

Artículo de investigación

Legal language as an intellectual and legal communication means

El lenguaje legal como medio de comunicación intelectual y legal
A linguagem jurídica como meio de comunicação intelectual e legal

Recibido: 9 de abril de 2018. Aceptado: 30 de mayo de 2018

Escrito por:

Ol'ga V. Grechkina⁴⁸
Alla Yu. Korniyushkina²
Ekaterina A. Naruzhnaya³
Evgenij E. Tonkov⁴
Vladislav Y. Turanin⁵

Abstract

The authors considered the essence of the legal language and highlighted its properties. In particular, it is determined that the legal language is, primarily, the official language, which is distinguished by the standard formulations. It is based on the legal terminology. Legal language is characterized by a circle of regular users, special, distinctive fixation objects (for example, legislative, judicial and other legal acts). It is a means of special, intellectual and legal communication, intended for the exchange of legal information. The article contains arguments in favor of the need for the general availability of the legal language and justifies the possibility of its subdivision into species.

Key words: legal language, law, legal acts, intellectual and legal communication.

Resumen

Los autores consideraron la esencia del lenguaje legal y resaltaron sus propiedades. En particular, se determina que el lenguaje legal es, principalmente, el idioma oficial, que se distingue por las formulaciones estándar. Se basa en la terminología legal. El lenguaje legal se caracteriza por un círculo de usuarios regulares, objetos de fijación especiales y distintivos (por ejemplo, actos legislativos, judiciales y otros actos jurídicos). Es un medio de comunicación especial, intelectual y legal, destinado al intercambio de información legal. El artículo contiene argumentos a favor de la necesidad de la disponibilidad general del lenguaje legal y justifica la posibilidad de su subdivisión en especies.

Palabras clave: lenguaje legal, derecho, actos jurídicos, comunicación intelectual y legal.

Resumo

Os autores consideraram a essência da linguagem jurídica e destacaram suas propriedades. Em particular, é determinado que a linguagem jurídica é, principalmente, a língua oficial, que se distingue pelas formulações padrão. Baseia-se na terminologia jurídica. A linguagem jurídica é caracterizada por um círculo de usuários regulares, objetos especiais e distintos de fixação (por exemplo, legislativo, judicial e outros atos legais). É um meio de comunicação especial, intelectual e legal, destinado ao intercâmbio de informações jurídicas. O artigo contém argumentos a favor da necessidade da disponibilidade geral da linguagem jurídica e justifica a possibilidade de sua subdivisão em espécie.

Palavras-chave: linguagem jurídica, lei, atos jurídicos, comunicação intelectual e jurídica.

Introduction

⁴⁸ Russian Presidential Academy of National Economy and Public Administration, 82, Vernadskogo Ave., Moscow, 119571, Russia

^{2,4,5} Belgorod State University, 85 Pobeda Street, Belgorod, the Belgorod region, 308015, Russia

³ Krasnodar Krai administration, 36, Rashpilevskaya Street, Krasnodar, 350000, Russia

e-mail: turanin@mail.ru





As we know, the law is inconceivable without a language embodiment, because it is called upon to regulate the social relations, and therefore, to clearly define permissions and establish prohibitions. Moreover, the law, being the dominant source of expressing the state will, is interested in correct language objectification (Brunner and Ganga-Contreras, 2017).

The method of transferring the subjective thoughts about law is represented by the legal language, implemented in most cases with the help of a special text, which regulates for some time the facts, which are once or permanently important for the individual, society, state. It is the written form of thought that is most actualized in the law and any legal prescription in order to acquire a valid legal force should be reflected in the official written source with the help of linguistic means.

The problems of forming and functioning of the legal language are studied in the papers of various Russian (N.A. Vlasenko, A.S. Pigolkin, T.V. Gubaeva, S.A. Bogolyubov, A.A. Keshtkar M.M. and Dadkhodazadeh, P., (2018).) and foreign (I. Sabo, V. Spesov, J. Cornu, R. Kabriak, et al.) scientists. At the same time, it should be noted that the aspect of implementation of the legal language as an intellectual and legal communication means has not yet been sufficiently developed.

Methodology.

