THE LANGUAGE IN THE LAW-MAKING PROCESS

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Abstract

The paper is dedicated to the role of the language in the law-making process. In the ancient times non-linguistic signs prevailed, and the words were used along with the elements of the ritual widely implemented in the process of creating and implementing legal rules. Representatives of ancient civilizations sought to convert non-linguistic signs into words to denote the rules of human behaviour. The problem of the language in the law-making process was caused out of necessity to issue the laws in the written form. The study and development of the language in the law-making process is relevant up to now as any situation being subject to legal influence can be viewed as legal interpretation and identification.

The purpose of the paper is to analyse the language in the law-making process. The essence of law is highlighted in the work as there are different definitions for law in general and the law-making process in particular. The novelty of the research is that the law making process is analysed from the angle of linguistics. The language of law has specific characteristics. Law in all its manifestations is expressed through the language. Legal orders acquire the characteristics of applicable law and appear in official written texts issued by state bodies in a strictly specified order. Any idea related to legal regulations is expressed through the language since it can be perceived and realized provided that it appears in verbal and written form.

Keywords: law-making process, legal system, lawyer, legal regulations, moral values, verbal symbols.

1 INTRODUCTION

Language and law are seen as the greatest cultural values that are of fundamental importance to human beings. Language describes people as sentient beings. It’s only words that help systematize world perception and shape thoughts. Law is created to maintain and safeguard law and order providing members of public relations equal rights and freedoms to all citizens.

Law in all its manifestations exists in linguistic form as a reasonable tool to manage society. Words are necessary to coordinate social interaction in legally meaningful situations and to achieve the coordination of interests of various members of legal relations. Law is a unique phenomenon of civilization. In an effort to understand and explain the nature of law, a great number of schools of world legal and philosophical thought emerged. The approaches they developed to the definition of law could be different, but one theory remains common: legal matter is conditional and changeable.
It does not arise by itself, but is purposefully created by man. A person strives to organize his/her life in accordance with rational rules that can ensure the development of society on the basis of freedom and justice, streamline relations between people, guarantee the protection of their interests, as well as the correct reasonable resolution of disputes and social conflicts. However, what is considered fair by now is not fair in general and forever. When we compare the notion of justice in different epochs, we can see a huge difference in the world outlook of people at different stages of the development of society. For example, in medieval Europe, a counterfeiter was welded alive in the same way as he melted metal to counterfeit coins. The member states of the Council of Europe adopted Protocol No. 6 to the European Convention setting out that "no one can be sentenced to death or executed". Such a harsh measure is now regarded as inhuman, barbarous custom that is out of place in the criminal system that is aimed at the maintenance of human dignity. It was not until the 5th century BC that ancient Greek man of wisdom Democritus pointed out those regulations of laws was artificial. The above argument can easily be seen from personal experience. Everyone who is involved in the sphere of applicable law understands that in the legal world, unlike in the real world not all but only some of the person’s actions and states are taken into account.

1.1 Words and symbols

The person’s actions and states are not judged according to worldly standards but according to one or another abstract model of behaviour specified in the law. The more perfect the model is, the better the typical structure of competences, duties and responsibilities of subjects in the legal system is thought out, the more opportunities will emerge to meet the person’s interests and provide a legal remedy. Any situation, if only it is subject to legal influence, can in general be brought to a form that permits legal interpretation and qualification.

There are specific features in the legal dimension. Temporary insanity and emotions give way to a balanced, controlled application of uniform rules of law recognized by society and secured by the authority and power of the state. Complex practical relationships should be correctly introduced into the strict framework of legal concepts and categories in order to bring them into effect. Specific projections instead of particular people emerge in the legal space: abstract accused person, victim, civil plaintiff, a member of the family being dependant on a breadwinner, civil defendant that enjoys rights and obligations laid down in the legislation. In some situations the actions of the offender are subject to conviction both in criminal and civil law. Fair conflict resolution through legal means is possible only if abstract persons are selected in the right way for each particular participant of the situation in strict compliance with the law and the real circumstances of the case. Thus, in the field of jurisprudence the form is top priority. It is extremely important for a lawyer to distinguish, on the one hand, particular real material, and on the other hand, artificially created legal categories and designs. For a lawyer, it is important to distinguish between everything that represents the law “outside” and shapes the content of law, embodies it in legal structures. Legal structures form a category of law that ancient Romans called the body, flesh, the substance of law (corpus juris). Legal regulations include rational beginnings in public life, establish and protect a certain scope and correct rules of conduct embodying the highest moral values and ideals. Law always exists for conscious beings. It normally confirms and denies some things; it formulates and demands that people know what has been confirmed and what has been rejected to be aware of the formulated demand.

