The Value of Legal Terminology for the Romano-German Legal System Countries

Vladimir S. Sinenko[1,*], Denis N. Latypov[2], Husen A. Thabisimov[3], Marina G. Shadzhe[4] and Marhat U. YAh"yaeva[5]

[1]Belgorod State University, 85 Pobedy Street, Belgorod, the Belgorod Region, 308015, Russia

[2]Perm State University, Bukireva str., 15, Perm', 614990, Russia

[3]Pyatigorsk State University, 9, Kalinin Ave, Stavropol Region, Pyatigorsk, 357532, Russia

[4]Adyghe State University, 208, Pervomayskaya Street, Maikop, 385000, Russia

[5]Chechen State University, 32, A. Sheripova, Groznyj, 364024, Russia

Abstract: The problems of terminology are relevant for any aspect of human life. In the field of lawmaking, the significance of this problem corresponds to the significance of laws in society. Thus, the primary aim of the article is to investigate the place of legal terminology in the countries of the continental system of law. To accomplish end, this survey attempts to substantiate that legal terminology in this legal system is of significant importance for the formation and application of legislation. To do so, a comparison is made with the construction of the legal system in the countries of the Anglo-Saxon legal system. Based on the result, Russian law is classified as a continental legal family. At the same time, based on an analysis of the key areas of development of economic legislation, a tendency has been revealed for the penetration of Anglo-Saxon legal institutions into the Russian legal system. The conclusion is formulated on the need to ensure the unity of legal terminology in legal texts. This is of particular importance when borrowing foreign legal institutions.

Keywords: Continental law, legal terminology, legal system, legislative system, Romano-German legal system.

INTRODUCTION

This paper discusses the general approach on the construction of the legal system in the countries following an Anglo-Saxon legal system, with a focus on Russian law. It considers the legal recent legal reforms, its implications on standard vocabulary and critical principles of interpretation, including the general approach to construing express terms and the tools of construction that the justice system has at its disposal towards reaching a just outcome. It also looks at the extent to which terms can be implied in the legal process, and concludes with recommendations/setting out how the courts will approach questions of interpretation and implied terms.

Recently, representatives of Russian legal science and practice are paying more and more attention to the issues of building an internally coordinated system of legislation. This system is based on concepts that are used in the legal system of a particular state (Ogus 1999; Mitrović, Pease, and Granitzer 2019).

The Romano-Germanic Legal System is a legal system based in Europe, intellectualized with the framework of late Roman law, and whose most prevalent feature is that its core principles are codified into a referable system, which serves as the primary source of law. Historically, the Romano-Germanic legal system is the group of legal ideas and systems ultimately derived from the Code of Justinian, but heavily overlaid by Germanic, Canonical, Feudal, and Local Practices, as well as doctrinal strains such as natural laws, codification, and legislative positivism (Peters 2014).

Jurisprudence as a branch of special knowledge has its own system of ordered concepts and categories, providing a logical and legal organization of knowledge about law and the state. Such concepts reflect a certain level of knowledge in the field of state-legal phenomena. This is of greatest importance in the field of lawmaking. The legal concept that is used in legislation is commonly called a legal term. Terms used in the text of the law are of particular importance. This is due to the fact that the accuracy of law enforcement depends on the accuracy of legislative wording. As a result of this, legal terminology occupies a special place in the process of building the legal system of any state (Dolganova and Kolesnikova 2019).

As a rule, in legal science, certain types of legal systems are distinguished. The theory, according to which it is necessary to isolate two main legal systems, namely, the Romano-Germanic and the Anglo-Saxon,

*Address correspondence to this author at the Belgorod State University, 85 Pobedy Street, Belgorod, the Belgorod Region, 308015, Russia;
E-mail: sinenko@bsu.edu.ru

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has become most widespread. Also, individual systems often include systems of Scandinavian (Merryman 1985) and Islamic (Vago 2003) law. In the 20th century, it was also customary to single out a socialist (Chloros 1992) legal system. Despite the variety of points of view on this issue, the dominant position of both Russian and foreign (Liebesny 1981) scholars is that all national legal systems are based on one of the two most widespread and influential legal families: German or Anglo-Saxon.

