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EVOLUTION OF TERMINOLOGY IN THE CONTEXT OF ARMENIAN JURISPRUDENCE

Gevorg Danielyan[1]

In the sphere of jurisprudence, professional terminological system in itself is the initial source for the degree of establishment of legal culture as well as for tendencies of its further development. Indeed, legal systems currently obtained significant flexibility, therein the terms reflected in the international legal documents as well as known to international practice penetrate more easily. However the legal system of each country enters into those processes with peculiarities typical for it and those having scientific-practical research essence. Traditionally, the terminology is a subject of linguists' study, that is quite natural. However separate components of professional terminology may be explored and obtain scientific-practical value in the complex form merely within the scope of methodology typical for the particular branch of science. In this respect, explanatory dictionaries of professional terms are especially desirable. Generally, starting from the middle of the 20th century, theoretical researches dedicated to, the so-called, Onomastics (proper name study) obtained scientifically axial interest, and its supporters think that the entire human culture is fixed on proper names[2]. In the context of the developments mentioned earlier, however, we consider it is worth to notice that scientific researches of such directions are unable to explore peculiarities of development of professional terminology adequately and present other predictions of not only historical but also the social direction of the origin of professional

[1] Doctor of Legal Sciences, Professor of the Chair of Constitutional Law of the Yerevan State University, Member of the Supreme Judicial Council of the RA. E-mail: danielyan@live.ru.

[2] See, for example, P. Meytikhanyan, Biblical Onomastics, Yerevan, YSU publishing house, 2017, pages 8-11, V. S. Solovyev, Philosophy of Art and Literary Criticism, M., 1991, page 750.

terms.

In this article, we will refer to those terms that have familiar characteristics and they are equally applicable in social relations as well as to those legal terms that are generally accepted in the frames of jurisprudence.

In the sphere of jurisprudence professional terminology significantly concerns not only the legitimate characterization of separate concepts but also the complex tasks of their literal perception and application. At the same time, these problems are most relevant in those countries where a legal system and culture have not yet been fully complied with international legal standards. Russian law specialist N. Bondar correctly notes that in the case of transitional countries the principle of legal certainty often becomes vulnerable due to the use of non-adequate terms which is a result of the perception of international legal standards with insufficient consistency[1]. At the same time, it should be noted that the international legal standards are not able to propose exhaustive solutions from the discussed viewpoint and to make the national legal system complete, moreover, introduced utterly new terms often cause unnecessary confusion and reduce the effectiveness of law enforcement activities.

The term is not merely a conventional symbol, it is not merely the external aspect of any meaning, but rather the content of the public culture formed in that environment, so it is not accidental that the same term at different times acquires completely new content, a new meaning and often it is simultaneously used in several meanings. Moreover, as a result of essential features of social self-consciousness, there is no complete harmony of terms between different languages as well as between different legal systems, in

[1] See N. Bondar, Commands of equality and justice in the decisions of the Constitutional Court of Russia, «Constitutional Justice,» Journal of the conference of constitutional control authorities in the countries of a young democracy, Yerevan 2004, Publication 4 (38)2007, page 27-28.

such cases, the confirmation of legal systems meets the most severe obstacles. If the absence of equivalency of terms in social relations is not problematic, it is impossible to say the same with respect to legal terms, as in this case, the question is the legal regulation, particularly, security of common principle of legal certainty.

To the best of our knowledge, professional terminology is one of the stable components of national legal culture, so while introducing a new term, including the ones that had success in the context of international practice, we have to be extremely careful, clearly calculate possible ways of its perception, accompany it with appropriate clarifications if needed, etc. When considering the issue under this and other similar criteria, if it is found out that the introduction of the term cannot guarantee the expected result, then professional terms already known in the domestic legal system are preferred. At the same time, they can be used with new content, if necessary.

