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THEORETICAL FRAMEWORKS FOR THE LEGAL TERMINOLOGY (THE NEED OF RECONCEPTUALIZATION AND PARADIGM SHIFT)

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У статті розглянуто характерні особливості юридичної термінології в рамках особливого акценту на міждисциплінарні дослідження. Автор пропонує до розгляду основні підходи до загального розуміння термінології. Окрему увагу приділено багатоаспектній природі юридичної термінології, зокрема у її англomовній версії. Зроблено висновок, що юридичний термін може бути визначений як слово або фраза, що функціонують у межах певного юридичного процесу комунікації і виражають певний концепт, який уособлює те чи іншеправовеявище.

Ключові слова: термінологія, термінологічна система, юридичний термін, мовний субстрат, юридичний концепт.

Реминская Ю. Ю. Теоретические основы юридической терминологии (необходимость реконцептуализации и системных изменений). В статье сделан обзор характерных особенностей юридической терминологии в рамках особого акцента на междисциплинарные исследования. Автор представляет основные подходы к общему пониманию терминологии. Особое внимание уделяется многоаспектному характеру юридической терминологии, в частности англоязычной. Сделан вывод о том, что юридический термин может быть определен как слово или фраза, функционирующие в рамках определенного юридического процесса коммуникации, выражающее определенный концепт, которая относится к тому или иному правовому явлению.

Ключевые слова: терминология, терминологическая система, юридический термин, языковой субстрат, юридический концепт.

Reminska Yu. Yu. Theoretical frameworks for the legal terminology (the need of reconceptualization and paradigm shift). Rapid transformational processes in contemporary societies represent considerable challenges for both lawyers and translators. Trough interaction of various aspect of human activities there are qualitatively new linguistic forms of concept expression. Particularly, among them are legal terms – language units with quite complex nature. In this vein, the article gives a review of characteristic features of legal terminology within special emphasis on interdisciplinary research. As a result, current research has well-structured content and consists of 3 Paragraphs. Paragraph 1 mainly focuses on general understanding of terminology. It is argued that generally “term” can be defined as a words or phrase that denotes particular concept of some field of science, technology, art and suchlike. Terms serve as specializing, delimitative naming units specific for some sphere of human activity. Unlike the words of general vocabulary, which are often polysemantic and bear emotional coloring, terms within the field of their application, in most cases are unambiguous and deprived from expressiveness. In their unity, terms compose terminology, which has several meanings. In Paragraph 2, special attention is given to the multidimensional character of the legal terminology, designed to provide a clear understanding about various legal phenomena. Inherently, legal terminology fulfills a wide range of functions to create appropriate conditions for legal texts to become cohesive and coherent. Finally, Paragraph 3 addresses the question about English-language version of legal terminology. Essentially, it can be characterized as a set of terms, representing different legal concepts through borrowed words (from Latin and Norman-French) and conservative in some aspects. It is concluded that legal term may be defined as a word or phrase that functions within the framework of a specific legal communication and expresses a certain concept that refers to some legal phenomenon.

Key words: terminology, term system, legal term, language substratum, legal concept.

Problem statement and its relation to important scientific and practical tasks. One of the most important law functions is the regulation of relations and behavior of people in current society. Legal rules cannot exist otherwise than in certain language form, and therefore, the language and the law are in close interaction with each other. The interest in legal terminology studies at the hands of lawyers

can be explained by the significant role of linguistic resources in the legal profession. Legal language is one of the most challenging highly sought areas in which one must have scientific understanding of the theory and practice in search of interlingual equivalents.

Reviewing existing literature on the current subject. The issue of linguistic characteristics of law language is not new. From year to year, overwhelming majority of domestic and foreign linguists raises a question about language peculiarities of law terms,

and in broader context – discursive transformations of legal texts. Among such foreign scientists, particularly, are: D. Cao, M. Galia, P. Goodrich, H. Matilla, D. Melinkoff, B. Pozzo, L. M. Solan. Ukrainian scholars are also actively conduct research in this field of scientific knowledge: N. V. Artykutsa, M. I. Lyubchenko, N. P. Yatsyshyn.

However, despite the existence of sufficient literature on the current issue, there are still important **questions** which remain unresolved in modern linguistic theory. Among them, particularly is absence in domestic scientific literature of an appropriate theory foundations.

This is why special regard must be paid to the comprehensive research on language of the law. Well-known scientist P. Tiersma once has correctly pointed out: “Legal language is not merely the most important tool of the average lawyer, or just an interesting research for linguists. The law and its language affect the daily lives of virtually everyone in our society. Every time we take a ticket to park in a public garage or to ride the subway, we enter into a transaction that is governed by legal language” [15, 1-2].

