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THE LANGUAGE OF LAW: CONCEPT AND SPECIFICS

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Abstract

Recognizing the current existence of legal linguistics as an independent interdisciplinary area of science, we highlight the problems existing in this field of knowledge, particularly related to inconsistent and fragmentary nature of studies, from both linguistic and legal points of view, lack of integrated approach as well as absence of unified and sufficient definitions of the investigated phenomena. Firstly, this may be attributed to the lack of specialized knowledge in the legal field, which linguists demonstrate by neglecting legal specifics of the customary language patterns, often focusing only on deficiencies contained in legal documents; secondly, legal experts, for their part, often consider only separate phenomena, not rising to the level of systemic studies and confining themselves for the most part to general reasoning on transparency and intelligibility of the language of law. The article contains a definition of the legal language, establishes its place in the language system as well as its relationship to other linguistic phenomena, including literary language, everyday language and professional language. The article suggests considering legal language in the narrow and the broad aspect. In the narrow sense the legal language may be compared to a professional language. In its broad sense the legal language includes professional legal language (i.e. the language used exclusively by the members of the corresponding profession) and unprofessional legal language (unrelated to the professional affiliation of speakers and addressees), since it may be used by non-lawyers.

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1. Introduction

Presently one could consider legal linguistics as an independent interdisciplinary area of science. However, despite a rather significant volume of scientific works, sharing this subject, the terminology of this area of scientific research is quite unstable demonstrating inconsistency and lack of uniformity.

It should be noted, that currently the scientific area in question does not have a unified definition of the phenomenon we are interested in, just as there is no expressly accepted term for its designation: “language of law”, “legal language”, “lawyers’ language” – are among the terms that we encounter in academic literature. However, it is customary in legal science to distinguish between the terms “legal language” and “language of law”.

2. Problem Statement

Modern science is characterized by a large number of interdisciplinary research. So, the increasing interest of researchers is caused by questions arising at the intersection of law and linguistics. The first studies in this area were carried out at the beginning of the XIX century in Germany. However, attempts to create a unified approach were made only in the second half of the twentieth century. Since then, the issues of the interaction of language and law are regularly considered in the works of domestic and foreign jurists and linguists. Today we can talk about the existence of an independent interdisciplinary scientific field. At the same time, the process of forming a new field of science is accompanied by a number of difficulties: the instability of the terminological base, the ambiguity of its object, subject, tasks, methods, boundaries, etc. We believe that the existing conceptual apparatus is imperfect and requires clarification. It is also necessary to specify the key characteristics of the legal language.

3. Research Questions

Like most interdisciplinary research works, the studies in the area of legal linguistics are confronted by the challenge of use of terminology from the two sciences: law and linguistics. We believe the conceptual framework of linguistics to be the most appropriate for description of the legal language, since a linguistic phenomenon is impossible to describe without recurring to the science, which is focused on the language as a subject of study.

According to Kostromicheva (2007), this discipline, located in the transitory zone, “must equally pertain to the fields of linguistics and law. However, currently there is an apparent imbalance in favor of linguistics” (p. 57). The researcher notes that in the course of study of the matters situated at the interface between the language and law, the “pure” linguists reveal a high level of linguistic knowledge coupled with a lack of knowledge in the field of law (Kostromicheva, 2007, p. 57). The linguists concentrate in their research on individual mistakes in the language of procedural acts and judicial discourse (Zubarev, Statkus, & Krysin, 2017).

On the other hand, the studies initiated by legal scholars are often characterized with a too narrow a focus (separate research on terminology, language specifics of particular branches of law, forensic linguistics, etc.) lacking general systemic approach, which could be provided by linguistics. Moreover, such research works tend to include general reasoning on accuracy and transparency of the language.

4. Purpose of the Study

The purpose of the study is to analyze the perspectives existing in legal linguistics in relation to definition of legal language and its place in the language system.

5. Research Methods

We achieved the established objectives using the dialectic method of inquiry complying with its requirements in relation to comprehensive and complete nature of study, exploration of a phenomenon in its development, interrelation and interdependence. Additionally, the following general scientific methods were used: scientific analysis (description, classification, and explanation), synthesis, deduction, abstraction and structural-functional method. With account for the subject of study, the following special methods of inquiry were used: formal-legal, formal-logical, systemic, statistical, historical and technical-legal analysis methods and others.