We used various general scientific methods and logical cognition methods in the paper. The analysis and synthesis methods were used to study the essence of the legal language and to highlight its properties. The system-structural, functional and formal-logical approaches were used to identify the systemic and logical features of forming the legal language as an intellectual and legal communication means and its division into species. The use of formal legal and comparative legal methods made it possible to analyze the problem of general availability of a legal language.

Discussion and results.

The phenomenon of legal language has a primordial, decisive significance in the study of all legal matter. According to fair opinion of Yu.V. Sorokina, "language is a great heritage of mankind. It preserves all acquisitions, all experience, all emotions and feelings that have

been formed for many thousands of years" (Keshtkar M. M., Talebizadeh, P., 2018, p. 31).

In legal science, the legal language and the language of law are traditionally divided. For example, N.A. Vlasenko notes that there are two key concepts - "legal language" and "language of law". In his opinion, "the first term is the most general, it is necessary to understand the legal lexicon, the entire vocabulary (arsenal) of jurisprudence. In essence, this is the whole system of words and phrases (including terms and concepts) that are operated by the law in all its manifestations... The second concept - the language of law - is the lexicon of the regulatory legal acts (laws, etc.) and the official interpretation acts" (Keshtkar, 2018, p. 14).

Sharing the above opinion and taking into account the variety of definitions of the concept of "law", as well as the conceptual specifics in the approaches to its interpretation, we should note that we can perceive the language of law only as a system of verbal expression of thoughts conveying the content of the state-sanctioned norms, which is only part of the general concept meaning expressed by the term "legal language", covering the entire contact process between a person and the law. In this regard, it is the term "legal language" that is a complex, generalizing and most adequate linguistic tool conveying the meaning of law and the content of thoughts about law.

According to I. Sabo, "the "legal language" is essentially nothing more than a normal language, supplemented by special expressions, technical terms, that is, a language that more accurately uses the expressions occurring in everyday life" (Keshtkar, 2017, p. 245-246). We think that this point of view is controversial. The modern Russian language is a system where there is a basis, a common component, traditionally called a literary language, and its special segments - the sublanguages, having their own distinctive features and tasks for conveying information. In other words, there is a common literary language, and there are literary sublanguages necessary to describe special phenomena and processes inherent in the specific areas of knowledge, possessing all the features of the literary language, but also having their own peculiarities (for example, medical language, computer language). The legal language is one of such special literary sublanguages.

There is no place for metaphors, epithets and other expressive linguistic means in the legal

language; it is traditionally distinguished by the offishness of a thought transmission. In addition, the main wealth of the legal language is its absolutely unique terminological fund, consisting of an ordered set of neutral units (in terms of their emotional coloring) with different historical destinies. Some elements of this set are not involved in the literary language, which gives the legal language a special flair, emphasizes its functional significance. At the same time it is erroneous to consider that the legal language (or any of its kind) consists only of terms. The legal language includes also some terms that make up its core, and the words that are not the terms (ordinary words). Thus, we are close to the position of the French researcher J. Cornu, who distinguished the words belonging exclusively to the legal vocabulary, and the words of double belonging in the legal language (Cornu, G. 1990, p. 19-20).

The legal language, created primarily for communication through the official acts, does not tolerate verbal entropy, it is characterized by the semantic definiteness and accuracy of the concept expression.

Let us present our vision of the legal language essence with the help of highlighting and studying its special properties.

Firstly, the legal language is, in most cases, the official language, distinguished by standard formulations, strict and logical construction. Ideally, it should represent a coherent system of clear and precise words.

Secondly, the legal language is based on a peculiar, distinctive legal terminology.

Thirdly, in the overwhelming majority of cases, the legal language has a certain, albeit quite variable, circle of regular users, which includes, first of all, professional lawyers, but it is intended for an unlimited number of persons.

Fourth, the legal language is characterized by special, distinctive objects of its fixation (for example, legislative or judicial acts).

Fifthly, the legal language serves as a means of special, intellectual and legal communication. At the same time, it is not created for daily communication of people, the use of a legal language occurs only in cases of contact with law.

It seems quite possible to formulate a general definition of the corresponding concept relying

on the highlighted properties of the legal language and the peculiarities of its existence.

The legal language is a logical system of verbal expression of thoughts, describing the law and its manifestations, characterized by the presence of specific terminology, special fixation objects and certain circle of regular users, which serves as an intellectual and legal communication means. Considering the legal language as an intellectual and legal communication means, we need to focus on two key points (Aleksandrovna Maximova and Aleksandrovich Belyaev, 2017). Firstly, it is necessary to answer the question: Should the legal language be public? We should note that there are different opinions in this case.

