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СТАНОВЛЕНИЕ ЯЗЫКА КРИМИНАЛИСТИКИ

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THE FORMATION OF THE LANGUAGE OF CRIMINALISTICS

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Аннотация: Данная статья посвящена рассмотрению процесса формирования юридической терминологии, который происходил таким образом, что возникающие вследствие развития и усложнения общественных отношений новые отраслевые правовые науки формировали свой терминологический аппарат на основе уже существовавших в общенаучной лексике определениях и понятиях, превращая их в свои базовые термины, а еще более молодые правовые науки, в свою очередь, заимствовали термины уже из лексики конкретной области знания. По такому принципу выстраивалась преемственность научного знания, то есть обеспечивался его хронологический фактор. Таким образом, более поздние правовые науки появлялись и терминологически формировались на основе уже существовавшей системы знаний. Научные исследования, посвященные вопросам юридической терминологии, стали появляться намного раньше в западной юридической науке, и только потом, уже спустя несколько десятилетий, стали развиваться и в отечественной правовой науке.

Abstract: This article is devoted to the process of formation of legal terminology, which took place in such a way that new branch legal sciences arising as a result of the development and complication of social relations formed their terminological apparatus on the basis of definitions and concepts already existing in the general scientific vocabulary, turning them into their basic terms, and even younger legal sciences, in turn, borrowed terms from the vocabulary of a specific area knowledge. According to this principle, the continuity of scientific knowledge was built, that is, its chronological factor was ensured. Thus, later legal sciences appeared and terminologically formed on the basis of an already existing system of knowledge. Scientific research on legal terminology began to appear much earlier in Western legal science, and only then, after several decades, began to develop in domestic legal science.

Ключевые слова: криминалистика, язык криминалистики, терминология, уголовный процесс, преступления.

Key words: criminalistics, the language of criminalistics, terminology, criminal procedure, crimes.

Practice clearly shows that at present, in the era of active scientific and technical transformations, the language of legal science does not always satisfy the ever-growing demands for increasing the efficiency of the creation, accumulation, processing and transmission of scientific information. This is due to the fact that the special (over 90%) vocabulary of the Russian language, however, like many other languages, in a significant part of the fields of knowledge is not a systematic (ordered) knowledge that would fully correspond to the current level of development of science and the needs of practice.

It is worth mentioning that the Russian legal language was generally formed systematically, since for each newly emerging concept its own types and means of linguistic expression were developed: a restricted and stable lexicon, characteristic syntactic compatibility and synonymy, specific syntactic constructions. The constant clichéd use of linguistic means to describe the same situation in the same context "did not stimulate the widespread development of figurative values, but expedited the processes of specialization of certain verbal forms as constructive elements of the legal language" [5, p. 25]. So, the terms originated and were used for a long time: "vor" (thief) - a criminal in general; "dati pravdu" (to give the truth) - to treat fairly; "pravdu dati" - to acquit by the court; "pravdu vzyati" (to take the truth) - to achieve the right, to use the rights; "na pravdu ne stati, protivu pravdy molvit', ne na pravde" (to oppose the truth, not to speak against the truth, not on the truth) - to perjure; "prodat' vdern'" (sell without the right of redemption), "oderen'" (completely, in full ownership), "dernovataya gramota" (a document fixing the ownership of land) - concepts related to the right of land ownership (the oath in land transactions was mandatory and was carried out on a piece of turf).

The process of forming legal terminology took place in such a way that new branch legal sciences arising as a result of the development and complication of social relations formed their terminological apparatus on the basis of definitions and concepts already existing in the general scientific vocabulary, turning them into their basic terms, and even younger legal sciences, in turn, borrowed terms from the vocabulary of a specific area knowledge. According to this principle, the continuity of scientific knowledge was built, that is, its chronological (time) factor was ensured. Thus, later legal sciences appeared and terminologically formed on the basis of an already existing system of knowledge (for example, criminal investigation - criminal tactics - criminal procedure - criminalistics - general theory of forensic examination).