Optimal ways should be found to express legal regulations, permissions and prohibitions that meet a number of requirements simultaneously. Requirements to express legal regulations, permissions and prohibitions are as follows:

- well-known material appearance,
- common use,
- accessibility to visual, clear and specific perception,
- universal understanding,
- implication.

Symbols possess the above characters in its entirety. Ideal objects that shape the real world of a word are created and exist in a symbolic form. It is the form of the word that makes law objectively real, strictly defined, stable and independent on the participants in social regulation. Legal norms, ideas and values can be specified in two ways. The ways to specify legal norms, ideas and values are as follows:

- verbal signs,
- non-linguistic symbols.
However, legal proceedings are conducted not through various symbolic items, but through the language. The court examines the evidence in the case, considers oral statements and petitions of the participants in the case. The court constantly works with oral and written texts, evaluates the information contained in them. The court assesses the information contained in the texts from the point of view of law. From the linguistic point of view, law is a specific sequence of words with correct interpretation necessary to make a well-reasoned and fair decision. Thus, it is the word, and not any other symbolic sign that becomes the main instrument to administer justice. There are various defects of verbal form that can lead to the termination of even the fairest judicial decisions. Linguistic defects include the following:

- violation of procedural rules from the point of view of the language in legal proceedings
- failure to comply with the requirements of the law regarding the formulation and content of the verdict
- incorrect interpretation of substantive law
- incorrect formulation of questions in a jury trial
- inaccurate statements in the record of proceedings.

1.1.1 How to Express the Language

A word is never an "empty sound" in the legal sphere. Various legal notations imply real people, their activities and well-being. Anyone who admits the slightest inaccuracy in the statement runs the risk to lose the case even with advantages for success. Abstract legal constructions and principles make it possible to be above tyranny and primitive revenge. Abstract legal constructions and principles really influence people through symbolic forms. Vital questions are resolved without violence and bloodshed within the legal framework. Complex legal problems are solved on the basis of justice, freedom and dignity of the individual. External strict form being subject to strict rules of creation and functioning, serves as a kind of indicator for the boundaries of the legal space. However, it serves as a kind of barrier that prevents the penetration of random elements into the sphere of development, structuring and application of law. Language of law is a matter of legal technique and stylistics. Language of law covers constructive elements of the existence of law itself as a kind of social phenomenon. In modern civilized states, legal norms are specified only in certain linguistic forms. Linguistic forms include any symbols used in legal regulation. In a narrower sense they include verbal signs that embody some legal content.

The advantages of language expression of law in comparison with other sign systems are obvious. The authors analyse three advantages.

1. The ability to understand words, create texts and extract from them a common sense that is embedded in people from birth and is freely implemented at any desired time. No additional tools or resources are required which makes the language simple and convenient for everyday use. Instead of a spoken or written phrase, a mental image instantaneously arises of the reality that is reflected in the content of the words. The person immediately prepares to act according to the situation when hearing or reading the words.

2. Language is dynamic as it is constantly evolving. Language strives to accurately express new knowledge about nature and society.

3. The construction of words and phrases and the formation of meaning in the language are subject to strict rules and system regularities. Language rules and patterns make it possible to model the world as a specific structure, convey all possible relationships between different concepts, and achieve uniqueness of the terms used. Language not only shapes thoughts, but also shows the way of its logical development.

New knowledge about nature and society can only be expressed through language. The linguistic sign is primary in relation to all possible sign systems due to the above qualities. The verbal way of expressing views and ideas prevails in the sphere of law. Law is called upon to ensure the ultimate certainty of the emerging real relations. Law is also designed to ensure the strength and reliability of legal guarantees and advantages. Unlike other signs the word is able to ideally preserve the continuity of legal ideas as it can not completely get rid of specific contexts. Punishment and other legal measures regarding the person who committed the crime must be fair, that is, correspond to the gravity of the crime and the circumstances of its commission.

Legal thinking is always expressed in language as it is required to accurately convey many details of human relations, point the way to a fair resolution of disputes. Disputes should be resolved taking into account the vital interests of the individual and society as a whole. In the legal language, the whole professional picture
of the world should be specified. The professional picture of the world of lawyers is a legal system in the form of general principles, as well as general and professional concepts. General and professional concepts are interdependent. For example, in English, along with the verb to kill, there is another word-to murder that has a more vivid negative social colouring. “To murder” means to commit a crime. Another example: in the decisions of the European Court of Human Rights, published in English, the noun Government is often found in the singular and the link-verb related to it is in the plural.

