


<https://doi.org/10.22363/2313-2337-2023-27-2-273-287>
EDN: SAQYAG

Research Article / Научная статья

On the scientific scope of the “legal drafting” concept

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Abstract. The article attempts to define the content of “legal drafting”, as well as its place and role in the categorical apparatus of the theory of law. It investigates the main scientific approaches to the definition of the concept and classification of types of legal documents technology. The paper determines its axiological significance through a functional methodological approach, the impact on the effectiveness of legal regulation, as well as the place and role in the categorical apparatus of the theory of law. The findings of the research show that the terminological feature of the concept of “legal drafting” is described through a number of aspects. First of all, this term performs the function of a “framework concept” and is often subjected to erroneous idealization. At the same time, the term “legal drafting” has a polysemantic character and, therefore, enjoys a poly conceptual scientific maintenance; basically, it refers to the instrumental part of legal activity. The research concludes that the legal drafting technique occupies a special place in the categorical system, which is primarily due to the difference in approaches to its interpretation, and the large volume of its content.

Key words: legal drafting technology, legal engineering, legal tactics, legal strategy, legal forecasting

Conflict of interest. The author declares no conflict of interest.

Information on financing. The research was carried out with the financial support of the Grant of the President of the Russian Federation No. HIII-3270.2022.2 “Evolution or revolution of civil proceedings: digitalization through the prism of artificial intelligence”.

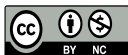
Article received 26th January 2023

Article accepted 15th April 2023

For citation:

Kozhokar, I.P. (2023) On the scientific scope of the “legal drafting” concept. *RUDN Journal of Law*. 27 (2), 273—287. <https://doi.org/10.22363/2313-2337-2023-27-2-273-287>


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О научном содержании понятия «юридическая техника»

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Аннотация. Предпринята попытка, с учетом существующих научных достижений теории права, определить содержание понятия «юридическая техника», а также ее место и роль в категориальном аппарате теории права. Рассмотрены основные научные подходы к определению понятия, дана классификация видов юридической техники, определено ее аксиологическое значение через функциональный методологический подход, влияние на эффективность правового регулирования, а также место и роль в категориальном аппарате теории права. Установлено, что терминологическая особенность понятия «юридическая техника» заключается в ряде аспектов. Прежде всего этот термин выполняет функцию «рамочного» понятия и нередко подвергается ошибочной идеализации. При этом термин «юридическая техника» обладает полисмысловым характером и, как следствие, поликонцептуальным научным сопровождением и относится к области инструментальной части юридической деятельности. Сделан вывод, что юридическая техника занимает особое место в категориальной системе, что обусловлено, прежде всего, разностью подходов к ее толкованию и большим по объему содержанием.

Ключевые слова: юридическая технология, правовая инженерия, юридическая тактика, юридическая стратегия, юридическое прогнозирование

Конфликт интересов: Автор заявляет об отсутствии конфликта интересов.

Информация о финансировании. Исследование выполнено при финансовой поддержке Гранта Президента РФ № НШ-3270.2022.2 «Эволюция или революция гражданского судопроизводства: цифровизация через призму искусственного интеллекта».

Дата поступления в редакцию: 26 января 2023 г.

Дата принятия к печати: 15 апреля 2023 г.

Для цитирования:

Кожокарь И.П. О научном содержании понятия «юридическая техника» // RUDN Journal of Law. 2023. Т. 27. № 2. С. 273—287. <https://doi.org/10.22363/2313-2337-2023-27-273-287>

Introduction

Formation of the theoretical doctrine on legal drafting requires a preliminary clarification of the concepts' content that forms the substance of the relevant scientific research and, above all, of the concept itself.

The immanent connection of law and legal drafting suggests their simultaneous historical emergence. At the same time, formation of such technology always begins at the consciousness level, which confirms the thesis of primacy of *technical legal thinking*. Legal drafting in general terms should be understood as a means of law materialization, reflecting the current legal framework. Conceptual approaches to the content of the term “legal drafting” are quite diversified: one of them reduces it to the law-making and legal proceedings setting; another — to the form of intellectual activity on conceptualizing and systematizing legal prescriptions; still another — to the means of implementing the legal purposes and/or to the mode of ensuring the social needs.

