Journal of Siberian Federal University. Humanities & Social Sciences 2 (2011 4) 208-215
~ ~ ~

УДК 340.113

The Legal Language: Concept, General Characteristic, Application Problems

Evgeny M. Shajkhutdinov*
Siberian Federal University
79 Svobodny, Krasnoyarsk, 660041 Russia [1]

Received 4.02.2011, received in revised form 11.02.2011, accepted 18.02.2011

The article is devoted to research of a different conceptual problems of legal language. The article analyses concept, general characteristic, application problems of legal language.

Keywords: Legal language; terminology/

Word *«term»* (from Latin. terminus – a border, a limit) is considered in the humanities as «concept; a word; a word expressing concept», in the logician – as «a judgment component». *Terminology* is defined as «special language, set of the special and artificial signs used in a science or art»[1].

The term in legal sense is a verbal designation of a concept used at wording the content of a legal act[2].

In literature the basic signs of a term are:

1) adequacy of a content of a concept reflection, semantic unambiguity;
2) its logic correlation to other generic terms (generic systemacy);
3) professional level of practical use (technical, chemical, medical, sports, legal etc. terminology)[3].

Along with specified properties such a sign as stylistic neutrality is also inherent *in the term*. There is no expressiveness, emotional colouring at a subject designation. The main thing for it is logic and subject orientation, instead of aesthetic embellishment and subjective intonations[4].

Science philosophy, formal logic consider terminology as a categorical device of a corresponding science stipulating a processes of cognition and accumulation (preservation) of knowledge. In this sense terminology is revealed through the system of terms forming the content of a science.

However, in literature the legal language is often defined as one of elements of legal techniques; means of a legal text wording, allowing to formulate a content of the rule of law capaciously and briefly.

Such understanding is considered insufficiently capacious, not reflecting features and possibilities of the scientific legal language. It is deemed, that legal terminology is necessary to be understood a set of special verbal designations reflecting a qualitative condition of jurisprudence and practice, used to describe legal concepts, including those making the content legal normative-regulatory means.

* Corresponding author E-mail address: shzh1@yandex.ru

The legal language peculiarity (distinguishing it from any other special terminology) is its formalisation that is fixedness of the most practically significant terms in official legal documents.

The named allows to refer a formalized term directly to *normative-regulatory means*, so-called normative generalizations (norms-definitions) that stipulates:

- Socially significant character of the legal language;
- Big (in comparison with not legal terms) accuracy of the legal language.

In legal literature some criteria of classification of used terms are developed.

So, there are widespread and special terms (legal, technical, medical, economic, etc.) *according to a degree of distribution and use*. Another distribution occurs:

By *kinds of legal documents* – terminology of a normative act, a contract template, a law enforcing act, an act of interpretation of law.

On *a source of origin* of the term – Russian-speaking terms and foreign terms.

On *definiteness degree* – demanding interpretation and unequivocal.

On *complexity degree* – one-compound and multicompound terms.

Under *willed content* – imperative and dispositive.

On *style of wording*- official, strict and informal, ordinary[5].

In addition, there are: general legal, interbranch and branch terms;

Those fixed legislatively, and used in a legal science (the latter are not necessarily bound in the law (for example, «sense of justice», «a legal norm disposition»)[6];

Defined (specially defined) and not defined in the law.

- commonly used terms; commonly used ones having a narrower, special meaning in a statutory act ; especially legal; technical ones[7].

In particular, commonly used terms are usual, widespread names of objects, qualities, signs, actions, the phenomena which are equally used in household speech, in the art and scientific literature, in business documents, in legislation. Such terms are simple, easily understood. In legislation they are used in a standard meaning and do not contain any special sense in themselves («find», «mass poisonings» etc.)

It is necessary to emphasize, that many terms borrowed from the ordinary language, receive a special, more exact, *special* meaning in the scientific literature or in a normative legal act. Their advantage in comparison with commonly used is that at the maximum brevity they designate the necessary concept most precisely.

Say, the term «cargo» is not legal as it is. However, it acquires the given quality if the legislator has expressed his attitude towards it in a certain way. There are a lot of similar terms (compare: «victim», «complaint», «third party», «transaction» etc.) in statutory acts. They make a skeleton of legal formally-defined terminology, bear a basic semantic loading in legislation. It is explained, on the one hand, that law regulates an array of various spheres of public relations so, cannot do without usual terminology; on the other hand – that the maximum accuracy of wording of the legislator's idea requires terminological unambiguity. It is important, that a *special* meaning of a commonly used term was obvious. Such acts are usually given definitions in an act. If it is not present, the term's meaning is defined proceeding from the general context. At the first use of the term with a special meaning in order to avoid excessively wide or inexact interpretation it is appropriate to provide it with corresponding normative explanations.