The analysis of the above-mentioned issues proves that clear legislative regulations and possibly unified approaches developed in jurisprudence miss in the field under discussion concerned with some crucial issues of terminology. In essence, this statement of a question is not yet perceived as a key component of the legal technique subject to complex regulation. In particular, for disclosing the content of specific terms, one can encounter many variants, for example, in one case references are made to non-professional general explanatory dictionaries, in another case, to the definition envisaged in the legal act that does not have any connection with the branch of law, etc.

This confusion is probably caused by some factors. First of all, extensive theoretical debates on this or that term were traditionally specific for the research conducted within the framework of Soviet law (we believe that this methodology still maintains its viability to some extent), by the way, as a rule, the issue in which branch of law or institute the term will be applied was not preliminary clarified,

which, in our opinion, is an extremely important statement of a question, as it is not always possible to use terms of the same meaning when regulating relations of quite different nature. In particular, the term «state government body» is used in the same meaning in any legal act, whereas the nature of a particular relationship conditions the content of the term "office-holder."

Thus, the very important fact that legal terms cannot be unconditionally considered as universal concepts has been ignored, their contents are often conditional, and they are predetermined taking into account the scopes of application. Additionally, in some cases, the above-mentioned important circumstance is somewhat ignored in international legal instruments as well, that will be referred to in details below.

The fact that some institutes and terms related to public law are obviously «young» in the legal system also has some role herein; they have not been sufficiently studied and have not passed legal processes yet and have not become sustainable components of legal culture. In a similar situation, a simple but problematic solution to the problem is the application of such terms commonly used in private law. In this case, the use of such terms is not perceived as a law-based law enforcement activity, but the misinterpretation that the same terms in different branches of law have similar meanings is taken as a starting point. This misinterpretation is also conditioned by insufficient study of international practice, in particular the terms of the legislative acts of different countries are combined in mind with the terms known in the domestic legal system and are involved in national legislative acts as they are, ignoring that they have entirely different content in the branches of public law.

With the intention of referring to these and similar issues in a possibly complicated way and suggesting some coordinated positions on the terminology of jurisprudence, in this study we have mainly discussed the scientific-practical issues in the context of interrelations

between public and private law.

Often in the living environment or any other system, even the familiar terms acquire an entirely different meaning within the framework of the legal terminology in their content which is dictated not by purely professional «ambitiousness,» but by completely objective requirements. Moreover, the same terms acquire quite different meanings also in separate parts of the legal system which should be viewed as a normal phenomenon.

From this point of view, perhaps, it is a futile approach when law specialists initiate an extensive debate on the definition of this or that term in a more comprehensive and universal form. It is obvious that this methodology is attempting to propose such terms that are equally applicable in various branches of law, in various legislative acts but it should not be ignored that this approach does not provide a legitimate solution to the problem but creates an unnecessary mess, disrupting the provisions of fundamental importance typical for branches and institutions of public and private law.

In our opinion, as a result of the aforementioned limited approaches, some manifestations of poor perception have emerged regarding significant terms and institutions in the whole domestic legal system. Let's see these manifestations in a structured way below, present their reasons and suggest appropriate solutions.

1. In the Soviet legal system public law branches, as opposed to private law, did not have a relatively noticeable development and were cut off from international legal standards as they directly related to politics and any revision would have resulted in shattering of «party leader and coordinator» stable constitutional status. This situation unwittingly assigned a dominant role to private law terms in public legal relations. Thus, the term «legal entity» had and even now partially has a common use but its definition is provided only by civil legislation. Later, the notions of this term remained unchanged for a long time and, as a result, the legislative solutions that were

exclusively applicable from the viewpoint of civil legislation were «forced» by the legislative acts of public law as they were.

From the viewpoint of civil law, state institutions having no property could not have the status of a legal entity. However the whole problem was that they did not acquire the status of a legal entity of public law with all the negative consequences arising from that place. It is noteworthy that the term «legal entity of public law» was introduced in the legal system for the first time only by the Constitution in edition 2015, by Article 180 § 2 «Community is a legal entity of public law.» We believe that for adequate perception and proper application of this term in public law norms it is necessary to overcome the above-mentioned stereotypes of terminology.