Methodological basis of the research

Methodological basis of legal drafting is justifiably considered to be a legal dogma that received a detailed scientific coverage under the influence of the doctrine of legal positivism. This predetermined the emergence of a scientific concept identifying legal documents technique and dogmatics, which is understood as practical implementation of theoretical legal knowledge in the law enforcement activity (Uspensky, 1927; Ushakov, 1963).

Remarkably, that the generic term in the phrase “legal drafting” — “drafting” — is the term that does not bear any social content, while the specific term “legal” has a restrictive functional purpose. Its restrictive nature stems from the applied purpose to distinguish *legal* from *non-legal*.

Scientific approaches to the concept definition “legal drafting”

The term “legal drafting technique” often characterizes a framework concept uniting all “technical” in law as a whole (Tarasov, 2007:7). N.N. Tarasov asserts that, legal drafting within the framework of legal positivism primarily involves applied developments in law, including those related to constructing and formatting legal text, systematization of legislation, and legal document turnover. (Tarasov, 2007:10). Arguing about the content of the term “юридическая техника/legal drafting technique”, G.I. Muromtsev rightly notes the “canonized” connotation of the approach that reduces legal drafting to legislative technique (Muromtsev, 2000), which, in its turn, is understood as a set of techniques that ensure the enactment of the *most exquisite laws* (Alekseev, 1982). It is worth noting that the idealization of legal drafting technique, attaching the quality of a tool for improving regulations are not entirely successful: in fact, legal drafting reflects the level of real legal experience, which cannot be exclusively positive.

In search for a definition of the term “legal drafting”, Y.A. Tikhomirov identifies two of its meanings: subjective and objective. In his opinion, legal drafting in the subjective sense is a tool for *refining* legal material, while in the objective sense it is a mechanism of law (Tikhomirov, 2007:12). The author identifies six structural components that constitute the content of this legal term: (1) cognitive-legal, (2) normative-structural, (3) logical, (4) linguistic, (5) documentary-technical, and (6) procedural.

Professor Davydova M.V. defines legal drafting as “a system of professional legal rules and means applied for drawing up legal acts and implementation of other legal activities in law-making, legal interpretation, governmental and non-governmental implementation of law, and ensuring the perfection of its form and content” (Davydova, 2009:50).

The term “legal drafting” has firmly entered the theoretical and legal terminological apparatus, however, despite this fact, its terminological designation is subjected to reasonable criticism. Thus, V.M. Baranov noticed that the use of the term “legal drafting” is rather a tribute to scientific traditions of the legal theory (Baranov, 2000:11). The significant drawback of the term is its polysemantic usage, compromising its status as a scientific concept (Muromtsev, 2000). The polysemantic nature of the term “legal

drafting”, which is not questioned, makes it difficult not only to define it, but also to specify the fields of application and/or to clarify the system structuring components. This predetermines a wide range of opinions regarding the concept, features, functionality, and content of the term. Theorists fail to agree on what is the object and the subject of legal drafting.

The polysemantic nature of the term “legal drafting” promotes a polyconceptual scientific maintenance: each scholar engaged in scientific developments in the field of legal drafting conceptualizes the existing approaches to its comprehension and interprets them in his own way. Among them, pragmatist and documentary conceptions are the most recognized. Adherents of the documentary conception proceed from the fact that the object of legal drafting is textual documents — legal acts; it is through them that successful implementation of the rules of law takes place (Derevnin, 2001). Advocates of the pragmatist conception interpret legal drafting from the perspective of legal activity goals, which determines its understanding as an instrumental part of legal practice (Kartashov, 2000:18).

