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LEGAL COLLISIONS IN LABOUR LAW: PROBLEMS OF TRANSLATION AND USE OF FOREIGN TERMINOLOGY

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Abstract

The article analyses issues of legal conflicts caused by linguistic problems. Previously such problems were solved only through the legal side, but recently more problems causing collisions have appeared, such as inaccuracy of translation of individual terms or existence of a term in English and the lack of its equivalent in Russian. The authors consider the fact that existence of law without collisions is impossible; this is true about the linguistic component. Thus, more discrepancy is found between the conceptual apparatus of international labour standards and national labour legislation of states. It especially concerns developing states, because their national labour legislation needs to be elaborated and closely revised. Nowadays the problem under study is relevant because new terms and concepts appear. The latter require the adoption of new national norms and entire sections in the labour codes of states, following the example of France and other European states. Collision problems also emerge when translators are fluent in language but lack knowledge of special legal terminology (the terms of labour law, theory of law, etc.). The authors state that to minimize the collisions the translator should have some basic knowledge of the professional language as well as of the linguacultural peculiarities of the states they translate for. The authors prove that nowadays learning a foreign language is growing into a popular and urgent tendency marked by the term “legal linguistics”. The authors suppose it should help in present day communication between lawyers and legislators and contribute to resolving conflicts in law.

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Keywords: Foreign terminology, labour law, new terms, problems of translation, use of foreign terminology in law.

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1. Introduction

The issue of legal conflicts has always provoked numerous discussions. Such conflicts are also present in labour law, and we believe that it is possible to single out a hierarchy of conflicts, which we mentioned in our earlier studies (Shesteryakova, 2011):

- conflicts between international norms of different fields of activity;
- conflicts between national and international norms;
- conflict of goals set by states in labour-legal integration;
- conflicts in law-making within the framework of international organizations (unsystematic, duplication, publication of mutually exclusive acts);
- conflicts between normative acts or separate legal norms;
- conflicts of law enforcement.

Thus, conflicts will always take place in law. Matuzov and Malko (2005) noted that

> *the imperfection and conflict of laws negatively affect the work of state bodies and officials, the implementation of their tasks and weaken the rule of law. The expansion and deepening of legal regulation led to an unjustified increase in the number of laws and other regulations, which reduced the effectiveness of the legislation as a whole. The legal consciousness of the population can no longer keep pace with the rapid process of changing the law, which is sometimes difficult to explain.* (pp. 468-469)

2. Problem Statement

The causes of legal conflicts are as follows:

- objective, such as inconsistency, dynamism and variability of public relations regulated by law, their chaotic development, the lag of law from the pace and realities of modern life. In addition, the law, like any other phenomenon, contains internal contradictions that act as the source of its development. The mismatch and mobility of borders between the legal and non-legal spheres and their expansion or narrowing have their effect. Finally, any national law must comply with international standards;
- subjective reasons, or "the reasons depending on the will and consciousness of people - politicians, legislators, and government officials. These reasons are poor quality of laws, gaps in laws, poor coordination of law-making activities, disordered legal material, economic problems, social tension, political struggle, etc." (Marchenko, 2007, pp. 752-753).

Collision may occur in the following:

- textual inconsistency between international labour standards;
- inconsistencies between international norms by legal force (norms of various international organizations);
- inconsistencies in the conceptual framework contained in international and national labour standards;
- the absence of a national norm reflecting world standards.

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In the context of our study, we can talk about the following types of conflicts between:

- international labour standards of various legal force;
- national and international labour standards;
- labour laws of various states.

An important question is how to resolve emerging legal conflicts in labour relations. Today, it is definitely impossible to answer this question, since it requires an integrated approach. In this case, there is a resolution of conflicts by legal means, as well as with the help of linguistic opportunities.

The language of law, which is in close contact with public consciousness and partly influences its formation, has always been and is one of the fundamental foundations of an official business style. Translation of legal texts and legal documents is a rather complicated process, in which there is a need to apply special approaches in the work of a translator. The translator must possess basic and professional knowledge of not only the language of translation, but also the linguistic and cultural features of the legal sphere of Great Britain and Russia, be aware and able to understand the basic and specific phenomena in the field of law of both countries, which means being an owner of broad horizons and knowledge in many areas of social life.

The study of the language of jurisprudence or the language of law in various aspects is currently one of the areas of linguistics, since law itself is an integral part of society. The term “legal linguistics” is a popular area in linguistics. It develops concepts such as language and law. This means that the subject of research in this area is a specific functioning of the language in the field of law. As Khizhnyak (2009) notes, this direction is more correctly attributed to linguistic science, since its purpose is to study the legal sublanguage, which is not a completely separate lexical subsystem of the general literary language, but it is a part of its functioning in spoken and written texts.

3. Research Questions

In science, there is an opinion supported by a number of linguistic scientists that legal linguistics, despite the wide representation of certain aspects of the interaction of language and law, is an emerging scientific discipline.