1.1.2 Ambiguity

Such ambiguity of expression, multiplicity of points of view is necessarily taken into account by judicial thinking. It is legal thinking that is aimed at eliminating emerging uncertainties and compromising interests. In view of this fact, specific issues of the multifaceted life of society are solved. Lawyers use two logical-methodological standards: 1) legal reasoning based on application of known norms of law to various facts; 2) legal reasoning using precedent. This standard has historically evolved in the system of Roman-German law.

Legal reasoning using the precedent is characteristic of the Anglo-Saxon legal system. The standard, encompassing legal reasoning on the basis of application of known norms of law to various facts historically developed in the system of Roman-German system Legal reasoning implies a sequence of statements clearly connected to each other in accordance with certain principles. The sequence makes it possible to come to conclusions and solutions. The system of Roman-German follows the principle of the primacy of legislation and the secondary nature of judicial practice. The lawyer who acts in the system of Roman-German law thinks deductively, that is, from the general to the particular. The tasks are to determine the scope of the facts needed to solve the case and analyse their characteristics. The lawyer should also choose the rule of law and make a decision. The rule of law should be case related. A lawyer should rely on laws and on their unambiguous meaning. Unambiguous meaning is revealed in utterance. Laws and their unambiguous meaning guarantee the reliability of the application of the norms of law through the validity of judgments and the subtlety of their analysis. In the system of Anglo-Saxon law, the key role is played by the court precedent. In the system of Anglo-Saxon law, logic is different. Legal thinking within the framework of Anglo-Saxon law is inductive, that is, from the general to the particular. The wording used by the legislator is considered to be fundamentally open for a rethinking of content with new content. The lawyer establishes key analogues and from them proceeds to the general classification. Legal texts should be specified. [2] The essence of the matter lies in the movement of concepts. Concepts are formed by comparison. The similarities between situations are revealed. The legal norm for the first situation is determined. Then this legal norm is determined to the second situation. The situation which is descriptive for the first case becomes the rule of law and is applied to the following analogous situation. Words change in order to put into them the meaning that the society puts in them.

In modern conditions, there is a certain convergence of the Romance-Saxon and Roman-German legal systems. The convergence of the Anglo-Saxon and Romano-German legal systems influences the logic of legal thinking. However, in any case, regardless of the sequence of reasoning, the lawyer applies the rules, clothed in the form of a legal language. The language of law is actively used in the process of legal impact on public relations. The language of law shows all the changes taking place in the legal system. Key words in the language of law are signals of a specific legal outlook. Signals of a particular legal outlook that are reflected in the language of law express the spiritual and moral ideals of society and moral principles conceived by the human mind and perceived by a particular legal system. The legal language inevitably reflects the deformation of the sense of justice that arose in society for various reasons.

2 LEGAL LANGUAGE AND PECULIARITIES

The legal language has always being the backbone for the class political point of view. Language of law accurately reflects the legal system of the society where it operates. With the change of principles that state the understanding of law, the semantic structure of the legal language also changes. Particular lexicogrammatical variations emerge with the change of principles. New key words have their own specific futures, different lexis interpretation, syntactic compatibility, etc. The legal language can exert a reverse influence on the legal system of society. Words used in drafting law and its institutions set certain patterns of perception of reality. Examples:

- law - justice
- justice - truth
- truth - unconditional recognition
Law - compliance, respect for human rights
- punishment - retribution
- punishment - social justice restitution.

Such schemes are an integral part of public consciousness. They play the role of a kind of cultural reformer of social life and influence, to varying degrees, the adoption of various normative and law enforcement decisions. Special attention should be drawn to the use of the word in the legal language. The lawmaker and the law enforcer can get access to specific mechanisms for controlling people's thinking and beliefs, power over the public conscience. Language in the law-making process differs from “ordinary language". It is a linguistic phenomenon that incorporates the specificity of its sentence structure, semantics and stylistics. [3]

The intensity of the information impact of law and the effectiveness of legal regulation generally depend on how the legislator constructs legal concepts. Ideas and values should be written in the laws and other official sources, so that the law could become an effective tool for managing the society. Ideas and values can be valid as a result of law-making. Law-making is a special activity of the state that is aimed at creating legal norms, their upgrading, modification or abolition. Law-making process is implemented in compliance with the established procedure for the preparation, adoption and publication of regulatory and legal decisions, law-making procedures and forms of acts adopted. The legal process is carried out continuously. Socially significant information is transformed through the law-making process.