V.M. Baranov, being one of the leading theorists and experts in the field of legal drafting, notes that despite the numerous discussions, most researchers agree on such its generic feature as “instrumentarium”. At the same time, he asserts that the functional purpose of this instrumentarium is to rationalize the activities and achieve the goals (Baranov (ed.), 2015:42). Thus, legal drafting belongs to the instrumental part of legal activity.

Disputes concerning the object of legal drafting are traditionally reduced to two main approaches — formal and substantive. Apologists of the formal approach qualify the rules of legal acts formalizing as an object of legal drafting. In this sense, researchers are interested in applying only “attributive” tools related to language, style, rubrication, etc. The content approach is based on completely different principles: the scope of legal drafting covers both formal and content components. Therefore, from the point of view of the content approach, the axiological significance of legal drafting lies in improving regulatory acts both in form and content. The latter approach seems to enjoy universal support: a perfect legal act is the one that is not just written competently and in compliance with drafting techniques, but, above all, properly reflects the actual needs of modern society and contains tools that contribute to their satisfaction.

As for the issue of the subject of legal drafting, its resolution is reflected in two opposing views — public law and private law. The concept of the public law approach is focused on limiting legal drafting technologies to the activities of public authorities in the field of law-making, law enforcement and law interpretation (meaning *official interpretation*) (Muromtsev, 2000; Voevodin, 1997)¹. It should be noted that the etymological origin of the public law approach is traditionally associated with the Soviet period of the development of the legal drafting doctrine and is conditioned by the historically determined rejection of the private law component in all fields of legal activity. The private law view on the subject of legal drafting presumes recognition of any actor in legal activity using legal and technical tools. Obviously, this conceptual view

¹ *Shutak I.D.* Theory and practice of the legal clause: system of concepts: terminological dictionary. St. Petersburg, 2001, p. 8.

is broader and implies understanding of legal drafting as an activity aimed at preparing any (including unofficial) legal documents (Cherdantsev, 2001:366). Taking the position of a private law approach to the definition of the subject of legal drafting, it is important to bear in mind that legal drafting is a sphere of professional activity. All private law actors demonstrating legal competencies are divided into professionals and non-professionals. A person without any professional training will be able to trace a specific federal law, using, for example, the legal reference systems. Moreover, such person is likely to be able to draft a civil law contract. However, he may not be attributed to the subjects of legal drafting. It seems that a *valid* subject of legal drafting technology is a person who possesses relevant competencies at a high professional level and has a profile degree in this sphere. In this regard, legal drafting can be qualified as a communication technique in the legal environment (Aleksandrov, 2000:102). Such communication is only possible if the participants of this activity can operate appropriate technical and legal tools. The above ability, in its turn, implies a certain level of legal culture and a certain degree of general cultural and professional competencies.

It is important to emphasize that the private law approach is not an antagonist to the public law approach: in fact, the former is broader and includes the latter. It is clear that the private law approach in the modern context of its *heyday* is more demanded, since it allows taking into account both the needs of the modern market economy and actual scientific trends that clearly reflect the current state and direction of legal research.

The quality of regulations and, consequently, the effectiveness of legal norms directly correlate with the level of legal and technical competencies of persons involved in the law-making process. However, as Y.A. Tikhomirov correctly notes, such individuals have not been taught legal drafting technology (Tikhomirov, 2007:12). At the same time, legal drafting is a factor of optimization and efficiency of legislation (Polenina, 1987). By taking a broader approach to “legal drafting” interpretation, which denies its limitation exclusively to law-making, we understand its importance precisely at the stage of creating rules of law.

Accepting or rejecting this or that concept, it is obvious that the scope of legal drafting coincides with the scope of professional legal competencies. Therefore, we believe that a competence-based conceptual approach to understanding legal drafting and clarifying its actual scope seems to be more universal. The essence of the competence approach can be reduced to understanding legal drafting as a system of tools that require special legal competencies. If we evaluate our proposed approach in terms of the above dichotomous concepts and classifications, the following outcome will inevitably be obtained: the competence—based conceptual approach allows the polysemantic usage of the term “legal drafting”; the approach proceeds from a meaningful concept while characterizing its object, and from a private law approach while characterizing its subject; it reflects the objective meaning of the “legal drafting” concept in the system of scientific coordinates proposed by Y.A. Tikhomirov.

