

DOI: <https://doi.org/10.18454/RULB.2020.21.1.15>**ПРОБЛЕМЫ ПЕРЕВОДА ЮРИДИЧЕСКИХ ТЕРМИНОВ ТЕРМИНОСИСТЕМЫ НЕДВИЖИМОСТЬ/
REALTY**

Научная статья

Кравчук Ю.С.*

Московский государственный институт международных отношений, Москва, Россия

* Корреспондирующий автор (juliabritish[at]mail.ru)

Аннотация

В современном мире вербализация представлений о правовой фиксации тех или иных отношений существенно отличается от системы к системе, ввиду чего обостряется проблематика нюансного терминологического перевода в юридическом контексте. Цель статьи – выявить проблемы юридического перевода основных терминов терминосистемы недвижимость/ realty и их возможное решение. На основе теоретических материалов и данных юридических лексикографических источников, а также специальной юридической литературы в двух языках был проведен анализ семантического объема рассматриваемых юридических терминов в английском и русском языках, рассмотрены степень эквивалентности и адекватность разноязычных юридических терминов, способы их перевода, выявлены примеры синонимии и многозначности терминов, способных затруднить процесс перевода. Практическая значимость заключается в предложенных решениях некоторых проблем перевода юридических текстов, связанных с лингвистическими и экстралингвистическими факторами, а также установлена зависимость использования терминов от особенностей правовой системы государства.

Ключевые слова: юридический перевод, адекватность, эквивалентность, термин, термин «недвижимость», realty.

PROBLEMS OF TRANSLATING LEGAL TERMS RELATED TO REAL ESTATE / REALTY

Research article

Kravchuk Yu.S.*

MGIMO University, Moscow, Russia

* Corresponding author (juliabritish[at]mail.ru)

Abstract

Nowadays, the verbalization of ideas concerning the legal documentation of certain relations differs significantly from system to system, as a result of which the problems of terminological translation in the legal context intensify. The purpose of the article is to identify the problems of legal translation of the main terms in the term system of real estate/realty and their possible solutions. Based on theoretical materials and data from legal lexicographic sources, as well as special legal literature in two languages, we performed the analysis of the semantic volume of the legal terms in English and Russian, as well as the degree of equivalence and adequacy of multilingual legal terms, and ways of their translation, identified examples of synonymy and ambiguity as they may complicate the process of translation. Practical significance of the paper is related to the provided solutions of some problems of the translation of legal texts caused by linguistic and extralinguistic factors, whereas the dependence of the use of terms on the features of the legal system of the state is established.

Keywords: legal translation, adequacy, equivalence, term, term “real estate”, realty.

Introduction

Nowadays, the trading of real estate is no longer a purely national or domestic issue. In view of the growing importance of international legal institutions, subtleties in legal terminology related to the specificity of the transformation of meanings within state educational institutions, ideas about the rights and real estate objects and their transfer from system to system, is of particular relevance. Legal validity or invalidity of transactions determines the movement of global capital, the migration of the masses of population and the solution of global problems, and therefore, the relevance and equivalence of legal translation is of great importance.

Research Methods and Principles

It is known that “the concept of types of translation is associated, first of all, with the genre characteristics of the material which is the subject of inter-language transmission” [12, P. 9]. Traditionally, translation is divided into literary and specialized. One of the subspecies of specialized translation is legal translation, which includes “extremely accurate and clear presentation of the material with an almost complete absence of figurative and emotional expressive means” [12, P. 10].

O. V. Barabash, O. V. Meshcheryakova, and A. V. Podstrakhova claim that the greatest difficulties are caused by the “translation of legal terms not recorded in definition and translation dictionaries and reference books, but units of the lexical-semantic language system” [14], the meaning of which in specific legal documents is determined by the linguistic and cultural contexts. Accordingly, the translation of texts related to regional and national law is of particular difficulty” [2, P. 154].

In our opinion, the most comprehensive definition of the legal term is given by O. V. Barabash and O. V. Meshcheryakova, who understand the legal term as “a word or phrase used in the legal sub-style of the official business style of the language expressing a key concept of the legal norm with clear semantic boundaries and limited compatibility” [2, P. 154].