It should be noted that scientific research on legal terminology began to appear much earlier in Western legal science, and only then, after several decades, began to develop in domestic legal science. This is explained by the fact that in European jurisprudence, the need to develop common approaches to the grammatical interpretation of the norms of the law clearly began to be realized at the beginning of the XIX century, when generalized recommendations on the conceptual expression of the will of the legislator began to appear. For example, one of the founders in the field of legal and terminological research is rightly called the English philosopher, legal scholar Jeremy Bentham. The main issues in the field of legislative technique were outlined by him in the treatise "Nomography", published after his death in 1843 [12]. Already at that time, the scientist clearly understood that, depending on what terminology and how exactly we use it when writing legislative acts, the success of their implementation will depend. According to the author, the shortcomings inherent in the expression and method as a form of legislation can be divided into two groups. The shortcomings of the first group are especially important, since they hinder the notion of the true thought of the legislator. Among them, the philosopher identified the following:

- the ambiguity of the terminology used, "... when conclusions can be drawn from the expression used in various directions, and it is not known which of these directions corresponds to the actual thought of the legislator";
- the use of expressions, the comprehension of which does not lead to a conclusion about what idea the legislator wanted to express;
- the bulkiness of the constructions used, "... in which the mind loses the opportunity to grasp them with a single understanding".

The disadvantages of the second group are derivatives that depend on the disadvantages listed above. Among them, the legal scholar identified the following:

- inconstancy in relation to expressions, "when different words or phrases are used to denote the same thing";
- inconstancy in relation to meaning, "when the same word or phrase is used in different cases in different senses";
- verbosity, "when a certain part of words, without prejudice to the meaning, i.e. for accuracy, completeness and comprehensibility, can be omitted or a simple phrase can be put in place of a more complex one";
- prolixity, "when legislative thought is expressed in such an extended form that the human mind is unable to hold all the parts of legislative thought connected to each other in one sentence";
- constraint, "when provisions that are essentially different are artificially introduced into the composition of one grammatical sentence";
- the confusion of terminology used in the formulation of the legislator's thoughts [1].

Analyzing these shortcomings, the author comes to recommendations on the correct use of legal terminology when writing texts of normative acts. At the same time, I. Bentham adheres to the position that "the law is the law", and it should be understandable for all subjects in respect of which its legal force operates. A number of German developers of normative acts in the middle of the last century noted that "the law cannot be understandable to everyone in any respect, not to mention at all that it cannot reveal the full depth of its ideological content to an inexperienced reader" [10].

A. Schnitzer held the point of view at all, according to which only a low level of development of people can force them to use a form of expression of law that is understandable to everyone. Otto Gierke's position is also close to this, that the text of the laws should be written in such a way that it is "... completely incomprehensible to non-specialists". In turn, this gave V. Gedeman reason to believe that the difficulties associated with the clarity of the language of the law are insurmountable [11].

Indeed, thanks to this position, the point of view prevailed in foreign and domestic jurisprudence for quite a long time that the language of law should be accessible only to a certain category of people, therefore, both the style and the terminology used when writing law or even just legal literature should be appropriate.

The question of the formation and development of the language of forensic science in Russia is directly related to the question of the emergence of the procedure for identifying and punishing persons, who commit criminal acts. However, if crime has existed since the emergence of primitive society, then criminalistic science began to be talked about much later.

The question of when exactly criminalistic thought originated in Russia is controversial. Some researchers argue that, since criminalistics is a science, not a branch of law, it has no geographical affiliation, which means that it is worth considering the question of its origin from the point of view of world history [4, p. 5].

However, most researchers still consider the question of the formation of criminalistics within the framework of national history, and the opinions of such researchers about the time interval of the emergence of science vary. So, A.V. Viktorov believes that the origin of forensic science can be talked about only since the second half of the XIX century.

Then, as the author notes, "there were recommendations on the most effective ways to achieve the goals of justice" [2, p.51]. A.V. Viktorov writes that in the pre-revolutionary period there were prerequisites for the emergence of forensic science, and this is due to the judicial reform carried out in 1864, but at that time forensic methods were not widely used, and the ideas were based on the theoretical developments of foreign criminologists [2, p. 52].

D. V. Menyailo finds the first prerequisites of the language of criminalistics in an earlier period — in the XVII century. The author writes that the Cathedral Code of 1649 established responsibility for counterfeiting, as well as forgery of seals and documents, and persons with knowledge in a certain field were involved in the investigation of these types of crimes [8, p. 164]. This can be called the prototype of modern experts. As V. G. Nikiforov correctly notes: "for the first period of the formation of criminalistics, its perception was characteristic not as a legal, but as an applied scientific technical discipline, often referred to as "scientific investigation technique", "police technique", "criminal technique", etc." [9].

During the reign of Peter the Great, some prerequisites for the emergence of the language of criminalistics were also noted — healers took part in the investigation of certain types of crimes, who conducted a medical examination and were involved in the trial, at which they were obliged to announce the established cause of death of the victim under oath.

D.V. Menyailo considers the process of formation of the language of forensic science in parallel with the process of formation of the forensic service in Russia [8, p. 164]. Although the author notes that the use of criminalistic methods can be found in the XVII century, yet the science itself began to form with the formation of criminal procedure law.

