The Significance of the Legal-Linguistic Component of Law for its Implementation

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Abstract. *The article covers the axiological aspect of the legal-linguistic component of law in the process of its implementation. It is noted that the value of legal and linguistic knowledge in the implementation of the norms of law is directly related to understanding the essence and content of legal acts by their addressees, especially given the fact that the normative provisions are a specific form of legal construction of potential social relations by linguistic means.*

Keywords: *axiology of legal-linguistic knowledge; text of normative-legal act; realistic school of law; certainty of law; objectivity.*

Problem statement

An important aspect that reflects the significance (value) of the legal and linguistic component of the law is the behavior of capable and competent persons in social relations, which reflects the normative and legal provisions – the sphere of the exercise of law.

Presentation of the main research material. The concept of the implementation of legal norms, the classification of law, and the characteristics of individual forms of implementation are traditional issues that are comprehensively considered within the scope of both scientific monographs and textbooks and manuals on the theory of state and law. It should be noted that despite the importance of the realization of law (since understanding of the mechanism for the implementation of legal norms in the actual behavior of members of society can be, firstly, a component of legal technology, resulting in the created legal constructs will be effectively implemented, and secondly, the means of improvement the level of legal consciousness and legal culture and, accordingly, the reduction of the level of legal nihilism), it did not become the subject of a comprehensive study of domestic legal science. At the same time, the question of the relation of law and values is considered in the works of such modern Ukrainian scholars as T. Andrusiak, M. Antonovych, O. Bandura, M. Kostytskyi, O. Myronenko, V. Nechyporenko, P. Rabinovych, O. Skakun, S. Slyvka, and others. At the same time, we see the need to address the axiological perspectives of legal-linguistic knowledge from the point of view of the behavior of subjects of law.

The purpose of the article is to study the value aspect of legal-linguistic knowledge in the field of its realization.

The methodological basis of the proposed article is a special legal method that allows studying the value aspects of the

implementation of the behavior of subjects of law and analyzing the legal-linguistic aspect of the realization of law through the prism of the provisions of a realistic law school.

The implementation of legal norms is primarily connected to the behavior of the individual, and not the public authority. In view of this, an important issue that needs to be addressed is the understanding of the subject of law by the content of the regulations of normative legal acts.

In general, the current scientific views on the solution of this issue can be reduced to two approaches:

1. The text of a normative legal act should be clear, unambiguous, and understandable, only then it can be implemented as provided by the subjects of legal regulation. Therefore, the vocabulary used must be universally applicable.

2. The text of the normative legal act should be clear and unambiguous, therefore the vocabulary of the law should be special, within the official-business style. Although a person without legal education may not always be able to correctly understand the content of certain legal requirements, only in this way can the unanimous perception the text of the normative legal act be reached by specialists. "Function forming opportunities for the discourse of law are realized when there is a quality provider of legal information for the perception and assimilation of the addressee, and his consciousness. Here it is necessary to take into account the fundamental knowledge of the language and its ability to master the art of word formation for the best ways of producing, representing, transmitting, and storing legal information that determines the solution of a particular legal task or causes its solution" [1, p. 59] – notes T. Pantielieieva and M. Akhidzhakova.

Both the first and second approaches emphasize the linguistic features of the legal text. After all, an important condition for the implementation of the provisions of the legal acts is their understanding. You cannot require a person to perform a duty that he does not know. That is why according to art. 57 of the Constitution of Ukraine "Everyone is guaranteed the right to know his rights and obligations. Laws and other normative legal acts defining the rights and duties of citizens must be brought to the attention of the population in accordance with the procedure established by law. Laws and other normative legal acts defining the rights and duties of citizens are not brought to the attention of the population in accordance with the procedure established by law are ineffective" [2].

