

Importance of legal language for the stability of legislation

Viktor Lazariev, PhD in Law, associate professor, assistant professor of the Department of Theory and History of State and Law of the Faculty 1 of Kharkiv National University of Internal Affairs

Summary

The author of the article has studied the essence of legal language and has defined the role of legal terminology as a necessary element of the proper functioning of legal language. It has been noted that the power of language is of particular importance for legislation since there are no legal concepts outside the language. On this basis, it has been argued that law is related to language, because legal concepts exist only in language and can be perceived only through language. At the same time, it has been noted that language cannot fully explain the law, since the scope of the law exceeds any single explanation and any single reason. Language is only one factor among the variety, and all these individual factors may be weakened by the general nature of all people. However, it has been also emphasized that positive law without a clear linguistic expression cannot fully positively influence the legal awareness of individuals in society. It is the reason why legal terminology is used in the texts of regulatory acts in order to comply with the rules of formal certainty. It has been noted that terminology plays a leading role in the functioning of legal language. The emphasis has been placed on the fact that the concepts rooted in the national legal system are subordinated to the moral values that prevail in a particular society in a certain period of time. As a result, it has been emphasized that the exact and clear expression of the text of a regulatory legal act in language is necessary for a clear understanding of the essence of this legal act in order to accurately and consistently perform the tasks set by legislation.

Key words: law, language, legal language, terminology, legal terminology, legislation, legal systems, legal concepts.

The study of legal language is the cornerstone of the present time, because law without language will be dead. Legal language is characterized by a set of certain linguistic and stylistic parameters, which also serve as requirements for modern legal text: formality, clarity, accuracy, unambiguity, completeness of content, logical sequence, argumentation, clarity of presentation, instructive and informative (directive) nature of legal prescriptions, general nature, strict standardization at all language levels, a high degree of standardization (terminology and syntactic constructions: established inversions, formulas,

clichés), stylistic homogeneity, neutrality (emotionlessness), traditionalism (stability) of expression means, lack of individual authorial features. That is why the study of legal language and the peculiarities of legal terminology is a topical issue of the present day.

The research of legal language is constantly in the field of view of both domestic (N. Artykutsa, K. Bieliakov, O. Balynska, S. Zarkhina, M. Liubchenko, M. Sheremet) and foreign researchers (Alex Kasonde, Alexander Lorz, Frances Olsen, Peter Sandrini, Dieter Stein, Stanisław Goźdź-Roszkowski, Iwona Witczak-Plisiecka) and many others. As we can see, the research of legal language is gaining further relevance at the international level. At the same time, a number of issues of general theoretical orientation related to legal language and legal terminology need to be clarified and refined.

The study of legal language is in many ways similar to the study of a new language. It is primarily due to the fact that words and phrases may seem unfamiliar and difficult to remember. At the same time, it is important to understand their meaning and use them properly in order to perform their basic legal functions. It is also worth noting that the difficulty lies in the possibility of new ways of using familiar words and phrases. For example, the word court in the legal sense is not only used to denote the judicial branch of power or the place for settling legal disputes. This term is often used to refer to a particular judge and the relevant administrative staff involved in a particular case. The term court can also mean all judges in a particular district¹⁰⁶. As we can see, language and law are intertwined: law is expressed through language, in particular through its own specifics, which are characterized by special categories and concepts and can significantly differ between individual legal systems¹⁰⁷. This confirms the relevance of the research of legal terminology as an important element of legal language's functioning.

We face the statement in the scientific literature that terminology and phraseology are key features of legal discourses and central aspects of professional practice and research in the field of jurisprudence. Legal terms express different ways of structuring abstract legal knowledge between language and jurisdiction¹⁰⁸.

Legislation is based on the text, the law is unique in its complete dependence on language: legislators develop a special language to encode the law in the text,

¹⁰⁶ Legal Terminology. – Available at: <https://www.icslearn.ca/~media/files/pdf/samplelessons/465-legal-transcriptionist-diploma.pdf?la=en>

¹⁰⁷ Chiocchetti E., Ralli N. Legal terminology and lesser used languages: the case of mòcheno. *Research in Language*. 2011. Vol. 9.1. p. 137. URL: https://www.academia.edu/5789565/Special_Issue_on_Legal_Terminology_Approaches_and_Applications

¹⁰⁸ Ramos F. P. Translating legal terminology and phraseology: between inter-systemic incongruity and multilingual harmonization. *Perspectives: Studies in Translation Theory and Practice*. 2021. Vol. 29. pp. 175-183. – Available at: <https://www.tandfonline.com/doi/full/10.1080/0907676X.2021.1849940>

which judges, lawyers, jurists and other professionals can later interpret by identifying, analyzing and deciphering possible linguistic variations and loopholes, hidden between the lines. Terms, structure and even punctuation are the subject matter of the analysis, commenting, interpretation and rethinking¹⁰⁹.