In this regard, the **overall aim** of the study is to create an appropriate basis for scholars to try to deconstruct contemporary understanding of the legal term as important linguistic category. Thus, main tasks of current research are reflected in three paragraphs. *Paragraph 1* focused on linguistic essence of terminology, predominantly on approaches to its definition. *Paragraph 2* reveals the question regarding cross-cutting nature of legal terminology, its linguistic attributes. And finally, crucial task of *Paragraph 3* is to identify key parameters of English legal terminology in order to achieve holistic vision about this linguistic category.

Main material presentation.

1. Linguistic essence of terminology

Science of terms as a distinct from a science of language, gained acceptance only in the second half of the 18th century. “Terminologie” appears documented in German in the writings of a Professor of the Universities of Halle and Jena, Christian Gottfried Schüts (1747-1832); the adjective “terminologisch” dates from 1788. At 1837 English scholar William Whewell gave following definition of the terminology: “it is a system of terms employed in the description of objects of natural phenomena” [12, 17]. A representative of the Moscow phonological school O. O. Reformats'kyi in his basic work wrote following: “terms are the words, limited by its special purpose; words, having a unique, exact expression of the concepts... <...> the terms exist not just in language, but as a part of specific terminology <...> [8, 110-111]. So, it is believed that to systematize existing approaches to the terminology (in its linguistic dimension) is an integral part of our research.

For instance, O. S. Herd defined term as “a unit of a particular natural or artificial language (usually a word or a word-combination), which previously

existed or specially made and has a special terminological meaning, either verbally expressed or formalized in some manner and accurately, completely reflects the basic, essential characteristic features of the existing scientific concepts” [2, 4]. Term is also interpreted as a verbalized result of professional thinking, significant linguo-cognitive tool of orientation in professional sphere and one of the most important elements of professional communication [3, 63]. Another linguist, V. M. Leychyk suggested a concept of “language substratum”, according to which the term is a “three-layer complex formation”. It includes: 1) natural language substratum – material (sound or graphical) elements of the term structure; semantic (ideal) component of such structure, which determines the status of the term in lexical system of a particular natural language; 2) logical superstratum – term in its content has substantial features; term may have an abstract or concrete meaning; 3) terminological essence – reflects descriptive and functional characteristics, with the aid of which a special field of expertise or activity can be described [6, 7].

As the result, there are several meanings of the noti “terminology”: 1) the whole complex or some unspecified set of general scientific terms; 2) a set of terms of any branch of learning (for instance, legal terminology); 3) the theory of formation, structure and functioning of general scientific terms; 4) the doctrine of formation, composition and functioning of terms in particular field of expertise, used in any given language and its equivalents in other languages; 5) general terminological science [9, 14].

In foreign dictionaries “terminology” determined as the collection of defined technical terms within a specific system, which differs from everyday usage in that the terms are defined exactly within a specific system [17, 1186]. And in English-language scientific literature it is popularly believed that the word “terminology” refers to at least three different concepts: a) the principles and conceptual bases that govern the study of terms (refers to the whole field); b) the guidelines used in terminographic work (refers to the methodology); c) the set of terms of a particular special subject (the sets of terms on a specific topic). This view is shared by M. T. Cabre. According to the linguist's opinion, in its third meaning, terminology is the product which is generated by the practice [14, 17-32].

It is therefore logical that terminology has its own specificity. In this regard, R. Berry pays closer attention to the following: “An important characteristic of terminology is its technical nature. Terms do not just denote simple things or ideas, for which the words can be acquired incidentally; they may refer to complex notions, things that have to be learnt with effort. These “things” and “ideas” that terms refer to are “concepts” – the notions that have to be learnt in order to access the knowledge base of an academic community. But access is difficult, if not impossible, without the term”. Furthermore, author defines terminology as “... the system of words or phrases relating

to concepts in a particular technical field or discipline as used by the practitioners in that field" [13, 29]. Hence, special emphasis should be placed on interrelation between "terminology" and "term system". There are two main approaches concerning this: 1) identification of the concepts "terminology" and "term system"; it is believed "terminology" and "term system" are common in consisting of lexical items of a particular language for special objectives and are functional subtypes of modern national languages, which serve any field of expertise (I. M. Humovs'ka) [4, 7]; 2) discipline-specific term systems internally exist in terminology as full-featured separate systems; otherwise speaking, notion "terminology" is broader than notion "term system"; notably, V. M. Leychuk's opinion, terminology is the spontaneously formed set of terms inside vocabulary of a language; and by comparison, term system is consciously established system of terms [5, 107].