It seems obvious that the translation of legal terms is required not only for documents and other legal texts, but also for oral speech. In the process of translating legal terms of English and Russian languages, it is necessary to take into account significant differences between the Russian and Anglo-Saxon legal systems, since each of them has its own terminological peculiarities due to a number of socio-historical patterns and grammatical features. We agree with the opinion expressed by A.

M. Velichko and V. A. Lazareva who claim that “due to the fact that the task of translating legal terms is performed in different fields, the problem of studying the features of legal terminology and its adequate translation is becoming critical for the translator” [4, P. 629].

Due to the differences in legal systems, as a rule, legal terms are not completely equivalent in the two languages, i.e. “Terms expressed in one natural language and corresponding to the terms of another natural language regarding the volume of the concept” [13, P. 255]. This phenomenon, therefore, requires further search for approaches that will make the translation of legal terms adequate.

According to L. L. Nelyubin, the author of the specialized professional dictionary, “the adequacy of the translation: 1. Re-creates the unity of the form and content of the original by means of another language; 2. Renders identical information transmitted by equivalent means,” and “equivalent translation is a translation carried out at the level necessary and sufficient to transmit the unchanged content sticking to the norms of the target language” [13, P. 13, 255].

V. N. Komissarov characterizes adequate translation as “the translation that ensures pragmatic objectives of the act of translation at the highest possible level of equivalence, avoiding violation of the norms and standards of the target language, while observing the generic and stylistic requirements for texts of this type and compliance with the conventional norms of translation. The equivalence of the translation is the commonality of the content (semantic proximity) of the original and the translation” [10, P. 398, 403].

Therefore, when it comes to translating legal terms, adequacy and equivalence are equally important as they make translation reliable. We agree with Kondratiev who claims that for an adequate legal translation, it is essential for the translator to have high basic knowledge of law and legal culture that would enable them to use various sources of legal information, to choose the most appropriate translation solution and the best term among possible options, as well as the right translation strategy, and recognize and analyze complex linguistic and legal phenomena of the English and Russian languages [11, P. 263].

Undoubtedly, the study of legal terms in English and Russian languages remains a popular topic for scientific and science-to-practice development [Vlasenko, 2005; Gamzatov, 2007; Ikonnikova, 2014; Popova, 2019; Yazhgunovich, 2011]. Legal terms of the Russian and English languages were used as the material for the study. We applied the component method for the selection and analysis of legal terms of the real estate/realty field in Russian and English, and namely, the dictionary definition chain method, since Russian and British jurisprudence belong to different legal systems, and therefore, approaches to the consideration of legal realities differ dramatically.

Discussion

As noted by E. S. Kapshutar, M. M. Filippova, “there are the following ways of translating terms in the Russian tradition: untranslatable borrowing, transformational translation, descriptive translation, or interpretation, and loan translation” [9, P. 43, 44]. The widely used legal term «недвижимость» (“real estate”) is a case in point in the context under consideration. Despite the common use of the transliterated phrase “real estate” in Russian, especially in conversation, and in company names (Real Estate Finance, Synergy Real Estate, Real Estate Bank), examples of untranslatable borrowings are, in fact, rare in the legal language. The main reason for it is the fundamental differences between the legal systems of Russia and the United Kingdom, which, in most cases, leads to the choice of descriptive translation (interpretation) as the most complete and accurate way of translating legal terms. First of all, it is worth emphasizing that legal terms “real estate,” “realty,” “land estate,” “real property,” “land property” refer to different branches of law: whereas in Russian the definition of the term «недвижимость» (“real estate”) belongs to the area of civil law, in English law legal terms “realty,” “real property,” “real estate” refer to land law.

In the text of Article 130 of the Civil Code of the Russian Federation, legal terms «недвижимость» (“real estate”) and «недвижимое имущество» (“realty”) that verbalize the concepts of tangible objects of real estate are presented as equivalent synonyms, which are often interchangeable. However, in English legal language there are equivalents to each of these terms that bear important distinctive characteristics. The electronic resource of professional legal terms offers the exact definition of the legal term “realty”: “real property (= land and buildings) and legal rights to real property” [16]. The term “real estate” is, in turn, defined as “land and any permanent things attached to it” [16]. The interpretation of British sources is also worth mentioning, in particular, the Oxford Dictionary of Law, which, reflects the British legal practice and recognizes the legal terms “realty” and “real property” as synonyms recording their meaning as “freehold land and incorporeal hereditaments” [19, P. 453]. Thus, the legal term «недвижимость» should be the equivalent of the legal term “real estate”, since it is wider in scope, and verbally verifies not only real estate objects, but also rights to them, and the terms “real estate” (in international legal practice) and “real property” (British legal practice) should be considered equivalents to the term «недвижимое имущество».

