

# SCIENTIFIC THOUGHT

---

U.D.C.: 340. 113



***Dina Azmy***

Candidate of Law Science,  
Councilor of Department of legislative  
works of Moscow Government,  
Associate professor of Moscow Institute of Law  
(Russia, Moscow)

## **TO THE QUESTION OF MEANING OF JURIDICAL TERMINOLOGY: SYSTEMIC LEGAL ASPECT**

### *Annotation*

*Article is devoted to the analysis of value of legal terms in a context of the decision of questions on front numbers of the right and legislations, system legal action. By means of various examples in work the idea that infringements of requirements of legal techniques are capable to render rather essential destabilizing influences on various components of legal system including on system action of a legislative material is shown.*

During the present period in the Russian legal doctrine considerable increase of interest to subjects of system of the right, especially in a context of definition of a structural number of correlative phenomena is observed. It is caused by that many problems of corresponding area remain till now unclear, or rather impugnable.

In a context of search of an optimum way and the form of the ordered gradation of a standard right material, and also scientific and practical data about it, discussion on questions on a parity of branch designs of the right and the legislation are actual for domestic jurisprudence. Researches (of various levels) concerning a combination, similarities and distinctions of

branches of the right with directions of statute (and other standard legal) regulations, structures of the legislation, are carried out constantly.

In this connection it is necessary to notice, that peculiar domestic perception of law (and prevailing in this) branch vision of questions of structurization of system of the right, based on «declaration» by two basic criteria of distribution of data about the public relations falling under legal influence a subject (content) and a method (form) of legal regulation, does not provide appropriate clearness, exactness and sequence in studying, research and «designing» of a legal matter (different sectors, types, cuts). That is also not completely demanded by legal practice

since the latter is inclined to focus attention on a structural design not of the rights, but namely of legislations (a written legal material).

At the same time, along with primacy of branch vision and interpretation of questions of a structural construction of a legal matter, in domestic jurisprudence there can be (though it is not frequent) other approaches to consideration of the designated problematics.

So, it is necessary to recognize evidentiary messages and arguments of that scientific platform which specifies the ambiguity, insufficient «viability» of branch designs of the right interesting us and (or) legislations; in particular, designates that: « Differentiation of branch of the right as objective category and legislation branch as derivative of it is not scientifically proved... Codes, other federal laws are not under construction to a branch principle as by them different in a subject and method relations are regulated. At the same time these relations cannot be divided actually on public and private - it is a question of their organic unity ... the Branch structure of legal system of Russia is more the tribute of scientific tradition, than an objective reality ... It is impossible to draw an accurate side between law branches »[1, with. 50, 51]. Earlier similar reasonings in the specified subject were expressed by some other lawyers, jurists [2, with. 94; 95-97; 107-113].

Here it is important to understand, that the negative aspect consists not of available legal design of law branch, but namely in its dogmatized, the absolute perception. Abstract

constructions in jurisprudence exist much enough, and frequently their creation is directed on the decision of not only academic, but also practical (and even applied) problems, in other words – it is proved and justified. But, the subject and a method of legal regulation are postulated as objective, set by the nature of the right of factors of «distribution» of judicially regulated public relations of corresponding blocks.

Negativity in the given context is seen on the basis of the designated postulation experts of various directions of jurisprudence create among themselves endless disputes about: presence (absence) of this or that regional standard legal division; independence (dependence), uniformity (heterogeneity) of the maintenance of profile influence; the volume, whether a certain set of social behavioural certificates is sufficient (insufficient) for ascertaining of life of legal branch.

At the same time, as it is represented, considering a problematics of a legal structure and its system action, making the system analysis of special regulation interesting us, it is necessary to pay certain attention to a question on a legal language. It is caused by that internal streamlining of a standard legal matter and system action that cannot be qualitative in the conditions of absence of the unified legal realization and monotonous standard operating by the legal conceptual device. Here we mean not directions of treatment of other words and (or) definitions (for the debatable aspect from positions of development and perfection of corresponding area cannot be

absolutely overcome, at least, in social sphere), but of the formal (legally issued) recognition behind these a miscellaneous, sometimes even from positions of principle, value.

It is also impossible to forget about of the necessity consecutive, adequately displaying sense, the usage of (and, not only on rule-making, but also on judicially realized level) «introduced in sphere of action of the law» lexical designs. It is caused by the fact that, especially in «refraction» to a written material, we, first of all, deal with the text, not with thought of the founder of this or that judicially behavioural rule.

Besides, it is necessary to remember about the predetermined profile logic and the legal life of necessity of observance directed on non-admission of defects of perception of legal texts (and, hence, primary orientation to following the instructions containing in them) judicially-technical requirements that special terms, by the general rule, should coincide on the semantic value with accepted, settled in any concrete historical society, word meaning. Thus, the statement of legal norms should be not only professional, but also popular, simple, clear and capacious (i.e. «designated» not only for professional lawyers, but also for all other addressees of legal establishments).