6. Findings

The scientists consider possible to distinguish two research lines within the field of legal linguistics. The first line is directly related to the study of different characteristics of the language of law. Whereas, the second one is oriented towards the matters of its legal regulation. Bossov (2009) conducted an analysis of the existing concepts in the field of legal texts, coming to the conclusion that all the studies may be conventionally divided into predominantly linguistic (including the texts dedicated to terminology and stylistics), strictly theoretical in nature, and, in contrast, those oriented to practical application, “aimed at enhancement of speech culture of lawyers or dedicated to the practical interpretation of particular terms” (p. 26). According to the author, both types of studies are insufficient, as they take into account either only linguistic or only practical aspects.

Consequently, one can refer to the need of development of an integrated approach to the study of phenomena in the field of legal linguistics, which we will attempt to do by reviewing the language of law in the context of its functional and stylistic structure, in conformity with the hierarchy of the Russian language.

It should be noted, that currently the scientific area in question does not have a unified definition of the phenomenon we are interested in, just as there is no expressly accepted term for its designation: “language of law”, “legal language”, “lawyers’ language” – are among the terms that we encounter in academic literature. However, it is customary in legal science to distinguish between the terms “legal language” and “language of law”. Thus, Vlasenko (2016) considers the former to be more general, defining it as “a legal vocabulary, a word-stock (pool) of jurisprudence... entire system of words and expressions (including terms and concepts), used by law in all of its aspects” (p. 14). As to the second term, the researcher refers to it as “a vocabulary of statutory and regulatory enactments (laws, etc.) subject to official interpretation” (Vlasenko, 2016, p. 14). Spasov (2016) shares a similar point of view: “legal language is a holistic concept embracing several types of language of law...” (p. 83).

We believe that the above definitions are not sufficient to define the language of law, as they accentuate only the lexical component of the language, which is not enough and does not capture this

phenomenon in its entirety. Shepelyov (2015) suggests the most generalized definition of the term “legal language”, highlighting its systemic nature: “legal language is an element of legal life” representing “a system, in which the language is a means of implementation of the legal sphere of society and the related spheres” (p. 70).

Based on the above approaches, we suggest considering the legal language in two aspects: the narrow and the broad one. In each of these aspects, it is based on the general norms of the literary language, set out in the orthography and grammar rules, but is rather more strictly regulated in order to make the legal texts unambiguous.

In the narrow sense, the legal language corresponds, in our view, to the language of professional communication. In the broad sense, the use of the legal language is not exclusively limited to legal professionals. In this context, one cannot speak of the legal language as of a purely professional language, since the legislative system is dedicated to serving the needs of a wide spectrum of social relations and, consequently, is accessible to an unlimited circle of people regardless of their professional occupation. In the broad sense, the legal language may be divided into professional legal language (i.e. used exclusively by the members of the corresponding profession) and unprofessional legal language (unrelated to the professional affiliation of speakers and addressees), since, in our opinion, in certain situations the legal language may be used by non-lawyers (for example, when filing a law suit), however involving a different level of proficiency of the legal language.

As we have already mentioned, the legal language is a complex multi-level formation, manifesting itself in various forms and ways. In this regard, there are also many theories concerning the place of the legal language and its relation to different planes of existence of the language in general.

Thus, there are two primary points of view on the essence of the legal language and its relation to the literary language. The first one implies complete confluence of the legal and the literary languages. The text of a law written in Russian language must be clear to all of its native speakers; law abidance involves understanding of laws, in this way, specific legal language reduces to professional slang of lawyers. This point of view was widely accepted in the soviet science and practice, “aiming to validate the idea of proximity of the Soviet law to the broad masses in contrast with the bourgeois law” (Golev, 2004, p. 44).

Supporters of the second line of thought insist on the difference between the two languages, since, according to them, any legal text is created and then interpreted by professionals. Making the contents and meaning accessible to non-lawyers is a task for a legal expert (attorney, legal consultant, judge, etc.). In such a manner, this perspective makes a reference to the view on the legal language as a language of a closed professional group, which we will discuss later, comparing the legal language with other professional languages.

Undoubtedly, the functioning of the legal language relies on the general norms of the literary language, set out in the orthography rules and grammars, and is often characterized with additional, stricter norms intended to make the legal texts explicit and unambiguous.

Linguistics and legal linguistics contains a widely shared view on the legal language as one of sub-styles or functional styles of the literary language. Thus, for example, Shepelyov (2015) and other

researchers highlight the need to consider the language of law as an independent functional style of Russian language arising as a result of development of the legal science (Isakov, 2000).

