

МЕЖДИСЦИПЛИНАРНЫЕ ИССЛЕДОВАНИЯ

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FORENSIC LINGUISTICS IN LEGAL PROCEEDINGS

(ПРАВОВАЯ ЛИНГВИСТИКА В СУДОПРОИЗВОДСТВЕ)

Review. *The article provides a detailed study of forensic application of linguistic examination of judicial documents, written speech and oral discourse materials involved as evidence in Russian legal proceedings. It is stated that usage of forensic expert evidence in court has increased rapidly in the past fifteen years. Lawyers, attorneys, police officers, judges can seek for linguistic evidence as remedy to solve the case. The article covers the key topics of the forensic linguistic field from legal language and interface between language and the law to the collection and testing of verbal evidence in the courtroom. The author focuses on criminal and civil cases involving a variety of crimes and other delicts conducted via usage of language, such as fraud, bribery, threats, terrorism and extremism, ransom demands, slander, calumny, seditions, abuses and many others. It is pointed that forensic linguistic expertise provides important evidence that can help to reveal ambiguity, disguise, language manipulations in cases when an impression of the targets' guilt is intentionally created or a person has been provoked for crime actions or verbally forced to make false confession. In summary, the article represents an attempt to provide a wide spectrum overview of concerns of forensic linguistics and its practical application in legal process by law enforcements.*

Keywords: *forensics, forensic linguistics, legal proceedings, language and the law, law enforcement, speech crime, verbal evidence.*

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I. INTRODUCTION TO FORENSIC LINGUISTICS IN JURISPRUDENCE

Forensic linguistic evidence was invoked to legal proceedings in Russia since the beginning of 2000 with the great amount of libel and humiliation of honor cases. Forensic linguistics was defined as the scientific study of language applied to foren-

sic purposes and linguistic expertise was stated as usage of the special linguistic knowledge for crime investigations and for solving information disputes and corporative conflicts in civil proceedings¹. Initially growth of forensic linguistics was exponential. Philologist were widely called to analyze texts and statements with defamation, tried to do with disputed confessions, hatred speech, abuse,

¹ See: Galyashina E. I. Preliminaries in Forensic Speech Science. Moscow : Stency, 2003.

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blackmails and obscenity in advertising, attempted to penetrate in many areas that relate to crime committed with jargon expressions or ambiguous words, both solving crime and absolving people wrongly accused of committing crimes.

In those days it was made an attempt to establish a new forensic discipline, formulate scientific methodology that required the creation of a special interdisciplinary method of speech analysis called forensic speech examination². Since that time we can see the extreme expanse of forensic linguistics in different spheres of jurisprudence in many countries. The International Association of Forensic Linguistics has started its activity and a journal "Forensic Linguistics" was launched in 1994. The journal was renamed in 2003 as The International Journal of Speech, Language and the Law³.

Forensic linguists from the International Association of Forensic Linguistics become involved in many areas that relate to crime, both helping to investigate crime and absolving people mistakenly accused of committing crimes. These areas of research and expertise included speaker profiling and voice identification (*forensic phonetics and acoustics*); author identification (*forensic stylistics and slylometry*); discourse analysis (*forensic semiology and forensic speech science*); language competence (*forensic linguistic proficiency*); text profiling (*forensic dialectology and sociolectology*), etc.

Forensic text, message or oral discourse research have varying degrees of acceptability or reliability within the field. For example, discourse analysis of internet communication fulfilled by a qualified expert experienced in criminalistics, criminology, statistics and textology within the limitations of the methodology and findings is estimated as reliable and robust.

In Russia forensic linguistic examinations started in the early 2000 in criminal and civil cases of libel and humiliation of honor. Forensic linguistics was stated as the scientific study of language applied to forensic purposes and contexts and forensic linguistic expertise was stated as usage of the special linguistic knowledge for crime investigations⁴.

Social and economic situation in Russia called a great amount of linguists to function as experts in courts and crime investigations. The development of glasnost, with focus on human rights, has increased social demand for the legal regulation of people relations in the aspect of the Russian language usage in political, business, social media, internet discourse, etc. The qualified Russian experts in forensic linguistics founded the Guild of Linguistic Experts for Documentation and Information Disputes in 2001. A fundamental book "Value of Words"⁵ released in 2001 generated great interest from mass-media, judges, lawyers, experts and prosecutors. Forensic linguistics originated in a number of diverse disciplines interfacing law and linguistics, speech examination, discourse analysis, theory of speech acts, criminology and criminalistics, forensics, investigation of scene of crime and many others.