So, according to D.A.Kerimova's capacious instructions, key rules of legislative techniques can be presented with following requirements: literacy of legislative language; logic sequence of a statement of standard instructions; directive and official stylistics

of the statute; availability, professionalism and clearness of text reflection of legislative establishments; absence of excessive quantity of forbidding positions (though, on the «criminal» legislation given requirements does not extend). It is impossible to disagree that displayed in legislative (and bylaw) legal documents it is possible to name the rule of law logical only in the event that it includes answers to questions on: what behaviour is provided for addressees (corresponding subjects of the law); under what conditions this behaviour can or should take place to be; what are the legal consequences concerning persons, «putting into practice» corresponding judicially-behavioural rule [3 consist, with. 71-103].

Taking into account aforesaid an interesting current legal practice of operating by two conformable, but various terms on the value is represented: «home nursing» and «patronage». The first of them, following the Civil code of Russian Federation (a part the first), represents a certain «care form», legalized subsidiary to activity, guardianship concerning the physical person who, not having lost the right of subjectivity (let even only in one of components) nevertheless, in view of a state of health, is not capable to carry out and protect independently correlative subjective rights and to fulfill legal duties. In the same value the term home nursing is reflected in other legal certificates, for example, in the Tax code of Russian Federation (the first part).

By the way it is necessary to note that one as it seems to us, an error of law-reflecting a text statement. In part 1 item 41 of the Code, there's a question, for some reason, only of impossibility of execution, but not usage of legal duties. It is obviously necessary to ascertain a judicially-technical error, instead of deliberate restriction of semantic loading of the standard legal instruction.

Patronage in turn, is also related to guardianship. But, in accord with committee of inquiry of Russian Federation, it is realized not concerning full age capable persons, but concerning children who remained without care of parents. It is made out by means of the contract (about home-nursing family, home-nursing education, patronage).

The specified example is subject to an ambiguous estimation. On the one hand, it is positive since shows observance of the requirement of lexical delimitation of words differing on the semantic filling. Differently: there's no pluralities of value of one term, capable to lead to negative legal consequences in this case. On the other hand, from a position of perception of legal instructions, clearness of differentiation is also absent: and not only in view of accord of terms, but also because of an accessory of each of them to patrimonial concept «guardianship». In practice it often leads to understanding (especially peculiar to the persons, who are not experts in family area) two different concepts as same, and, hence, to is substantial-verbal mess of their values.

Addressing to other example, we will notice, that according to item 48 of the civil code of Russian Federation the term which is generalizing, concerning all legal bodies, is «organization». At the same time, some special documents, sometimes even standard character (let alone current legal practice), operate in the value designated above with a word «enterprise», instead of «organization» [4]. It shows a vivid example of judicially-technical defect since accordingly part 2 item 3 of the civil code other certificates containing norms of civil law, should correspond the federal law, while that designates the second of the designated terms only unitary (and, accordingly, their version - state) enterprises.

The situation is interesting when the term «loan» (and the corresponding contract) under which, following the operating civil legislation, gratuitous using (the agreement on this) is understood. At the same time, in ordinary legal consciousness the loan till now is often treated as something identical or similar to the credit contract. Anyway, they often unreasonably speak about reception of it «in bank». On the one hand, it testifies to necessity of carrying out active law enlightening works, but on the other hand, - about legalized use of the term not in that value in which it is habitual to public consciousness.

As one more example concerning native area of civil wrights, we will specify that many bodies of the public power in the positions fix the legal fact, - namely that they are legal bodies [5, item 1.4. Appendices]. Thus, according to the Civil

Code (item 124), the Russian Federation, its subjects, and also local governments are not the legal bodies. All of them only participate in economic circulation on the same rights and at the same duties that are inherent in legal bodies, i.e. operate on the basis of the instructions defining participation named before subjects, in the relations regulated by the civil legislation, not being those in the true sense.

We will notice, that rather doubtful the correctness of a statement of item 145 of native Criminal Code is represented. At «operating by default» literal interpretation of its text it turns out, that the criminal liability comes only for illegal refusal in employment or dismissal of women (in the presence of specified in the article and its name of factors), while to a principle of equality of representatives of homo sapiens the different floor, reflected in part 3 item 19 dominating on a validity and having direct action of the Constitution, it doesn't correspond. Besides, according to item 264 ch. 41 («Features of regulation of work of women, with seed duties») of LC of Russian Federation guarantees and the privileges given to women in connection with motherhood, are also carried to bringing up children in absence of to fathers, trustees (trustees) and minors.

Also, it's not clear, why, by what criteria and (or) to the bases (factors), under number criminally-forbidden here (in item 145 of the CC of Russian Federation) fall only acts concerning persons of having children, instead of the child. Especially negatively formulation of the article

designated above «the law on crimes» is estimated in a context of an interdiction for realization in the field of criminal law broad on the volume of interpretation.