The Roman-Germanic legal system is also referred to as the Continental or Civil Law System. This legal model dates back to ancient Roman law, which was received in the Middle Ages by countries of continental Europe. The main source of law in it is a regulatory legal act. The latter has an unconditional priority over other sources. The advantages of such a construction of law are the presence of a clearly organized and structured system of regulatory acts. Legislation, as a rule, regulates all the main aspects of public life and is based on a written basic law - the constitution. The legal system is divided into sectors, sub-sectors and other smaller elements. The lawmaking function is endowed with special legislative bodies (Borisov, Tsukanova, Tonkov, Sinenko, Zinkovskiy, 2018). A key element of legislative language is the legislative term. Accordingly, the study of the problems of using legal terminology is relevant. This is especially true in the Romano-German legal system.

As pointed out earlier, the chief purpose of this survey is to make an investigation into the value of legal terminology for the Romano-German legal system countries. Looking objectively, we have attempted to put forward some recommendations in order to demonstrate the concept of unifying terminology, which can bring about harmonizing legislation, eliminating the contradiction between the legal norms of national legal systems.

METHODS

Various general scientific methods and the methods of logical cognition are used in the study: analysis and synthesis, systemic, functional and formal-logical approaches. The development of conclusions was facilitated by the application of formal-legal and comparative-legal methods.

Comparative-legal method is mainly about comparing national legal systems, even if different forms of globalization, such as Europeanization, and an increasing recognition of non-state law, such as customary law, religious law or unofficial lawmaking by international companies are challenging the very concept of ‘legal system (Vago 2003).

The concept of formal-legal and comparative-legal methods bring one of the most intellectually challenging experiences in the study of the law. This is due not only to the deparochialising role of comparative law but also to the imperative for the researcher to reach a high level of abstraction in order to attempt to make sense of the differences and similarities between the legal systems compared and map out solutions to the legal issue under examination (Turanin, Tonkov, Kuprieva, Pozharova, Turanina 2019).

DISCUSSION AND RESULTS

If the law as a whole is understood as a set of legal norms organized in a certain way, then legislation is a set of normative acts that are in an interconnected relationship. The relationship between these phenomena is indisputable. In the most generalized form, this relationship is characterized by the ratio of content and form, where legislation appears as an external form of expression of law.

Thus, the systematic nature of the legislation largely depends on the use of clear, clear, understandable and unified legal terminology in it. However, at the present stage of optimization of domestic legislation, the process of creating a new terminological system is seriously delayed.

The current state of legal regulation of public relations suffers from insufficient attention to uniform methodological approaches in building a system of law and creating an integrated and consistent regulatory framework. As previously noted, this is of particular importance in the countries of the Romano-German legal system.

The Anglo-Saxon legal model is represented by the Common Law system. The leading source in it is judicial precedent as a decision of a particular court in a particular case. Thus, the courts in this system are endowed with rule-making functions. An ordered collection of such precedents forms a common law (Borisov *et al*. 2018). Thus, in these countries, the logic of law is revealed through a judicial interpretation.

In recent years, a debate over the competition of legal systems in general has been very active (Peters 2014). Moreover, the closer the cooperation in the economic sphere, the more acute this competition

becomes. States that provide more effective remedies attract the capital and labor necessary for dynamic development (Ogus 1999). For post-Soviet Russia, which is in the process of reforming its legal system, this is especially true.

