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ПРАВОВЫЕ АСПЕКТЫ ФУНКЦИОНИРОВАНИЯ ЯЗЫКА

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Аннотация. Обращенность языка одновременно и к внешнему миру, и к человеку определяет особое положение языкознания в системе наук и правомерность формирования многих пограничных дисциплин, среди которых особую значимость сегодня приобретает юридическая лингвистика. Любое правовое явление – законодательный акт, судебный процесс – всегда текстовое явление, явление речевой коммуникации, а значит и феномен языка. Сегодня правомерно ставится вопрос о лингвистическом праве, состоящем из нескольких компонентов, среди которых важнейшее – это право на лингвистическую экологию, по которому человек должен иметь комфортную языковую среду. Если человек испытывает унижение и стресс из-за инвективной лексики, то закон обязан защитить его право на окультуренную лингвистическую среду. При этом право на лингвистическую экологию неотделимо от права на защиту чести и достоинства человека. Поскольку в наши дни необыкновенно активизировался жанр речевой инвективы, опирающийся не только на допустимые в культурной среде средства дискредитации оппонента, но и на табуированные обороты речи, поскольку возросла частотность судебных исков об оскорблении чести и достоинства, о диффамации, стало неизбежным тесное практическое взаимодействие юристов и лингвистов.

Ключевые слова: законодательный акт, судебный процесс, лингвоэкология, речевая коммуникация, лингвистическая экспертиза.

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PHILOLOGY

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Original article

Legal aspects of language functioning

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Abstract. A language being directed either to the outer world or to the human determines a special place of language studies within the system of science. It also enforces the trend to formation of multiple bordering subjects, including legal linguistics. Any legal manifestation – a legislative act, a court trial – is always of textual nature, an act of verbal communication which is consequently an aspect of a language. Today the question of the linguistic law, comprising several components, where the right for linguistic ecology according to which human has the right for a comfortable language environment, is the most vital. If a person feels stress or humiliation because of invective lexicon, the law is to protect their right for the relative linguistic environment. Thus, the right for linguistic ecology is inseparable from the right for protection of honor and dignity of a person. As the genre of communicative invective basing on different means of discrediting an opponent became widely used, the number of cases on harming the honor and dignity of a person, on defamation increased drastically, practical interaction of linguists and lawyers is inevitable.

Key words: legislative act, court trial, linguistic ecology, verbal communication, linguistic forensic expertise.

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Introduction

Despite the fact that in Ancient Rome there was no such concept as "legal linguistics", prominent lawyers of that time expressed the idea that legal documents should be simple in content, clear, accurate and at the same time accessible to everyone, both for the general public and for professional lawyers. That is why the culture of lawmaking in any state since immemorial times requires a logical and coherent presentation of the text of law, that is, it's a strict professional style and language. Legal linguistics is a relatively new branch, which is located at the intersection of language and law and is being developed through the joint efforts of lawyers and linguists. In the field of domestic science, the first fundamental studies of the language and style of legal acts were conducted mainly in the nineties of the last century. At that time, scientists focused mainly on the functional style of the language used to write legal norms. The aim of the researchers was to develop uniform rules of a written norm to avoid conflicts when applying them. Today, legal linguistics is designed to solve a wide range of issues in the field of language and law.

Regarding the characteristics of the appearance of modern linguistics, «notions of "diversity", "the vastness of borders", the presence of "multiple objects" are noted. "...linguistics, studying the essence of humanity in a person, cannot be a narrow field of knowledge"» [1, p. 279]. If a few decades ago it was quite acceptable to analyze language as an entity separate from human (as if languages were not a part of social life and natural history), today language is considered in the broad existential and conceptual context of human existence. Numerous interdisciplinary fields of knowledge have become a reality – sociolinguistics, cognitive linguistics, psycholinguistics, linguistic pragmatics. The very concept of pragmatics, being developed by the intensive researches in the field of semasiology, is, in its turn, the result of a semantic analysis tasks and target enlargement. As the new areas of searching for the functionality of language signs in speech implementation appeared, the research goes beyond the conventional linguistics with their solid patterns. Many applied areas of linguistics need to "redefine" their subject. «The existing trend to "fragmentation" of the modern branches of linguistics is, sometimes, a disadvantage, but more often, it is a sign of a certain maturity of linguistics. The general scientific prerequisites of linguistics of law are connected with general integration processes, on the one hand, and with the expansionism of modern linguistics as its defining feature. Today's linguistics has become what biology was for 19th-century intellectuals» [1, p. 101].

