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LINGUISTIC SUPPORT OF THE HEALTHCARE LEGAL REGULATION

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Abstract

The article analyses the problem of integration between linguistic and legal science in order to increase the efficiency of healthcare legal regulation. The initial point is the necessity of branch-wise specialization of legal linguistics which explores the functioning of language in a legal sphere. Legal regulation is considered as the establishment of legal rules as rules of behaviour in a certain sphere and formation of legal relations which content of mutual rights and responsibilities of the subjects of law. Legal regulation requires linguistic support. According to the author linguistic support of legal regulation may be defined as the appliance of linguistic tools (lexical, syntactical, and stylistic) to achieve legal goals. Legal linguistics has developed a number of general requirements posted to certain elements of legal regulation. The general linguistic requirements have specific interpretation when applied to certain branches of law, in particular, in healthcare. Linguistic support of professional medical care has to promote the enforcement of the citizens' right to healthcare, especially in a context of the development of telemedicine healthcare technologies, healthcare commercial services, and modern medical technologies. The author proves that verbal communication between a patient and a physician is the linchpin of the structure of linguistic support of healthcare legal regulation. The physician has to find adequate language tools to collect the patient's medical history, to provide the patient with the information regarding his or her state of health, to get the patient's informed consent to medical intervention, and to draft medical documents. The justification of the physician's choice of language tools might be analysed within the scope of a speech or psycho-linguistic examination.

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1. Introduction

In the information-oriented society the level of information appliance and accessibility drastically affect economic, social, and cultural conditions of citizens' lives and the enforcement of their rights. Even in a context of digitalization the amount of information externalized in a spoken form is significant. This means that new tasks are set before the science of linguistics. To accomplish these tasks, linguistics interacts with several areas of scientific studies, including law. In the area of law, information has multiple substances. Information may be an object of right, a legal goal or a mean towards this goal, an object of a violation or a mean towards wrongdoing, etc. Thus, linguistic and legal studies might be successfully integrated to resolve both theoretical and action-oriented issues.

2. Problem Statement

As a reaction to these challenges, the science of legal linguistics has been formed. It studies the functioning of languages in a legal area (e.g., in lawmaking, law enforcement, legal texts interpretation, development of legal terms, etc.) (Krasnov, Hadvikova, & Shkatulla, 2014; Fetykov, 2014; Tarasevich, 2012).

The totality of all legal phenomena, institutions, and processes forms the category called "legal system". The number of this system's elements directly affect social relations and form legal regulation. Legal regulation includes such legal tools as laws, legal facts, legal relations, acts of rights exercising, acts of law enforcement. Legal regulation basically sets the laws which may be defined as rules of behavior in the specific areas of social relations. This includes the adoption of statutes, subordinate laws, making contracts. On the basis of these legal regulations legal relations, i.e. connections between the subjects of law which consist of their mutual rights and responsibilities, are formed and evolved. If the rights are violated, they might be protected and re-established by the law. Failure to fulfill responsibilities may cause legal liability. All of the legal regulation stages mentioned above require proper linguistic support.

3. Research Questions

Despite the fact that lately this range of problems is being actively researched, some important issues are still not resolved. In particular, it is necessary to identify the means by which legal science and linguistics interact with each other in relation to legal regulation and its specific spheres. The research questions are: 1) what linguistic support of the legal regulation is; 2) how this support is performed; 3) what the requirements placed to the elements of legal regulations in this sphere are; 4) what the specifics of such requirements in relation to the different branches of law are (as exemplified by the health care).

4. Purpose of the Study

The purpose of this research is to attempt to define the term "linguistic support of the legal regulation", identify the universal legal-linguistic requirements and demonstrate the specifics of its' realization in health care.

5. Research Methods

The general scientific methods have been used: dialectics, analysis, synthesis, abstracting and specialization. Specific legal methods used in the article are technical and dogmatical research methods.

6. Findings

6.1. Linguistic support of legal regulation: definition, general requirements and their specific forms

Linguistic support of legal regulation may be defined as the appliance of linguistic tools to accomplish legal purposes. The legal linguistics has developed several general requirements imposed on certain legal regulation elements. In particular, the legal norm must be formulated in such a way that a rule of law is clear to the subject of legal relations and has a definitive interpretation. The text of a statute or any other legal act has to be understandable and straight-forward both logically and stylistically. The named qualitative criteria may be applied to any legal document, including courts decisions (Krasnov et al., 2014).