The legal system of Russia traditionally belongs to the continental family. It is based on the principles of Romano-German law. The civil legislation of Russia, which took shape in the 19th century, was significantly influenced by the German legal tradition. Indeed, the continental (romano-germanic) legal system places the main emphasis on a set of core principles that are codified into a single referable system serving as the primary source of law... as compared with a common law - which is a collective name for legal systems that are primarily based on judicial precedents. What this means is that common law courts will look for previous precedential judgements and base their verdicts on them if there is a disagreement between the parties as to which law is applicable to their dispute. However, recent trends in the development of Russian legislation suggest a noticeable approximation to the common law legal system. This is expressed in the borrowing of legislative models that have historically been formed in the countries of the Anglo-Saxon system of law (Turanin *et al*. 2019).

We believe that the logic of law has significant prospects in countries in which the law acts as a source of law. However, this is only possible with high-quality and consistent legislation. One of the prerequisites for such legislation is unity in the use of legal terms. These terms are a reflection of concepts that take shape in the theory of law (Turanin *et al*. 2019).

A term is a concept that means a special word (or phrase) used to denote a concept that is part of the system of concepts of a certain area of professional knowledge. For a proper understanding of the term requires a special definition (precise scientific definition).

Natural language, falling into the legal sphere, undergoes a number of changes. As a result of this, legal terminology can be considered as a functional legal variety of the Russian language and as an independent subsystem. Legal vocabulary has a specific quality. It is due to the fact that the being of a natural language does not always coincide with those terms and definitions that are used in legal speech.

On the whole, access to basic human rights and privileges are anchored in language. It should be evident that if the language is unclear or incomprehensible, people will not know what these rights are. When people are unaware of their rights, any legal process involving them can hardly be fair.

Thus, legal terminology is an important component of the legal language. Legal terms are an element of the legal technique, verbal designations of state-legal concepts, with the help of which the content of the legal requirements of the state is expressed and fixed. (Sukharev, Zorkin, and Krutskikh 2009).

Legal terms are reference points in the process of cognition of legal phenomena, they are directly related to the regulatory function of law, the key to the implementation of which is the effective operation and application of legal norms. In this regard, there is a need to study legal terms not only as units of the language system, but also from the point of view of their actual functioning, perception by ordinary native speakers.

Legal vocabulary is necessary for such a clear formulation of legal requirements, to achieve conciseness of the legal text. Each term has its own story of its creation, development and functioning. And each term goes its own way: some remain unambiguous, others go out of use or, conversely, remain for a long time (Matulewska, 2017).

Concepts and categories related to a particular branch of knowledge are interconnected and interdependent. This is due to the fact that between them there are diverse relationships that obey the laws of logic. Cognition of dialectical connections between separate concepts is carried out with the help of definition, generalization, systematization and comparison. As a result of this, they form a kind of systemic unity, giving reason to talk about the formation of a special legal concept, namely the conceptual apparatus.

Since the conceptual apparatus is a systemic phenomenon, the main systemic features are applicable to it. These may include: integrity, hierarchy, interdependence of the system and the environment (Turanin *et al*. 2019).

Legal terms are specific. This determines the importance of their precise application. And this consists not only in the use of words, but also in the systematic functioning of law. Thus, if a number of

terms are used inappropriately or incorrectly, as well as if national legal features and primary functioning are not taken into account, then systematicity may be violated. Therefore, the specialist must possess sufficient knowledge not only in the field of law, but also in the field of linguistics and translation theory, in order to avoid such errors.

Working with legal texts presents certain difficulties, as there are a huge number of lexical features of the language of jurisprudence. It is not always an easy task, even with the help of a dictionary, to find the corresponding equivalent to any stable combination or term. Correct translation requires cultural knowledge and abroad outlook (Dolganova and Kolesnikova 2019).

The bulk of the legal terms used in the countries of the continental system of law originates in the law of ancient Rome. This is due to the fact that the law was formed on the basis of the processing of Roman legal sources, primarily, the Justinian Digestov (Corpus iuriscivilis). Thus, the source of the formation of legal terms are Latinisms. Indeed, the important role of the Latin language in shaping the legal terminological system cannot be overestimated.