The terminology of law refers to the socio-political sphere, since it functions in the sphere of social relations. The concepts of social mind and social relations are closely connected with the nation, national culture and lifestyle of the people. Accordingly, the terminology of law has both general and specific features. Terminological systems like the legal terminology are classified as naturally occurring. It means that terminology can arise both as a result of the artificial formation of a scientific direction, and as a result of people’s practical activities.

Besides solving the problem of conflicts in law it is necessary to study thoroughly the following issues:

- textual inconsistency of international and national norms;
- the emergence of concepts that do not exist either in the Russian language, or in Russian law, and in our case, labour law in recent years;
- appearance of foreign terms in Russian labour law.

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4. Purpose of the Study

The purpose of this research is to attempt to define the existing conflicts in labour law, caused by the linguistic peculiarities of Russian and foreign languages, as well as problems of terminological translation. The authors not only described the problems, but also suggested the way to solve them.

5. Research Methods

The general scientific methods have been used: dialectics, analysis, synthesis, concrete definition. A specific legal method used in the article is the technical method.

6. Findings

6.1. Conflicts in labour law caused by linguistic peculiarities

Conflicts between national and international labour standards arise are in the following situations:

1. Textual inconsistency of international and national norms.

It can arise due to several reasons. Firstly, it is translation problems. Most international standards are not initially adopted in Russian, but in English and (or) French or other foreign languages. So, the Versailles Peace Treaty in §8 stipulated that the language in which the proceedings will be conducted, in the absence of an opposite agreement, will be English, French, Italian or Japanese, depending on what is decided by the interested Allied or Associated Power. Article №396 of the same treaty provides that the International Labour Office, a periodic bulletin devoted to the study of issues relating to industry and labor of international interest, will compile and publish in French, English and in other languages that the Governing Body deems appropriate. Any of the adopted ILO conventions contains an article stating that English and French texts are equally valid (for example, Article №19 of ILO Convention №175 “On Part-time Work” (Geneva, June 24, 1994). ILO Convention on Labor in Maritime Navigation (Geneva, February 23, 2006) contains the section “Official Languages”, where in Article XVI it is also noted that the English and French versions of the text of this Convention are equally valid. The question of translating international treaties into Russian for subsequent ratification, application, study, etc. arises for the Russian Federation. The matter is that the Russian Federation does not have an official translation of the ILO conventions. The official text of the document will exist only when it is published in one of the official languages of the organization receiving the document. Russian is not an official language of the ILO and most international organizations. Opening the text of the Convention in the legal reference system, in the upper right corner we see the inscription "unofficial translation". The accuracy of the presented translation may depend on various factors: the education of the translator, his knowledge of legal terminology, knowledge of translation practice in various countries, etc. For example, one of the key concepts in labour law is a “labour contract”. The word “agreement” in the dictionary has several meanings: treaty, agreement, bond, compact, concord, contract, convention, covenant, pact (Hinton & Baykova, 1997). In labour law, the translation “labour contract” is applied to a personal employment contract. However, it is its second meaning in a row (Mamoulian, 1993). The labour contract in the translation of “labour contract” is also used by Butler (1990). ILO Convention № 22 (Geneva, June 24, 1926) in the Russian version is called “On Employment Contracts of Sailors”, in the English version it is

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called “Seamen's Articles of Agreement Convention”, that is, we see that in this case the “agreement” is mentioned in the original, but an agreement in the Russian language is not always an employment contract. Another expression for a personal contract of employment is “agreement of employment”. The word “employment” can be used in several meanings, like use, personal hiring, work, employment (Hinton & Baykova, 1997). Thus, when translating even basic concepts, the problem arises of how accurate and equivalent they are to their meaning and how clear it is to organizations and citizens who are using the text.

2. Another relevant linguistic problem of jurisprudence in the last 5-7 years, has been the emergence of concepts that do not exist neither in the Russian language, nor in Russian law, and in our case, labour law. For example, several decades ago in foreign labour law, the term “flexibility” began to be actively used. As applied to Russian labour law, Russian scientists began to adopt such concept as flexibility. However, this term is used differently by different scholars in labour law. For example, flexibility means the possibility of modifying labour and legal concepts under the influence of scientific and technological progress and the economy. So, the term labour contract, as an agreement between the employee and the employer, concluded in writing in modern conditions, has changed because the actual admission to work is possible when the labour relationship is not executed in writing, at the same time, the labor contract as a shift form is being replaced today by its electronic counterpart. In addition, flexibility means flexibility in the application of labour standards for certain categories of workers (for example, when establishing a part-time regime for a woman with a child under the age of 14), as well as the possibility of a flexible approach to the legal regulation of relations between an employee and an employer directly, that is in a specific case (for example, when an employee requests granting him leave without pay). Another example of understanding flexibility is the fact that individual employers consider such flexibility as signs of the modern life. They present such flexibility as an opportunity to dismiss an employee on the same day without giving reasons, so in this case, flexibility acts as a possibility of non-compliance with current legislation, which is explained by economic necessity.