As any other sphere of public life, jurisprudence cannot do without special

terminology which *is specially developed* by the legislator for regulation public relations. Special legal terms, as a rule, designate the concept (construction) applied in jurisprudence laconically and rather precisely («claimant», «previous conviction», «penalty», «inquiry» etc.).

The following could be referred to the basic general requirements which the legal language use should meet.

Firstly, terminology systemacy, i.e. its internal coordination is stipulated by logic of law itself. Legal terms comprise a complicated organic system, are in various links with each other.

The most widespread links of terminology is *coordination* link (a crime – an administrative offence – a tort), *subordination* (the statutory act as a generic concept and its concrete kinds as specific).

Interdependence of terms also means that from one, representing a nested word, a set of phrases reflecting close concepts are formed. For example, by means of the term «law» such word-combinations-terms as «legal relation», «feeling for law and order», «law breaking», «competence», etc. are formed. The term «claim» is a derived word for the terms connected with it «claimant», «action proceeding», « claim limitation», «statement of claim», etc.

Secondly, *stability* of terminology that assumes stability of the term's meaning, inadmissibility of arbitrary change of its content[8]. The named characteristic, of course, does not mean absolute firmness of legal concepts, similar contradicts the most dynamical nature of law, capable of changing together with development and change of a public life, relations. At the same time, the offered property is especially significant for terminology of acts of interpretation, it stipulates interpretation limits, inadmissibility to give definitions of concepts distinct from the interpreted act which is connected with the nature of interpretation itself.

Thirdly, *unity* of terminology. Used terms (taking a context into account) should have identical semantic filling irrespective of an act they are used in[9].

Fourthly, *rationality* of terminology that implies economic use of terminological resources, not blocking up the text of an act by excessive terms, use of already available legal concepts.

The following may also be referred to *the requirements* peculiar to the legal language:

- Clearness;
- Unambiguity;
- Stability;
- Universal recognition;
- Accuracy and unambiguity;
- Simplicity;
- Harmony and stylistic correctness;
- Brevity of a formulation of terms.

Besides, with reference to separate directions of application of the legal language it is possible to highlight corresponding specific requirements.

So, for example, interpreted acts terminology should meet the requirements *of adequacy, availability, definiteness*.

The requirement *of adequacy* of terminology implies use in the text of the act of interpretation terms *identical* in the meaning to sense put by the interpreted act.

For example, in the Code of the Russian Federation on administrative offences the term *the official* implies:

- Persons, permanently, temporary or according to special powers carrying out functions of the representative of power;
- Persons who are carrying out organizational-administrative or administrative functions in the state bodies, local governments, the state and municipal organisations, and also in Armed forces of Russian Federation,

other armies and military formations of Russian Federation;

- Heads and other employees of other organisations;

Persons who are carrying out entrepreneurial activity without formation a legal person10. And the Criminal code of Russian Federation understands as officials only:

- Persons,permanently, temporary or on special power carrying out functions of the representative of power;
- Persons who are carrying out organizational-administrative, administrative functions in the state bodies, local governments, state and municipal authorities, and also in Armed forces of Russian Federation, other armies and military formations of the Russian Federation[11].

Hence, in texts of the acts interpreting provisions of named federal laws, the term the official should be used in corresponding sense.

So, the Supreme Arbitration Court in point 7 of the Decision of Plenum № 16 30.07.2003explained, that «while estimating legitimacy of application of administrative responsibility established by article 14.5 of the Code to individual businessmen, courts should recognise that as the given article does not define other, the named subjects bear responsibility provided for *officials*».

Requirement *of availability* of terminology assumes necessity of a designation containing in the text of the act of interpretation of law norms of concepts by means of the most widespread terms. The given requirement derives from necessity of achieving the primary goal of the act of interpretation – *an explanation* of sense of interpreted acts that stipulates undesirability of occurrence of necessity of secondary interpretation of acts of interpretation. In cases of compelled use of difficult terms, in some cases it is expedient to replace them with a short verbal description, for example, it is possible to replace *the contracting contract* with a word-combination *purchase and sale of agricultural production*.

As an illustration of the named characteristic point 3 of the Decision of Plenum of the Supreme Court of Russian Federation № 14 05.06.2002 can serve : «the subject of the crime provided by article 219 of Russian Federation Criminal Code is a person to whom the duty to execute fire prevention rules (constantly or temporarily) confirmed and registered when due hereunder was imposed *(for example, heads of enterprises and organisations of all forms of ownership and persons authorised by them who according to a post or character of executed works owing to operating normative- legal acts and instructions are directly obliged to carry out corresponding rules or to provide their observance on certain sites of works; proprietors of property, including dwelling, employers, tenants, etc.)*».