According to lexicographic sources, Russian legal terms that represent the legal concept of “real estate” express objects of the material world (land, subsoil, buildings, structures, residential/non-residential premises, etc.), while in English, as established, the legal term “realty” also verbalizes the concept of real estate rights. In this regard, there are interesting examples of legal terms expressing the main forms of land rights in English – “freehold” and “leasehold,” which are also vivid examples of loan borrowings in Russian as a way of translating non-equivalent vocabulary. The Oxford Dictionary of Law defines the legal term “freehold” as “the most complete form of ownership of land: a legal estate held in fee absolute in possession” [19, P. 241], and the term “leasehold” as “held under a lease, i.e. for a period of fixed minimum duration. See term of years absolute” [19, P.319]. The legal terms “freehold” and “leasehold,” in fact, reinforce the fundamental concepts of the forms of land rights – absolute ownership (“freehold”) and rent (“leasehold”). It should be noted that both terms are synonyms of the terms “freehold estate” and “leasehold estate” and act as hyponyms for the hyperonym “estate,” which is a legal term and are recorded as follows “in land law technically the duration of tenure in land” [19, P. 206], where the legal term “tenure” is “a legal estate in land, i.e. freehold or leasehold” [19, P. 545]. It should be emphasized from the above definition of the term “estate” that in Russian it should be translated as “legal status or land ownership right,” which implies that the term “real

estate” in Russian and Russian legal practice can render the meaning “real land ownership” or “real legal status of land ownership.” Legal terms “freehold estate” and “leasehold estate” respectively have the meaning of “absolute right of ownership” and “right of lease.”

The definition of the legal term “fee simple absolute in possession” allows understanding the concept of the absolute form of ownership more accurately: “fee simple indicates ownership that is not liable to end upon any person’s death, with the expiration of time, or on the failure of a particular line of heirs. Absolute means that the owner’s rights are not conditional or liable to terminate on the occurrence of any event. In possession means that the owner’s rights are immediate, thus future interests do not qualify, but possession need not imply actual physical occupation [19, P. 227]. It stands to notice that all the land in England and Wales belongs to the Crown, so the concept of absolute ownership has some limits.

When it comes to the definition of the legal term “leasehold,” it seems important to refer to the legal concept of “term of years absolute” that mean “a leasehold estate in land: a term of years that may or may not be brought to an end by notice, forfeiture, or any other event except death of any person” [19, P. 545]. The given interpretation enables the establishment of the basic derivative of legal terms “term,” “term of years,” as well as the comparison of legal terms “term” in English and “lease term” in Russian, which have obvious similarities of approaches in legal practice.

The analysis of legal terms in English helped us to established that the legal term “estate” is the basic one for the production of binary and multi-component terms, for example, “estate at will,” “life estate,” “estate from year to year,” “estate of inheritance,” “estate upon condition,” which confirms that the word realty has a focus on law in the legal term system, not on the real estate as such.

It should also be noted that there are cases where several Russian legal terms may be equivalent to one English term. Thus, when translated into Russian the legal term “residence” has the following basic equivalents – «жилище», «жилое помещение», «жилое строение». The Oxford Dictionary of Law gives the term “residence” the following definition: “the dwelling in which an individual resides” [19, P. 474]. The American Law Dictionary describes the term “residence” as: “broadly, any place that is more than temporary” [18, P. 442].

The legal dictionary of A. N. Azrilian gives the following definition of the term “residence”: “a room for permanent or temporary residence of people in it ...” [1, P. 199]. The large legal dictionary of A. B. Borisov does not contain the term “residence,” but there are terms “dwelling” and “residential building”: “dwelling is an object of property right or other property rights...” [3, P. 210]; “a residential building is a separate building (construction, house) of a permanent type, designed for long service, all or at least half of the area of which is intended and used for living...” [3, P. 210]. It should be noted that in American English, along with the legal term “residence,” additional terms close to the above Russian terms are recorded, and namely “house” and “dwelling house.” However, it is necessary to clarify that there are equivalents of the terms “house” and “apartment house” in Russian.