The factor above has also had an impact on the problematic manifestations of terminology that directly relate to human rights and freedoms. In this case, again, the use of unnecessary commonly known terms has led to misinterpretation and consequently unnecessary restriction of human status.

As it is known, the mental state of a person is often interconnected with the latter's status, in particular with the Institute of responsibility. From criminal and administrative liability, it is stipulated that, for example, an insane person is not liable to responsibility, whereas civil legislation provides restrictions for persons who are legally recognized as incapacitated. Each of these terms is unequivocally applied only within the scope of the branch of relevant law. In particular, criminal investigative authority is not authorized to discontinue the criminal proceedings merely on the ground that the accused is legally recognized as incapable. The civil –legal status of a person recognized as insane cannot be limited in the same way.

2. As noted at the beginning of the article, some problems of terminology are conditioned by the shortcomings of the localization process of international practice. Thus, the basic laws of countries

with high rates of democracy have widespread use of such terms as discussed in this article, such as «capable,» «legal entity», etc. However, the whole problem is that those terms are used in these countries in the context of public law rather than private law. In particular, the term «incapable» used in constitutions is used exclusively in the definition of public law. Meanwhile, those terms in domestic constitutional and legal and public law norms are simply perceived in the meaning they have in civil legislation. This, in practice, inevitably leads to misunderstanding, incomplete perception and application of legal norms. In particular, as a result of the general definition of the term «legal entity» in the civil legislation, state bodies and local self-government bodies were also deprived of the status of legal entity of public law which made the bases of their status and activities unnecessary contrary. As a result, the idea is leading that the state body cannot have the status of a legal entity since it does not have its property and consequently cannot act as a respondent with that property, whereas the fact that those features are absolutely not necessary in the case of the legal entity of the public law is ignored.

3. Practical analyses suggest that if interconnecting the use of terms specific to private law in the field of criminal proceedings and legal consequences is an extremely rare phenomenon (and a part has a tendency to obvious extinguish[1]), the same cannot be said for administrative proceedings and administration. Particularly, inadequate development of legal regulations related to the proceedings of administrative offenses and the «poverty» of

[1] In particular, the analysis of archive materials of the General Prosecutor's Office of Republic of Armenia proves that up to 2004 cases of discontinuing criminal lawsuit were recorded, on the basis of recognizing the wanted person as dead in civil-law procedure, in this term decisions on discontinuation were eliminated in the General Prosecutor's Office and it was instructed not to take the judicial act on recognizing the person dead as a satisfactory basis for discontinuing the criminal lawsuit in the criminal proceedings.

professional terms in the administration are explained not only by the viability of features typical to the strictly-politicized Soviet legal system but also by the presence of unequal systems of liability types[1]. In particular, the study of international practice leads to the belief that the term «administrative responsibility» traditionally perceived from the Soviet legal culture and still widely used in the domestic legal system is either not used at all, or it is used in a completely different sense.

The stated approach has also been reflected in the European Convention «On the Protection of Human Rights and Fundamental Freedoms», in particular, if Article 5 of the Convention touches upon the procedure on depriving the person of liberty on the basis of reasonable suspicion of crimes, other offenses, then Article 6 on the right to fair trial, merely by editorial summary, exclusively refers to the field of criminal proceedings. By the way, such legal regulation can also be found in national legislation as well, in particular in the basic laws of states. At the same time, the Constitution of the Republic of Armenia is not an exception from this viewpoint; there is no norm directly related to the legal grounds for proceedings on administrative offenses, in particular, the restriction of rights for the administrative offense as well as the protection of the suspect's rights in the administrative proceedings.