Nowadays forensic linguists are involved in many areas that relate to crime and other delicts from trademark and firm name disputes to accusations of extremism, terrorism and fabrications of verbal evidences.

But it will be wrong to limit forensic linguistics and forensic speech science only to spheres connected with crimes as forensic linguistics helping both the prosecutor or the defender to gain expert evidences. Often such evidence is offered by state or private forensic expert's institutions or independent individual experts. Very often forensic linguistic experts can apply to civil cases as well. So the forensic linguistic expertise can be defined as encompassing the multidiscipline branches of speech sciences that are useful in deciding criminal and law cases. The point with forensic linguistics is that integrating the fields of language and the law it should differentiate experts' and jurists' competences.

It is essential to distinguish factual from legal issues and legal issues from language and speech items. Language of the law demands to respect rules (laws) of the language. Prosecutes and lawyers, judges and other jurists are experts on the

² See: The Theory and Practice of Linguistic Analysis of Newspaper Texts in Forensic Expertise and Mass-media Conflicts : The materials of a science and practice seminar. Moscow, 7—8 December 2002 r. Part 2. M. : Galeria, 2003.

³ Coulthard M., Jonson A. An Introduction to Forensic Linguistics: Language in Evidence. Routledge. London and New York, 2007. P. 6.

⁴ Galyashina E. I. Preliminaries in Forensic Speech Science.

⁵ The Words' Value: Linguistic Expert Opinion Requested in Connection with Honor, Dignity and Business Reputation Defense, Claims Against the Media. Sec. ed. M. : Galeria, 2002.

law and usually are competent in the language of law. So jurists very often object if an expert in the linguistic field tries to opine on the meaning of a statute or judicial opinion. On the other hand, it is specifically the job of the judge to decide questions of fact (for example in accusation of blackmail, extortion, provocation of bribery, etc.). The role of forensic linguistic expert in the legal process is to assist the investigator of case and the «factfinder» to make all factual and juridical determinations based on profound scientific arguments.

II. SPEECH CRIMES AND OTHER DELICTS COMMITTED VIA LANGUAGE

In the state and private forensic institutions and centres of Russian Federation forensic linguistic examinations are conducted in such fields as: analysis of text, messages and discourse (*forensic semantics*), plagiarism detection (*forensic textology*); analysis of names (*forensic denomination*), analysis of the intellectual creations (*forensic trademarks comparison, forensic patent expertise, etc.*).

Analysis of text meaning is useful in such cases as: offence — expert linguist can find out, if the utterance under examination could be understood as offence; threat to harm or kill — expert can find out, if a certain expression should be understood as a threat; libel and humiliation of honor — declarative statement or opinion.

Speech communication which generate conflicts, disputes and delicts might be called offensive. Such delicts are committed by usage of language in everyday life, business, political, legal communication. Texts, messages, oral conversation bare traces of verbal activities and serve as an essential source of evidence. So language usage can be both an instrument and a trace of speech crime. Forensic linguistic expertise must distinct language as the crime or wrongful conduct itself, and language as evidence of one or more elements of the wrongful conduct.

For example, bribery (defined as corruptly giving something of value to a public official) actually does not require language. But in almost every bribery case, language is relevant to prove corrupt motives. So language is used as evidence, but is not what is being prosecuted. But perjury (swearing under oath that a statement is true, while believing it to be false) is a speech crime. The same holds true for verbal threats, blackmail, etc.

In the Criminal Code of Russian Federation, we can find some types of speech crimes.

The first type can be called as defamation that construct *corpus delicti* of verbal crimes, such as: Slander, that is the spreading of deliberately falsified information that denigrates the honour and dignity of another person or undermines his reputation (Art. 128.1 of the Criminal Code of the Russian Federation); Slander against a judge, juror, or any other person taking part in the dispensation of justice, in connection with the examination of cases or materials in court (Art. 298.1 of the Criminal Code of the Russian Federation); Insult of a Representative of the Authority that is the denigration of the honour and dignity of another person, expressed in indecent form (Art. 319 of the Criminal Code of the Russian Federation); Insult by one serviceman of another serviceman during the discharge of their duties of military service, or in connection with the discharge of these duties (Art. 336 of the Criminal Code of the Russian Federation); Contempt of Court, which finds expression in the insult of the trial participants (Art. 297 of the Criminal Code of the Russian Federation).

