

Legal Terminology from the Rhetorical Perspective: Legal Genres Approach¹

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 **Abstract**

The approach to legal terms of art (or technical legal terms) from rhetorical perspectives is based on their place in legal discourse depending on the genre of the text. The division of legal texts by genres, proposed in the article, is grounded in Russian theory of *slovesnost'*, which was in the core of education in Russia in the second half of the 19th and beginning of the 20th centuries and was later developed in the works by Soviet professor of linguistics Yuri Rozhdestvensky and his students of rhetoric, philology and cultural studies. Law as a discipline in which ordinary words and terms of art behave in a different way than in other sciences poses many questions before the researchers, and these questions can only be resolved by using interdisciplinary approach, where rhetoric and *theory of slovesnost'* provide one of the possibilities. The main legal genre of written prose is a normative act, that is why special attention is paid to the use of the terms in statutes. Different behavior of terms of art in texts of different genres is noted. Analysis of polysemy and homonymy in statutory texts and investigation of legal terms versus terms in other sciences is made. Special attention is paid to technical legal terms, which have different definitions in different branches of law, to legal definitions, which have different meaning in law and other sciences, to terms of "general science" (such as 'assimilation', 'operation', 'balance', etc.) and to those words, which can be used in legal texts in their ordinary or terminological meaning (e.g. 'agent', 'defender'). A distinction will be drawn between the technical legal terms in legal theory and technical legal terms, which found their definitions in statutory texts or regulations.

 **Keywords**

technical legal terms, legal terms of art, legal homonymy, legal polysemy, legal genres, Yuri Rozhdestvensky, legal rhetoric, art of speech, *slovesnost'*

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Introduction

Law and language is an enormously wide field for research, and many scholars contributed to its cultivation both in Russia and abroad². Frederick Schauer in the introduction to the volume

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² See, for instance: Law and Language. Ed. by Schauer F. Aldershot, 1993; Conley J., O'Barr W. Just Words: Law, Language and Power. Chicago, London, 1998; Solan L. The Language of Judges. Chicago, 1993; Solan L. The Language of Statutes: Laws and Their Interpretation. Chicago, 2010; Polyakov A.V. Obshhaja teorija prava:

“Law and Language”, in which he published a collection of the most distinguished articles on the subject, fairly noted that the analysis of the “the distinctiveness (or not) of legal language” helps to understand law “through the window of language”, and that “language operates here as a microscope (or telescope, if you will), enabling us to see things that would otherwise escape our notice”³. From the other side, unusual behavior of words in law provides fruits for philosophical and philological thought, and specific relationship between law and language, which has been noted by all the authors exploring this field, led them to a conclusion that “it might be safe to say that the subject of law and language is larger than the subject of the language of the law”⁴ and that “like most other ‘law and...’ topics, an inquiry into law and language is fruitfully interdisciplinary”⁵.

The indeterminacy of law is closely connected with the indeterminacy of language. Most of the words have several meanings. This proneness of words to polysemy usually does not create difficulties due to the context, in which the words have been used, but ambiguity of a legal rule inevitably provokes disputes in the process of its application in practice and can be used by arguing parties or a judge as a means of manipulation. In order to comply with the requirement of legal certainty of a normative text, the legislative drafters have to employ different types of techniques, which would enable law practitioners to avoid unfruitful disputes about ‘true meaning’ of the words in a given context and their misinterpretation in favor of one of the parties.

Use of legal definitions is one of the possible techniques to avoid confusion and manipulation, and seemingly the most reliable one. By providing the legal definition in the text of the statute, the drafters assign a certain meaning to a word either for the purposes of the given statute or for a set of related statutes and by-laws. This assigned meaning usually differs from the ‘ordinary’ meaning of the word — it can be broader, narrower or totally different. For instance, the International Convention on the Elimination of All Forms of Racial Discrimination includes in the notion of “racial discrimination” any distinction, exclusion, restriction or preference based on “race, colour, descent, or national or ethnic origin...”. Thus, in the legal language the word *race* is wider in its meaning than in the ‘ordinary’ language. The word *advocate* (*адвокат*) in Russian legal language is narrower than in ordinary language, because for lawyers it means ‘a member of the bar’, while for ordinary people it relates to all lawyers and even non-lawyers, who act in defense of someone⁶. Another example of totally different meaning of the word in its ordinary sense and its legal sense is the word *agent* in the word-combination ‘foreign agent’ as applied in Russian case-law in accordance with its legal definition provided in the so-called “Foreign Agent Law”⁷. The Russian word *агент* (*agent*) in civil law means “one party (the agent)”, which “is obligated for compensation to take on delegation from the other party (the principal), legal or other actions in its own name but at the expense of the principal or in the name and the expense of the principal”⁸. In ordinary Russian language the word ‘agent’ means “1) a person acting by someone’s order, an authorized representative; 2) a person, a group

fenomenologo-kommunikativnij podkhod. Sankt-Peterburg, 2003; Gubaeva T., Vlasenko N.. Jazyk prava. Irkutsk, 1997; Juridicheskaja lingvistika. Pod red. S.P.Hizhnjaka. Saratov, 2009; etc.

