THE NORMATIVE LANGUAGE

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Abstract. *The present study aims to carry out a theoretical-practical approach of the legal language used for the complex process of proposing, elaborating and drafting normative acts, by the persons who take part to the legislative process and by the specialists within the central and local public administration who are involved as well in this essential activity.*

Keywords: legal language, the language of law, legal terminology, jurilinguistics, legislative technique.

Language represents an entity which uses the complex system of the speech, inside of which has established its own code and system. To a certain extent, each language resorts to the complexity which characterizes organizational systems – phonology, morphology, syntax, stylistics – creating thus a terminological network of meanings, after it has parted form the lexical resources of common language with the view to express notions and conceptualize systems typical to the specialized field [1]. A language such as the legal one uses all the formal systems of the speech, but also a terminological network comprising specific notions.

When it comes to law rules and their implementation, in the broad meaning of the word, a key part is undoubtedly played by the *legal language.*

Legal language (that is the terminology and phraseology of the normative act) is based on the legal technique [2].

Professor Jean-Louis Bergel has tried to find out whether there is a specific language of law, in other words a specific way of expressing the legal thought and reality, which is set apart from the common language and only borrows the latter's exterior elements. The answer is yes, so we can consequently speak about the existence of *a legal terminology, legal vocabulary* and other instruments which enable the expression and communication of law rules [3].

Terminology means all the terms specific to a science, art, discipline [4]. In the field of Law, legal concepts can be accurately expressed only by means of adequate terms. This is how *legal terminology* and *legal semantics* emerge [5].

The interdisciplinary approach of the legal language has led to the appearance of two new research fields - *legal linguistics* and *legal semiotics*. From a linguistic point of view, the field of legal semiotics deals with the description of the legal

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discourse and text, using both grammar books and specialized dictionaries as reference elements. Within Romanian bibliography [6], the first semiotic model to be applied to the legal discourse can be found in a study focused on the typical Law argumentation. Strictly speaking, legal linguistics presupposes examining the two essential components of the language of Law - the legal vocabulary and discourse – the field of legal linguistics being established in accordance to the general linguistics and the science of Law.

The discipline called *Legal Linguistics* or *Jurilinguistics* [7] was elaborated by *Gérard Cornu*, *Jean-Claude Gémar* and *Louis Jolicoeur* in France, having as object of study the legal language under its two defining aspects: *legal terminology* and *legal discourse*. The field of Legal Linguistics has began to be introduced in Romania through studies and researches with interdisciplinary character which examine the way in which Law uses language and its resources in order to build a specialized language such as the legal one.

Within the Romanian bibliography, the notion of *legal linguistics* is attested by a study dedicated to jurists and carried out by *Barbu Berceanu***.** According to the author, the object of this discipline is represented by "the linguistic activity in the field of Law, focusing on the words with legal signification, specific to the legal existence"; legal linguistics has nothing to do with the "impact of Law in the field of linguistics, since Law provides a legal value to words irrespective of the field where they are applied". Thus, the activity of legal linguistics includes the study of legal terminology – "both the terminology used by the public and the restrictive one, used by specialists and Law practitioners […], with the view of choosing the most economic and suitable terms (in terms of semantic category and inflectional possibilities) and the most scientific definition". Legal linguistics has also the task of elaborating legal dictionaries [8].

François Térré, a professor who studied the auxiliary sciences of Law, has also mentioned *legal linguistics, legal semiology and legal semantics* [9]. He has emphasized that the development of legal linguistics is naturally connected to the analysis of *semantics* – a part of linguistics which deals with the vocabulary and the meaning of words. At the same time, semantics represents a historic study of the words meaning, with all the variations produced in time. In the field of Law, the preoccupation for semantics is optional [10] .

Ferdinand de Saussure, the founder of semiology, considered that semiology is a part of social psychology, "a science which studies the life of signs within the social life". Saussure defined the sign by means of only two entities: *the signifier and the signified* [11].

Given the obvious role played by the sign within legal life, the appearance of *legal semiology* has been a natural event. The major difficulty encountered by this field of knowledge consists in the fact that, in order to match its objectives

and be functional, the notion of "sign" must be clearly defined, while in the field of legal doctrine there are unfortunately some hesitations about that [12].

It is commonly agreed that semiology and *semiotics* must not be confounded, as a result of two major differences: on the one hand, even if semiotics represents the sign par excellence, it encompasses all the evocated signs, and not only the language, while on the other hand, even if semiotics regards the language, it presents it in its relations with logics. At a first analysis, general semiotics can be considered the study of all the relations mentioned above, the comparative study of logics and language and therefore the comparative study of scientific language. From this perspective, *legal semiotics* consists in the study of the relations between Law, Logics and Language [13].

