] The present commentary convincingly highlights the influence of Roman heritage on many codified rules and main categories (e.g. the sources of obligation and its content in articles 1173 and 1174). Roughly every third page features Latin terms and references to the Digest or other parts of the *Corpus Juris* of Justinian.

Nevertheless, the commentator does not fail to mention the discrepancy between the Roman archetype and the modern rule or a codification of the rules unknown to Roman jurists (e.g. *accollo* in art. 1273) or even transplanted from common law (e.g. factoring). For example, articles 1546-1548 of the Civil Code repeal the rule from *lex Anastasiana* (C. 4.35.22) that prevented the cessionary to claim from the debtor more than he or she paid to the cedent (*retratto litigioso*) if the ceded rights were contested in court (*credito litigioso*).

[6] CANNATA, *Il diritto romano e gli attuali problemi*, 41-83.

The commentary is not limited to the Romanistic tradition or French and German models but takes into account the official motives of the Italian lawmaker provided in the reports of the Minister of Justice (*Relazione del Guardasigilli al Progetto Ministeriale, Libro delle Obbligazioni* 1941, *Relazione alla Maestà del Re Imperatore del Ministro Guardasigilli* 1942). Occasionally, the decisions of the Court of Cassation are cited and the prevailing doctrinal interpretation of the codified legal rules is indicated. In other words, the reader can find various legal formants of Italian civil law, or even some equivalents in Russian civil law.

All in all, the commentary provides sufficient evidence in support of the main conclusions from the foreword. The Italian law of obligations often follows the Roman tradition and thereby guarantees private autonomy. It is relevant for Russian civil lawyers because it introduces the living legacy of Roman law and could inspire the reform of Russian civil law. Moreover, the reviewed commentary is yet another argument in favour of the famous statements that 'history involves comparison' (by F.W. Maitland) and that 'comparison involves history' (by Gino Gorla). This kind of legal scholarship is absolutely indispensable for ensuring a better understanding across jurisdictions and, in doing so, in promoting harmonization of the law that one day may unite different nations – *apud omnes gentes, omni tempore, una eademque lex* (Cic. *Rep.* 3.22.33).

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