Honour and dignity are protected from discrediting by the norms of art.152 and art.152.1 of the Civil Code of the Russian Federation and from insult, that is the denigration of the honour and dignity of another person, expressed in indecent form, — by the norm under Art. 5.61 of the Code of Administrative Offences of the Russian Federation.

The utterances, which give negative factual information about a certain person, can be understood as a libel or humiliation of honor. Declarative statements are the assertions about reality as objective truth, when there are no signs of the uncertainty of a speaker, no marks of the subjectivity of the utterances. Utterances, which contains value judgments, reflection, speaker's attitudes towards the things of reality and some marks of subjectivity, are understood as opinion. In the cases of libel and humiliation of honor the forensic linguistic expert can determinate the meaning and content of the utterance under examination, can conclude, if there is a negative information about a certain person in the utterance, if it is formulated as a declarative statement or as an opinion, if there are disparaging words or phrases in the text.

As verbal delicts are considered organization of public performance of works of literature, art or folk art that contains obscene language, through theatrical entertainment, cultural, educational or entertainment events (Art. 6.26. of the Code

of Administrative Offences of the Russian Federation) and distribution of copies of audiovisual products and phonograms on any type of media, copies of printed products (except products of the media) that contains obscene language, without special packaging and text alerts (Art. 6.27. of the Code of Administrative Offences of the Russian Federation).

The task of forensic expert is to detect and explain obscenity and detect defamation in the above mentioned materials.

It should be mentioned that defamation is defined as spreading of untrue discreditable information in the sense contained in the norm of art. 152 of the Civil Code of Russian Federation. Art. 1 of the Federal act of 30 March 1998 № 54-FZ «On ratification of the Convention for the protection of human rights and fundamental freedoms and its Protocols» demands to take into account the legal position of the European Court of Human Rights, expressed in its resolutions and concerning questions of interpretation and application of the Convention (especially article 10), while having in mind that used by the European Court of Human Rights in its judgments, the notion of defamation is identical with the concept of dissemination of untrue discrediting information⁶.

Defamation is the communication of a false statement that harms the reputation of an individual person, business, product, group, government, religion, or nation⁷.

Many countries have criminal penalties for defamation and different conditions for determining whether an offense has occurred. The Organization for Security and Co-operation in Europe (OSCE) has also published a detailed database on criminal and civil defamation provisions in 55 countries, including all European countries, all member countries of the Commonwealth of Independent States, the United States and Canada⁸.

For example, section 9 of the Defamation Act,

2013⁹ requires that England and Wales is “clearly the most appropriate place” for the case to be heard if the person who made the statement does not live in the EU, Norway, Switzerland or Iceland. Also it is stated that the burden of proof rests on the defendant, it does now require individuals to demonstrate that they have suffered, or are likely to suffer, ‘serious’ harm to their reputation as a result of the comments, and for businesses to show that they have suffered, or are likely to suffer, serious financial loss. The Act also gave greater protection to the operators of websites, making it a defense to defamation that a comment was posted by someone other than themselves.

It is interesting that in UK and USA legislations libel and slander mostly differ¹⁰. «Libel refers to written defamatory statements; slander refers to oral statements. Libel encompasses communications occurring in 'physical form'... defamatory statements on records and computer tapes are considered libel rather than slander»¹¹.

Criminal libel is a crime and can be prosecuted in a criminal court like any other crime. The procedure is known as the criminal libel action. Any person convicted in a criminal libel action can be imposed with a fine or with imprisonment. Under common law, to constitute defamation, a claim must generally be false and have been made to someone other than the person defamed¹².

A statement can only be defamatory if it is false; therefore, true statements of fact about others, regardless of the damage rendered, are not defamatory (although such comments might represent other sorts of privacy or hate speech violations). Defamation may occur when one party (the eventual defendant if a case goes forward) writes or says something that is false about a second party (plaintiff) such that some third party «receives» the communication, and the communication of false information damages the plaintiff». The United Nations Commission on Human

⁶ The Resolution of the Plenum of the Supreme Court of the Russian Federation of 24.02.2005 № 3 «On the Court Practice on Affairs about Protection of Honour and Dignity of Citizens and also Business Reputation of Citizens and Juridical persons».

⁷ LeRoy Miller R. *Business Law Today: The Essentials*. United States : South-Western Cengage Learning, 2011. P. 127.

⁸ OSCE Report — Libel and Insult Laws: a matrix on where we stand and what we would like to achieve.

⁹ Defamation Act, 2013.

¹⁰ Criminal Libel Act, 1819 ; Defamation Act, 1996, 2013.