Requirement *of definiteness* of terminology follows from the aforesaid – any special legal, especially, technical term must be defined specifically in the text of the act of interpretation of law norms, fully and unequivocally as much as possible.

Thus, the definition should be short and clear, contain a keyword (noun) round which adjectives and other parts of speech fixing basic signs of the phenomenon are grouped. In concept interpretation use of the term requiring further explanations is inadmissible. In other words, it is impossible to explain a defined word through a defined word[12].

For example, point 1 of the above-named Decision of Plenum of the Supreme Court contains *definition of fire prevention rules absent in legislation* – «a complex of provisions establishing obligatory requirements of fire safety, containing in the Federal law « On fire safety «, in federal laws passed according to it and laws of

subjects of Russian Federation, other normative legal acts, normative documents of the authorised state bodies, in particular, standards, norms and branch fire prevention rules, instructions and other documents aimed at prevention of fires and maintenance of safety of people and objects in case of fire occurrence».

It is deemed, that the following can be referred to problems *of application* of the legal language:

1. Complexity and terminology polysemy;

2. Insufficient definiteness (formalisation) of terminology;

3. Redundancy of terminology.

So, the first of the named problems is peculiar to both the exclusively scientific and practically significant legal language.

For example, the term «a source of law» in modern scientific papers designates a great variety of legal concepts that has caused necessity of separation of so-called «senses» of a considered designation, for example: ideological, material, formally-legal. What about polysemy of the term «law», etc.?

Thus on the one hand, such polysemy is an inevitable consequence of development of a science, on the other hand it characterises poorness and inaccuracy of a legal science apparatus (from this point of view converting formal-legal aspects of concept «a source of law» for example, into another term – a form of law is considered really reasonable).

Not lesser complexities arise in practice either. So, an elementary (at first sight) term «cost» (having the unequivocal economic content) in current legislation has undergone a number of specifications that has led to separation of cost into customs, tax, costs of a subject of an administrative offence etc.

It is not surprising, that many authors insist on necessity of maximum simplification of the legal language. The given position derives from the premise that the language of any legal acts, especially interpretative acts, should be understandable to anyone and everyone addressed to it.

At the same time, under A.S.Pigolkin's fair remark, the aspiration to simplicity and availability should not cause damage to completeness, accuracy and depth of formulation of legal provisions, should not lead oversimplification, to primitiveness[13].

Indeed, in many cases legal acts regulate difficult public relations, and it cannot be reflected in style of corresponding provisions wording. As a special sphere of knowledge, jurisprudence operates with complicated, many-sided and specific concepts which are expressed by corresponding special terminology. And without it legislation, jurisprudence, interpretative activity cannot manage. If to replace special terms with descriptive expressions, it can lead to uncertainty and a vagueness of formulations, to loss of accuracy and clearness of expression of the legislator's thought.

Thus, in literature an extremely opposite position can be come across. So, according to A.Shnittser only a low level of development of people can induce to clear form of expression of law. V.Gedeman considers that difficulties which are connected with clearness and availability of the language of a legal act are insuperable. To relieve nonspecialists of pressure of thought, an act, according to V.Gedeman, should provide every possible case of vital relations regulated by it in detail. But then it loses internal riches of the content of each separate provision and, moreover, expands quantitatively, blocking up memory and producing inevitable contradictions. G.Kinderman, highlighting importance of availability of a legal text, nevertheless asserts, that it frequently contradicts its accuracy. Removal of such a contradiction should be in favour of accuracy, instead of clearness[14].

It is deemed, that opposition of availability and accuracy of terminology can have artificial character too.

In particular, degree of simplicity and clearness of used designations depends on educational and cultural level of a society, should be defined depending on who it is aimed at, what sphere of relations it directly concerns[15].

If the act regulates a narrow and special sphere of public relations and is aimed at a special category of people, for example, at law enforcement bodies' officials, then in such an act it is probable to use special and technical terms, special constructions. But legal acts, concerning wide layers of citizens, their collectives, public organisations, should be stated in the language simple and understandable to them. Use of difficult and not clear terms and expressions, special constructions without explanation is inadmissible here. If for the execution of a law, its application and pure comprehension many people have to address experts to help with clarification, then this law will hardly be effective.

The second designated problem of application of the legal language (*insufficient definiteness* (formalisation)), is expressed, on the one hand, in absence of formalized terms (verbal designations) which content is actually applied, on the other hand – in absence of legal definitions of the corresponding terms used in legislation, or in their ambiguity (discrepancy).

In particular, the term «norm of law» is a basic category in the system of law, at the same time, the named term in the current legislation is not named actually, its content is not revealed.