On the one hand, even Sh.-L. Montesquieu wrote that the "laws should be in no way sophisticated: they are designed for people with mediocre mental abilities" (Montesquieu, Ch.1961, p. 16). On the other hand, for example, R. Kabriak believes that the universal accessibility of legal language is impossible. He writes that "the desire for a generally accessible code is largely a utopia" (Kabriak, R. 2007., p. 335), and substantiates its position by a number of examples from the lawmaking practice of various countries where the developers have unsuccessfully tried to create the generally accessible laws. This refers to the draft French Civil Code of 1793, the German Prussian General Administration Code of 1794, as well as to the modern Canadian Civil Code of Quebec of 1994. All of them were initially positioned as the acts that are generally accessible to understanding, but then were perceived as documents intended exclusively for lawyers.

However, there is also such a situation when the development of legal acts has initially the goal to create them exclusively for a certain part of society, having appropriate professional training. For example, the drafters of the German Civil Code of 1900 consciously went to "develop the civil popular code, which will not be accessible to all, but will be a purely legal work, mainly designed for lawyers..." (Pedamon, M.1997, p. 107). This model was also used in preparing the modern Civil Code of the Netherlands of 1992: his main ideologist E. Meyers sought to make a code of scientists, but not a code addressed to a man of the street (Tallon, D. 1985, p. 182). We should note that this idea has been implemented, but the Civil Code of the Netherlands is really written in a very complicated and abstract way. This approach, which is called "Germanic"





(Turánin V.Yu. 2007, p.26), has a deserved right to exist, but if we evaluate its applicability to Russian lawmaking, then, from our point of view, it is unlikely to be in demand. There is a paradoxical situation in modern Russia: despite the obvious popularity of legal education, the opening of many law faculties, the increasing number of students, there is an obvious shortage of qualified personnel in the labor market, capable of both writing and applying legal acts at a high level (Lasserre-Kiesow, V. 2002, p. 26-31). And if they are developed exclusively for lawyers, then this can lead to a misunderstanding of the Russian legal framework by wide groups of the population. Therefore, our domestic law-making, in our opinion, should include an initial setting for the general availability of a legal language.

Secondly, the possibility of dividing the legal language into species and defining the features of each of them is an important issue.

We should note that from our point of view, the legal language can be divided into three main functional varieties: the language of legal science, the language of legal practice and the legal spoken language. The first two types of legal language are characterized by a written form of expression, while the original form of expression of the legal spoken language is oral speech.

The language of legal practice, in turn, can exist as a language of the regulatory legal acts, including the language of laws and the language of by-laws, as well as the language of law application acts. In this case, it is necessary to consider the category of "law application" the most widely.

Defining such independent types of legal language as the language of legal science and the language of legal practice, we conditionally contrast two philosophical categories - "theory" and "practice", while taking into account the unconditional connection of the corresponding phenomena. The theory puts urgent problems before knowledge and requires their solution. Accordingly, the legal practice consists of a set of actions of various subject aimed at creating and applying legal norms. It is characterized by the existence of material results - legislative, subordinate, judicial and other acts. In other words, we include both the rule-making and law-enforcement aspects of legal activity in the content of this concept. That is why, within the framework of the language of legal practice, we

distinguish two independent subspecies, which, despite their isolation, nevertheless actively interact and functionally intertwine with each other - this is the language of the regulatory legal acts, including the language of laws and the language of by-laws. At the same time, the language of laws is the "heart" of the legal language.

It should be emphasized that the legal language separation and its subdivision into species has a certain convention connotation. This is due to the openness of the linguistic space, which encourages the assimilation of various concepts and words, with the help of which they are expressed, the interpenetration and mutual influence of languages and their elements. But we believe that such legal language isolation and its system analysis is extremely necessary. Such an analysis is needed, first of all, from the point of view of further development and strengthening of the legal science position, because the study of the legal language elements allows us getting a sight of the formation origins of certain legal norms, tracing their change in time and space, identifying errors and determining the ways to eliminate them. This creates a foundation for a detailed analysis of the legal part of life, the definition of ways and stages of further improvement of legal acts, and the communicative development of law.

Conclusions.