³ Law and Language. Ed. by Schauer F. Aldershot, 1993. P. xv.

⁴ Ibid.

⁵ Ibid. P. xiv.

⁶ For an elaboration and description of several meanings of the word ‘advocate’ in Russian jurisprudence, see my: Use and Misuse of Language in Judicial Decision-Making: Russian Experience, in: *International Journal for the Semiotics of Law*, 2013, no 3, pp. 680–684.

⁷ Federal’nyj zakon 20.07.2012 № 121-FZ «O vnesenii izmenenij v otdel’nye zakonodatel’nye akty Rossijskoj Federacii v chasti regulirovanija dejatel’nosti nekommercheskih organizacij, vypolnjajushhih funkcii inostranogo agenta» Sobranie zakonodatel’sтва Rossijskoj Federacii. 23.07.2012. № 30. Art. 4172.

⁸ Civil Code of the Russian Federation. Art. 1005.

or society, promoting someone's ideas; 3) a spy, a diversionist" (Dictionary of foreign words⁹), "a spy" (Ozhegov's Dictionary of the Russian Language)¹⁰, "a secret employee of an intelligence service" (Efremova's Dictionary)¹¹. This difference in meaning caused severe problems in application of the amendments to a law on NGOs: NGOs refuse to register as 'foreign agents', because they believe that their status would stigmatize them as 'spies' in the eyes of the public.

As we can see, the use of legal definitions raises several terminological problems. Further I will call "a legal term" what is usually called in English "a technical term", or "a term of art", and will use these words as synonyms. Peter Tiersma wrote in his chapter about legal lexicon: "If a word or a phrase is used exclusively by a particular trade or profession, or if the profession uses it in a way that differs from its normal meaning, and a term has relatively well-defined sense, it should be considered a technical term. An absolutely fixed and precise meaning is not essential, nor is it usually attainable"¹². Technical terms are useful, he notes, because they often have "a fairly precise definition"¹³. If a definition is provided, does it mean that an ordinary word turned into a term? If it is a term, how we can explain, that in different legal texts different meanings can be assigned to one and the same word? If polysemy of terms appears, is it a flaw in legislative drafting, which needs to be corrected? Can at all a term be polysemous? If not, does it mean that law in general does not exist as a single, consistent terminological system and we must speak of several legal terminologies and, consequently, contest the existence of law as a branch of knowledge in general and recognize the existence only of its branches as separate systems?

Legal terms: polysemy/monosemy difficulty

The main distinctive feature of a term, according to many scholars, is its monosemy. For many scholars, monosemy is one of the distinctive features of a term. For instance, Alexander Reformatsky wrote: "A term exists not just in a language, but as a constituent part of the concrete terminology. If in general language (outside the given terminology) a word can be polysemic, by being included into a definite terminology it acquires monosemy... A term does not need a context, as distinct from an ordinary word, because it 1) is a member of a concrete terminology, 2) can be used in isolation, for instance, in the texts of registries or orders for technical equipment, 3) for which purposes should be monosemic not in the language in general, but within the concrete terminology"¹⁴. However, some modern researchers are ready to accept the possibility of polysemy of terms: M.G. Gamzatov, for instance, while accepting the premises, that the 'ideal' term must have only one exact meaning, should correlate with only one notion and have neither synonyms nor homonyms, notes that these requirements are hardly realizable in practice and comes to a conclusion, that practice, whether we like it or not, creates polysemy of terms¹⁵.

Indeed, in Russian legal texts such words as «родственники» ('relatives'), «брак» (both 'marriage' and 'defect of goods'), «ассимиляция» ('assimilation'), «транспортное средство» (a means

⁹ *Kratkiy slovar' inostrannykh slov*. Pod red. Lyokhinoy I., Petrovoy F. Moscow, 1950. P. 13.

¹⁰ *Ozhegov S.I. Slovar' russkogo yazyka*. M.: Russkij jazyk. 1975. P. 21.

¹¹ *Efremova T. Sovremenniy tolkovy slovar' russkogo yazyka*. Moscow, 2006.

¹² *Tiersma P. Legal Language*. Chicago. 1999. P. 108. David Melinkoff calls technical terms "terms of art" (*Melinkoff D. The Language of the Law*. Boston—Toronto. 1963. P. 293).

¹³ *Ibid.* P. 108.

¹⁴ *Reformatskiy A.A. Vvedenie v jazykovedenie*. Moscow, 1967. P. 110 (translation of the quotes here and further in the text of this article is mine — A.S.).