¹¹ Edwards L. L., Edwards J. S., Wells P. K. *Tort Law for Legal Assistants*. Cengage Learning, 2008. P. 390.

¹² Lamoureux E. L., Baron S. L., Stewart C. *Intellectual property law and interactive media: free for a fee*. Peter Lang, 2009. P. 190.

Rights ruled in 2012 that the criminalization of libel violates freedom of expression and is inconsistent with Article 19 of the International Covenant on Civil and Political Rights¹³.

In cases of defamation for forensic linguistic purposes it is significant to distinguish opinion, criticism and statement so the semantic and syntactic structure of a statement and its addressing to a person is linguistically examined. But cultural specific variations in forensic linguistics tasks and objectives result more directly from the facts of the cultures involved. Some general effects of the legal system and the way it is being plasticized may result in differences related to forensic linguistic expert's activities¹⁴.

Coming back to Russian legal system we can define the second group of verbal crimes committed against the Administration of Justice. These are: knowingly false denunciation about a crime (Art. 306 of the Criminal Code of the Russian Federation); knowingly false testimony of a witness, a victim or an expert's opinion, and also knowing mistranslation in court, or in a preliminary investigation (Art. 307 of the Criminal Code of the Russian Federation); provocation of a bribe or commercial graft, that is, attempts to transfer money, securities, or other assets, or to render property-related services to a functionary or a person fulfilling managerial functions in profit-making and other organizations, for the purpose of artificially manufacturing evidence of a crime of blackmail (Art. 304 of the Criminal Code of the Russian Federation); falsification of evidence (Art. 303 of the Criminal Code of the Russian Federation).

In the mentioned above cases the forensic linguistic expert can determinate the meaning and content of the utterance under examination, can conclude, if there is a statement, affirmation assertion, proposition, asseveration, declaration or an opinion.

The third type is composed of speech acts that inflicts harm to human life and health. It is verbal threat, that is threat of murder or infliction of grave injury to health, if there were grounds to fear the realization of this threat (Art. 119 of the Criminal Code of the Russian Federation) and propaganda of narcotic drugs psychotropic substances or their precursors (Art. 6.13. of the Code of Administrative Offences of the Russian Federa-

tion). Forensic linguist expert can find out, if a certain expression should be understood as a threat or propaganda.

The next group compose the crimes against public security: public justification of terrorism (Art. 205.2 of the Criminal Code of the Russian Federation); Public appeals for a forcible seizure of state power, its forcible retention, or for a forcible change of the constitutional system of the Russian Federation, (Art. 280 of the Criminal Code of the Russian Federation); Public appeals to implementation of actions aimed at violation of territorial integrity of Russian Federation (Art. 280.1 of the Criminal Code of the Russian Federation); Actions aimed at the incitement of national, racial, or religious enmity, abasement of human dignity, and also propaganda of the exceptionality, superiority, or inferiority of individuals by reason of their attitude to religion, national, or racial affiliation (Art. 282 of the Criminal Code of the Russian Federation); rehabilitation of Nazism (Art. 354.1 of the Criminal Code of the Russian Federation); propaganda and public show of Nazi attributes or symbolic or the attributes or symbolism similar to Nazi attributes or symbolic to the extent of blending (Art. 20.3. of the Code of Administrative Offences of the Russian Federation).

Forensic linguist expert can find out, if a certain expression should be understood as an appeal, excitation of racial, national or religious strife, and also social hatred associated with violence or calls for violence. Also it could be stated whether there is propaganda of the exclusiveness, superiority or deficiency of individuals on the basis of their attitude to religion, social, racial, national, religious or linguistic identity, or verbally expressed abasement of national dignity. A special item is to detect propaganda or justification of terrorism, incitement to terrorist action, to violence against individuals or organizations, or to the destruction of material objects for terrorist purposes; Nazism, or demonstration of attributes or symbols or the attributes or symbolism similar to Nazi attributes or symbolic to the extent of blending.

It is for the forensic linguist expert to examine the extremist materials, that is documents intended for publication which call for extremist activity or warranting or justifying the need for such activity, including the works by the leaders of the Na-

¹³ The Manila Times. 30 January 2012. «Libel law violates freedom of expression — UN rights panel».