Discussion

The problem of language ecology is particularly acute in Russian linguistics in the 90-s of the 20-th century under pressure of the global changes that occurred during this period in the social, political, economic, legal and cultural life of Russian society. All those predetermined changes and expansion of the communicative paradigm in all the said areas. The social, legal, and economic contradictions of the described period clearly indicate the aggravated contradictions between the normative and the conventional language, these contradictions were manifested in the appearance of such concepts as "language of law" and "law of language". These dual processes determine the formation of such areas of modern science as legal linguistics, etc. These directions explicate such relatively new concepts as language policy, linguistic ecology and language forecasting. Such aspects as the strategic development of the legal system, improvement of various "legal instruments" advanced during the formation and development of the legal system of the Russian Federation. Consequently, the language of legislation takes a special position, because the process of lawmaking forms a unique environment in its own special way for the interaction of natural human language and law. It should be noted, that linguistics in this case acts not only in terms of content, but also performs an "instrumental" function. We mean, without disparaging the substantive aspect of law, it is clothed in a linguistic form and acquires in this way an external structure. Thus, we are talking about the "instrumental function" of a language on the grounds that legal prescriptions are formulated and translated by giving them a linguistic form.

Modern cognitive studies proved a natural language to be more synthetic than it was believed in the earlier formal descriptions. The connection between language and law has been observed for a long time, but no sufficient conclusions capable to explain the essence of law, evidence, truth from the point of view of linguistics, appeared for a long time.

«Today, the existence of a newly established field of study, bordering on practically all conventional realms of linguistics and other disciplines has become a reality. The first international conference on linguistics of law was held in Bonn in 1993. In the western countries this discipline exists for several decades. Our scientific school was being developed some time later. The obvious interest is connected with recent historical events, i.e. the humanities and the legal system were much affected by ideology in the late USSR» [3, p. 125]. However, legal linguistics has taken shape in our country not from scratch, but on the basis of very significant developments made within the framework of functional stylistics. The idea of considering the language of law as an independent functional style of literary language, which has a special vocabulary for expressing the thoughts of the legislator, has its own grammatical and stylistic resources was proposed in the works of A.A. Ushakov and A.S. Pigolkin. The strong point of Russian science has always been the study of the peculiarities of the legal terminology system. Domestic linguistics of law is only about two decades old and is rapidly developing. Russian researchers made their best to cover the gap and the achievements of foreign linguistics were applied. The widest scope of questions, and the most urgent matters of the language of legislative acts, the invective use of language, the cases of insulting honor and dignity are represented in the eleven published issues of "Legal linguistics". It must be stressed, that «the overseas linguistics pays much more attention to other aspects, their target is a legal argumentation by means of natural language.

The matters of state of language assessment and formation of language policy, enforcement of the constitutional right to use their native language are the general issues that constitute a greater interest for linguistic research nowadays. A special terminology, including legal is as much of an interest as legal discourse, in other terms – legal texts» [3, p. 126]. There is a strong opinion that being the highest achievement of humanity the law is to be provided with the special language system that should differ in style and terminology. Though the number of publications on linguistics of law is rapidly growing, there is no sufficient ground to consider the later a fundamental science. «Nevertheless, the fundamental questions arise. They are as follows: How does language affect law? What are the ways of manifestation of interconnection of language and law? Can one and the same language express different legal systems equally? Is it possible to define and what are the linguistic universal conventions of law? Recently, the linguistics of law became institutionalized» [3, c. 126]. A number of special research centers and laboratories were established. The role of the Siberian School of Legal Linguistics (Kemerovo, Barnaul, Novosibirsk) headed by N.D. Golev is particularly noticeable. Significant contribution to the development of legal aspects of linguistics was made by such scientists as A.S. Alexandrov, A.N. Baranov, E.I. Galyashina, M.V. Gorbanevsky, T.V. Gubaeva, V.I. Zelvis, A.A. Leontiev, O.N. Matveeva, A.P. Skovorodnikov, B.Ya. Sharidullin and others. The directions of linguistics and law traditional interaction are well established. Fundamental research in the field of phonetics turned out to be of a great necessity for voice recognition in order to identify the speaker. Research in the field of author's style is being used in criminology (e.g. the sensational computer analysis of texts to establish the authorship of the "Quiet Flows the Don" under the leadership of G. Hetso). This fact turns the said research type into the forensic field.