¹⁵ *Gamzatov M.G. Tehnika i specifika juridicheskogo perevoda*. Sankt-Peterburg, 2004. P. 16.

of transport, a vehicle) have several meanings, which do not necessarily overlap. Moreover, they have different meaning in different branches of law and even in statutes, which we can fairly consider as statutes *in pari materia* (for instance, ‘a means of transport’ has different meaning in the traffic rules, in criminal law, in law on shipment and transportation). The same picture is described for other languages. Peter Tiersma, cited above, writes: “Not only does the law have many technical terms, but the legal subdisciplines have their own terminology, and sometimes a term can differ in meaning according to specialty. *Libel* in tort law refers to a type of defamation. The same word means something quite different in admiralty law: to bring an action against a ship. Thus, the meaning of *to libel a ship* could depend on whether it is being used in admiralty or tort”¹⁶. In such cases, shall we treat law as a unified terminological system, as a set of sub-systems, where each branch of law represents its own system of terms, or as a number of terminological systems?

Legal terms of art have been a subject of inquiry for many Russian scholars. Nikolay Vlasenko wrote about lexicological characteristics of words in law, including polysemous words and homonyms¹⁷. V.Tolstik devoted to legal terminology a chapter in the collective monography on legislative drafting. He defines a legal term as “a word or a combination of words, which serve for the naming of the notions and which are used in legal science and/or legal practice”¹⁸, but this definition is very general and indefinite, and can be used only as a starting point for further elaborations. It does not contribute to better understanding of terminology in general, because the same definition can be given to any other professional terminology by substituting “legal science and/or practice” with “medical/historical/anthropological/linguistic science and/or practice”, and it does not explain us, why words and terms are more important in law than in other disciplines, and whether law as a science can force linguists to reconsider their terminological views. Neither it leads us to a question, if law is a unified science or a number of disciplines with their own rules and terminological systems, nor answers the question, if the terms in law can be polysemous, though such assumption contradicts the nature of terms and is not acceptable in any other science rather than law. At the same time, the possible classifications of legal terms, built on different characteristics of word behavior in law, are summarized by V.Tolstik: terms of legal science and terms of legal practice; terms of general use and terms of non-general use, or special terms (which, in their turn, are subdivided into special non-legal terms and special legal terms); terms, belonging to law in general and terms, belonging to a particular branch of law; terms with definitions and terms without definitions in the text of law; terms with exact meaning and terms, which express evaluation and esteem (such as “serious reason” for absence at a workplace), etc. Though very important points have been noted in this overview of existing classifications (for instance, attention was paid to differentiation of legal terms in legal theory and in legal practice, to the use of professional terms of other sciences in legal discourse, to the use of indefinite legal terms — which are called “evaluative words” in Russian legal theory), this approach does not move us further in the discussion, why words in law behave differently than in other disciplines and how this difference can be accounted for.

N.I.Khabibulina also suggests the classification of legal terms based on either their lexical meaning or their belonging to different branches of law¹⁹.

Peter Tiersma did not analyze legal terms of art from these perspectives, though within his approach the questions about the unity of law as a terminological system or possibility of

¹⁶ Tiersma P. Op. cit. P. 108.

¹⁷ Gubaeva T., Vlasenko N. *Jazyk prava*. Irkutsk, 1997. P. 48–79.

¹⁸ Tolstik V.A. *Juridicheskaja terminologija*. *Juridicheskaja tehnika*. Kurs lekcij. Moscow, 2012. P. 118.

¹⁹ Khabibulina N.I. *Politiko-pravovye problemy semioticheskogo analiza jazyka zakona*: Monografija. Sankt-Peterburg, 2001. P. 122–124.

polysemy of terms of art also did not arise. First of all, he drew a distinction between legal terms and terms of other sciences and noted, that “it is unrealistic to expect the legal vocabulary to achieve the exactitude of the scientific lexicon”, because in science “the concepts or categories themselves are well defined”²⁰ (here I leave aside the question, if he meant natural science or did not recognize law to be a science). For instance, *centimeter* means the same for the scientific community, and the sense of the word does not change with time and from country to country. Legal vocabulary, quite the opposite, “tends to refer to legal and social institutions that change frequently, which results in the meaning of associated terminology changing as well”. The content of the legal term can change “depending on the era, the society, and the norms established by its legal system”²¹. Secondly, he notes, that exact sciences are international in scope, while legal systems are “highly parochial”. With splintered jurisdictions, it is close to impossible to attain agreement on the exact meaning of legal terminology. Though despite some variations technical legal terms (for instance, *negligence*) have well-established general meaning, they cannot by their nature be as precise as terms of art in exact sciences. Thirdly, technical legal terms “are created not through usage, but by authoritative pronouncements of courts or legislatures” — for instance, the meaning of *income* for tax purposes has been refined in the respective context by the courts over the years²².

