

20. Общероссийский государственный телеканал Россия. [Сайт]. URL : <http://live.russia.tv/> (дата обращения 22.04.2018).
21. Сетевое издание «Информационное агентство «РБК». [Электронный ресурс]. URL: <https://sport.rbc.ru/news/5ab55e8a9a79474471fc932f> (дата обращения 27.04.2018).
22. Петрова Н. Е., Рацибурская Л. В. Язык современных СМИ: средства речевой агрессии: Учеб. пособие. М.: Флинта; Наука, 2011. 160 с.



UDC 80 (811.111)
DOI 10.1555/2409-3203-2018-0-14-246-248

LEGALESE AS THE OBJECT OF STUDY OF JURILINGUISTICS

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Abstract: The article analyzes the problem of understanding the language of law, which partly arises from the ways the culture manifests itself in the law. The special attention is paid to 'legalese' the use of which raises a lot of debates. It is one of the tasks of jurilinguistics to define methods for improving the quality of legal texts to make them understandable to the general public.

Keywords: jurilinguistics, legalese, legal translation, multiculturalization.

Globalization of the practice of law requires legal professionals all over the world to work together. Legal practitioners, as well as judges, can no longer isolate themselves from working with lawyers from other nations and legal cultures. The task is then to understand and then meld these legal cultures.

It is generally considered that law can be translated through words, sentences and text which regulate man's behaviour within the society. The juridical norm should comprise, within its linguistic aspect, many social aspects linked to its application, selection and use within the social environment. It is a difficulty that the present researchers are trying to solve, taking into consideration the necessity of adapting the national legislations in order to achieve mutual and unambiguous understanding.

Jurilinguistics, being a relatively young scientific discipline, proposes itself to combine the linguistic aspects with the juridical ones. Its development dates back to the beginning of the nineteenth century. However, we must not forget that questions about the relationship between language and law were raised by the lawyers of Ancient Rome. They put forward the position that "law can and must be defined" [3], thereby affecting the general objective of jurilinguistics, namely, to make legal text not only accurate in contents, but at the same time understandable to every person.

The attention to the issues of tackling and translation of legal documents is increasing due to the development of trade relations, communication in society, as well as mobility of population. Nowadays people often tend to go to live abroad, but the fact that each country has its own language and laws greatly complicates their life. The understanding of laws, statutes, codes and other normative-legal acts is fundamentally dependent on the accuracy of translation, clarity of

legal terms. If the meaning is lost through translation, ambiguity may arise, which results in misunderstanding and disobedience to the law.

Jurilinguistics is the study of legal discourse from a language perspective. Because each legal system and each language has its own special characteristics, jurilinguistics specifically seeks to define methods for improving the quality of legal texts while taking into account the complexity and shades of meaning of each system and the unique character of each language. Let us consider the two major divisions in law, which are Common Law and Civil Law, and the ways how they predetermine the nature of legal language.

Common Law has developed in Anglo-Saxon countries and is inseparable from English language. Civil Law has its roots in Roman law and cannot be associated with one particular language. Common Law builds on analyzing previous cases and decisions by judges, which set a precedent, thus leaving less room to judges for interpretations than Civil Law, which builds on interpreting abstract principles that address unforeseen future situations, and applying them to concrete situations. Thus, Common law leaves as little room for interpretations as possible trying to cover every foreseeable situation, event or contingency, and this leads us to considering the distinctiveness of the English legal terminology.

Particularly English legal language owing to its rich multinational historical background is a most interesting and, at the same time, exceptionally complex legal jargon which may seem virtually incomprehensible even to the speakers of English from outside the profession not mentioning foreign recipients. Known for its incomprehensibility and obscurity, legal English is also ironically called “legalese” meaning that it may be regarded as a foreign language. “It is a special legal language, the special way of constructing phrases and sentences, which for those ignorant of the intricacies of English legal terminology often seems devoid of meaning” [1]. Legalese is generally used in judicial decisions and in the preparation of various documents, but this style can be observed in the everyday vocabulary of lawyers. The legal manner of presentation is considered formal. This formalism manifests itself in the use of long complex sentences, cumbersome syntax and specific terminology.