Translation of legal terms of the Russian language into English can cause additional difficulties. Along with the possibility of a relatively adequate translation of legal terms, for example, “lands of national parks,” “defense and security lands,” and “derelict property,” “residential premises in halls of residence,” “high-value, productive agricultural land area,” it is difficult to translate multi-component poly-semantic legal terms, which are absent in the terminological system of realty in English: “residential premises of the facilities for temporary settlement of forced migrants and individuals recognized as refugees,” “unitary enterprise on the basis of the right of operational management,” “facility of residential premises lease agreement.”

Key Results

The study allows drawing a number of conclusions.

First of all, when it comes to the translation of legal texts, difficulties related to differences not only in the grammatical systems of the Russian and English languages, but also in state legal systems become evident. When translating legal terms, it is necessary to take into account not only the lexicographic description of the meaning of the legal term, but also its legal application in the legislative systems of states. For example, keep in mind that, unlike the Russian legal system, in the UK “aircraft,” “sea vessels,” “inland navigation vessels” (formerly – “space objects”) are not recognized as real estate. The legal terms of the real estate sector in Russian, in contrast to the legal terms realty of the English language, are recorded not only in land, but also in civil law (in particular, in the Civil Code of the Russian Federation).

In Russian, the legal term «недвижимость» (“real estate”) verbalizes the concept of tangible real estate objects; in English, the legal term “realty,” in addition to the concept of objects, expresses the concept of rights to real estate. Therefore, the translator needs to remember that in case of legal translation from Russian, for example, of Real Estate Contract, the subject of the contract is the real estate object as such (residential premises, land, parking place), however, in case of translation from English, the rights to land are also taken into account (forms of ownership of freehold and leasehold). Noted differences in the interpretation of the analyzed terms make translation difficult, and the translator must take the surrounding context into account.

Conclusion

Subjectively, the choice of one of several English terms depends primarily on the professionalism of the translator. Objectively, it seems necessary to proceed from the subtleties of the contextual environment. With regard to the question of the existence of mutual nonequivalent plurality of terms of one language combined with the comparative terminological narrowness of another language, it should be noted that there is a tendency to unify, smooth or eliminate terminological difficulties that are caused by differences in legislative acts.

Конфликт интересов

Не указан.

Conflict of Interest

None declared.