Of course, as in the European Court of Human Rights, in the domestic legal system as well the RA Constitutional Court has taken a starting point in recent years according to which the principles and guarantees of criminal proceedings are equally applied to administrative proceedings. Moreover, this means that, for example, the grounds for restriction of personal freedoms outlined in Article 27

[1] See R.R. Marandyan, «Referendum as a form of implementation of people's sovereignty in the Republic of Armenia,» ԾԲ.00.02, Summary for request of the scientific degree of Candidate of Juridical Sciences in the field of Public Law, Yerevan – 2017, page 7-8.

of the Constitution refer to the legal status of those who committed administrative offenses in the administrative proceedings. Moreover, in some cases, the absence of the term «administrative offense» does not mean that the Constitution did not refer to this type of offense. Thus, by Article 27, paragraph 1, clause two a person may be deprived of his or her liberty: «for disobeying the lawful order of the court.» It should be noted that disobeying the lawful order of the court causes administrative liability and the offense is qualified as an administrative offense. Of course, the preference has been given to the term «judicial sanction» by the legislation, but it is, in fact, an administrative responsibility. Disobeying the lawful order of the court has no relation to the crime in the sense of the present norm, as according to the Article 27 par. 1, clause four an independent basis for depriving a person of liberty in case of a substantiated suspicion of committing a crime has been established.

Additionally, the same ground for depriving a person of his or her liberty may be applicable in both cases of crime and administrative offense. Thus, by Article 27 paragraph 1, clause 7, a person may be deprived of his or her liberty: «for the purpose to prevent illegal entry of a person into the Republic of Armenia or to deport a person or to transfer him to another state.» As we know, illegal entry of a person may be qualified as either a criminal offense or an administrative offense due to the circumstances of a specific act. However, in this case, the Constitution does not fairly give importance to the type of offense, but the degree of public danger of the latter has been identified as well as in the case of administrative offense.

4. Pain points in terminology impede not only complete introduction and application of relatively new institutes of public law but also the adequate development of private law. Let's substantiate this point using comparative analysis of the term «incapability» - the aforementioned subject of research. The national legislation has taken

as a starting point the approach that incapability is exclusively interconnected with a person's «mental disorder» (Article 31 par. 1 of RA Civil Code). Such approach, in our opinion, does not create significant barriers to the use of the same term in public law since while determining the status of a person in public relations, person's mental health problems are also taken as a basis. For example, a person with such problems cannot hold a post. However, on the other hand, at present, it is very disputable to deprive the person of the right to participate in the referendum on the same ground.

Let us now see what developments are in the international practice regarding incapability. First, there is a tendency to expand the bases for recognizing a person as incapable of private law. Thus, as a result of changes made in the example of Civic Meeting in the Federal Republic of Germany in 1896 a person may be legally recognized as incapable not only due to mental but also physical health problems that deprive him or her to fully act in civil law relations, freely express his/her will, etc. It should be noted that currently there are such norms in the civil legislative acts of France, Spain, Belgium, Holland and so on.

Naturally, from the statement above of question international practice is progressive, so reasonably it can be reflected in the domestic legislation later. However, if we continue to use the terms of the private law in all public relations in the whole scale, in this case, the civil law definition of incapability, it will become apparent that we inevitably give preference to the groundless restriction of constitutional rights which is unacceptable. In particular, if in the case of a physical defect the limitation of the civil-law status of a person is considered reasonable and legitimate, then in no case can it be justified in case of constitutional rights such as the participation in the elections and referendum, etc.

Of course, in the context of limitation of some of the person's rights in public relations, physical health problems are put as a basis

to ensure the integrity of the legal regulation however they are not interconnected with the limitation of the person's capability. Moreover, this is evidenced by the fact that the legislator cannot fully admit the developments related to civil-law incapability and perhaps he has «insured» himself partly using situational solutions. On the other hand, the combination of these examples indicates that the need to apply differentiated content of one or another term has been partly understood on the law-making dimension, but the developed legal culture still does not give the opportunity to clearly propose the necessity to introduce the same terms with different content specific to each branch of law.