The model of law-making includes the following stages:
- collecting the necessary information about the state of a particular sphere of social relations
- evaluating the information obtained
- developing alternative legislative solutions to the problem
- selecting one of the options
- documenting the text of a statutory act

The obtained information is evaluated from the point of view of the objectives of legal regulation. The legislator establishes legal duties, permissions and prohibitions. Thus, the legislator makes changes to the real world, influences the existing system of social relations. A specific and precise legal order is never given in ready-made form. The achievement of the centuries-old culture is the result of the efforts of many experts on law. Theoreticians and practitioners work on the creation of laws, formulate and clarify legal concepts, analyse the content and enforcement of legal norms. In this aspect, jurisprudence is a technique of social life; lawyers are engineers of public life. The spoken and written word is a practical instrument for lawyers.

The art of the legislator is to correctly introduce social needs into the language of law and create a legal world. The legal world implies a verbal and symbolic reality where an equal measure of the freedom of subjects is defined and specific forms of proper behaviour and principles for solving spontaneous issues are established.

The world of law is specified in words, therefore verbal technologies are important for law-making. The term technology is of Greek origin and literally means a reasonable basis, the explanation of any skill and knowledge. Technology is usually considered in terms of specific activities. Focus is laid on possible ways of processing the source material and obtaining a quality product. Legal technology is a system of knowledge about tools, methods and modes of the most effective and planned legal practice. Legal technology is an important part of legal technique. The upgrading of legislation and the entire legal system is achieved through the use of legal technique. Legal technology responds to the question of how to do it and what the sequence of one or other of the legal transactions is. Legal technique shows what specific methods and means are used to implement legal activities. Verbal technologies in law-making are a set of rationally grounded linguistic rules and requirements. The selection and structure of the source language material is carried out in accordance with rationally substantiated linguistic rules and requirements. The source language material covers words, grammatical forms and constructions. The purpose of selection and structure of the source language material is the precise expression of the legislative will in the text of the statutory act. Use as many sections and subsections as you need (e.g. Introduction, Methodology, Results, Conclusions, etc.) and end the paper with the list of references.

2.1 Verbal technologies

Legislative verbal technologies are regarded as an important part of legislative machinery. Legislation is a system of rules intended and used for cognitive-logical and normative-structural formation of legal material.
and preparation of a legal text. In a broader sense of law-making technologies one can also name the description of the relevant linguistic rules, the choice of language resources, their combination and processing in the process of creating a legal text. Every word in a legal text means a strictly defined legal concept with its own special content. The ideal verbal image of the rule of law is a logically faultless model of lawful or unlawful conduct. The model of lawful or unlawful conduct is specified in single-valued and clear words. Words set the frame that makes it possible to determine with relative accuracy the limits of legal space and its benchmarks. The legislator transforms the original language material so as to obtain not just a coherent sentence, but also a detailed normative formula. When the legislator transforms the original language material so as to obtain not just a coherent sentence, but also a developed normative formula he applies special verbal technologies. An extended normative formula is able to clearly show people the best behaviour.

Law-making verbal technologies can be called a kind of instruction of how to use the word in the process of creating rules of law, their changes and improvements. Linguistic methods can be achieved by:

- exact designation of general and special legal concepts
- material consolidation of the results obtained at one or other stage of law-making activity
- specifying the legislative will

General and special legal concepts are interdependent. The material consolidation of the results obtained at one or other stage of the law-making activity implies the definition of the constituent parts of the projected statutory act and the formation of the relevant headings. Proper use of verbal technologies guarantees correct handling of the normative text after its creation. The higher the linguistic quality of the law, the less likely that the meaning of its regulations will be distorted. Legislative verbal technologies are relatively stable as they are based on the language norm. The system of rules of usage and grammar is quite conservative. Dictionaries record changes in the system of rules of usage and grammar not earlier than in 10-20 years. Verbal technologies are constantly evolving and improving. The development and upgrading of verbal technologies take place under the influence of an increasing scope of theoretical knowledge about law, information about law-making practice in different countries and other factors. In modern conditions, when new information systems are widely introduced into law-making activity, unification of verbal technologies of law-making becomes more and more relevant.