The general linguistic requirements have specific interpretation when applied to the certain branches of law. Every branch of law has its own specific problems which require linguistic support. For instance, for the procedural branches of law expert examinations of speech are of a current interest (in civil procedure such examinations are used in the disputes over authorship, defamation disputes, in criminal procedure they are used in extremism indictments and stirring up racial, religious, national, and social hatred accusations, etc.) (Galyashina, 2015, 2015b; Lisovtseva & Petrova, 2014; Shuravina, 2013).

6.2. The specifics of the legal regulation linguistic support in the healthcare system

In the meantime, there is no other branch of law, for which linguistic support is so vitally important as it is for the medical law. The specifics of the medical law which include different groups of social relations explain the importance of the linguistic support to this branch of law (Kaletskiy, 2019). For example, medical law covers relations which occur while forming the national healthcare system and international cooperation in the medical and biotechnological sphere, delivering different types of healthcare, including pharmaceutical provisions addressed to patients and healthcare organizations, etc.

In the current environment, the legal regulation of healthcare has some fundamental specifics. In its turn, this requires the appliance of adequate language tools both to the process of verbal communication between the subjects of medical-legal relations and to the production of medical documents. Thus, the problem of optimizing the methods of fixation, safe-keeping, and transferring medical information related to the healthcare provision arises. In other words, the specifics of legal regulations in the healthcare sphere predetermine the specifics of its linguistic support.

One of such specifics is the requirement to the healthcare system to correlate with the rules of ethics (Kanunnikova & Shinko, 2010). It is explicitly provided by Article 6, 36¹, 73 of the Federal law of November 21, 2011, № 323-FZ “On the Fundamentals of Public Health Protection in the Russian Federation”. In particular, the rules of ethics and morality must be followed in order to secure the priority of the patient’s rights and interests while health care delivery. Public health care worker is responsible for

complying with the rules of medical and deontological ethics. The specific rules relate to the ethical justification of the possibility to apply certain preventive and diagnostics measures and to provide medical treatment and rehabilitation while its' clinical testing. Complying with ethical rules in the patient-doctor relations affects the system of language tools used in their communication.

Modern healthcare functions under free-market conditions. It is necessary to secure the accessibility of high-quality medical care to the nation, including healthcare which is provided on a commercial basis. Thus, the linguistic support of the medical and health insurance organizations' work, including the process of formulating the terms of commercial contracts, is required (Voitenkov, 2014). Patient in healthcare relations has the status of the service recipient. As a service recipient, a patient has a right to obtain necessary information about the medical services and the conditions of its' provision. Thus, it is required to adequately choose language tools to achieve these goals.

The development of information technologies greatly affects the system of healthcare. Starting January 1, 2018, the newly passed law has enacted telemedicine healthcare technologies in Russia (Akhmina, 2016). These technologies are intended to provide cooperation between medical healthcare workers, patients, and their legal representatives. Such technologies may be applied to exercise distant consultations and medical screenings, to form a board of doctors. Various medical documents, including patient's medical record and medical sick leave certificates, may exist in electronic form (Zhuravlev, 2017). The uniform state healthcare system creates a supportive environment for telehealth development.

It is evident that these processes have to affect the development of linguistic tools used while virtual communications between the subjects of medical-legal relations. When the empiric material is collected, these changes might be evaluated in the context of its' effect on the patients', healthcare workers', and medical organizations' rights and responsibilities enforcement.

6.3. Verbal patient-doctor communication in a structure of linguistic support of healthcare legal regulation

Verbal communication between a patient and a doctor is the linchpin of the structure of linguistic support of healthcare legal regulation (Akayeva, 2007; Barsukova, 2007; Shuravina, 2013). This is caused by the following circumstances.

1) Relations regarding medical care provision is the core subject of the legal regulation of medical law. The enforcement of every citizen's right to healthcare depends on how effective these relations are. Thus, all other groups of social relations regulated by medical law are only secondary and supportive.

2) The process of providing medical care on its every stage is characterized as an information exchange between a physician in charge and a patient, in some cases – between them and other subjects (consulting physicians, healthcare organization, health insurance organization, attorneys, experts, etc.). So, when the patient seeks healthcare, they provide identification documents (excluding the cases where medical care is provided anonymously), documents that prove their status as an insured in a compulsory medical insurance system (e.g. a certificate of insurance), and other documents to a healthcare organization. The medical organization supplies the patient with information about the medical help provided and the conditions of its provision. In a diagnostic and treatment process patient's complaints and medical history are collected and analyzed, treatment methods are discussed and chosen, the patient's

medical status is controlled. When the treatment is completely implemented, the patient is provided with information about the treatment's results and after-effectiveness.