Legal vocabulary represents the *basic language stock of a language which is used within the legal field*. Legal vocabulary is made up of *three main components*: 1. *(literal) legal terms* 2. *words from common language* and 3. *words from other scientific disciplines* [14].

Legal vocabulary frequently uses a part of the word stock typical to common language. *Volens nolens,* jurists currently resort more often to words coming from other science fields, especially if they are connected to legal regulations. Thus, jurists have to learn the meaning of words and expressions such as "integrated circuits", "social security", "master degree", "management" a.s.o.

The main features of legal terminology and its dynamics are:

- *the appearance of new terms* (usually borrowed or word-to-word translated – calques) which represent legal institutions recently introduced in the Romanian Law: *Ombudsman (Avocatul poporului)*, *NGO* Non-Governmental Organization (ONG Organizaţie non-guvernamentală) *emergency ordinance (ordonaţă de urgenţă), organized crime (crimă organizată), stand by contract (contract stand by), leasing contract (contract de leasing), malpraxis insurance (asigurare de malpraxis);*

- the introduction in the Romanian law of *terms* or *expressions* mentioned by dictionaries before 1990 and *regarding exclusively the foreign legislation*: *know-how contract* (contract de know-how)*, immovability* (imovabilitate), a.s.o.;

- *the expansion of the meaning* which some legal terms within specialized dictionaries have (for instance, the term *piracy* – initially restricted to the air and sea piracy - has now a broader applicability, including also the field of informatics and audio-visual);

- *the restriction of the meaning* – it can be noticed at the Latin expression *restitutio in integrum* (which currently signifies almost only the restitution of the possessions confiscated during the communist regime to their real possessors);

- *the reintroduction in use* of some terms or expressions belonging to "bourgeois Law" [15]: *concession; [public] domain; Court of Appeal* a.s.o.;

- the disappearance from use of some terms/expressions belonging to socialist Law: *socialist cooperatives; socialist nationalization; socialist state organisation.*

Technical language – popular language. In the process of drawing up acts, the lawmaker is confronted with a double contradictory condition: on the one hand, he has the duty to make sure that legal concepts are accurately communicated and adapted to the social environment, resorting thus to a *popular language*, that is to a language that everyone can understand, while on the other hand he has to be precise and rigorous, so that any citizen can understand exactly the provisions of law, resorting thus to *a technical language* [16].

Given the dialectic connection between the dynamics of social life and the legislation's need for improvement which takes into account all social transformations, the evolution of legal language is a complex process, not deprived of contradictions.

Two of these contradictions have a particular importance from a practical point of view, both for the jurists and linguists: (1) *precision* versus *flexibility* in expressing legal norms and (2) *technical* (specialized) *precision* versus *accessibility* of legal norms.

(1) In order to be clearly understood, since it has a less obvious influence upon the legal language, *the first contradiction* must be analyzed in connection to an essential law principle – creating a balance between the *stability* and *mobility* of legal regulations [17].

Consequently, the legislative technique takes into account both linguistic methods for insuring a precise clear speech, and the manners aimed to maintain the "flexibility" of law.

The contradiction between the requirements of *stability* and *mobility* when it comes to expressing law norms determines, on a linguistic scale, the coexistence between some elements which reflect a *conservative behaviour* (archaisms, obsolete formulae and syntactic patterns) and other elements which are *dynamic and updated* (terminological innovations, changes of meaning, creation of new complex syntactic units, reorganization of lexical-semantic fields and so on).

(2) *The second contradiction* (*technical precision* versus *accessibility*) – which has brought about the question "Whom are laws written for?" – is due to the heterogeneous nature of readers (specialists within the filed and non specialists).

As for the Romanian Law, the lawmaker's preoccupation for a simple and accessible speech has a long tradition, being attested – implicitly or explicitly – by the first law provisions.

The attempt to find an answer to the question "Whom are laws written for?", has generated arguments both in favour of considering the legal language a professional specialized one, and in favour of coming up with a language which can be easily understood by law subjects when it comes to reading legal acts.

The first category of arguments recommends the use of specialized terminology capable to satisfy the need of precision, cohesion and stability which are typical to any specialized language and opposed to the common one.

On the other hand, the second category of arguments based on the Roman Law principle "*Nemo censetur ignorare legem"* considers that lawfulness can be maintained only if the legal language which regulates it is accessible to everyone.

Thus, the language of law and its codes must be easily understood by citizens. And thus, the lawmaker must resort to common language.

Bentham required that law used only "terms which are familiar to people". Furthermore, while elaborating his explicative works which finally culminated with the French Civil Code, in 1804, *Cambacérès* was clearly asserting: "The lawmaker works for the people; above all, he must communicate with the people: his mission is accomplished after he has been understood" [18].