For example, legalese is characterized by obligatory use of archaic, alliterative and often redundant expressions. While reading English legal texts, we encounter with specific concepts which are hard to translate in Russian without the loss of their cultural component. Examples include legal doublets which are not typical for the Russian language. Some of them appeared as a result of French and Latin influence on the English language, but some of them are composed of English synonyms. Most words in such doublets mean almost the same thing, and, as can be seen from the following examples, are usually translated in one word because the literal translation could be misleading: ‘will and testament’ – ‘завещание’ (English / Latin), ‘null and void’ – ‘недействительный’ (English / French), ‘have and hold’ – ‘обладать’ (English / English), ‘over and above’ – ‘к тому же’ (English / English).

The all-encompassing and self-contained nature of legal texts explains also the tendency for complex and long sentences. Sentences often have the logical structure of an if-clause, conditional expressions and exceptions being frequently employed: ‘except’, ‘unless’, ‘in the event’, ‘in the case’, ‘if and so far as’, ‘if, but only if’, ‘provided that’, ‘subject to’ and ‘notwithstanding’. Formal tone is supported by the extensive use of passive voice. This construction has the added advantage of allowing lawyers to avoid directly referring to the doer of the action.

Legalese is meant to be a precise and unambiguous term. However, “often the texts written in the style of legalese contain so cumbersome and complex sentences that they become even more ambiguous than the written public language” [1]. One more difficulty is that legalese expands the definitions of English words giving them extra meanings which these words do not have in normal parlance and normal understanding.

It must be noted that nowadays The Plain English Movement is gaining popularity which is a tendency to use normal, everyday English instead of legalese. The main conflict of interpretations by a legal professional and an ordinary citizen is that a legal professional is initially committed to the maximum uniqueness of the text, and an ordinary native speaker can provide a number of reasonable interpretations depending on his social and educational background. However, many lawyers say that it is impossible to completely renounce the legalese, because most legal documents of England have been composed in this style, and in order to change them you will need lots of time. Besides, for those who understand, the legalese gives an unambiguous meaning of legal concepts on which to build normative legal acts. Legalese may be particularly resistant to misinterpretation, be it incidental or deliberate, for two reasons:

1. Its long history of use provides a similarly extensive background of precedent tied to the language. This precedent, as discussed above, will be a strong determinant of how documents written in legalese will be interpreted.

2. The legalese language itself may be more precise when compared to plain English, having arisen from a need for such precision, among other things.

Even in spite of its complexity, this style is necessary, because only it can give clarity to the English legal terminology. There is no doubt that the main function of any formal communication is social regulation. Therefore, all the texts should have a definite reading, i.e. each text should be characterized by such accuracy of presenting information, which would not allow for different interpretations. This is one of the tasks jurilinguistics is designed to solve.

For a long time the functioning of the legal language, as associated with interpretation of the text of law and its components – legal terms, has mostly been a matter of jurisprudence: the theory of the state and law (law-making, interpretation of law), legal hermeneutics. But at the same time to identify and describe the full picture of this phenomenon involves going beyond the purely legal subject. Recently, most studies of the language of law have gradually changed treating it as a linguistic, psychological, philosophical (hermeneutic) phenomenon. The language of law is examined as a social phenomenon, so it is not surprising that the problem of understanding legal language by non-professionals is of primary importance.

The problems jurilinguistics deals with are multi-faceted and complicated. Some of them require both legal and linguistic competence, others need a deep theoretical understanding and practical development. However, it can be concluded that the status of jurilinguistics as a science is under active scientific research in the sphere of language of law worldwide.

References

1. Berg, E. B. The Basic Tools of Professional Communication in the Legal Sphere / E. B. Berg // Languages of Professional Communication: Proceedings of the International Scientific Conf., Ekaterinburg, 2003.
2. Vlasenko S. V. Translation of Legal Text: Cognitive Features of a Category and Realities of Professionalism in the Language Pair English-Russian//Philological Sciences at MGIMO. / SB. scientific. works. No. 21 (37). M.:MGIMO(University). 2005.
3. Khizhnyak S. P. Foundations of Jurilinguistics [Electronic resource]/ Khizhnyak S. P.— Electron. text data.— Saratov: University education, 2016.— 123 p.
4. Vorob'eva, M. E. Interpretation of Legal Terms in the Field of Everyday Communication / M. E. Vorobyeva // Materials of XVII International Conference of Students, Postgraduates and Young Scientists “Lomonosov”. Section “Philology”. – M.: Izd-vo Mosk. University Press, 2010. – 35-38 pp.