Список литературы / References

1. Азрилиян А. Н. Юридический словарь / А. Н. Азрилиян. – М. : Институт новой экономики, 2010. – 1152 с.
2. Барабаш О. В., Мещерякова О. В. Юридический текст: проблема интерпретации и перевода / О. В. Барабаш, О. В. Мещерякова // Известия высших учебных заведений. Поволжский регион. Гуманитарные науки. – 2013. – № 3 (27). – С. 152–161.
3. Борисов А. Б. Большой юридический словарь / А. Б. Борисов. – М. : Книжный мир, 2010. – 848 с.
4. Величко А. М., Лазарев В. А. Проблемы декодирования перевода юридической терминологии / А. М. Величко, В. А. Лазарев // Современные научные исследования и инновации. – 2016. – № 1 (57). – С. 628-630.
5. Власенко С. В. Перевод юридического текста: когнитивные особенности номинации и реалии-профессионализмы в языковой паре английский-русский / С. В. Власенко // Филологические науки в МГИМО : Сб. науч. тр. – 2005. – Вып. 21 (36). – С. 108–118.
6. Гамзатов М. Г. Английская и русская юридическая терминология в сравнительно-сопоставительном аспекте / М. Г. Гамзатов // Вестник Спб. ун-та. Сер. «Язык и литература». – 2007. – № 2. – С. 124–132.
7. Гражданский кодекс Российской Федерации [Электронный ресурс] : федеральный закон от 30 ноября 1994 года № 51-ФЗ (ред. от 25.10.2016). СПС КонсультантПлюс.
8. Иконникова В. А. Возникновение и развитие культурного компонента в англоязычной юридической терминологии : автореф. дис. ... докт. филол. наук : 10.02.04 / Иконникова Валентина Александровна ; Мос. пед. гос. ун-т. – М., 2014. – 48 с.
9. Капшутарь Е. С., Филиппова М. М. Особенности перевода современных англоязычных терминов права / Е. С. Капшутарь, М. М. Филиппова // Научный диалог. – 2016. – № 10 (58). – С. 41–53.
10. Комиссаров В. Н. Современное переводоведение / В. Н. Комиссаров. – М. : Р. Валент, 2011. – 408 с.
11. Кондратьев П. Б. Проблема несоответствия смыслового объема юридических терминов и их эквивалентов в русском и английском языках права / П. Б. Кондратьев // Балтийский гуманитарный журнал. – 2019. – Т. 8 – № 2 (27). – С. 260–263.
12. Нелюбин Л. Л. Введение в технику перевода / Л. Л. Нелюбин. – М. : Флинта : Наука, 2009-А. – 216 с.
13. Нелюбин Л. Л. Толковый переводоведческий словарь / Л. Л. Нелюбин. – М. : Флинта : Наука, 2009-Б. – 320 с.
14. Подстрахова А. В. Перевод юридического текста: проблемы лингвистической и межкультурной коммуникации / А. В. Подстрахова – URL: <http://www.my-luni.ru/journal/clauses/115/> (дата обращения: 07.02.2020).
15. Попова Е. П. Соотношение общих, специальных и терминологических языковых единиц на разных этапах эволюции английской правовой лексики / Е. П. Попова / Терминология: становление, развитие, функционирование. Коллективная монография. – Астрахань, 2019. – С. 135–157.
16. Профессиональные юридические термины: сайт. [Электронный ресурс]. – URL : <https://www.translegal.com/> (дата обращения: 07.02.2020).
17. Яжгунович О. А. Функционирование и перевод терминов гражданского права (на материале терминологии недвижимости) : дис. ... канд. филол. наук. : 10.02.04 / Яжгунович Ольга Алексеевна ; Москва. МГУ. – М., 2011. – С. 160.
18. Gifis Steven H. Law dictionary / Steven H. Gifis. – NY : Barron's educational series, 2003. – 591 p.
19. Jonathan, K., Martin, Elizabeth A. Oxford Dictionary of Law / K. Jonathan, Elizabeth A. Martin. – Oxford : Oxford University Press, 2009. – 602 p.

Список литературы на английском / References in English

1. Azrilian A. N. Yuridicheskii slovar [Law Dictionary] / A.N. Azrilian. – M.: Institute of the New Economy, 2010. – 1152 p. [In Russian]
2. Barabash O. V., Meshcheryakova O. V. Yuridicheskii tekst: problema interpretatsii i perevoda [Legal Text: Interpretation and Translation Problem] / O. V. Barabash, O. V. Meshcheryakova // Izvestiya vysshikh uchebnykh zavedeniy. Povolzhskiy region. Gumanitarnyye nauki. [Proceedings of Higher Educational Institutions. Volga Region. Humanitarian Sciences]. – 2013. – No.3 (27). - P. 152–161. [In Russian]
3. Borisov A. B. Bolshoi yuridicheskii slovar [Big Law Dictionary] / A. B. Borisov. – M.: Book World, 2010. – 848 p. [In Russian]
4. Velichko A. M., Lazarev V. A. Problemy dekodirovaniya perevoda yuridicheskoi terminologii [Problems of Decoding Translation of Legal Terminology] / A. M. Velichko, V. A. Lazarev // Sovremennyye nauchnyye issledovaniya i innovatsii [Modern Scientific Research and Innovation]. – 2016. – No.1 (57). – P. 628-630. [In Russian]
5. Vlasenko S. V. Perevod yuridicheskogo teksta: kognitivnye osobennosti nominatsii i realii -professionalizmy v yazykovoi pare angliiskii-russkii [Translation of a Legal Text: Cognitive Features of Nomination and Realia - Industry Words in the English-Russian Language Pair] / S. V. Vlasenko // Filologicheskiye nauki v MGIMO [Philological Sciences at MGIMO: Coll. of Scientific Works] – 2005. – Vol. 21 (36). – P. 108–118. [In Russian]
6. Gamzatov M. G. Angliiskaya i russkaya yuridicheskaya terminologiya v sravnitelno-sopostavitelnom aspekte [English and Russian Legal Terminology in the Comparative Aspect] / M. G. Gamzatov // Vestnik Spb. un-ta. Ser. «Yazyk i literatura» [Bulletin of St. Petersburg Un. “Language and Literature” Series] - 2007. - No.2. - P. 124–132. [In Russian]
7. Grazhdanskii kodeks Rossiiskoi Federatsii [Elektronnyi resurs] : federalnyi zakon ot 30 noyabrya 1994 goda № 51-FZ (red. ot 25.10.2016) [Civil Code of the Russian Federation [Electronic resource]: Federal Law of November 30, 1994 No. 51-FZ (as amended on October 25, 2016)]. SPS ConsultantPlus. [In Russian]
8. Ikonnikova V. A. Vozniknovenie i razvitie kulturnogo komponenta v angloyazychnoi yuridicheskoi terminologii [Emergence and Development of the Cultural Component in English Legal Terminology]: Thesis Abstract of PhD in Phylol.: 10.02.04 / Ikonnikova Valentina Aleksandrovna; Mos. Ped State Un. – M., 2014. – 48 p. [In Russian]