The most detailed investigation of the legal language as an independent functional style was carried out by Shepelyov (2015). In his work, he consistently correlates the legal language with the existing functional styles of the literary language (official, scientific, publicistic and conversational) coming to the conclusion that “the analysis of each of the existing functional styles proves that none of them fully corresponds with the relevant element of the language of law. These elements prove to be broader, including components from several styles at the same time (Shepelyov, 2015).

Turanin (2010) points to the need of distinction between the general literary language “used for artistic expression of various phenomena and processes” and literary sub-languages “necessary for description of specific phenomena and processes characteristic of particular fields of knowledge, possessing all the attributes of the literary language, but having their own particular features” (pp. 7-10). The scientist identifies the legal language as the latter.

We cannot deny the fact that the legal language (particularly, its written form) is based on the literary language in its essence. Nevertheless, we cannot fully agree with the perspectives suggesting their equivalence or considering the legal language as one of the literary sub-languages. As a non-dialectal form, the literary language contrasts with dialects and other non-literary language forms. In our opinion, the legal language is much wider than the literary language and comprises non-literary linguistic forms.

Among other non-literary linguistic forms, everyday conversational speech, colloquial language and dialects are particularly interesting for our study.

There are two viewpoints on the relation between the legal language and the everyday language. The first one implies that the legal language “... is not intended for everyday communication, the use of the legal language occurs only in the case of contact with the law” (Turanin, 2010, pp. 7-10). Supporters of the opposite position insist that the legal language is basing itself on the everyday language. Thus, Sabo (2016) asserts that “what is termed legal language is essentially nothing else but the common language complemented with specialized expressions and technical terms, meaning the language which uses the everyday expressions more accurately” (pp. 245-246). According to our opinion, the substance of interrelationship between the legal language and the everyday language is expressed in the position of Shepelyov (2015): “The legal language in its spoken form is based on the everyday language. For this reason, the grammar and overall vocabulary of the legal language matches the grammatical system and vocabulary of the everyday language” (p. 66).

We will place particular focus on the relationship between the legal language and territorial and professional dialects. It is around this topic that the main disputes on the essence of the legal language revolve.

The question of penetration of territorial dialects into the legal language is hardly considered by the scientists. One might presume that the influence of the territorial speech on the legal language is completely ruled out. It is indeed impossible to find dialecticisms in, let us say, written federal statutes, however, there is a lexical layer which entered the general language from the regional and territorial dialects, and is still marked as “colloquial” or “archaic” vocabulary. This vocabulary is similar in nature to regionalisms, i.e. the words adopted from national languages and territorial dialects (Rezvukhina, 2015,

pp. 84-90). In this way, the modern legislation includes the term “*pristroy*” (from Rus. “annex”), e.g. in the text of the Regulation of the RF Government dated 26 December, 2017 No. 1642 On. Approval of the State Program of the Russian Federation “Development of Education” (in the Rules for provision and allocation of subsidies from the federal budget to the members of the Russian Federation for the co-financing of the costs arising in the course of implementation of government programs of the members of the Russian Federation for implementation of the activities aimed at promoting the establishment in the members of the Russian Federation (based on the forecasted demand) of new places in general-education institutions as part of the state program of the Russian Federation (“Development of Education”): “ensuring the establishment of new places in general-education institutions by way of construction, acquisition (reacquisition), reconstruction and (or) overhaul of at least one building (*annex (pristroy)* to the building) in accordance with the application and the forecasted demand...”; in the text of the Ruling of the Supreme Court of the Russian Federation dated December 19, 2017 No.13-KГ17-9: “Under such circumstances the decision of an appellate court on demolition of the entire *annex (pristroy)* let. A7 with the area of 88 sq.m. does not comply with the above law and its interpretation from the point of view of proportionality of the means to remedy violations”. In addition, it should be noted that the Russian Dialect Dictionary (2017) refers this word to the Perm and Ural dialects. In the thesaurus by Efremova (2018) this word is marked as “archaic”. In this case, the word “*pristroyka*” is recognized as a literary norm (Efremova, 2018, p. 367). Consequently, we can make a conclusion about penetration of elements of territorial dialects and spoken languages into the legal language.