In this context (although the circumstances of the case relate to the sphere of law enforcement, however, as we have indicated above, the application of legal norms is carried out in the same forms as the immediate realization) one cannot but mention the Supreme Court's Resolution of May 17, 2018, in case No. 761/15138/16, in the reasoning part of which it is stated "In view of the above, since the Supreme Court has erroneously opened the cassation proceedings under the cassation appeal of PJSC "Delta Bank" for judgments in insignificant cases that are not subject to appeal, the cassation proceedings must be closed" [3]. It should be noted, that art. 396 of the Civil Procedure Code of Ukraine "Closing the Cassation Proceedings" does not contain such grounds for closing the cassation proceedings as "erroneously opening of cassation proceedings"; at the same time, the correctness of such a decision is indicated by common sense.

The above-mentioned resolution and the decisions outlined in it once again raise the question of the adequacy of the reflection in the texts of legal acts of social reality, the rules of the activity of public authorities, models of human behavior. Moreover, this situation also makes it possible to actualize the issue of the relationship between law and legal acts: what should a judge follow while judge – law or legal acts? And what does it mean: the implementation of the law or the implementation of the prescriptive text? In this context, one cannot but mention the well-known case of Riggs v. Palmer, which is studied by law students in Europe and the United States of America. This case is described in detail by Ronald Dvorkin. Under the circumstances of the case, the heir deliberately deprives the testator of his life, confesses to the murder and, in this case, claims recognition of his inheritance, referring to civil law, which does not provide for the murder of a legacy for the

purpose of obtaining an inheritance as a ground for deprivation of the inheritance. The judge decided to refuse recognition of the right to inheritance, based on the rule of law principle [4, p. 44]. So, in this case, were the provisions of civil law enforced? And was the implementation of the law?

The questions raised should be the basis for answering questions about the forms of realization of the right through observance, execution, and use. In addition, the question needs to be answered: Is the right implemented in the case of so-called abuse of the law?

Cortical provisions that allow answering the questions posed are G. Hart's argument that society, according to the views on its existing rules of behavior, is divided into two parts:

– the first part considers these rules as standards of conduct, as an example of how to behave (and not simply as information about what will happen to them when they do not implement them);

– the second part (mostly offenders or "victims of the system") interprets these rules as a source of punishment. Therefore, these standards of behavior are imposed on them either by force or threat of use of force.

If a society has built a fair system that takes into account the interests of everyone from whom the implementation of the established rules is required, it will be appreciated by the majority of members of society and, accordingly, will be stable. And, conversely, if such a system functions in the interests of a small group, it will increasingly become repressive and unstable, will be on the verge of a social blast [5, p. 203–204]. That is why the right must conform to morality, only in this way can the order of the society be ensured.

It should be noted that in the aforementioned legend of Rex L. Fuller, as an example of an imaginary monarch who only came to power and full of desire to create effective legislation, began to carry out a legal reform, describing eight principles, the failure of which (at least one of them) indicates the illegal nature of both the law and the public authority itself, which adopts regulatory acts. Such principles, according to the philosopher of law, include the following:

– insufficiency of legal regulation of certain social relations is a factor of non-system justice;

– nondisclosure of normative legal acts to citizens is a factor of the impossibility of realization of legal requirements;

– incomprehensibility, fuzziness of legal provisions leads to the failure to implement them;

– normative legal acts cannot have retroactive effect;

– the existence of conflicts in the legislation is a factor in its inefficiency;

– shortcomings in the construction of a legal provision, consisting in impossibility of their implementation by the subjects;

– permanent changes to laws are a factor in their instability;

– incompatibility of the application of the law with its requirements [6, p. 38–42].

One of these requirements directly concerns the legal and linguistic aspects of the effectiveness of legislation: incomprehensibility, unclear legal requirements lead to the unfulfilled of the latter. L. Fuller described this situation as follows: "Now Rex has understood that it is impossible to avoid publishing a code of law that should apply in future disputes. However, the embarrassment of Rex subjects increased even more when his code became available and it turned out that it was a true masterpiece of confusion. The lawyers who studied it stated that there was no place in it that would be understandable not only to the ordinary citizen but also to an educated lawyer. The upheavals were common and in front of the royal palace a picket with a banner soon appeared: "How can one adhere to rules that nobody can understand?" [6, p.40].