Roman law was distinguished by accuracy of wording, simplicity and clarity. By virtue of this, it was the basis of the legal systems of many European states. Despite the fact that English law developed autonomously and did not experience significant influence from the European legal systems, there are a large number of Latin legal terms in the legal terminology of the English language (Sukharev *et al*. 2009).

Considering that are 35 different languages which are considered official languages in various regions of Russia, along with Russian, this has several implications. Russia is a multilingual country, which means the citizenry switches between a number of languages and language varieties as they move between different domains.

A large number of Latinisms, legal terms, were introduced into other languages from the original language back in the Renaissance, when access to the classical Latin language appeared. In this regard, we give such legal terms-Latinisms as bona fide, memorandum, certiorari, Alibi (Mitrović *et al*. 2019).

The legislation gravitates in meaning to the sphere of exact knowledge, requires the uniqueness of the information that forms its basis. This requirement for legislation is especially significant, since legal requirements must have the maximum accuracy of presentation, and therefore it is allocated to a special unit of work.

The requirement for the unity of legal terminology is especially growing in the modern period, when scientific and technological progress penetrates deeper into public life, when the specialization of knowledge increases (Chloros, 1992).

The designation of one and the same legal concept in various terms is a form of manifestation of redundancy of legal information, which must be fought vigorously and consistently, bearing in mind, among other things, the prospects for the creation and implementation of information retrieval systems in legislation and their transformation into a national system.

For the unity of legal terminology, it is necessary that when designating a certain concept in the regulatory text one and the same term is used consistently, and when designating different, not matching concepts, different terms should be used. Otherwise, fuzziness, confusion and even errors in legal activity are possible. In this regard, it is clear why almost all scientists involved in the problems of legislative technology speak about the need for unity of legal terminology

Legislative definitions are norms of a special kind, organically included in the mechanism of legal regulation, defining its general principles, organizational prerequisites. The body or person applying or executing the order should not interpret it differently from what is formulated in the normative act. The definition, that is, a brief definition of a concept that reflects the essential, qualitative characteristics of an object or phenomenon, is one of the most common methods of legislative technique that are widely used in lawmaking.

Legislative definitions should be built on the model of classical definitions indicating generic characteristics (quality inherent in a number of related objects or phenomena) and species differences (quality characteristic only for a given defined concept). Changing the definition of a term is carried out by recognizing the old definition as invalid and adopting a new one, or by making appropriate changes to it. If the definition of a legal term is amended by law, then in all acts where such a term is used, its meaning should be understood in a new, amended version.

CONCLUSION

The findings of this study provided with a broad overview of the general way in which the Russian justice system/ courts tend to approach the task of construing disputed or ambiguous wording. Ultimately, however, the "rules" of construction are no more than guidance tools and the particular facts and circumstances of the case determine how they are applied. In practice it is open to judges to select from these tools at their discretion in order to make the legal process fair, accessible and, give effect to the parties' (presumed) intentions and to try to achieve reasonable justice between them.

The accuracy of the expression of the will of the legislator, and, consequently, the effectiveness of the law, largely depends on the accuracy of the use of terms. As was shown in the research part, this circumstance is especially important in the countries of the Romano-German system of law. It is in these countries that the source of law is the written text, elevated to the quality of the law. The quality of such a text largely depends on the accuracy and uniform understanding of legal terms.

As a result of this, the most important requirement for improving legislation is the unity of the use of legal terminology not only within the framework of a single regulatory act, but also in the entire relevant branch of legislation. The basis for structuring regulatory requirements is the terminology contained in constitutional and federal laws. To ensure a single legal space, the uniform formation of a legislative system of legislation is especially important.

In the future, the process of unification of legal terminology in the countries of the Romano-German legal family should be launched. The ultimate goal of unifying terminology is the harmonization of legislation, designed to eliminate the contradiction between the legal norms of national legal systems.

CONFLICT OF INTEREST

The authors confirm that the information provided in the article does not contain a conflict of interest.

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