As we can see, Peter Tiersma does not consider legal terms (or technical legal terms, as they are called in English) as ‘terms’ in strict sense of this word, because they have characteristics which terms of art in other sciences do not have and because they lack scientific precision. He does not consider this lack of precision as a flaw, “because “the precise” or “literal” legal meaning could not possibly be what the writer of the document intended”²³, even though a court in search for the writer’s intent undermines the established meaning of the term. I can define his approach as rhetorical in nature, because Peter Tiersma stresses the role of the author and policy reasons in legal interpretation of the rules and legal documents and demonstrates that strict applications of extremely precise technical legal terms without any deviations (which, in my view, is a dream of many Russian legal scholars and practitioners) would elevate form over the substance. Due to this reason Peter Tiersma calls legal profession “to acknowledge that its terminology — while obviously very useful — can never be as exact as it might hope or believe”²⁴.

I will undertake an attempt to resolve monosemy/polysemy difficulty also from rhetorical perspective, but by employing the approach to text analysis, which was elaborated by professor of linguistics of the Moscow State Lomonosov University Yuri Rozhdestvensky²⁵, who based it on the Russian rhetorical doctrine of speech genres.

Legal Terms and Legal Genres

Yuri Rozhdestvensky built his analysis of terms on the premise, that texts of different genres are not equal in their nature, value and importance if we consider them from the points of view

²⁰ Tiersma P. Op. cit. P. 109.

²¹ Ibid. P. 109.

²² Ibid.

²³ Ibid. P. 110.

²⁴ Ibid. P. 110.

²⁵ Yuri Vladimirovich Rozhdestvensky (1926–1999), Soviet and Russian linguist, rhetorician, educator and philosopher. Head of the Chair of the General and Comparative Linguistics at Moscow Lomonosov University, author of numerous books on rhetoric, Chinese grammar, typology, language universals, history of linguistics, semiotics, general linguistic and culture studies.

of law, cultural studies and linguistics²⁶. In this connection, different requirements exist for the use of terms and exactness of definitions depending on the genre of the text. Applying his approach to legal texts (which have never been a special point of his interest), I will argue that requirements of legal certainty and exactness of verbal expression may differ and depend on the genre of a legal text.

Legislative acts, by-laws and legal documents, which in Russian classification of different types of oral and written texts (united under the general heading ‘*slovesnost*’, which can be roughly translated as “set of all oral and written texts in the variety of their genres”) fall under the heading of ‘documentary texts’ (“документальная письменность”). They are more important than other legal texts, because they regulate everybody’s life, household, all kinds of activities and civil status. Consequently, they must be oriented to the unanimous understanding by everyone and similar interpretation in the process of application and further preservation in archives²⁷. Due to their nature, they are more sensitive to terms, and, by contrast with other genres of legal discourse, they require standardized understanding of words and phrases. The ‘author’ of the text and its ‘user’ do not coincide, so a special responsibility of the creator of the text exists to draft it in a way, which will allow as much as possible avoiding the interpretation of the text in legal practice against the intent of its author. Legislative texts do not imply that a reader (term’s user) and an author (term’s creator, or name-giver) can reverse their roles. As far as most of the words have several meanings, the legislator seeks to concretize their meaning in a text, which he creates, by providing legal definitions. Ideally, a law implementer should not re-define the meaning of words and terms, clearly defined by a legislator. But as I have already mentioned above with the references to Peter Tiersma, though “judicial decisions and statutory definitions would make the meaning of legal terminology more precise, especially compared to terms whose meaning depends on usage”, judicial interpretations can “muddy the waters by deviating from accepted legal usage, or even from ordinary language”²⁸. The judges deviate from the established meaning in order to arrive to a more just decision, or to make a decision in compliance with the author’s intent (when there is a gap between the wording and the intent), or for political and social policy reasons. These considerations, which did not draw attention of Yuri Rozhdestvensky, do not allow including of the judicial decisions in one legal genre with the statutes. In contracts legal terms also behave not the same way as in statutes and birth certificates: the authors and the users of the technical legal terms (whether defined in the text of the contract or not) coincide, and when it happens that one of the parties tries to deviate from the agreed meaning of the technical legal term for its own benefit, the dispute on interpretation goes to court. A judge in such cases needs to choose between two meanings, provided by two equal authors who defend their own author’s intents and act simultaneously as readers and authors of the text of the contract. Again, we come to a conclusion, that judicial decisions should be singled out as a separate legal sub-genre of legal documentary if we agree, that technical legal terms may be refined by the courts over some period of time, as Peter Tiersma pointed out. For continental system judge is not, strictly speaking (if we move within the division of legal genres which I started with), a creator of the word, but rather its user and as far as he or she remain in this capacity, no additional legal genres appear. Legal genre approach shows, that investigation of legal terms may come to different results in different legal systems.