It should be noted that the occurrence of one of the most ancient monuments of Roman law – the laws of XII tables (leges duodecimo tabularum) – was due to a requirement of the plebeians to formalize the customary law to avoid abuse of it by the patricians and to enhance the clarity and comprehensiveness of this customary law. The resulting Laws were set out on twelve boards that were displayed on the square for familiarization with them. "According to some information, – as V. Pankratov notes, – every young man entering into the ranks of citizens had to know the laws by heart. It was believed that without this one cannot perform the duties of a citizen, especially judges" [7, p. 32].

A well-known philosopher Montesquieu stressed the necessity for legal provisions to be clear and easy to understand. In the work "On the Spirit of Laws", he notes that the content of the law should be concise, precise: "The laws of the Twelve Tables serve as an example of accuracy: the children learned them to memory. Justinian's Novels are so verbose that they had to be cut" [8, p. 500].

The style of a legal act should be simple. Direct expressions are always more accessible to understanding than complex ones. According to Montesquieu, the essential condition for the effectiveness of the laws is that the terms used in the legal act must be equally understood by all people. If certain concepts in the law were precisely defined, then it would not be appropriate to return to obscure expressions. "In the criminal law of Louis XIV, after an accurate list of all cases of jurisdiction of the royal court, it was added: "and those cases that at all times were considered by the royal courts" – a definition that forces us to return to the same arbitrariness, from which we have just gone" [8, p. 500].

In the opinion of the French philosopher, the laws must not be overburdened with details, since their addressees are ordinary people, therefore, the laws "do not contain the art of logic, but the concept with the common sense of the simple father of the family" [8, p. 501]. You cannot give the laws a form that contradicts the nature of things [8, p. 503].

So Montesquieu also pointed out the need to comply with certain requirements (which are expressed in the modern language as legally-linguistic ones), the observance of which will contribute to the implementation of prescriptive texts and to raise respect for the law as a regulator of social relations.

Jeremy Bentham also emphasized the need for clarity and understandability of the text of the law: "Take, for example, the law: "You should not steal". If such a command was on that, it would never have been able to sufficiently fulfill the intention of the law. Such an indeterminate and obscure word can fulfill this in no way but as a general inspiration of various provisions, each of which, in order to become understood, requires a more specific number of terms" [9, p. 399]. The above considerations of G. Hart concerning the peculiarities of legal concepts, similar to the arguments of the founder of utilitarianism, gives the following example. Is it possible to consider a sufficient definition of theft as "Taking a thing belonging to another, a person who does not have the right to do so with the awareness that this person does not have this right". Is it possible to implement the definition of theft of the law? The first answer, which comes to mind and is commendable, will be false. After all, what does "a man who has no right to take a thing" mean? [9, p. 399]

Studying the problem of the certainty of law and the issue of free judicial law-making, the Russian lawyer of Ukrainian descent I. Pokrovskyi noted that one of the important and essential requirements for the law from a developing person is the requirement of legal certainty. This requirement is conditioned by the fact that a person cannot be outside the scope of the legal norms, he must coordinate his actions with legal requirements. Thus, the first condition for the ordering of the life of society is the certainty of legal norms. "Any ambiguity in this respect is contrary to the very concept of law and order, and places a person in a rather difficult situation: it is unknown what to do and what to adapt to. And naturally, the more the individual consciousness develops, the greater the need for the certainty of law increases" [10, p. 42].

Such a principle of scientific knowledge as objectivity necessitates the consideration of the subject of research through the prism of a rather actual trend in law – legal realism.