2. Legal terms: on the border between law and linguistics

Generally, legal term (from the Latin "terminus" – limit, border) is a word or word phrase, which eternalizes (expresses) items (ideas, notions) from the legal sphere of public life and has a definition (that is determined) in legal sources (legislation, legal dictionaries, academic researches). M. I. Lyubchenko in her synopsis of a thesis "Legal terminology: concept, characteristics and types" made complex analysis to the essence of the legal terminology. Particularly, author defines "legal term" as a word or phrase, which serves as a generic naming unit of a certain legal concept or even non-legal concept, but functioning in such environment, attains specific shades of meaning, usually is put into practice by legal science or by legislator and characterized by emotional neutrality and relative stabilities [7, 9].

N. V. Artykutsa developed and suggested set of functions fulfilled by legal terms: 1) nominative (naming the realities and legal concepts); 2) epistemological (as a tool and method of a legal knowledge and overtaking social and legal experience); 3) axiological (legal, moral and ethical evaluation); 4) communicative; 5) regulatory (legal control of human behavior and social relations through the will of an entity); 6) culturological (preservation and transferring of legal knowledge); 7) educational (the impact on "justice" understanding, for example); 8) aesthetic (linguistic and stylistic perfection of the legal text) [1, 34]. For instance, N. P. Yatsyshyn marked out special features of legal terminology. Among them are: 1) systemacity; 2) monosemy; 3) appropriateness; 4) stylistic neutrality; 5) brevity; 6) lack of emotiveness and expressiveness; 7) high level of standardization and some others [11, 219].

For another thing, there is a special set of requirements in scientific literature, which legal terminology should comply with:

– consolidarity: used in particular legal act in the same meaning; monosemantic within the framework of one legal system;

– universally accepted nature: using of a term in some special sense is invalid;

– stability: the meaning and significance of the term should not change as warranted by the context;

– consistency (logical nature): term should be linked with other terms of this system;

– purposefulness: term should be correlated with the professional sphere of usage [10, 99-101].

Legal terminology is quite peculiar due to its high level of unification and phraseology. As a result, thereof, the process of drafting legal texts is more or less formulaic as it is generally prescribed by certain rules. It allows preserving the form of legal language, so that actual legislators (legal institutions, social institutions, authoritative organs), as well as other initiators, co-determiners and individual users (lawyers or non-lawyers) could actually use it.

3. English Legal terms: defining characteristics

Without any qualms, among most interesting and "hard-hitting" issues is the question about translation of English legal terms, ways of conveying meaning that should be used in specific context.

As early as 1963 an outstanding lawyer and linguistic expert David Melinkoff in his fundamental work suggested following principal attributes of the legal terms:

(1) Frequent use of common words with uncommon meanings; in most general sense, such words have specific contexts for the lawyers who permanently use them in their everyday activities; among them, for example, are "instrument" – which is understood by the lawyer as "legal document" or "action" in the sense of "law suit".

(2) Frequent use of Old English and Middle English words once in common use, but now rare; to such-like archaisms belong following words "aforesaid", "forthwith", "hereinafter", "hereof", "thereby", "therefore", "whereas", "whereby" and others.

(3) Frequent use of Latin words and phrases; for all linguists it is a well-known fact, English language is rich in borrowing from different foreign languages; particularly among them: "alibi", "bona fide", "habeas corpus", "prima facie".

(4) Use of Old French and Anglo-Norman words which have not been taken into the general vocabulary, but actively involved in legal lexicon: "estoppels" (a legal principle that bars a party from denying or alleging a certain fact owing to that party's previous conduct, allegation, or denial), "demurrer" (a written response to a complaint filed in a lawsuit which, in effect, pleads for dismissal on the point that even if the facts alleged in the complaint were true, there is no legal basis for a lawsuit), "laches" (is the legal doctrine that an unreasonable delay in seeking a remedy for a legal right or claim will prevent it from being enforced or allowed if the delay has prejudiced the opposing party).

(5) Use of terms of art; intrinsically, term of art has technical nature with specific meaning: "appeal", "comparative negligence", "felony", "letters patent", "negotiable instrument", "plaintiff", "special appearance" and so on.

(6) Use of argot; by contrast with term of art, argot is a set of specialized vocabulary common to any group; particularly, among them are: “horse case”, “inferior court”, “issue of fact”, “issue of law”, “legal conclusion”, “prescriptive rights”, “reasonable man”, “superior court”, “without prejudice” and suchlike.

(7) Frequent use of formal words; formal words give to the language more serious character; they are not commonly used in oral language, but in official written; naturally, this are longer words or words with origins in Latin and Greek: “may it please the court” (commonly used in court), “time is of the essence” (used in contracts), “before me, a notary public” (applied in affidavits).

(8) Deliberate use of words and expressions with flexible meanings: “adequate remedy at”, “due care”, “extreme cruelty”, “malice”, “suitable”, “vicinage” and other.

(9) Attempts at extreme precision of expression: “and no other purpose”, “shall not be deemed a consent”, “nothing contained herein shall” etc. [15, 11-23].