5. In some cases in lawmaking activities equivalently translated terms are predominant which is not vulnerable merely from rules of legal technique. However, when it comes to the problem with the criteria of other components of legal culture, especially that is of legal consciousness, it becomes clear that the literal translation of foreign terms does not always justify itself and avoid unnecessary misunderstandings. In particular, the term «victim» borrowed from some international treaties is translated adequately, but practically it is problematic in the sense that there is no clear answer to the question as for whether the latter is equivalent to the term «sufferer» traditionally accepted in domestic legislation or it has a completely different content. In our opinion, these two terms have the same content, but their parallel usage can cause unnecessary confusion.

Our position on this issue is as follows: if translating any foreign term it is obvious that it will be problematic on the basis of the existence of another term of the same content, then either exact translation of the foreign term should be completely introduced and exclude the use of any other term of the same content or to be satisfied with the existence of a similar term and to refrain from literal translations. Also, the last version is considered to be the most reasonable for the following reasons:

(a) the law enforcement authorities will exclude unnecessary confusion and possible deviations from the legal norm;

(b) it will not result in the adoption of relevant legislation complying with international norms as the content of the international law is meticulously preserved;

(c) there will be no need to apply large-scale legislative changes requiring unnecessary costs and the introduction of training for professionals, etc.

On the other hand, the use of new terms, even in the context of traditionally formed terms, can be considered beneficial if there are sufficient grounds for predicting that new terms will substantially contribute to the healing of legal consciousness and getting rid of stereotypes. It is clear that the new term itself is not a guarantee of solving this problem, but it can contribute to the formation of a new, more progressive legal culture combined with adequate steps.

6. We have already discussed the issue of using the same term in different meanings. It should be noted that foreign law specialists also point out the expediency of applying the same term in different meanings, but the idea is emphasized that sometimes one or another term has a certain meaning in legislation whereas in public law consciousness it parallelly has another meaning. For example, French constitutionalist Carolina Cerda-Guzman notes that the term «constitutional law» is used in French jurisprudence in at least four meanings as a branch of law, a political institution, a basis for the formation of a legal system, a source of fundamental rights and freedoms[1]. In general, the use of the same term differently cannot be assessed as a defect of lawmaking activity because it is often an objective necessity as a result of which it often provides legal certainty and a real opportunity for complex regulation of relations.

[1] See Carolina Cerda-Guzman, Droit Constitutionnel et Institutions de la V^{e} Republique, Paris, 2^{e} edition 2014-2015, Gualino editieur, Lextenso editions 2015, page 16.

However, this approach may be effective if at least the following conditions are provided:

(a) When using a multivalent term in each legislative act, it is necessary to clearly define the meaning used in the legal act or its relevant section. For example, it is worth to welcome the reservation of the content of the term «office-holder» in Article 308, Part 4 of the RA Criminal Code, since it has been simultaneously clarified that it refers to the same term provided in certain articles,

(b) It is problematic to use different terms with the same content in the same legal act. Often, we meet the mentality that it is referred to famous terms, so in the law-enforcement process they will be adequately perceived but practical analyzes prove just the opposite. In particular, the existence of different terms expressing the same meaning gives rise to confusion and it is not understood that they have the same content, since logically the approach is taken as a basis that if the same meaning was expressed, different terms would not be used. As a result, an attempt is made to give each of them an independent interpretation. For example, in RA Code of Administrative Offenses at least several terms were used to describe the organization, such as enterprise, organization, institution, structural subdivision, etc., some of which are already not envisaged by relevant branch (civil) legislation at all, for example «enterprise»,

(c) It is inexpedient to introduce common terms in this or that legislative act in a new sense, without any legitimate reason. For example, in the stated sense, common terms can be considered and have the meaning of the same content in the whole legal system such terms as «principle,» «public authority» etc. If it is worth to emphasize that in terms of the content of the particular norm the term «public authorities» is not equivalent since they are not taken into consideration, for example, local self-governing bodies, it is simply advisable to list those public authorities that have been taken into consideration, and not to give limited definition to the term «public

authorities».