The Realistic School of Law arose in the twenties of the twentieth century in the United States of America. In accordance with the provisions of this school, the law is not a set of formally determined rules of conduct that may be contained either in a legal act or in a precedent. Such a conclusion is made because these forms are "frozen», they do not keep up with the development of social relations, and therefore should not be recognized as the primary regulators of social relations, as the law. The law is unique, and is therefore sought primarily by the judiciary in each particular case, taking into account the facts of the case, which must be thoroughly analyzed and judged by the court (once again we recall that the decisions

of the domestic judicial authorities up to now contain, in general, only an indication of the relevant point and/or part of the article of the normative legal act). It is in this case that the law is created. The factors contributing to this or on the basis of which a particular decision is made are psychological in essence. "The methods of work of judges and lawyers, their skills and their sense are a source of certainty in the law. Predictability is not due to the subordination of judges to precedents and legal norms, but due to working methodology, case facts and "living standards" (norms of real life)" [10, p. 401–402] – says V. Mataras.

Judges find a fair decision based on the facts of a particular case, and then they refer to separate normative prescriptions of prescriptive texts, that is, as M. Melnyk notes, referring to S. Roederer, "realists believe that the legal norms are used only to rationalize the solution that is already was preliminarily adopted without an analysis of the provisions of legislation but a way of applying common sense, life, and professional experience, intuition, and a sense of justice" [12, p. 68]. This provision is consistent with the thesis of G. Hart about the ascriptive nature of legal expressions. According to the concept of G. Hart, the legal assessment of an act of a person is not only the description of the situation (and here the facts are important and their assessment) and its subordination to a certain legal norm, but also the reliance on the person of responsibility for the legal consequences of such actions [13, c. 85]. At the same time, as A. Didikin notes, ascriptibility in the legal language is interpreted as a combination of the imperative nature of legal regulations with their consequences that we can observe, and therefore the change of legal arguments depends on their linguistic content and on the interpretation of the content of legal rules [13, p. 85].

Excessive emphasis on facts by the realistic school is due to the fact that, according to Jerome Franco, one of the developers of this legal field, there is no law for a person until there is a court decision (with an analysis of all the circumstances of the case). By this time, it is possible to speak only about the legal positions of the lawyer, prosecutor, etc., which are not law [14, p. 50].

According to the founders of a realistic school of law, a factor of uncertainty in legal norms is the uncertainty of the language used in everyday life. Therefore, the court decision is intuitive and based primarily on moral principles, judge's ideological convictions or on his professional qualifications. At the same time, attention is paid to the fact that uncertainty exists in all situations that are considered by the judicial body. "Legal rules in the process of their interpretation allow a plurality of alternatives to the adoption of a court decision, – said A. Didikin, – therefore, the subjective choice of judge determines the essence and nature of the decision and its subsequent consequences (confirmation or the abolition of the highest judicial instance)" [13, p. 86].

In this understanding of law, the issues of its realization (in the context of existing domestic doctrine on the implementation of legal norms formed by Soviet jurisprudence), as well as legal-linguistic requirements for legal discourse are not relevant (with the exception of the simplicity of perception and the logical justification of a court decision).

Y. Timoshyna, A. Kraievskyi and A. Salmin also came to the same conclusions, studying the methodology of judicial interpretation in the context of human rights competition: "The uncertainty and variability of the content of the legal norm, the priority of expediency, make the traditional search of formally logical grounds for judicial argumentation, based on the fundamental structures of language and logic of the system of law, intellectually inferior, ethically lucrative, politically short-sighted, ultimately marginal" [15, p. 9].

In general, not denying the provisions of the realistic law school, let's note the following.

First, excessive attention to facts, while leveling regulations is not a factor of the rule of law. Thus, generally accepted within the limits of Western culture is the principle of "state bodies can only do what is expressly provided by law". In addition, legality is an integral part of the rule of law and provides for the existence of a quality law that allows for prediction of the behavior of public authorities. Therefore, there should be a law on the judiciary, which will determine, in particular, the principles of the administration of justice, the limits of the

judge's discretion, etc., which will facilitate the continuity of judicial practice, the adoption of fair decisions.

Secondly, in this approach, the right in some way is deprived of normative character and becomes individual in nature, since it is actually created for the participants in the trial. In this connection, the question arises of the use of state coercion among participants in public relations that commit offenses (especially in the context of the characteristics of the subjective part of the offense).