7. Conclusion

As for the relationship between the legal language and languages of professional communication, we believe it appropriate to consider it in two aspects: the narrow and the broad one. In each of these aspects, it is based on the general norms of the literary language, set out in the orthography and grammar rules, but is rather more strictly regulated in order to make the legal texts unambiguous.

In the narrow sense, the legal language is comparable, in our view, to a professional language, in the sense given to it by the representatives of the functional perspective, considering it as a specific functional language form in the framework of which various styles may be applied in their turn. Following Davydova (2011) we believe that it would be more accurate to speak of the legal language as of an integral phenomenon, functioning in various areas of legal work and, therefore, making use of several classic functional styles of Russian language (Efremova, 2018).

However, we do not reduce the legal language to a unique terminology system, since, in our opinion, this phenomenon includes, apart from the terms, professional words (semi-official words, commonly used in spoken speech of people engaged in a certain profession) and even professional jargon (Chufarova, 2018, p. 9-14).

In the broad sense, the use of legal language is not exclusively limited to legal professionals. In this context, one cannot speak of the legal language as of a purely professional language, since the legislative system is dedicated to serving the needs of a wide spectrum of social relations and, consequently, is accessible to an unlimited circle of people regardless of their professional occupation. In the broad sense, the legal language may be divided into professional legal language (i.e. used exclusively

by the members of the corresponding profession) and unprofessional legal language (unrelated to the professional affiliation of speakers and addressees), since, in our opinion, in certain situations the legal language may be used by non-lawyers (for example, when filing a law suit), however involving a different level of proficiency of the legal language.

We believe that the everyday language constitutes the basis of the legal speech just as the literary language is the basis for the written form of the legal language.

Consequently, we believe, that in its functioning the legal language, relies on the general norms of the literary language, set out in the orthography rules and grammars, and is often characterized with additional stricter norms, intended to make the legal texts explicit and unambiguous and, according to its application field, makes use of various functional styles of the literary language.

It is due to the understanding, that the legal language in its functioning makes use of various styles, operating their characteristic linguistic means for the accomplishment of communication tasks, also associated with these styles, that we cannot identify the legal language with a particular style or assume that it represents a separate functional style in itself.

We suggest the following definition of the legal language: a sign system, designed to express informational component of the law system, providing for creative, implemental, scientific and educational activities and communication of participants in legal relations.

References

- Bossov, A. E. (2009). *Functioning of the Terms in National Linguistic and Legal Texts of the Second Half of the XX – Beginning of the XXI Century in the Light of the Discourse Analysis Data* (Doctoral Dissertation). N. Novgorod: Nizhny Novgorod state University.
- Chufarova, E. N. (2018). Legal Terms, Professional Vocabulary and Professional Slang: the Problem of Distinction between the Concepts. *Law and Politics*, 2, 9-14.
- Davydova, M. L. (2011). Concerning the Style of the Language of Law. *Juridical Linguistics*, 11, 67-76.
- Efremova, T. F. (2018). *New Dictionary of Russian Language. Educative Thesaurus* (in 2 vol.). (Vol. 2, p. 367) Moscow: Russian language.
- Golev, N. D. (2004). On Specifics of the Language of Law As Part of the Nation-Wide Russian Language. *Juridical Linguistics*, 5, 39-57.
- Isakov, V. B. (2000). Language of Law. *Juridical Linguistics*, 2, 64-79.
- Kostromicheva, M. V. (2007). Legal Linguistics: Addressing the Relationship between Language and Law. *Central Russian Journal of Social Sciences*, 3(2), 57-61.
- Rezvukhina, U. A. (2015). Regionalism: on Definition of the Concept. *Interexpo Geo-Siberia*, 6(2), 84-90.
- Russian Dialect Dictionary (2017). (Edition 31, p. 422). Saint-Petersburg: Nauka.
- Sabo, I. (2016). *Socialist Law*. Moscow: Progress.
- Spasov, B. P. (2016). *Law and Its Interpretation*. Moscow: Legal Literature.
- Shepelyov, A. N. (2015). Legal Language as a Phenomenon of Legal Life. *Tambov University Journal. Series: Humanities*, 8(148), 65-70.
- Turanin, V. U. (2010). Concerning the Legal Language Phenomenon. *Modern Law*, 7, 7-10.
- Vlasenko, N. A. (2016). *Language of Law*. Moscow: Infra-M.
- Zubarev, V. S., Statkus, V. F., & Krysin, L. P. (2017). *Language and Style of Indictment*. Moscow: Legal Literature.