²⁶ *Rozhdestvensky Yu. V.* Obshhaja filologija. Moscow, 1996. P. 19–26; idem. Principy sovremennoj ritoriki. Moscow, 2000. P. 92, 100–101.

²⁷ For more elaboration on the role of terms in documentary (business) prose see: *Rozhdestvensky Yu. V.* Tehnika. Kul’tura. Jazyk. Moscow, 1993. P. 136–180.

²⁸ *Tiersma P.* Op. cit. P. 108. See also about deviations in ordinary meaning: *Soboleva A.* Op. cit. Pp. 673–692.

Scientific legal literature and other types of academic legal discourse, as any other scientific and academic literature, is a result of individual creative work. Its reader is a legal specialist, who himself participates in the process of creating texts, so ‘author’ and ‘reader’ can change their roles. Yuri Rozhdestvensky fairly draws our attention to “the exchange of texts and communicative roles”, which takes place in the texts belonging to scientific genre, “because a reader is in most cases also an author. That is why we find in the texts of scientific and technical literature, united under the common term “professional literature”, the deviation in the meaning of the words and forms as compared to those accepted in the written documentary texts”.²⁹ It follows, that interpretation of legal terms in academic literature will be fixed within the boundaries of the particular legal theory or particular scientific school. For instance, ‘democracy’, ‘sovereignty’, ‘constitutionalism’ as terms may differ in different academic works, but they will mean the same through all the pages of one book or in all the articles of one scholar. Scientific terms are polysemous, but they have a common semantic core. In order to avoid confusion in understanding, the academic writer usually concretizes the meaning of the polysemous words by providing his or her definitions. Though these terms have different or slightly different meaning in different books written by different scholars, a lexicographer in a dictionary or in a thesaurus can assign them one generalized meaning.

It is important to note also, that Yuri Rozhdestvensky made a distinction between scientific terms and philosophical terms. Following his ideas, I must agree, that in legal philosophy, as in any other philosophical text, a term may be an invention of the author and exist only within his or her philosophical system (for instance, as a term ‘нормография’/ ‘normography’, invented by Yuri Arzamasov³⁰). Such terms have only one, unique meaning. As any other philosopher, every legal scholar is free to invent his or her own system of terms, which can be reproduced by his colleagues, students or other scholars, but, however, it remains unique.

As it can be seen from what I have said above, legal terminology is represented mostly in normative texts, documents and works of legal academics. When legal terms penetrate into mass media or ordinary speech, they, as a general rule, lose their terminological nature. That is why it is not appropriate to search for the answer about the nature of legal terms irrespective of the genre of legal discourse in which they are employed.

The proposed classification of oral and written genres is based on Russian philological tradition, which goes back to 19th century and which has been reflected in the numerous textbooks for the course “The theory of *slovesnost*”³¹. This course took its roots in *trivium* (rhetoric, grammar and logics), and was rhetorical by its nature. The purpose of the course was to logically build on a universal basis a complete, self-consistent system of composition and speech art, and for this purpose a system of speech genres and a system of rules for each genre was developed. Rhetoric was in the core of this course, because rhetoric “provides rules for consistent and exact presentation of thoughts and for proper disposition of parts of speech, in conformity with the kinds of each particular type of prosaic writings”³². The rules for invention, disposition and presentation of prosaic texts, which had to achieve the main goal — to convince the audience by arguments, good style (which, in its turn, included clarity, exactness, completeness and

²⁹ Rozhdestvenskij Ju. Op. cit. P. 138.

³⁰ Arzamasov Ju.G. (ed.). Normografija: teorija i metodologija normotvorcestva. Moscow, 2007.

³¹ This course was close to the course of composition and speech art in other countries and was elaborated for the educational purposes. For the detailed description of more than 100 textbooks on *Theory of Slovesnost* published between 1820–1923 with bibliography and commentaries see: Zarif’jan I.A. Teorija slovesnosti. Bibliografija i kommentarii. Moscow, Znanie, 1990.

³² Zarif’jan I.A. Op.cit.

brevity) and logical structure, — were borrowed from rhetoric, and their application was different in texts of different genres (for instance, in letters, academic essays, lectures, sermons, theatre, philosophy, etc.). The number of genres and the division of texts between genres differed from one author to another³³, but the main idea, that in order to write a good text one needs to take into consideration the correlation between the author (rhetor), the reader (audience) and the nature of the text (type of *slovesnost'*), remained in the center of all author's efforts. The choice and usage of words were also a part of these theories, and it was clear, that words behave differently in the texts of different genres. However, as far as the usage of legal terms in oral legal texts, both in monologues (court pleadings, closing statements, etc.) and dialogues (cross-examination of witnesses, negotiations of contract details, etc.) are the same as in written ones, there is no need to include them into the system of genres, which are relevant for the purposes of terminological analysis (of course, if we do not concentrate our attention on manipulative use of technical legal terms in presentation of facts and arguments in court with a purpose to mislead another party and the judges)³⁴. However, for a more detailed inquiry of behavior of words in legal texts this division and sub-division of legal texts will be relevant.