The creative and comprehensible power of language is of particular importance for legislation. There are almost no legal concepts outside the language. At least positive law is related to language because legal concepts exist only in language and can be perceived only through language. The law is expressed in a “*verum dicere*” and is associated with “*jurisdiction*”¹¹⁰. That is why the exact and clear expression of the text of a regulatory legal act in language is necessary for a clear understanding of the essence of the law.

The structure of language plays an important role in determining our thinking, it may well be that a particular language can only express certain legal ideas and that the boundaries of our particular language are the limits of our legal considerations. The legal norm is implanted in another language context; the linguistic dynamics of language can move it in an unexpected direction¹¹¹.

The language cannot definitely explain the law in full, since the scope of the law exceeds any single explanation and any single reason. Language is only one factor among many, and all these individual factors may well be weakened by the general nature of all people¹¹². The correlation between language and law is not only about lawyers, it is also important for anyone who wants to know more about the functioning of law in general. This becomes apparent when we consider Chomsky’s theory of the deep structure of human languages. According to Chomsky, this deep structure of language is genetically transmitted. The issue that immediately arises is whether such deep structures can be found in the law. If language has a genetic structure, the same is applied to the law, at least in part, because of the influence of language on the law. The genetic structure of a language is then passed on to the law. This hypothesis can tell us something about the power of law on human behavior and why the law is observed¹¹³.

It is reasonable to assume that legal language tries to correspond to our internal structures. Language is meant to impress us. As the rhythm of the music invites us

¹⁰⁹ Campos M. A., Isani S. Aspects of Language and the Law: Exploring Further Avenues. *Alicante Journal of English Studies*. 2015. № 28. p. 5. URL: https://www.academia.edu/27997928/Language_and_the_Law_special_issue_Alicante_Journal_of_English_Studies_no_28_?email_work_card=view-paper

¹¹⁰ Grossfield B., Language and the Law. *Journal of Air Law and Commerce*. 1985. V. 50. I. 4. p. 797. – Available at: <https://core.ac.uk/download/pdf/147638084.pdf>

¹¹¹ Grossfield B., Language and the Law. *Journal of Air Law and Commerce*. 1985. V. 50. I. 4. p. 801. – Available at: <https://core.ac.uk/download/pdf/147638084.pdf>

¹¹² Grossfield B. Language and the Law. *Journal of Air Law and Commerce*. 1985. V. 50. I. 4. pp. 801-802. – Available at: <https://core.ac.uk/download/pdf/147638084.pdf>

¹¹³ Grossfield B. Language and the Law. *Journal of Air Law and Commerce*. 1985. V. 50. I. 4. p. 802. – Available at: <https://core.ac.uk/download/pdf/147638084.pdf>

to imitate, as the sound of drums makes the soldier march, then legal language due to its structure, its rhythm and sound, stimulates us to internalize the law. Language uses genetic and cultural sensitivity for the purposes of the law. We obey the law voluntarily; the law is obeyed not because we must obey it, but because we want to do it. Instead of the external order, it forms the internal order¹¹⁴.

The law can be effective only if it is voluntarily complied with through an internal incentive. The law that does not correspond to the linguistic sensitivity of our society is not considered as “our law”, but as something foreign. Positive law without favorable language cannot create legal awareness. Then the “language” and “law” become central to modern legal systems, as well as to the functioning and development of legal cultures. The “magic” of a language continues to be a central pillar of law. It is a decisive factor in the legal organization of our society¹¹⁵.

In order to comply with the rules of formal certainty in the texts of regulatory legal acts, legal terminology is used. This terminology plays a leading role in the functioning of legal language. Legal terminology is rooted in national legal systems. The conceptual meaning of terms as a general criterion of comparative analysis: therefore, we talk about legal concepts and ignore, at the moment, the term or linguistic representation of concepts¹¹⁶, which concern the proper functioning of legal language.

Legal concepts are formed by abstracting common features from a large number of cases. Thus, a “contract” is a legal concept abstracted from various cases of legal relations, which are called contracts. A group of real or possible real-life situations is usually described after a long discussion with the public, politicians, legal advisers, legislators, etc., that should be the object to legislation in order to regulate human interaction (civil law) or control human behavior (criminal law). Most legal concepts come from such a process, e.g. dismissal, rent, murder, theft, etc.

Concepts rooted in the national legal system are subordinated to the moral values that prevail in this particular society over a period of time. Besides, every rule, every law is the result of political debate and decision-making process: society consciously chooses the basis on which its members will live together. It is in the interests of legislators to adopt provisions to ensure that the rules are followed, thus fulfilling their purpose. This would force legislators to strive for the most accurate definitions to ensure that this particular situation will always be managed

¹¹⁴ Sandrini P. Legal Terminology. Some Aspects for a New Methodology. – Available at: https://www.researchgate.net/publication/258106581_Legal_Terminology_Some_Aspects_for_a_New_Methodology

¹¹⁵ Grossfield B. Language and the Law. *Journal of Air Law and Commerce*. 1985. V. 50. I. 4. p. 803. – Available at: <https://core.ac.uk/download/pdf/147638084.pdf>

¹¹⁶ Sandrini P. Legal Terminology. Some Aspects for a New Methodology. – Available at: https://www.researchgate.net/publication/258106581_Legal_Terminology_Some_Aspects_for_a_New_Methodology

as they have chosen. However, they cannot predict how society will be developed with its moral values¹¹⁷, which contributes to the development of legal terminology and the emergence of new categories.