Yet, it must not be ignored the fact that, in common language, the meaning of words may change and that many words have more meanings at the same time. Other times, words of common language have a confusing obscure meaning. When such words are used in order to express legal concepts, without resorting to methods which assign only one meaning (always the same) to each one of them, the effect is that of uncertainty and confusion, whereas in principle the formula which characterizes the legal concept must be fix, clear and precise. The last result can be obtained only if law is expressed in a technical language. This type of language encompasses a limited number of words specific to law, such as: *mortgage, fidejussion, usufruct and so on.* But apart from the words above, the technical language of law is also based on the common one. The lawmaker can even loan new terms to common language, which become technical through a process of simplifying and fixing their meaning [19].

Contemporary jurists (just like those from the antique Rome) have proved that normative acts must be based on the common lexical stock, but in an improved variant of the latter, so that the scientific meaning of words can be reached. *Ihering***,** a reputed German jurist of the late 19th century, considered that "the lawmaker has to think like a philosopher and talk like a peasant".

It can be thus stated that jurists strongly uphold the dictum which Romans applied empirically – *any science means a well done language.*

In fact, just like any other science, Law is characterized by a specific language but without having at the same time the technical character of exact sciences.

Social science in continuous transformation, just like the social evolution that it embodies, Law always needs new terms which it finds in the common language. The will for innovation without considerable logical grounds cannot abolish what tradition proved to be a benefit gained forever.

Practical science at the same time, Law is applied every single day, a fact which would not be possible without a terminology that everyone understands.

The legal vocabulary has to meet particular requirements concerning the quality of the legal norm and its communication. The quality of the legal norm - which is a behavioral one, whose observance is insured by state restrictions – is accomplished if the legal norm evinces certain essential features, such as cohesion, organization, precision and clarity. For this reason, any legal norm must be expressed using clear precise words, with a well determined meaning. If a legal norm were expressed using ambiguous words, incompletely defined or unclear, then it would become uncertain; the lawmaker who elaborated it cannot guarantee that the addressees will understand the same thing; furthermore, those who apply the legal norm in question will be tempted to provide particular meanings to it, setting it thus apart from the lawmaker's will, albeit imperfect. In other words, when a legal norm is drafted, the legal vocabulary must to be used in such a way that facts which are to be established from a legal point of view are firstly translated in a legal language, in order to look for the applicable legal solution afterwards, and not the other way round [20].

Consequently, the legal language must be *clear and precise*, but at the same time *flexible,* given the fact that Law, which is in a ceaseless transformation, often needs new terms for keeping up with the strong dynamics of day to day life.

This is why the lawmaker must always look for clear non ambiguous terms, with a well defined content, whereas if terms have several meanings which may lead to various interpretations, the lawmaker himself can start to elaborate some accurate *definitions*.

Actually, the possibility for the lawmaker to start drawing up definitions has been anticipated ever since the Roman period. Thus, in its 50th book, the Roman *Digeste* includes a special chapter which renders the most important legal definitions (*De verborum significatione*) [21].

Precise and clear, *legal terms must have a limited meaning, but without avoiding nuances.* Creation of life, the legal language must take into account the evolution of social reality and the dynamics of terminological reality. Of course, it is obvious that certain notions such as *solidarity, responsibility, condition, term*

must have a certain legal precision and a well defined applicability field - the legal one.

In order to find the best legal linguistic formula, *Fr. Gény* suggests taking into account *three elements:* (1) the *selected word* must have an *intermediary function*, being a communication instrument; (2) *the legal language must meet the purposes of law*, in order to overcome the obscurity of common language and (3) *the extent* to which legal language *is used* (*the use*) and sometimes its *etymology*.

At the same time, the legal language must evince a minimal literary beauty, without falling into scholasticism, whereas the phrase structure must be logically coordinated so as to remove any possibility of interpretation based on sophisms.

The importance of legal vocabulary is equally major when it comes to the *issue of communicating a legal norm.* The latter represents a requirement generated by the key role of the norm itself, that is to be known, observed and applied. On the other hand, the communication in question is imposed by the principle *nemo censetur ignorare legem,* according to which no one can defend himself by claiming that he does not know the law.

In conclusion of the present analysis on the legal language specialization, we consider that, given the fact that the process of the legal language understanding by non specialists is quite complex and controversial, the most realistic and adequate perspective would be: "the language of legislative acts cannot be identical either with the common one, in front of which becomes more abstract, or with the language within legal literature which, from theoretical reasons, is highly specialized." [22].

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[6] As a result of legal terminology and semantics, a word used in connection to the legal field has always a specific signification. As a rule, words used within legal terminology are taken form the common vocabulary, but they are provided with a certain legal signification which sets them

apart from the common meaning, converting them in independent elements of the legal terminology. The birth of legal terminology is therefore the result of a process which involves modifying the common meaning of words by means of a semantic legal re-conversion (J.-L. Bergel, *quoted works,* p. 223).

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