¹⁴ Recent Developments in Forensic Linguistics / ed. By Hannes Kniffka in cooperation with Susan Blackwell and Malcolm Coulhard. Frankfurt am Main ; Berlin ; New York ; Paris ; Wien : Lang, 1996. P. 29.

tional-Socialist Worker's Party of Germany and the Fascist Party of Italy, publications substantiating or justifying national and/or racial superiority, or justifying the practice of committing military or other crimes aimed at the full or partial destruction of any ethnical, social, national or religious group (Art. 1 of the Federal Law №. 114-FZ of July 25, 2002 "On the Counteraction of Extremist Activity").

One more group of speech crimes can be formed with the delicts violating economic activity. That is illegal use of a trademark or service mark, name of the place of origin of goods, or similar designations for homogeneous goods, if this deed has been committed repeatedly or has caused substantial damage (Art. 180 of the Criminal Code of the Russian Federation) also usage of a trademarks is regulated by the norms (Art. 15¹⁵ of the Civil Code of Russian Federation, Art. 14.10 of the Code of Administrative Offences of the Russian Federation). Advertising as corpus delicti is stated in Art. 14.10 of the Code of Administrative Offences of the Russian Federation due to the art. 38 of the Federal Law of 13.03.2006 № 38-FZ «About Advertising». Extortion (Art. 163 of the Criminal Code of the Russian Federation) also can be estimated as a speech crime. Extortion is qualified as the demand that other people's property or their right to property should be transferred, or that other acts of a property nature should be performed under threat of violence or of destruction or damage of other people's property, and also under the threat of dissemination of information that defames the victim or his relatives or of any other information which may cause substantial harm to the rights or legitimate interests of the victim or his relatives.

The task of an expert in forensic linguistics is to reveal demands and treats if any in figurant communications.

The specificity of verbal offences is that a mark, symbol, speech utterance, text, electronic message, discourse or oral speech as a result of speech activity becomes the subject matter of the document conflict or information dispute. A speech product involves formal elements of crime — and as corpus delicti becomes a forensic text-object of the expert study. The conclusions of forensic expert examinations are used by law enforcement authority for the establishment the degree of public danger and proof of the offence.

III. FORENSIC LINGUISTIC EVIDENCE AND ITS ROLE IN LEGAL PROCEEDINGS

The problem with forensic linguistic investigations is connected with robustness and reliability of speech analysis methods, there scientific approbation and validation.

Since forensic linguists deal in probabilities, not certainties, it is all the more essential to further refine this field of study. There are situations when two experts give opposite conclusions on the same questioned text or utterance. Often expert-linguists go beyond their competences and decide matters of fact or law. Expert's report may include subjective judgments, unmotivated valuations and assumptions making it difficult to make objective and informed procedural decisions. In Russian legal proceedings as evidence can be use both a written expert report or specialist opinion, and their oral testimony. A forensic linguist report and his testimony are evaluated by law enforcements in the aspects of admissibility, relevance, and reliability (validity).

It should be stated explicitly that in Russian Law the judge is in charge of whether or not expert examination of forensic text and his testimony is commissioned, how they are applied and estimated. Forensic linguistic expert's report may be considered admitted or be rejected if there procedural, operational or methodological mistakes.

Under the norm of part 2, art. 207 of the Criminal Procedure Code of Russian Federation in case of doubt in validity of the expert opinion or if there are contradictions in the conclusions of experts on the same issues may be assigned the re-examination, the production of which is entrusted to another expert.

Unfounded is the opinion of the expert, which is not sufficiently substantiated conclusions, not applied or incorrectly applied the necessary methods and techniques of expert research.

The judge also can appoint a re-examination, if it finds violations of procedural rights of participants of judicial proceedings in the appointment and production of judicial examinations which have influenced or could influence the content of conclusions of experts.

In accordance with paragraph 3 of part 2 of art. 74 of the Criminal Procedure Code of Russian Federation evidence are admitted as an expert

¹⁵ Items 18 and 19 of the Resolution of the Plenum of the Supreme Court of the Russian Federation from December 21, 2010 № 28, Moscow. "On Forensic Examination in Criminal Cases".

written report and his testimony. And like all evidence (article 240 of the Criminal Procedure Code of Russian Federation) they are subject to direct examination at the hearing (except for cases prescribed by section X of the Criminal Procedure Code of Russian Federation)¹⁵. A forensic linguistic specialist may be involved to assist in the assessment of expert report and testimony at the request of a party or on the initiative of the court.