Legal concepts are mainly: 1) come from a system of moral values; 2) refer to specific “real life situations” within a particular society; 3) contain the provisions on how to resolve these situations. Legal concepts must leave room for the interpretation of laws and the adaptation of norms to new or changed social and moral conditions. For the fair and equitable application of laws and equal treatment of citizens, judges must have a certain range of freedom in the application of abstract norms to specific cases, which may significantly differ. On the other hand, if this freedom becomes too deep, there will be uncertainty about the application of laws, and citizens will not know what to expect from the administration of justice.

In addition, the extended definition of the legal concept can be significantly changed by applying the principle of analogy, i.e. extending the applicability of the norm to other cases not provided by the law. Therefore, legal concepts cannot be adequately described by intentional or extensional definitions. The process of applying law and concepts requires the interpretation of texts – a task for which each legal system has developed its own rules of interpretation and application, which lead to the fact that legal concepts are reinterpreted by judges, legislators or scholars. All these aspects contribute to the fact that legal concepts are subject to a certain degree of uncertainty, and therefore, legal definitions are open definitions¹¹⁸.

Legal terms that form different legal systems cannot be equivalent, unless they are the result of a complete identity of moral values, legal provisions, rules of interpretation and forms of application of laws – but again they mean the same legal framework.

Legal terminology cannot be reduced to the search for identical concepts in two or more legal systems, simply because it will lead to a fruitless discussion about when and where conceptual equivalence is possible. A new methodology is focused on cases of partial or relative equivalence of superimposed characteristics. To achieve this, we must abandon the concept of equivalence in favor of a more flexible comparative approach. The difference is the assumption that legal concepts as part of the national system of laws are fundamentally different in various legal systems and that only a comparative approach is possible; there is no establishment of equivalence relations.

¹¹⁷ Sandrini P. Legal Terminology. Some Aspects for a New Methodology. – Available at: https://www.researchgate.net/publication/258106581_Legal_Terminology_Some_Aspects_for_a_New_Methodology

¹¹⁸ Sandrini P. Legal Terminology. Some Aspects for a New Methodology. – Available at: https://www.researchgate.net/publication/258106581_Legal_Terminology_Some_Aspects_for_a_New_Methodology

The first thing to do is to record and describe legal concepts in their natural environment. This has two consequences: first, the concept should not be considered as separate elements, but as part of a system built on the relationship between its components, and secondly, that the information provided is always based on the national legal system, where the concept belongs to.

The description of legal concepts begins with a single concept but takes into account all the relationships that this particular concept has with its surrounding concepts, i.e. with all the concepts that contribute to a special legal framework designed to regulate or provide a legal basis for a particular aspect of real life¹¹⁹.

It should be also emphasized that legal terminology should focus on the elements of a legal solution to one real-life problem, although terminographic research may cover more than one legal solution for a wider subject area. This focus on one specific legal order is important for suggesting a set of consistent concepts rather than individual subject matters. It would be easy to combine the terminology of several such legal settings or related settings into a larger terminographic product. Terminology should cover small and very specific subject areas to achieve high quality. It would be difficult to conduct terminographic research on criminal or labor law; we should rather start with specific areas of these disciplines, such as, for example, protection against dismissal or immigration crimes, etc. At the second stage, they can be expanded by including other specific topics, and such small glossaries can be combined to provide larger collections covering a broader subject area, such as criminal law. But it is extremely necessary to maintain a systematic aspect of concepts that contribute to the same purpose¹²⁰.

Taking into account the above, we must note: 1) accurate and clear expression of the text of a regulatory legal act in language is necessary for a clear understanding of the essence of this legal act in order to accurately and consistently perform the tasks set by law; 2) legal language must clearly comply with the linguistic rules of presenting the text of a regulatory legal act; 3) “language and law” in modern globalized society acquire central meaning for modern legal systems, as well as for the functioning and development of legal cultures; 4) the peculiarity of legal terminology is its rooting in national legal systems; 5) the implementation of law norms requires the interpretation of texts – a task for which each legal system has developed its own rules of interpretation and application, which leads to the fact that legal concepts are reinterpreted by judges, legislators or scholars.

¹¹⁹ Sandrini P. Legal Terminology. Some Aspects for a New Methodology. – Available at: https://www.researchgate.net/publication/258106581_Legal_Terminology_Some_Aspects_for_a_New_Methodology

¹²⁰ Sandrini P. Legal Terminology. Some Aspects for a New Methodology. – Available at: https://www.researchgate.net/publication/258106581_Legal_Terminology_Some_Aspects_for_a_New_Methodology

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