Legal Homonyms

As far as terms are the basis and the main characteristics of “documentary texts”, which makes documents different from other types of texts, the culture of the legal texts depends on description and proper use of terms. Here we come back to the question of whether the legal terminology can be standardized within the legal system taken as a whole. If a word in different legislative texts has different meaning, it is considered as a flaw in legislative drafting. However, as I mentioned above, there are numerous examples, when different meaning is assigned to the same word in different branches of law or in different jurisdictions.

For instance, in the law on consumers' rights the word *producer* is defined as “organization or entrepreneur which produces goods with a purpose of realization to the customers”³⁵, while in a federal statute, which contains the safety requirements for the use of pesticides, “producer — is a citizen or a legal person, producing pesticides or agrochemicals”³⁶. By providing a definition, a legislative drafter concretizes the meaning of a polysemous words for a particular field of application in practice.

Another example is the word *гражданин* (*a citizen, an individual, a person*), which has different meaning in Russian constitutional, administrative and civil law. The constitutional language draws a distinction between *citizen* as a person who is a national of the state with the official citizenship status and *everyone* as a person without citizenship. For instance, in the first sentence of article 41 the Constitution provides, that “*everyone* has a right to the protection of health and to medical assistance”, but in the second sentence says that medical aid is provided for free in the state and municipal institutions to *citizens*. In article 40 it guarantees the right to

³³ Ibidem.

³⁴ For the detailed structure of legal genres, both oral and written (*juridicheskaya slovesnost'*), see my “Ritoricheskaja podgotovka studentov-juristov, ili «Juridicheskaja ritorika» kak uchebnyj predmet”. In: *Predmet ritoriki i problemy ee prepodavanija* (materialy Pervoj Vserossijskoj konferencii po ritorike). Moscow, 1998. P. 194–206.

³⁵ Zakon o zashhite prav potrebitelej ot 07.02.1992 № 2300-I // Available at: <http://base.garant.ru/10106035/> (accessed).

³⁶ Federal'nyj zakon ot 19.07.1997 N 109-FZ «O bezopasnom obrashhenii s pesticidami i agrohimiakatami» (s izmenenijami i dopolnenijami // Available at: <http://base.garant.ru/11900732/#ixzz3jj4a8Hbe> (accessed).

housing to *everyone*, but in section 3 of this article says that “the housing is provided for free to low-income and other *citizens*, specified by law, if they are in need of it”. Civil law, in its turn, uses the word *гражданин* differently — it is understood as a physical person, as any individual, irrespective of citizenship. In Soviet law the words *citizen* and *person* were used as synonyms and were interchangeable, — probably, because the Soviet Union did not have to deal with refugees and migrants, the status of foreigners was clearly defined and their movement within the territory of the USSR was restricted. Legal and ordinary meanings of the word *гражданин* at that time coincided, and where a necessity arose to draw attention to the legal ties between a person and the state, the term ‘USSR citizen’ was used. However, from the perspective of precision at that time there was no need in defining the proper sense of this polysemous word, because it could be easily found from the context without making the text ambiguous.

Today in Russian law we also find the word *гражданин* in the meaning ‘a person, any person’. For instance, Article 11(2) of the Act on Militia, which was in force up to year 2011, granted the police the power to “check *citizens’* and officials’ identity papers”³⁷. Definitely, in this provision the word *citizen* related also to foreigners and meant “a physical person”.

A new Police Act, which came in force in March 2011, in most cases uses the word ‘individual’ (*лицо*) as related to a physical person, though in some provisions we can find again the word *citizen* (*гражданин*) which can be read as a synonym for “person”: “*Citizens*, public associations and organizations have a right, in an order stipulated by laws of the Russian Federation, to receive true information about the police activity...” (8.2)³⁸; “police in realizing its activity seeks to attain public confidence and support of *citizens*” (9.1), “the actions of the police should be justified and clear for the *citizens*” (9.2), “in case where a police officer violates rights and freedoms of *citizens* or rights of organizations, police should take measures within its competence to restore the violated rights and freedoms... should bring apologies to the *citizen*, whose rights and freedoms were violated by the police officer, in the place of this *citizen’s* residence, employment or study...” (9.3), “information, diminishing dignity, honor and business reputation of the *citizen*, if it was made public by a police officer, in cases, when the court finds it untrue,should be disclaimed in the same form, in which it had been made public” (9.4). The same law entitles a police officer with a power “to seize from *citizens* and officials the documents, which have characteristics of falsification...” (12.37). Though it can be argued, that ambiguity still remains and may cause debates about the “true meaning” of the word *citizen* in the above mentioned cases in law implementing practice (if by some reason the police would prefer to read the text on human rights guarantees narrowly and restrictively), it would have been weird to grant a right to demand apology from the police in case of unlawful police actions only to nationals of the state and not to provide it to persons without citizenship.