The interesting example can be noted and in sphere of action of international and constitution and legal rules of law. In them, and, hence, and in the other legal areas, steady value the expression «the person and the citizen» has got. At the same time, citizenship represents steady legal communication of the person (the person, the representative of homo sapiens) with the state, expressed in their mutual rights, duties and responsibility, i.e. not any person is the citizen. Depending on stability of political and legal communication with any concrete sovereign national organization of the public political power the individual subject of the right can be also the foreign citizen or the person without citizenship. Differently - in analyzed expression through a copulative «and» a word «person» and «citizen» it is inadmissible (from semantic positions) «are put» as equal on generalization level, while the first of them includes the second as subspecies, as its component.

The attention should be paid to definition of «legislation system». So, according to the item 9 and 4 of capital laws «Charter of a city of Moscow» and «About legal certificates of a city of Moscow» (accordingly) the legislation system is defined as set of certificates. In literal sense it turns out, that internal streamlining of the maintenance and the form is not an obligatory sign of system of the legislation in capital region.

It is represented incorrect, since simple total set will not provide system (ordered, natural, constant) legal action. Besides, it is necessary to specify the impossibility of existence simple total systems in social sphere (that is especially significant at the account of that not all consider the latter as systems in the true sense of word).

So, for example, in the theory of systems it is accepted to notice, that objects interesting us (i.e. system) type are characterized by presence of intercomponental sheaves and formation in the complete phenomenon (system) of the certain new properties not inherent in each of parts separately. Coherence, integrity (integrity) and the structure predetermined by those (carrying steady, rather constant character) are distinctive signs of any system. At the same time total, unorganized set «is deprived of system character» [6, with. 177]. The last is caused by that fact, that, on the basis of philosophical granted the right structure is treated as the internal form while concerning legislation system interpretation as the form external is admissible.

Thus the right maintenance is reflected first of all through structure, i.e. the internal form: according to specially-scientific sources, the maintenance as the world outlook category, incorporates also structure of components (their complex, a set) and structure of these. Thus «the internal form» coincides with «structure», and «the external form» («form» as that) is compared with it is mediated, through «maintenance». «The external form» forms dialectic pair (corresponds with «maintenance»), and «the internal form»,

i.e. structure, dialectically corresponds with «structure» [7, with. 66].

Necessity of adequate operating by legal terms is caused by that «if the legal system is penetrated by logic of the right ( besides so that it with limiting clearness is shown in legislation system) enforcement bodies select the necessary form not to the touch, by repeated «fitting», and regulating properties of structural communications demand that operate on originally scientific bases. Logic of the right, harmonious construction of its structural divisions direct process, prevent errors in qualification of business, in interpretation of standard instructions. The main thing consists is that regulative qualities of structural connections demand to be regarded as the same essential element of a legal fabric, as well as legal norms» [8, with. 76].

In the given work not everything is mentioned. At the same time, even the stated material allows to show ideas that questions of a judicial and technical statement of rules of law have not only theoretical, but also huge practical value, that inadequate use of profile terms and other infringements of requirements of special techniques are capable to render rather essential destabilizing influences on domestic legal system, and both in rule-making, in realization of law, and in perception of law.

It is noted, that the domestic positive legal material requires the careful sector analysis, the subsequent updating, and creation of new legal instructions demands more reasonableness not only in ideological, but in expressive, technical

aspects. Especially significant in the given context is the offer of legal language unification, and, not only in branch directions, but also within the limits of all domestic legal field as a whole.

*Literature:*

1. *Андреев В.К.* К разработке новой редакции ГК РФ // *Хозяйство и право.* - № 10. - 2008.

2. *Ямпольская Ц.А.* Материалы «круглого стола» журнала *Советское государство и право* // *Советское государство и право.* - № 6. - 1982; *Лившиц Р. З.* Система советского права и перспективы ее развития. «Круглый стол» журнала «Советское государство и право» // *Советское государство и право.* - № 6. - 1982; *Мозолин В. П.* Система российского права (доклад на Всероссийской конференции 14 ноября 2001 года) // *Государство и право.* - № 1. - 2003.

3. *Керимов Д. А.* Законодательная техника. Научно-методическое и учебное пособие. - М., 2000.

4. Постановление Правительства РФ от 21.11.2008 № 873 (ред. 17.10.2009) «О мерах по реализации Указа Президента Российской Федерации от 10 июля 2008 г. № 1052» // *Собрание законодательства РФ.* - № 48. от 01.12.2008. - Ст. 5621.

5. Постановление Правительства Москвы от 04.03.2008 № 159-ПП «Об утверждении Положения о Департаменте внешнеэкономических и международных связей города Москвы» (ред. 10.11.2009) // *Вестник Мэра и Правительства Москвы.* - № 18 от 26.03.2008.

6. *Блауберг И.В., Юдин Э.Г.* Становление и сущность системного подхода. - М., 1973.

7. *Агудов В.В.* Соотношение категорий «форма» и «структура» / *Философские науки.* - № 1. - 1970.

8. *Алексеев С.С.* Структура советского права. - М., 1975.