A language performs the following legal functions: first of all, it is the main component of the legislative process. Secondly, the language acts as an object of legal regulation (Russian as the state language, cases within the framework of the norms on the protection of honor, dignity and business reputation of an individual, texts as an object of copyright, etc.) [4, <https://lawfirm.ru/article/index.php?id=10104>]. The law enforcement function of a language is performed in the interpretation of texts of the legislative acts and different procedural documents. From the point of view of general linguistic parameters, the language of law with the exception of its own terminology system meets the criteria of the language of science in its major and, thus, performs a scientific educational function. The language of jurisprudence is, a so-called, "thematic variety" of other scientific languages that does not differ qualitatively (except for the terminology) from other scientific languages, for example, sociology or history, and therefore acts as the main means of legal science. Here the language performs an instrumental function. Thus, the consciousness of a

lawyer perceives language as a tool for the implementation of the legislators' plan. On the other hand, the language as the universal system interacts with law at the level of formal logic. In this case, linguistics is considered as an environment that ensures a certain state of law, as well as a condition for the formation of the grammar of law. The key function here is generation and interpretation of texts of normative legal documents.

When attempting to set legal matters, specialists in semantics or syntax are often expected to provide a convincing evidence such as – “what did the speaker mean when he used this or that word, word-combination, sentence”. It becomes absolutely necessary to carry out professional linguistic support and support of documentary and information disputes, civil and criminal cases, where the text in Russian acts as document and/or material evidence. An applied law enforcement practice suggests to involve philologists to give a linguistic expertise of functionally and stylistically different texts of various subjects involved in a variety of controversial situations and conflicts. We should stress, that «forensic linguistic research as a multi-stage and multi-subject process of examining written texts and phonograms of uttered speech that possess the status of a document and/or material evidence, occupies a prominent place in domestic civil and criminal proceedings today. The detabuisation of invective vocabulary makes urgent the notion and problem of "linguistic crime"» [10, p. 362]. With the restoration of the institute for protection of honor, dignity and business reputation, «...questions about the differentiation of the concepts of "facts" and "opinions", "judgments", "assessments" and "insults", the ratio of truth and interpretation appear in the field of legal linguistics.

As the natural rights of native speakers to freely use the resources of their native language and the ontological understanding of language as subject to legal protection result in the legitimization of natural language manifestations» [10, p. 361]. «One of the most important tasks of the new discipline is the legal regulation of the obscene vocabulary – the lexical layer that has been the focus of attention of "legal linguists" since the very beginning of the formation of legal linguistics, but legal recommendations regarding this vocabulary have not yet been developed. For legal linguistics, works are valuable, where they are justified (by data from experiments and surveys of native speakers, typological description of the sphere and situations of the use of linguistic units and frequency, study of the traditions of their use in Russian linguistics and culture) classification of obscene words according to their invective degree.

A psycholinguistic study of the impact of obscene vocabulary in its perception by various segments of the population is of a great importance for legal linguistics» [10, p. 110]. Only linguists are able to track the appearance of a new offensive feature of a word. It is well-known that the procedural practice of the early twentieth century required the presence of an intention to insult in order to recognize expressions or actions offensive. But, since insults in a sane mental way of relating to the illegal act were divided into unconditionally offensive and conditionally offensive, the perpetrator had to prove that he had no intention to offend with an unconditionally qualified insult, and with conditionally offensive actions or words, the offended had to prove that there was an intent to offend him. The definition of communicative intent as a qualifying sign of insult by a legislator of the early XX century reflects the verbal nature of this social phenomenon, which arose from the ancient Russian understanding of "offense" as a semasiological predecessor of the modern term "crime". The increasing part of the state in regulating public life provided a semantic shift in the qualification of the legal norm of "insult".

Under the Criminal Code of 1996 it got differed from the "speech intent" which according to the "Criminal Code" of 1903 up to the conscious state of public danger and the violation of the said act. The matter of violation of law in cases of verbal insult has not been yet substantially interpreted for several reasons. First of all, the influence of natural law (*jus naturale*) is not always taken into account, which in its turn differs the very idea of a verbal insult as a specific negative phenomenon into a somewhat larger matter that affects much more wide scope, i.e. a higher extend of verbal aggression (pressure), which is directed onto a person. The understanding of the notion of insult in the ordinary and in the legal consciousness is different, which creates difficulties in the qualification of

the legal norm "insult". The qualification of "insults" shifted from the sphere of criminal law (i.e. offense) to the sphere of civil law (tort). The absence of classification of the linguistic methods of the diagnosis of insults has been an issue. The emphasis has been placed on solving linguistic or legal problems of insults. This problem has been repeatedly analyzed from the positions representing the ethnic and cultural aspects of the formation and functioning of the invective vocabulary in various linguistic cultures (Zelvis, 2001, 2004, Krongauz, 2008, Kudinova, 2012, Zubova, 2014 and many others). The court trial on the cases for the protection of honor, dignity and business reputation has been considered in various works alongside the previous problem. (Baranov, 2007, Vorontsova, 2006, Lazutkina, 2009). The ethnic and cultural features as well as frame elements of the concepts "offense", "insult" (Golev, 2002), as well as the strategies of harming self-esteem when describing the concept of "self-esteem" (Zelenova, 2003) are analyzed in details.