Thirdly, such an approach to the understanding of law reduces the implementation of the legal norms to the enforcement of a court decision, since the latter creates the law. Therefore, the question of the forms of realization of law, given its lack of practical significance, is in fact not considered.

Fourth, one cannot fully agree with the provisions of the realistic school of law with respect to the uncertainty of the law, which is substantiated by the uncertainty of everyday language. Following the rules in each case is carried out within the framework of the corresponding social discourse (we described above, characterizing the speech acts), while learning is a factor in promoting certainty. Wittgenstein's arguments to the founders of the realistic school of law, and the interpretation of the latter relate only to mathematical rules and cannot be extrapolated to legal phenomena without legal justification, taking into account cases where legal norms are uncertain even with a correct understanding of linguistic rules. It is the practice of law enforcement that allows solving complicated litigation, as well as the constant refinement of the requirements of legal norms [13, p. 86]. In this context, the parallel with the Convention for the Protection of Human Rights and Fundamental Freedoms and the practice of the European Court of Human Rights is relevant in this context. In accordance with Ukrainian legislation, the Convention and practice are a source of law (this, as we have found above, is expressed expressis verbis in article 17 of the Law of Ukraine "On the Enforcement of Decisions and Application of the Practice of the European Court of Human Rights": "The courts apply in the consideration of cases The Convention and the Court's practice as a source of law" [16]). For a long time, domestic lawyers have pointed to the incorrectness of the wording of the above normative order, since the source is not the practice of the European Court of Human Rights, but directly the Convention for the Protection of Human Rights and Fundamental Freedoms. The norms of this Convention (as well as many other international treaties, as well as national legal acts in the field of human rights) are implicit in being formulated in a rather vague and simple way, providing pluralism of choice (as we have already noted, in many judgments the European Court of Human Rights the person himself emphasizes the freedom of the Member States to the Convention on the legislative regulation of individual relations, which are subject to regulation and this Convention). Therefore, the practice of the European Court of Human Rights inter alia reveals the content of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms; the judgment of the Court is a peculiar part of the Convention. At the same time, the judgment of the European Court of Human Rights, based on the Convention for the Protection of Human Rights and Fundamental Freedoms, must be adopted ex aequo et bono.

Thus, the question of the axiology of legal and linguistic knowledge in the realization of the rules of law is directly related to the understanding of the essence and content of legal acts, their addressers and addressees, especially given the fact that normative prescriptions are a peculiar form of the legal construction of potential social relations with linguistic means. Through the use of linguistic rules and means, the basic relations in society are formalized, the boundaries of the activities of the public authorities, including the use of state coercion, are determined. At the same time, it is also important for individuals to understand the content of a normative legal act, which allows for predicting possible negative consequences of their own behavior (it is precisely to be clearly foreseen, since the lack of legal certainty indicates a lack of "quality of the law" and deprives the prescriptive text of normative quality). In addition, the constitutional principle recognized in the definition of human behavior: "Allowed everything that is not

directly prohibited by law" actually obliges individuals to clearly understand what act is an offense and what legal liability for its commission is foreseen. However, one cannot but agree with M. Batiushkina, who notes that "the problem of perceiving legislative texts is, of course, that most people who are not related to the legal sphere do not see the various implications of the law (legal, political, economic, etc.), do not perceive the legislative text as a legal phenomenon, its essential basis and purpose – the construction of a certain model of behavior in different situations of legal discourse" [17, p. 75]. In this case, the presence of basic skills in interpreting the text of a legal act is not a factor in the unambiguous understanding of such a person's content of the normative prescriptions of this act. "The recipient, as a non-governor, and a lawyer, cannot only "narrow down" the content of the text and the limits of the application of the legal norm, but, on the contrary, "broaden" this content, bring a new meaning, which was not in the design of the legislative text, but which is necessary the recipient to create the completeness of perception of legal information, the completeness and integrity of the communicative situation in the relevant sphere of social relations" [17, p. 75] summarizes M. Batiushkina.

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