In connection with the development of digitalization in labour law, new terms began to appear, such as electronic document management, digital presence, digital detoxification, etc.

3. Appearance of foreign terms in Russian labour law.

Foreign terms in Russian labour law are mostly English, and sometimes they can be the words of different backgrounds. There are various reasons for this: an increase in the number of comparative legal studies, the absence in Russian of analogies of foreign words and concepts, the reluctance of the authors to choose a Russian-language term, etc. For example, with the development of the digitalization of the economy, foreign terms are increasingly used in Russian labour law. So, with the amendments to the Labour Code of France due to this phenomenon, the appearance of the term “the right to disconnect” (le droit déconnecter) in French law regarding the absence of existing gadgets linking the employee and employer is widely discussed throughout the world. And today, this term is applied in a truncated form "the right to shutdown" without any explanation or clarification.

Currently, the issue of discrimination and its types is debatable. One of them is age discrimination. In this case, citizens of pre-retirement and retirement age, as well as minor workers, etc. are meant. Such

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discrimination in Russian labour law is often referred to as the term “ageism”. The concept of flexibility was also considered above.

4. The role of the conceptual apparatus in the unification of conflict of laws in the conditions of extraterritorial application of labour law.

Currently, the conceptual apparatus in labour law plays a significant role, acting as the "foundation" on which the national labour legislation of the contracting states is built within the framework of international organizations and economic pools. Such changes occur in several directions:

- the emergence of conceptual constructions in international treaties and through their ratification and in the national legislation of states;
- the establishment of uniform standards in international treaties in the understanding of certain labor and legal terms.

For example, it takes place within the framework of the International Labour Organization. In 2006, ILO recommendation №198 “On Labor Relations” was adopted, which gave the concept and signs of labor relations, one of which was the performance of work in accordance with the instructions and under the supervision of the employer. And only in 2014, after the adoption of the relevant federal law, article №15 in the Labour Code of the Russian Federation as an indication of labour relations was supplemented with the words “in the interests, under the control and control of the employer”. Within the framework of European Union, concepts for different states are also unified, for example "an employee and members of his family", where the wife and children of the employee are understood as family members. From the point of view of European law, an equal sign is placed between those who are in a registered marriage and those who live in an unregistered marriage. Children of both families are also equal in their labour and social rights. However, under the Treaty on the EAEU (Eurasian Economic Union), Article №96 states that a family member is a person who is married to an employee, dependent children and other persons, according to the legislation of the country of employment.

6.2. “Jurislinguistics” and its influence on conflict solution in labour law

The requirements for the terms of various terminological systems may be different and not in contact with its actual use. In this case, it is necessary to take into account not only the sphere of fixation, but also the sphere of functioning, where the terminology is removed from the framework of the closed system and becomes freely interwoven with the general literary presentation.

The term is a word or phrase limited in use by a group of people engaged in the same area. In this case, terminologists can identify some special properties of this type of term. These features of the term, in the described case of the legal term, require a certain amount of attention, knowledge of the “environment”, the rules of compatibility, and so on, when translating a legal document.

Lawyers themselves give the following definition of the term of law: A legal term is a word (phrase) used in the legislation, is a generalized name of a legal concept that has an exact and definite meaning, and is distinguished by semantic uniqueness and functional stability (Pigolkina, 1990).

English terminology, as well as the Russian one, has its roots in the preliterate period of the language, since the basis of English law in the Anglo-Saxon period was customs and traditions (Batler & Nersesyants, 1990). The very development of English law is fundamentally different from Russian.

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Such concepts as trust ownership, consideration, estopple (estoppel (deprivation of the right of objection)), burglary (burglary), tort (tort), and impact on the personality (trespass to person). The process of terminisation mainly occurs through the rethinking of the meaning of a common word. Although a certain proportion of such words is made up of latinisms and other borrowings that have come historically from the French language.

In addition, in English terminology, unlike Russian, there is a certain proportion of colloquial terms recorded in the corresponding dictionaries:

- yellow contract (a contract for employment, in which there is a clause where the hired worker refuses to join the union) (Garner, 1987);
- joyriding (stealing a car for fun);
- kangaroo (a colloquial term for parliamentary practice that allows the chairman of the commission to allow discussion of only a few amendments to the bill), (Abraham & Hawtrey, 1956).

7. Conclusion

Thus, the application of the correct terminology and the unification of the conceptual apparatus in the field of labour law will allow to:

- create uniformity in the regulation of labour relations with a foreign (international) element;
- eliminate conflicts in the material laws of individual countries (particularities of international economic relations that are substantially and often not taken into account by the rules of domestic law);
- reduce the number of lawsuits that arise when resolving conflict issues;
- increase the degree of legal protection of the disputing parties from violations of their rights by each other.
- facilitate international legal cooperation (such “uniform laws” make it unnecessary to apply international private law with all its problems, as well as the use of foreign substantive law fraught with no less dangers);
- ensure the stability of the legal space.

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