This example brings us to a question, if the use of the word *citizen* in different senses in a number of legal documents or even within the limits of the same piece of legislation be treated as a flaw in legislative drafting and be corrected, for instance, by its substitution with *everyone*, *person*, *physical person*, *individual* or by providing it with a legal definition “for the purposes of the current act”? In my opinion, in closely related branches of law, in *pari materia* acts, in one branch of law and, without saying, in one legal text (whether it is a normative text or a text of any other genre) the meaning of a polysemous word should be fixed. We need to avoid the use of the same word in its different senses. If different words are used (*citizen* and *person*) they should mean different things. If they are used as interchangeable, the drafter should make cor-

³⁷ Zakon Rossiyskoy Federacii «O milicii» ot 18.04.1991 № 1026-1, st. 11 (2).

³⁸ Federal’nyj Zakon “O policii” ot 07.02.2011 N 3-FZ (redakcija ot 12.02.2015) // Available at: http://www.consultant.ru/popular/police/115_2.html#p116 (accessed).

rections and employ only one through all the text. In legal texts on rights and freedoms the use of a word *citizen* can be interpreted as related to nationals of a particular state only and may cause violation of rights of foreigners and stateless persons.

But what we have to do, if a word has different meanings in different branches of law (in constitutional law and in civil law)? Does it mean that these words are not legal terms of art or that we are dealing with different systems of legal terms? Or, probably, law is an exception and legal terms of art can have different meanings, as distinct from other terminological systems?

First of all, the answer depends on whether we are dealing with homonyms or with polysemous words. Polysemous words have different, but related meanings, while homonyms are separate words. This distinction is clear in theory, but difficult in practice. As Peter Tiersma noted, “the distinction between homonymy and polysemy is not always easy to make, which shows that even in fields beside law, technical terms are seldom as precise as one might like”³⁹. The word *ука* (*legal claim, lawsuit, legal action*) — both a claim and a document, which contains the claim — is polysemous. These two meanings are closely related and can be treated as an example of rhetorical device — metonymy. Two main senses of *citizen* — a person and a national of the state — are also closely related, but still the difference is significant, because the choice of the interpretation brings us to different results in law application practice. I am inclined to consider *citizen* in civil law and constitutional law as separate words, that is, as homonyms. Polysemy in legal texts can exist only for the words, which are used in their ordinary sense and which are concretized for a particular context by assigning them a specified meaning by providing them with a definition. When we deal with different meaning of the word in different statutes, we deal with homonymy of terms, not with the polysemy.

Let us come back to the example about ID checks. If a police officer is entitled to check the ID documents of the Russian citizens, the common sense dictates that there is no reason, why he should not be entitled to do so with the foreigners — especially taken into account, that there is no reliable way to identify by appearance, if a person is a citizen or a foreigner. However, when we read the provision about the seizure of seemingly falsified ID documents, it is not clear, whether a policeman can seize the passport of a foreigner, if, in his view, it contains signs of falsification.

Here we come to the second point: how to treat ordinary words, which change their meaning in a legal text? “One of the reasons that homonymy and polysemy are of interest to the law is that there are many words that have a legal meaning very different from their ordinary significance”, — writes Peter Tiersma. He calls such words *legal homonyms*, and notes, that “they can easily end gender confusion”⁴⁰. For example, the words *адвокат, защитник* have both ordinary meanings and legal meanings⁴¹, and there were disputes whether in the text of our Constitution these words were being used in a technical or ordinary sense. Peter Tiersma adduced interesting examples from the US case-law, from which it follows, that “often it helps to consider, as some courts do, whether the document was written by a lawyer, in which case the technical legal usage should probably prevail, or by a layperson, who would most likely have intended the ordinary meaning”⁴². Russian judges have never used this approach, and it would not be easy to define, whether deputies or drafters of the Russian Constitution should be

³⁹ Tiersma P. Op. cit. P. 111.

⁴⁰ Tiersma P. Op. cit. P. 111.

⁴¹ See elaborations about these words and their interpretation in court decisions in: Soboleva A. Op. cit. pp. 673–692.

⁴² Tiersma P. Op. cit. P. 112.

classified as lawyers or as lay persons for the purposes of interpretation of the texts they have drafted. As distinct, the judges in the US in *Ocasio v. Beureau of Crimes Compensation Division of Workers' Compensation* wrote: "Technical words and phrases that have acquired a peculiar and appropriate meaning in law cannot be presumed to have been used by the legislature in a loose popular sense"⁴³.