Evaluation of expert's report and testimony may be challenged only together with the sentence or other final court decision in the appeal in the manner prescribed by law. Expert's conclusion does not have a predetermined force for the judge and has no advantage over other evidence and, like all other evidence, is assessed by the general rules in conjunction with other evidence. At the same time, the judge should consider the skill and qualifications of the expert, to find out whether he submitted sufficient materials and proper objects of study¹⁶. So the leading importance has the training of forensic linguistic expert and scientific valuating of practical methodology.

IV. QUALIFICATION, COMPETENCE, TRAINING AND SKILL OF FORENSIC LINGUIST EXPERT

In Russian legal system the field of expertise rule allow evidence which derives from specialized knowledge based on a person's training study or expertise. On this criterion there is a little question concerning the admissibility of evidence from qualified forensic linguist experts. The International Association for Forensic Linguistics has an admission criterion the possession of postgraduate qualification in forensic linguistics¹⁷.

In Kutafin Law University (MSAL) a Course "Forensic Linguistics in Legal Proceedings" is introduced within the Master Program "Russian and International Law Systems". The Master of Law program's course "Forensic Linguistics in Legal Proceedings" offered by O.E. Kutafin Moscow State Law University is designed to educate and train those who are currently working or seeking to work in legal fields using the practice of forensic linguistics. Curriculum provides students with an understanding of theory, training, and practice of forensic linguistics in jurisprudence.

The discipline "Forensic Linguistics in Legal Proceedings" provides a comprehensive knowledge of integration of Law and Forensic Linguistics. This discipline studies the relationship between language and the law, using methods derived from information technology and statistics that allow forensic linguists to provide highly skilled services and reliable scientific and professional opinions, actions and advice which are then used in legal and judicial settings.

This discipline in the University Master of Law program maintains policies and delivery formats well suited for law enforcements. Program coursework in forensic linguistics is tailored for practical application in legal proceedings. Graduate students gain the professional skills required to lawyers, prosecutors, judges, government agents, counselors, law enforcement agents and educators. Forensic Linguistics in Legal Proceedings helps to train students specialized in analyzing different manifestations of language, so that they can contribute to solving a police or other investigation on the basis of linguistic evidence, or to provide a basis for a judge's decisions or jury's verdict or sentence in a judicial process.

Graduates with forensic linguistic competences might be employed by a state or federal government agency to help solve crimes or exonerate individuals from false accusations. Police departments, courts and law firms also may utilize their services. With more experience they become an independent consultant to a law firm or academic institution.

The course of Forensic Linguistics in Legal Proceedings comprises six subjects (Language and the Law, Plagiarism Detection, Authorship Determination/Attribution, Expertise of Patents and Trademarks, Forensic Semiotics (Naming) and Forensic Phonetics. Together these make up the competencies provided by the Master's Degree for the additional qualification of Forensic Linguistic Expert. A master's essay is required.

Language and the Law is focused on reading comprehension of legal documents, legal and judicial discourse, legal and judicial interpreting and translation and support in multilingual contexts.

It considers the relationship between language and the law; the relationship between linguists and lawyers; the conflicting competences of linguists and lawyers; meaning and clarity in judges'

¹⁶ Points 18—19 of the Resolution of the Plenum of the Supreme Court of the Russian Federation from December 21, 2010 № 28, Moscow. «On forensic examination in criminal cases».

¹⁷ *Gibbom J. Forensic Linguistics / An Introduction to Language in the Justice System. Blackwell. UK., 2003. P. 281.*

directions to juries, and the process of admitting linguists as experts.

The relationship between language on the one hand and the law on the other is key to understanding how linguists can contribute to the law discourse. It has often been said that the law is the language that enshrines it. Not only do we need language to frame the law, but we need language to understand the law. Law and language are inseparable. For this reason, forensic linguist experts have an overwhelming interest in the relationship between the law and the language, the use of language within the law, and language in the court system. In court judges often refer to dictionaries for the meaning of words which occur in legislation. However, this approach has been criticised by forensic linguists. Experts in forensic linguistics consider interpreting dictionaries as imprecise and limited. Meanings of words should be taken not directly from a dictionary, but from experimentation and observation of how words are used in different contexts.

Though lawyers are obliged to use words in legal discourse in their direct meaning terms do present problems in some special contexts.

The post graduates will acquire skills that may assist forensic linguist experts in their role as forensic interpreters, mediators in interdisciplinary communication, help to obtain feed-back on the effect and usefulness of forensic linguist conclusions on the judges' opinion, jury verdicts, findings and investigations

Plagiarism Detection prepares to work with documents to authenticate primary sources, letters and plagiarism and for the analysis of imitation in producing texts for criminal purposes. It includes forensic comparison of written texts with the purpose of determining the existence of plagiarism in the authorship of song lyrics, novels, books, screenplays and translations, as well as in exam papers, course work, tests, etc.