The law exists in the most varied forms and it certainly needs to be revealed through the language.

The legal language is, primarily, the official language, which is distinguished by the standard formulations. It is based on a peculiar, distinctive legal terminology. In most cases, the legal language has a certain, albeit quite variable, circle of regular users, and is characterized by the special, distinctive objects of its fixation. The legal language serves as a means of special, intellectual and legal communication, which justifies the need for its general availability and the possibility of its subdivision into species.

The study of the legal language features and its essence is the basis for the development of law, the formulation of effective legal norms that are not only the tools of state management of society, but also a part of its spiritual world perception, a behavioral measure of each person and a bulwark of his/her self-awareness.

Acknowledgement.

This article was prepared within the framework of the scientific project № 17-13-31005 / 17 of the Russian Foundation for Basic Research "Improvement of the Organizational and Legal Mechanism for the Implementation of an Independent Anti-Corruption Expertise of Normative Legal Acts and their Projects at the Regional Level".

References.

Aleksandrovna Maximova, O & V. Aleksandrovich Belyaev (2017). Generational Indigenation in a Multi-Ethnic and -Religious Society (Tatarstan, Russia). *Opción*, Año 33, No. 84 (2017): 38-64.

Brunner, J.J & Ganga-Contreras, F. (2017). Vulnerabilidad educacional en América Latina: Una aproximación desde la sociología de la educación con foco en la educación temprana *Opción*, Año 33, No. 84 (2017): 12-37.

Cornu, G. *Linguistique juridique*. – Paris: Montchrestien, 1990. – 412 p.

G Soleimani, M Amiri, SM Khatami, MJ Isfahani :Using S Technology, in the Automotive Industry, with the Approach of Its Implementation in Commercial Vehicles . *Industrial Engineering & Management Systems*.2016; 15(4): pp.290-297.

Kabriak, R. *Codifications*. – Moscow, 2007. – 474 p.

Keshtkar (2018). Numerical analysis of transcritical carbon dioxide compression cycle: a case study, 7 (1), 1-6.

Keshtkar M. M., (2017). Energy, exergy analysis and optimization by a genetic algorithm of a system based on a solar absorption chiller with a cylindrical PCM and nano-fluid, *Int. Journal of Heat and Technology*, 35 (2), 416-420.

Keshtkar M. M., Talebizadeh, P., (2018). Investigation of transient conduction–radiation

heat transfer in a square cavity using combination of LBM and FVM, *Sadhana*, 43 (4), 145-155.

Keshtkar M. M.; Dadkhoda Zadeh M. (2018). Thermal Simulation of the Symmetric and Asymmetric Arrangement of Barriers on Heat Transfer Enhancement in a Porous Gas Heat Exchanger, *Journal of Thermal Science and Engineering Applications*, 10 (1), 120-135.

Lasserre-Kiesow, V. *La technique législative: étude sur les codes civils français et allemand*. – Paris: LGDJ, 2002. – 525 P.

Montesquieu, Ch. *De l' esprit des lois*; ed. by J. Berthe De La Gresssaye. – Paris: Soc. Les Belles Lettres, 1961. – Vol. 4: Livres XXVII-XXXI. – 410 p.

on a harmony search and artificial bee colony for solving a portfolio optimization problem using a mean-semi variance approach. *J Central South University* 23 (2016), No. 1, 181–188.

Pedamon, M. *Le centenaire du BGB // Recueil Dalloz*. – 1997. – Avril. – P. 106-110.

S. M. Seyedhosseini, M. J. Esfahani, M. Ghaffari: A novel hybrid algorithm based

Sabo I. *Socialist Law / edited by V.A. Tumanov*. M., 1964. – 271 p.

Sorokina Yu.V. *Language as a Legal Communication Means // Issues of Russian and International Law*. 2015. No. 8-9. P. 23-41.

Tallon, D. *Le nouveau code civil des Pays-Bas // La codification / F. Lessay, D. Baranger, D. Tallon (et al.)*. – Paris, 1998. – Vol. 27. – P. 181-182.

Turanin V.Yu. *Issues of Training Specialists to Ensure the Law-Making Activity in Russian Higher Educational Institutions // Law and Education*. 2007. No. 8. P. 26-31.

Vlasenko N.A. *Language of Law*. Irkutsk, 1997. – 175 p.