The state will is revealed by means of language. The legislator expresses his attitude to public life, revealing the state will. The rule of law as a common unit of legal communication is a significant statement. There are two elements in the content of an evaluation statement: 1) it is established which actions and states of people are of legal significance, that is, they are subject to legal qualification and can be lawful and inappropriate; 2) it should be shown in what exactly this legal value lays. Law-making process, from the linguistic point of view, includes the linguistic features of normative utterances. Language features of normative statements are conditioned by objective legal characteristics of the rules of law. The well-known linguistic ways of presenting normative regulations are specified by social experience. Language methods of presenting normative regulations form an independent field of speech practice. The field of speech practice is subordinated to the relevant standard. The main futures of standard speech practice are as follows:

- proposals with a description of the official order of reality
- system of legal terms
- formal definition of the meaning of words
- generalized grammatical forms and constructions
- speech stereotypes
- language tools that increase the content-information length of the sentence.

Compulsory legal regulations are based on an assessment of the existing practice in terms of equality, humanism, freedom and justice. Normative statements in any sphere of legal regulation are formulated in the form of widespread narrative proposals that contain an explicit or implied "must be" and have a standard set of elements corresponding to the structure of the norm.

The relevant logical structure of the norm is as follows:

- indication of the conditions where rights and duties arise
- dispersion, that is an indication of the rights and obligations themselves
- sanctions

The language of legal norms is characterized by a developed system of legal terms denoting any professional concepts. Professional concepts are necessary for the correct and clear expression of the legislative will. Terms in the field of jurisprudence, humanities as well as natural science and technology are applied in normative judgments regarding subjects conduct. Each branch of legislation has its own terminological dictionary. Language of the rule of law is aimed at the regulatory use of terms, their definition and explanation. Direct or indirect logical relationships and connections are established between separate terms. Mediated logical relationships and connections that are established between individual terms are conditioned by the systematic nature of the legislation in force and the unity of the structure of concepts.

Legal terms convey the basic meaning of the normative statements. Not only terms, but also words of common usage in the language of legal norms acquire a stable, clearly defined and established meaning designated for legal purposes. As a rule, this legal meaning coincides with the object-logical, that is, the literal meaning of the word. The legal meaning is directly or indirectly disclosed in the legal text itself. Formally, the specific meaning of the word in the normative legal language becomes mandatory and unique. At the same time, outside special legal context, the same word may seem ambiguous.

3 DISCUSSIONS

A strict regime of legality presupposes that the substitution of a formalized object-logical meaning of a word with its other meanings in normative legal acts is not allowed. Since normative legal regulations are normally mandatory and are applied repeatedly, words in the legal text designate not a separate object or event in its individual uniqueness, but an entire class of subjects or a multitude of events. Accordingly, abstract terms, verb forms, pronouns and passive constructions are used. The verb forms in the legal text are used with an abstract non-tense meaning. Pronouns are used without specific content. Passive constructions that are used in the legal text may emphasize the action specified in the rule of law outside the subject and legally insignificant circumstances. In the regulated process of law-making decisions many situations have a high degree of recurrence.

Language devices that increase the content-informational length of a sentence are necessary to achieve a compressed presentation provided that complete, correct and objective reality are reflected in the legal text. The informational length of a sentence may be increased due to participial constructions, homogeneous, subordinate clauses, isolated prepositional groups, parenthesis and some constructions that disseminate and specify normative utterance.

Language graphic tools include headings, sections, punctuation marks, gaps, various letters. Semantic parts of the statement are usually singed out and emphasize the most significant fragments of written speech through language graphical tools . Special graphics provide logical completeness and orderliness of legal regulations. Thus, legal articles are numbered and have a heading separated by spaces and a font. Groups of articles close in content can be combined into chapters and sections. Special structure of graphic devices promotes correct interpretation of normative legal regulations and helps to unmistakably establish connection of newly published rules of law with already existing ones, which is especially important for the developed system of law. The above language features are based on traditions of writing and are inherent in the legal norms contained in laws as well as regulatory legal acts and international treaties.

4 CONCLUSION

The basic rules for the use of the language in the process of drafting statutory acts have been developed due to the extensive factual material. The rules for the use of language in law-making activities are detailed and systematized. Legal texts are exempt from the use of obsolete and polysemantic words and expressions, figurative comparisons, epithets, metaphors. Regulatory legal acts do not reproduce one and the same regulations.

The linguistic design of legal norms as a high intellectual technology does not accept mechanical approaches. Special knowledge, thoughtful attitude to language material, great ability and professionally developed sense of speech are required to avoid language errors in the law-making process. It is expedient to follow the general principles of the linguistic structure of normative statements in order to avoid language errors in law-making activity. The principles of the linguistic structure of normative statements cover the correctness and stability of linguistic expression and information.

ACKNOWLEDGEMENT

The publication has been prepared with the support of the RUDN University program 5-100.
REFERENCE LIST


Additional resources