(d) For the consistent implementation of the principle of legal certainty, sometimes separate legal acts define common and well-known terms. This is not itself vulnerable, but the whole problem is that in the case of non-uniform criteria such definitions become unnecessary problematic,

(e) It is also ungrounded that without any substantiated argument different terms with the same content are used in legal acts regulating homogeneous public relations. Thus, as the same disciplinary sanction, the classic «reprimand» was used in different legal acts in various unnecessary, confusing terms, such as «reprimand» (Part 1 of Article 36 of RA law «On Criminal Executive Service»), «warning» (Part 1 of Article 32 of RA Law on «Civil Service»), «remark» (Part 1 of Article 47 of RA Law «On Prosecutor's Office») etc. It may seem that these terms are used in a completely different meaning. Meanwhile they have the same legal meaning in those legislative acts, by the way, the content is not disclosed. Note that this is not merely a problem of the editorial plane, but regulation of significant importance, as it is about the types of services that are in a certain relation, for example, a person may go from one type of service to another type of service, in this case, the components of its status should be preserved. And in case of various terms it remains unclear how in a new service it should be defined what kind of disciplinary penalty has been imposed, from the point of view of the legal basis of the new service what is necessary to apply the relevant norms regulating the particular type of service (for example, removing the disciplinary penalty, consider it repealed and other issues).

7. The position to outsourced terms cannot be single-valued; in particular, it is equally unacceptable to regard both the unconditional exclusion of these terms and their unrestricted use. Scientific-practical analyses show that there are still no clear criteria for this issue. Meanwhile, certain steps are taken regarding terms of everyday

life which cannot be said about outsourced professional terms.

We believe that the following approach should be taken as a starting point to avoid various and unpredictable solutions: preference is given to already-formed and traditionally used native terms as well as to those native terms equivalent to outsourced terms that are not problematic in their content. By the way, the phrase «traditionally effective native terms» is not single-valued as well and cannot be exclusively perceived as a term typically of native language[1] and in that very sense, we emphasize that it be referred to traditionally effective terms.

8. Finally, psychological factors are crucial in choosing terms. We believe that the degree of application of terms specific to this or that legal system is also conditioned by the fact what kind of psychological pre-attitude is effective to the countries applying that legal system in general, thus it is not accidental, for example, that the counterparts of the Soviet school consistently face the European system of values and the terms acting as its «symbols». On the other hand, the opponents of the Soviet system try not only to reconsider the typical legal principles and norms of the latter but also to exclude the use of «Soviet concepts,» fearing that those concepts are the unique guarantees of keeping the stereotypes.

In this issue, it is necessary to avoid unnecessary extremes and to seek solutions merely within the scope of reasonability; otherwise our perception of terms, even memory will remain on the household dimension. Perhaps it is appropriate to address the following observation by prominent psychologist and psychiatrist Sigmund Freud: «... a woman asks a doctor about the health of one of their common acquaintances but gives her maiden surname. She does not

[1] It should be understood that outsourced words used in legal acts and everyday life have acquired so wide scopes of application that it seems they are typical of the native language by origin. For example, the term «order» may be distinguished as the one most wide-spread. Meanwhile it is borrowed from the Iranian language; particularly that is the same word «farman» (https://hy.wiktionary.org).

remember her surname after marriage. Then she confesses that she is dissatisfied with her friend's marriage and cannot stand her husband»[1]. In our case, unreasonable intolerance towards any system will not allow us to evaluate the legal system and its components adequately.

Summarizing the material on the key issues of terminology and the approaches to their solution, we find it expedient to note that it includes obvious multi-polar statements of question, and in this article we tried to present the problem in more fundamental features, its undesirable consequences and to emphasize the necessity to take realistic steps for its adequate solution. This problem is typical of any country adjacent to any legal system as well as a country with relatively independent development experience; at the same time it is more urgent for a country that is willing to transform its legal system of values radically, and that has already taken particular practical steps.

[1] See Sigmund Freud, Introduction of Psychoanalysis (lectures). «Zangak- 97», yerevan, 2002, page 33.