Authorship Determination/Attribution teaches to identify authorship of documents, oral and written texts, for legal purposes. This discipline can be used to identify perpetrators of sexual crimes by examining the language they use and their texting styles in sexually-explicit conversations and other incriminating material, especially those that have been proven to lead to sex crimes or end in child pornography¹⁸. The discipline can also teach to predict the age and gender of the writer with

a certain degree of success. It includes forensic comparison of written texts with the purpose of either qualitatively or semi-automatically determining/attribution the authorship of a text, letter or anonymous note at a trial.

Expertise of Trademarks and Patents includes analysis of patents and trademarks, based on the elements of which they are composed, their linguistic formulations and origins, in order to define the brand's originality (potential for confusion with other trademarks) and any «generality» or «pseudo-generality», and if these trademarks have become generic, with an explanation of how this is reflected in lexicographical works, linguistic consultancy services and general language use.

Forensic Semiotics (Naming) includes analysis of the misrepresentation of names, facts in a public record; interpretation and disambiguation of texts; interpreting discourse in multilingual contexts. Corpus linguistics has allowed the semantic survey approach to flourish because in the technological age it is easy to collect many samples of a word in its ordinary usage.

The meaning of words is the central issue of forensic linguistic semiotic expertise. Meaning-as-use approach helps to decide the expert's tasks in legal contexts and laws. Changing the meaning, changes the whole situation. Forensic linguistics does not only have a look at the words and does not only interpret what some words mean but analyses how something was said according to the theory speech acts and meaning-as-use theory.

Forensic Phonetics is orientated towards the role of forensic expert and aligning participants' profiles with the requirements of expertise in real forensics cases in voice comparison, speaker identification, speech signal enhancement and sound evidence falsification. It includes forensic comparison of voices and linguistic profiles using tools which are now available through Speaking Technology, in order to make expert evidence regarding voice identification that is brought to a trial more conclusive and reliable.

CONCLUSIONS

A Forensic linguist applies linguistic knowledge and techniques to the language implicated in legal criminal and civil proceedings, informational and documental conflicts or disputes.

¹⁸ Galyashina E. I. Forensic Authorship Expertise of Internet Communication: Legal and Methodical Problems // Lex Russica. 2015. T. CI. № 4. Pp. 89—95.

Forensic Linguistics in Russian legislation has been established as a multidiscipline forensic speech and now is extremely rapidly flourishing. In its broadest sense Forensic Linguistics is the interface between language and law, speech and crime, where law includes law enforcement, judicial matters, legislation, disputes or proceedings in law, and even disputes which only potentially involve some infraction of the law or some necessity to seek a legal remedy. But there are still huge problems: disunity of methods, lack of precise methodological recommendations on the solution of some problems of linguistic expertise, the list of certificated and qualified forensic linguists is not conducted. The approaches for forensic linguistic training and expert specializations differ. Analysis of linguistic expert practice and methodology of expertology allowed us to conclude that existing disunity confuses the law enforcement authority, reduces the efficiency of the use of special linguistic knowledge as evidence, discredits forensic linguistics in the eyes of the legal community, provokes statements about the bias of experts, subjectivity of the used methods and principal impossibility of achieving objective and reliable results via linguistic methods.

On the basis of forensic expertology should be adopted approaches to unify expert linguist's training, standardize the list and content of competencies, classification and methodology of different types of forensic linguistic expertise. Supporting the idea of interagency certification of experts, we substantiate the conclusion about the necessity of development and introduction of forensic linguistics specialty passport according to the classification of forensic linguistic examinations. Validation and certification of scientific and methodological supplement of forensic linguistic expertise become urgent. It is necessary to accumulate forensic expert methodic in the library fund with public access.

So the perspectives of development of forensic linguistics in jurisprudence can be stated as follows: a thorough compilation of forensic linguistics reports and court testimony in particular criminal and civil cases; systematization of incriminating text types, genres, e.g. threatening, blackmail, defamatory, extremism, etc. messages, letters, utterances; complexing juridical and linguistic knowledge; registration the list of professionally skilled and certificated forensic linguistics experts, validation of forensic linguistic methods and practical methodology, providing guidelines for unexperienced newcomers to the field.