There are also words which have different meanings in different sciences. The word 'inequality' has different meanings in mathematics and in law, though they have a common semantic core. The Russian word *баланс* (*balance*) in taxation and accounting (*surplus balance, balance sheet, statement, profit-and-loss account*⁴⁴) has a meaning, different from its meaning in international law or in constitutional law (*fair balance, balance of interest, balance of constitutional values*). In Russian civil law *balance* is one of the characteristics of the legal entity. If we enter a word *balance* in the search bar of the Russian legal database "Garant"⁴⁵, we will find more than 70 terms, which contain it. For the word *лицо* (*person*) we will find 66 word-combinations, for 'guarantee'—29. Professor Rozhdestvensky fairly classified these words as *общенаучная лексика* — "general scientific words" (or "words of general science").

Exactness, which is necessary for legislative texts, can be reached by use of the complex terms — combination of words: *bank's balance, accounting balance, risk and reward balance, balance sheet, statement of balance, balance of profit, balance depreciation*, etc. Each of these word-combinations may have a legislative definition, and thus the word *balance* will be concretized for a particular statute or set of statutes. And if an ordinary language and in lexicon of general science the meaning of a word *balance* is understood from the context, in legal texts it will be used, in most cases, as a part of word combination. Complex terms (terms consisting of word combinations) allow placing polysemic words into different terminological systems without sacrificing the rule of monosemy of terms. Professor Reformatsky noted, then when a word turns into a term of art, its meaning becomes specialized and restricted. Depending on what terminological system it belongs, it has different combinatory power: assimilation in politics can be forced and natural, in phonetics — progressive and regressive⁴⁶.

According to Yuri Rozhdestvensky, the same words, when they change the genre they belonged to (for instance, when they move from the standards of technical terms, drafted and approved by the agency or the government, to professional literature), change their nature: they start to behave as homonyms of purely technical terms, which are used in documents⁴⁷. If we agree with this approach, we need to recognize, that when a word finds itself in different legal documents (statutes or codes, by-laws, contracts, etc.) which provide it with a definition, than homonyms are created. Theoretically, this position is in compliance with A.A.Reformatsky's approach: "Good terms of art should be distinguished from polysemy, expressiveness and, by means of that, from ordinary non terminological words, which are, in their turn, mostly polysemous and expressive"⁴⁸.

⁴³ *Ocasio v. Beureau of Crimes Compensation Division of Workers' Compensation*, 408 So. 2d 751, 753 (Fla. Dis. Ct. App. 1982). Cited: *Tiersma* P. Op. cit. P. 275.

⁴⁴ In many cases the Russian word *баланс* will be translated into English differently, because the semantic fields of the words in Russian and in English do not coincide.

⁴⁵ Available at: www.garant.ru; <http://english.garant.ru/> (accessed: 20.08.2015)

⁴⁶ *Reformatskij* A.A. Ukaz. soch. P. 113.

⁴⁷ *Rozhdestvensky Yu.V. Tehnika. Kul'tura. Jazyk. Moscow, 1993. P. 145.*

⁴⁸ *Reformatskij* A.A. Ukaz. soch. P. 113.

Conclusion

In legal texts we can meet the words, which are used a) as ordinary words and as terms (*defender, advocate*), b) as terms of different terminological systems (*assimilation* in linguistics, in political science and in law on national minorities and aboriginal population), 3) as purely legal terms of art, or technical legal terms (*restitution, vindication*).

In legislative texts, as in other documentary prose, for which a creator and a user of the terms do not coincide (professor Rozhdestvensky called them ‘texts with double officialization’), we can meet polysemy (*advocate, defender*), homonymy (*право — law and right*), and monosemy (kilometer).

Legal genre approach shows, that technical legal terms and ordinary words behave differently in legal texts of different genres, and that investigation of the professional use of words by lawyers should take place with legal genres in mind.

The change of word’s meaning in law happens not accidentally, but in compliance with a special procedure — when the word is defined in legislative act. In common law system and more often also in countries with continental system it may happen also by means of court interpretation.

Though we can have difficulties with interpretation both in cases when we have legal definitions and when we have not, their use in legislative texts can be considered as desirable. The meaning of the polysemous words in legal texts may differ for different branches of law and even for closely related branches of law. As a serious flaw in legislative drafting I consider only cases, when the same word has different meaning within the text of the same statute or when the same word is used in texts of laws, which regulate similar or close relations (for instance, family law, housing law and civil law; constitutional law and administrative law). In the last case the practicing lawyers and judges will have difficulties in interpretation, because it will be arguable, whether these statues are *in pari materia* statues and if the analogy can be applied here. The use of definitions, which create homonymy, will resolve the difficulty with interpretation, but will be also an evidence that law does not exist as a unified terminological system.



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