With a particular focus on extensive and complex character of legal vocabulary, there are other specific features of legal terms suggested in relevant scientific literature:

Antiquated morphology: legal language has retained several morphological forms that now are not used in ordinary speech; for example, “ye” – the old plural of you – has survived in the phrase “hear ye”; also the verb form “witnesseth” can be found in plenty of insurance contracts, for instance, “this policy witnesseth that...” (in most of cases this verb is placed at the beginning of the contract and literally means “this is a legal contract; following are in terms”); the same situation with another archaic morphological form “sayeth” (“and further deponent sayeth not” means “having nothing to add to the aforesaid”); among other peculiarities is the obsolete word order in certain set phrases (“comes now plaintiff”);

Use of “same” as a substitute for a pronoun; this is semantically refers to identity of reference (“She made an offer in a letter to buy the machinery, and I accepted same”);

The use of “said” as an article or demonstrative pronoun: “Lessee promises to pay a deposit. Said deposit shall accrue interest at a rate of five percent per annum”; in this context “said” could easily be replaced by “this” or “the”; “said” may also be used as an ordinary adjective: “the said deposit” is equally possible; “aforesaid” is the variant of “said” and occasionally occurs with the French words order (for example, “the indebtedness aforesaid”);

– Use of “such” which has a special legal sense “specified” (“as of such three months”, “as such term is defined”, “shall purchase such Participatory Interests”);

– Use of the phrase “to wit”, which in fact does not fulfill any language function but still very common in criminal complaints;

– Subjunctives, especially constructions called “formulaic subjunctive” – involves use of a verb in its base form and conveys roughly the same meaning as let or may (for example, “be it known”, “be it remembered”, “be it enacted”);

– Use of constructions of the type “hereunder”, “therein” and “wherewith” – the words which were common in Medieval English; in some cases they may lead to economy of expression when they replace a longer phrase like “in this document” or “in that clause” (verbal economy).

Conservative character of legal vocabulary; by its nature, legal lexicon has many obsolescent or obsolete English words and grammatical constructions, as well as outdated Latin and French terms.

Linguistic creativity; despite the large number of archaisms, legal vocabulary is full of different innovative words:

innovations in the law of contracts, torts, and damages has led to the coining of neologisms like “hedonic damages”, “lost volume seller”, “palmistry”, “toxic tort”;

frequent addition of the suffix *-ee* to a verb, primarily to indicate the human object of an action (for example, “asylee”, “escapee”, “tippee”); many *-ee* forms function as direct objects to refer to the person who is acted upon: “acquittee”, “arrestee”, “expellee”, “invitee” and others; at the same time, formations with *-ee* can also refer to the indirect object of an action: “allocattee”, “lessee”, “indorsee”, “referee”, “trustee”; frequently, *-ee* words come in matched pairs: “mortgagor – mortgagee”, “trustor – trustee”, “bailor – bailee” (the *-or* word typically indicates the actor, and hence has more of an active sense, while the *-ee* word refers to the recipient of the action, and thus has more of a passive sense); such way of word formation is intended to ensure an economy of expression [16, 87-100].

In accordance with general aim and specific objectives, set out in the beginning of the current article, the following **conclusions** were formulated. Legal terminology is one of the most significant and important language phenomenon, studied by majority of outstanding national and foreign linguists. Nevertheless, carried out analysis of main scientific achievements in this field of expertise have shown, there is no academic consensus concerning essence, specific features and stable definition of the legal term. First and foremost, there is dichotomy of approaches to the abovementioned concept: in special literature we can find both linguistic and legal approaches to the definition of legal term. For another thing, there are plenty of linguistic approaches, such descriptive or communicative-cognitive. The reigning feature of legal term and its unique characteristic is in its being simultaneously object of the research of two distinctive independent branches of science – linguistics and jurisprudence, so as a result juridical linguistics has appeared. This complex science with its own methods provided to us a great amount of academic thorough works, in which main characteristics,

requirements of legal terms are formulated. So, legal term refers to the name of a particular notion of legal institute constituting a part of the already determined legal system. The principal aim of legal term is to give the naming of the relevant legal concept.

All in all, legal terminology mainly focuses on the specialized words occurring in natural language, belonging to the specific domains of usage. Consequently, it is necessary to single out following approaches to its nature: 1) for linguistics legal terminology is a part of the special lexicon that is characterized by subject and pragmatic criteria; 2) for scientific-technical disciplines legal terminology

is the formal reflection of their conceptual organization and thus an essential means of expression and communication; 3) for the user (either direct or intermediate), legal terminology is a set of useful communicative units which must be evaluated from the point of view of economy, precision and suitability of expression.

Prospects for the further research. In the context of this research, among most promising and challenging legal terminology directions are: complex analysis of legal text translation, its linguistic peculiarities and main traditions of different legal practices transferred in linguistic discourse.

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