BIBLIOGRAPHY

1. *Cotterill J.* Language and Power in Court: A Linguistic Analysis of the O. J. Simpson Trial. — Palgrave Macmillan, 2003.
2. *Coulthard M.* On the use of corpora in the analysis of forensic texts // *The International Journal of Speech Language and the Law*. — 1994. — 1 (1). — Pp. 27—43.
3. *Coulthard M. and Cotterill J.* Introducing Forensic Linguistics. — Routledge, 2006.
4. *Fifty Years of Forensic Science* / Ed. Niamh Nic Daeid; Centre for Forensic Science, University of Strathclyde. — Glasgow, UK. — 2010.
5. *Galyashina E. I.* Forensic Linguistic Examinations in Trade Mark Disputes // *The Russian Laws. Experience. Analysis. Practice*. — 2006. — № 12 (December). — Pp. 77—94.
6. *Galyashina E. I.* Forensic Linguistic Expertise in Civil Proceedings // *The Russian Laws. Experience. Analysis. Practice*. — 2015. — № 10 (October). — Pp. 17—22.
7. *Galyashina E. I.* Forensic Authorship Expertise of Internet Communication: Legal and Methodological Problems // *Lex Russica*. — 2015. — T. CI. — № 4. — Pp. 89—95.
8. *Galyashina E. I.* Forensic Expertise of Verbal Extremism // *Expert-criminalist*. — 2009. — № 2. — Pp. 14—16.
9. *Galyashina E. I.* Forensic Speech Expertises: from Theory to Practice // *Expert-criminalist*. — 2015. — № 2. — Pp. 28—31.
10. *Goddard C.* Can linguists help judges know what they mean? Linguistic semantics in the court-room // *International Journal of Speech Language and the Law*. — 1996. — № 3 (2). — Pp. 250—272.
11. *Hale S.* Clash of world perspectives: the discursive practices of the law, witness and interpreter // *International Journal of Speech Language and the Law*. — 1997. — № 4 (2). — Pp. 197—209.
12. *Mc Menamin G.* Forensic Linguistics: advances in forensic stylistics. — Boca Raton : CRC Press LLC, 2002.
13. *Olsson J.* Forensic Linguistics: An introduction to Language, Crime and the Law. — London : Continuum, 2004.
14. *Olsson J. and Luchjenbroers J.* Forensic Linguistics. — 3 ed. — Bloomsbury Academic, 2014.

15. Olsson J. Wordcrime: Solving Crime Through Forensic Linguistics. — Reprint edition. — Continuum, 2012.
16. The Routledge Handbook of Forensic Linguistics (Routledge Handbooks in Applied Linguistics) / Ed. by M. Coulthard, A. Johnson. — Reprint edition. — Routledge, 2013.
17. Stratman J. A Forensic Linguistic Approach to Legal Disclosures : ERISA Cash Balance Conversion Cases and the Contextual Dynamics of Deception // Routledge Studies in Linguistics, 2015.

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FORENSIC LINGUISTICS IN LEGAL PROCEEDINGS

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Аннотация. В статье содержится подробное исследование применения судебной лингвистической экспертизы судебных документов, письменных показаний и показаний в устной форме, используемых в качестве доказательств в российском судопроизводстве. Утверждается, что за последние 15 лет существенно увеличилось число случаев использования показаний экспертов в качестве доказательств. Адвокаты, юристы, полицейские, судьи могут использовать лингвистическую экспертизу как средство разрешения дела. В статье освещаются основные вопросы применения судебной экспертизы: от особенностей юридической терминологии и интерференции языка и права до порядка сбора и проверки устных показаний в зале суда. Автор уделяет особое внимание уголовным и гражданским делам, в том числе большому числу преступлений и деликтов, совершенных посредством лингвистических средств: мошенничества, взяточничества, угрозы, терроризм и экстремизм, требования выкупа, клевета, диффамация, подстрекательство, оскорбления и др. В статье подчеркивается, что с помощью судебной лингвистической экспертизы можно получить важные доказательства, которые помогут избавиться от двусмысленности, искажений, лингвистических манипуляций в делах, в которых намеренно создается впечатление о виновности пострадавших, человек был спровоцирован к совершению преступных действий или принужден к ложному признанию своей вины вербальными средствами. В целом статья является попыткой рассмотреть широкий спектр проблем, связанных с судебной лингвистической экспертизой и ее практическим применением правоохранительными органами в правовом процессе.

Ключевые слова: судебная экспертиза, судебная лингвистическая экспертиза, судопроизводство, язык и право, правоприменение, преступное высказывание, вербальное доказательство.