9. Kapshutar E. S., Filippova M. M. Osobennosti perevoda sovremennykh angloyazychnykh terminov prava [Features of the Translation of Modern English Legal Terms] / E. S. Kapshutar, M. M. Filippova // Nauchnyy dialog [Scientific Dialogue]. 2016. – No. 10 (58). – P. 41–53. [In Russian]
10. Komissarov V. N. Sovremennoe perevodovedenie [Modern Translation Studies] / V.N. Komissarov. – M.: R. Valent, 2011. – 408 p. [In Russian]
11. Kondratiev P. B. Problema nesovpadeniya smyslovogo obyema yuridicheskikh terminov i ikh ekvivalentov v russkom i angliiskom yazykakh prava [Problem of Diversity in Semantic Volume of Legal Terms and their Equivalents in Russian and English Languages of Law] / P. B. Kondratiev // Baltiyskiy gumanitarnyy zhurnal [Baltic Humanitarian Journal]. – 2019. – V. 8. – No. 2 (27). – P. 260–263. [In Russian]
12. Nelyubin L. L. Vvedenie v tekhniku perevoda [Introduction to the Technique of Translation] / L. L. Nelyubin. – M.: Flint: Nauka, 2009-A. – 216 p. [In Russian]
13. Nelyubin L. L. Tolkovyi perevodovedcheskii slovar [Explanatory Dictionary for Translator] / L. L. Nelyubin. – M.: Flint: Nauka, 2009-B. – 320 p. [In Russian]
14. Podstrakhova A. V. Perevod yuridicheskogo teksta: problemy lingvisticheskoi i mezhkulturnoj kommunikatsii [Translation of a Legal Text: Problems of Linguistic and Intercultural Communication] / A. V. Podstrakhova – URL: <http://www.my-luni.ru/journal/clauses/115/> (Accessed: 07.02.2020) [In Russian]
15. Popova E. P. Sootnoshenie obshchikh, spetsialnykh i terminologicheskikh yazykovykh edinits na raznykh etapakh evolyutsii angliiskoi pravovoi leksiki [Correlation of General, Special and Terminological Language Units at Different Stages of Evolution of English Legal Vocabulary] / E.P. Popova / Terminologiya: stanovleniye, razvitiye, funktsionirovaniye. Kollektivnaya monografiya [Terminology: Formation, Development, Functioning. Multi-Authored Monograph]. – Astrakhan, 2019. – P. 135–157. [In Russian]
16. Professionalnye yuridicheskie terminy: sait. [Professional Legal Terms: Website] [Electronic resource] – URL: <https://www.translegal.com> (Accessed: 07.02.2020). [In Russian]
17. Yazhgunovich O. A. Funktsionirovanie i perevod terminov grazhdanskogo prava (na materiale terminologii nedvizhimosti) [Functioning and Translation of Civil Law Terms (on the basis of real estate terminology): Thesis of PhD in Filol.: 02/10/04] / Yazhgunovich Olga Alekseevna; Moscow. Moscow State University. – M., 2011. – P. 160. [In Russian]
18. Gifis Steven H. Law dictionary / Steven H. Gifis. – NY : Barron's educational series, 2003. – 591 p.
19. Jonathan, K., Martin, Elizabeth A. Oxford Dictionary of Law / K. Jonathan, Elizabeth A. Martin. – Oxford : Oxford University Press, 2009. – 602 p.