That is, the author notes that the development of the language of criminalistics was carried out through the accumulation of experience, both in theory and in practice. The establishment of various forensic offices and services in Russia, carried out by the state, contributed to the active development of forensic science since the XIX century.

So, the language of criminalistics began to form from the beginning of the XIX century, but the prerequisites for the emergence of criminalistic thought originated even earlier. It can be said that in the XVII-XVIII centuries there were also methods of combating crime and methods of investigating crimes that can be correlated with the methods of criminalistics that appeared later, but they were not designated as such. With the emergence of new legal relations, new forms of committing crimes also appear — there are ways of committing crimes that did not exist before. Therefore, it is not necessary to say that the language of criminalistics has been formed today. Nowadays, new technologies and various methods of forensic activity are emerging.

It is impossible not to notice the role of the Judicial Reform of 1864 in the birth of the language of criminalistics in Russia. It is indicative that in the process of reform, Russian procedural law got rid of the use of formal evidence, that is, the procedure for proving a person's guilt was abolished by collecting a list of evidence strictly defined by law for a specific case. The reform also made it possible to use indirect evidence in the process of proof, that is, intermediate facts began to be taken into account, which did not give a direct answer to whether a person was guilty or not, but gave some grounds for conclusions.

In the process of reform, such a section of forensic technology as forensic traceology was also initiated. There were no designations, however, as the researcher of that time A. A. Kvachevsky wrote in his writings, the role of traces for establishing the fact of a person's presence at the crime scene and his involvement in the commission of a criminal act began to be emphasized [7, p. 5].

As for the question of identifying stages in the history of the development of the language of forensic science, it is debatable. Science has developed gradually, the identification of any events as significant, having a greater impact on the development of science than the rest, is quite controversial. Therefore, it is advisable to consider the gradual process of the formation of the language of criminalistics over decades, starting from the post-revolutionary time:

the 1920s — the establishment of various forensic cabinets and services in Russia, carried out by the state, contributed to the active development of the language of forensic science since the end of the XIX century. Also during this period, theoretical material was accumulated, the first definitions of the subject of criminalistics were given, but at that time it was designated as an applied scientific discipline;

the 1930s - 1940s — accumulated empirical material has shown that the designation of criminalistics as an applied scientific discipline is not entirely correct, since its importance at that time increased, which caused the need to rethink its role in the fight against crime;

the 1950s — the subject of criminalistics was fully formed, the research of A.I. Vinberg was taken as a basis, who defined the subject of the science of criminalistics as "technical and tactical techniques and means of detecting, collecting, fixing and researching forensic evidence used to uncover crimes against the Soviet system and the established Soviet state of law and order, identifying the perpetrators and finding ways to prevent crime s " [3, p. 4].

the 1960-1980s — the actively developing science of criminalistics was no longer based on empirical material, but on the identification of patterns of phenomena and events. The definitions proposed by scientists of that time were based on the circle of laws that the science of criminalistics learns.

the 1990s — the subject of the science of criminalistics began to expand, it began to include not only the activities of law enforcement officials to identify, investigate, and prevent crime using forensic methods, but also law enforcement activities.

The language of criminalistics has gone a long way in its formation and development; today it also continues to develop.

In the future, it is quite possible, and most likely even inevitable, the transformation of the subject of criminalistics due to a clearer identification of its inherent features. This is necessary at least in order to limit processes and phenomena that are not related to them. This seemingly private issue needs to be resolved. Recently, attempts have become more frequent to include provisions in the content of criminalistics, and then sections that have nothing to do with the data of this science. First of all, we are talking about the provisions concerning the research of so-called electronic, digital technologies, their traces. In the theory of criminalistics, statements are increasingly appearing about the creation of a separate section of forensic technology first, and then computer forensic science, containing the provisions of forensic techniques, tactics and techniques that study these objects [6].

It seems that the further development of the language of criminalistics is closely related to the development of information technology. In order for this to be a progressive development, it is necessary to conduct scientific research of all the laws studied by criminalistics: within the framework of forensic technology, to develop forensic documentation, creating an independent sub-branch associated with "computer documents"; within the framework of forensic tactics - methods of working with these documents in the production of appropriate investigative actions; within the framework of criminalistic issues of disclosure and investigation of crimes- the use of the latest technologies in the work of the investigator (inquirer); within the framework of criminalistic methodology - improvement of techniques and methods of investigation of crimes committed with the use of modern information technologies. Only with this approach does the forensic language and science as a whole have a future.

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