3) Informed volitional consent of the patient is the prerequisite to every medical intervention. Patient's refusal of medical intervention also requires providing the patient with information about the consequences of such refusal. Thus, lack of information provided to the patient questions legal faultlessness of his or her will expression regarding medical intervention. Moreover, incomplete or ineffective information exchange between the physician and the patient may cause defects in the medical care provision (chronological, substantial, systematic, ethical, etc.). For the patient, this may create a risk of a personal injury, for the healthcare organization – a risk of facing personal injury claims (including moral harm claims).

Consequently, both the consulting physician and the patient hold an interest in forming favorable information exchange. To do so, they require some verbal communication skills. The patient only needs basic communication skills, while the physician is obligated to have professional communication skills. Moreover, this requirement is legal, since it is explicitly stated in their professional standards. The physician has to be able to collect patients' complaints, their medical history, to find out what patient's disease is, to analyze and interpret the results of communication with the patient. The doctor who lacks these skills will not comply with his or her obligation to provide patients with full information about their state of health. Thus, the patient's rights might be violated, including the right to high-quality medical care.

To avoid such violation of rights, the physician as a professional subject who provides patients with healthcare must have communication skills and also take into account legal requirements, posted to their verbal communication with the patient. Under the law, the patient has a right to obtain information in a comprehensible manner. This information may include medical checkup results, disease presence, diagnosis determination, and treatment prognosis, medical treatment methods, the risks connected to the treatment, kinds of available medical intervention, its consequences and results. The patient also has a right to familiarize themselves with medical documents and to get a consultation regarding these documents from different specialists.

This is the general rule which is established along with some specific rules regarding information provision, taking into consideration the patient's age and state of health. Information about the medical conditions of a minor, who has not reached the age of 15 years, or of a legally incapable person, is provided to their legal representatives who are authorized to give their consent to provide the patients with medical care or to refuse such care. If the disease has an unfavorable prognosis, such information should be communicated in a sensitive manner, but the physician still has to comply with the requirements regarding the scope of information and its understandable form.

Thus, the law establishes the requirements to the content of information regarding the patient's health and medical interventions, the extent of its fullness, subject who has to provide such information to the patient, the form and manner in which the information is transferred.

The definitions of the terms "understandable" and "sensitive" which are applied to the form of information provided to the patient are crucial. These terms are evaluative, consequently, their appliance requires the physician's knowledge of the basic of psychology, law, and linguistics. In particular, the

information is understandable if the patient can receive it in terms of his or her age, level of education, and state of health. Informing the patient of the diagnosis in Latin or commenting it by using medical terms without further explanation will not meet the requirement of understandability.

In response, the patient in the treatment and diagnostic process gives information about his or her health to the physician by using common words and phrases. The physician analyzes this information and transforms it into professional language so that every piece of data might be recorded in medical documentation (medical history, consultative medical reports, etc.). Later the physician provides the patient with information regarding the disease dynamics and treatment progress by transforming it from the professional information into the generic one. Experts, consulting physicians, medical statistics, attorneys, etc. might be the addressees of information casted into professional form. Consequently, health-related information during the whole treatment process and after its completion correspondingly transforms. This requires the physician to adequately search for and apply language tools. If necessary, the physician's choice of these tools (within the scope of the general evaluation of whether the verbal communication between the physician and the patient completed the goal of providing high-quality medical care) may become an object of expert examination of speech or psycho-linguistic examination.

7. Conclusion

The improvement of social relations legal regulation by raising the effectiveness of using language tools is a promising direction of law and linguistics cooperation. This scientific search is crucially relevant for those legal regulation spheres where the subjects of relations actively communicate with each other. One of such spheres is a medicine which is regulated by both legal and ethical rules.

Today the development of the healthcare market and electronic form of medical care is illustrative of the whole healthcare system. Thus, along with general legal and linguistic rules, some specific requirements are posted before the communications which occur while providing medical help.

The physician has to have professional communicative skills to collect patient's complaints, medical and life history. He or she analyzes and interprets the results of the treatment while communicating with his or her healthcare team. The physician is legally obligated to provide patients with information regarding his or her state of health. Such information should be understandable to the patient. Based on this information the patient decides whether to consent or refuse medical help.

The physician's compliance with his or her responsibility means the adequate choice of language tools. When necessary, justification of such choice might be analyzed within the scope of a speech or psycho-linguistic examination.

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