Example of another sort is the term-word-combination «the normative legal act». The given category is appealed by procedural codes, separate federal and regional laws, by-laws in particular.

So, chapter 23Administrative Procedural Code of Russian Federation regulates the order of the normative legal act arguing in court. It would seem what might be easier? However, the concept itself of a normative legal act at legislative level is not formulated, that leads to serious issues in judiciary practice when parties in litigation prove the opposite points of view. One party believes, that the legal act challenged in court is normative the other defends its individual nature.

Such a situation can develop (and developed), for example, at contest in arbitration court of a separate point of the appendix to the decision of administration of municipal entity on the statement of limits on water use. The matter is that if the decision of administration certainly possesses normative nature then the appendix confirms limits with reference to concrete managing entities, that is, has an individual character. The given disputable situation would not simply arise in the presence of corresponding definition of the term «the normative legal act».

As an example of inconsistent binding of a term it is possible to give the term «performing charge».

So, in 2001 the Constitutional Court of Russian Federation in the known decision № 13-P explained the content of this term. The court specified that performing charge is a sanction of penal character, a measure of publicly-legal responsibility of the debtor arising in connection with a committed offence in the course of enforcement proceedings. The performing charge as a penal sanction has signs of an administrative penal sanction: it has the fixed money term established by the Federal law, is collected compulsorily, made out by the decision of the authorised official, charged in case of committing an offence and also entered in the budget and in the off-budget fund which means are in state ownership.

However in 2002 the legislator passes the Code of Russian Federation on administrative offences, where part 1, article 1 excludes possibility

of establishment of an administrative sanction by other federal laws, while performing charge is not entered into the system of administrative punishments.

In 2007 the new Federal law «On enforcing proceedings» comes into force where article 112 regulates matters of reduction of performing charge and releasing of payment of performing charge in such a manner, that rather a grounded premise arises that performing charge is a civil-law sanction.

In general, at present, the content of the performing charge term is absolutely not clear, that entails considerable problems in legal practice. It is deemed, that solution to the given problem is one of the major problems of the legislator. Moreover, the named problem undermines a basis of legal regulation – legal definiteness, generates discrepancy and неконкретность of legal influence.

The following problem is *redundancy* of the legal language.

Its first refraction is connected with formalisation of terms which content has no special legal filling.

For example, article 5 of the Forest code is called «Concept of the forest». The article itself defines forest as an ecological system or a natural resource. What legal meaning has the definition in question has, is not easy to say, in my opinion. More likely it is a sort of a declaration, recognition of social importance of the problems connected with the use of forest resources.

Redundancy of the legal language can be also expressed in availability of two or more terms designating the same concept. So, in jurisprudence categories of an individual legal act and law enforcing legal act are used. Some authors leave a situation, uniting the named word-combinations.

However, the legislator, passing, the Arbitration procedural code of Russian Federation in particular introduces a new term – non normative legal act. The purpose and necessity of introduction in this case the new term, is difficult to explain.

Moreover, application of the named term undermines the bases of scientific classification of legal acts, causing illogicality of separation of such a version of a legal act as an interpretative act (as, division of legal acts into normative – non normative exhausts the classification).

The given matters do not touch upon all problems of understanding and application of the legal language and require deeper, system research.

---

1 Short philosophical encyclopedia. M,1994. P.452.
2 Alexeev S.S. Law: the alphabet – theory – philosophy: Experience of complex research. M, 1999. P. 107.
3 Terminology place in the system of modern sciences. M, 1970. P. 68
4 Legal language. Under edit. of Pigolkin A.S. M., 1980. P. 60.
5 Shugrina E.S. Technics of the legal letter. M, 2000. P. 60-62.
6 The language of law. P. 65.
7 The language of law. P. 69.
8 Alexeev S.S. ibid,P. 108.
9 Kerimov D.A. Legislative technique. Scientifically-methodical and teaching manual. M, 2000. P. 66.
10 Re. notes to art. 2.4. of RF Code on administrative offences.
11 Re. notes to art. 285 of RF Criminal Code.
12 Shugrina E.S. ibid, P. 64.
13 The Legal language. P. 60.
14 Legislative technique. Under edit. of Kerimov D.A. P.59.
15 The Legal language. P.61.

Юридическая терминология: понятие, общая характеристика, проблемы применения

Е.М. Шайхутдинов
Сибирский федеральный университет
Россия 660041, Красноярск, пр. Свободный, 79

Статья посвящена теоретико-правовому исследованию юридической терминологии. В статье анализируются понятие, общая характеристика и проблемы применения юридической терминологии.

Ключевые слова: юридическая терминология.