The members of the Guild of Linguists-Experts in Documentation and Information Disputes (Moscow) and the Laboratory of Legal Linguistics (Barnaul) thoroughly studied the principles of diagnosing insults in conflict texts during the forensic linguistic examination. The use of offensive words involved in a contradictory allegation in the interpreter's view is of a great importance, the broad social context of the language collectively, a conflicting statement from the point of view of the interpreter, the "criminal purpose" of the author of the text and the assessment of the meaning of the offensive text, the most common approaches and methods causing offense, mockery, discrediting, insult, and many others comprise wider scope of the matters of the modern legal linguistics. Legal linguistics is inextricably linked with many other borderline (syncretic) disciplines. This is, first of all, sociolinguistics and psycholinguistics. Within the framework of sociolinguistics, all aspects of the connection between language and society are analyzed in detail, the social differentiation of the national language is investigated, and the process of social determination of language is viewed at various tiers of the social and socio-ethnic structure – from nations and classes to the primary link – a speech act that is analyzed in the context of a social situation. The works of representatives of the sociolinguistic branch are dedicated to the study of connection between the development of civilization and changes in the composition of the vocabulary, between the development of new means of expression and the language itself. Due to their efforts, the social aspect has become essential and necessary in the science of language. Sociolinguistics has proposed a functional-dynamic approach to the language system, the development of which is determined not only by inner, but also by extra-linguistic factors.

Thus, R.A. Budagov wrote that social factors act through the prism of the language itself, its system, so researchers should strive not only to distinguish between the concepts of linguistic and social, but also to show their interaction in the process of functioning of each specific language [4, p. 125–126]. The famous linguists of the twentieth century (L.V. Shcherba, V.V. Vinogradov, M.V. Panov and many others) assigned a great role to the sociological component, proposed to study language as part of the social process, as a form of human life in contrast with the formal approach to the language study. It is obvious that even the central concept of the science of language – lexical meaning – is analyzed and described taking into account social components. Thus, the contextual theory of meaning is based on the concept of situation-oriented approach, the "broad context of the situation", which includes participants of communication and objects of the environment. In general, current understanding of a language is inseparable from ideas about a person's attitude to the world at one time or another.

Classical and contemporary works devoted to the problems of social determination of language have formed a reliable basis for theoretical research concerning social-linguistic connections and interrelations. Psycholinguistics can also be characterized as the forerunner of modern legal linguistics, where all manifestations of a person's spiritual activity are highly relevant, and the psycholinguistic method, or associative experiment, which allows to identify the representation of legal vocabulary in the linguistic consciousness of native speakers of the Russian language, has long been borrowed for the needs of linguistics forensic expertise. The reliance on cognitive science is extremely important for legal linguistics. Today, the most important methodological postulate is the

following statement by A.E. Kibrik: "cognitively oriented linguistics continues the traditions of functional and, in a more broad way, semantically oriented linguistic theory. Its empirical method is to consistently follow all the nuances of the linguistic form and look for their final explanation... in the structure of the cognitive structure... And then a lot of things that seem to be random and arbitrary at the semantic level in the language form become motivated and have a deep meaning" [9, p. 75]. Modern linguistics, with its anthropocentric orientation, is characterized by attention to all the circumstances of the formation, development and functioning of language forms, including those on the social level. The same quality – anthropocentricity – is inherited by legal linguistics. The special part of legal linguistics is to enhance the legal culture of citizens.

Conclusions

As it is well known, the basis of legal culture is the ability to accept and interpret the texts of law. The legal texts in a state governed by the rule of law play an extremely important part, since a person acts in different guises – a plaintiff, a defendant, a founder of a public organization, and everywhere he encounters the legal texts. Therefore, the need for philological support of legal activity is of a massive nature. There is every reason to believe that the processes of scientific expansionism will deepen, and this will inevitably lead to a different relationship between the disciplines. "Instead of the traditionally inherited and protected boundaries between them, the time will come for research on problems, and not on the established conditional demarcation of spheres of occupation. One can hope that the traditional and very conservative classification of knowledge adopted now will soon leave only memories," writes V.Vs. Ivanov [7, p. 156]. We think that the formation of a new, non-traditional problem for linguistics and jurisprudence confirms this foresight.

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