Law and legal drafting have certain etymological identity. The methodological precondition for the development of legal drafting technology is a legal dogma, which received a detailed scientific study under the influence of legal positivism. The terminological feature of “legal drafting” concept involves the following aspects: it performs as a “framework concept”; it is often subjected to inaccurate idealization; it has

a polysemantic character and, as a result, a polyconceptual scientific maintenance; and it refers to the instrumental part of legal activity.

Sharing the opinion that any complex system tends to be simplified, which is also relevant for the definition of scientific concepts, we propose to understand by “legal drafting technique” (or, more appropriately, “legal drafting technology”) the tools of legal activity that, due to professional legal competencies, promote the art of implementing law into human consciousness and behavior.

Granting the term “legal drafting” the status of a scientific category, we must have an idea of its content. According to V.M. Baranov, the composition of legal drafting includes two levels of technical and legal instruments: the first (aka the “highest”) level is represented by legal rules that act as a criterion for the quality of legal activity; the second level consists of specific tools of professional legal activity, differentiated into general social and legal (Baranov (ed.), 2015:53).

The statement that the main scope of legal drafting is exhausted by its two constituent elements — technical means and technology, has become axiomatic in the theory of law. The greatest theoretical and methodological challenge is to clarify the range of technical means that constitute the scope of legal drafting techniques. Thus, according to M.K. Yukov, legal drafting operates with three technical means — normative construction, legal construction, and field standardization (Yukov, 1979:45). A slightly different typification is found in the S.S. Alekseev’s works. According to him, technical means are differentiated into means of expressing the will of the legislator (including normative constructions, legal constructions, and field standardization) and means of their verbalization (Alekseev, 1982). Sharing this opinion on the issue, V.K. Babaev highlights underestimation of the potential of such legal and technical means as fictions, presumptions, axioms, etc. (Babaev (ed.), 1993:100). It is customary to relegate legal analysis, logical concentration and legal construction to the legal drafting technique (Ihering, 1905:80). The above demonstrates uncertainty concerning the framework of technical means and techniques, their identification and confusion. Analysis of the substantive components of legal drafting allows to outline the following findings: firstly, differentiating the scope of legal drafting into means and methods or means, methods and rules, scholars often argue not so much about the substantive aspects as about terminological designations; secondly, the elements of legal drafting are dynamic: they can change over time, be adjusted under the influence of a change in the legal paradigm, as well as lose their relevance; thirdly, it is advisable to study the elements of legal drafting technique within the framework of its current concept. In the latter case, the concept of legal drafting is understood as legal and technical means, methods, and rules, reflecting the current policy and legal agenda.

Classification of legal drafting

An integral element of the theoretical doctrine concerning legal drafting is scientific classification of its types. The heuristic potential of such methodology as classification can hardly be overestimated: the need for such a method is actualized in case of discovery of numerous structural components, whose clarification seems most effective in ordering by groups, classes, series. M.L. Davydova rightly points out that outlining just one basis for classification leads to disregard of other possible criteria and significantly

impoverishes understanding of legal drafting; therefore, the methodological premise for investigating this issue should be the idea of classification plurality of the phenomenon (Davydova, 2009:83).

The variety of legal drafting tools suggests a demand of their classification within the framework of this theoretical doctrine. Numerous attempts are being made to create universal and, in some cases, unique, open and closed classifications of legal drafting types. It is well known that the defining element of any classification is the criterion underlying the corresponding specific division. Thus, it is only natural to classify legal drafting by specifics of legal profession (for example, notarial, judicial, lawyer, etc.); by subjects of legal activity (governmental and non-governmental); by objects of legal drafting (techniques aimed at improving the quality of the form of law, and techniques aimed at improving the quality of the content of law); by the form of legal communication (written (including electronic) and oral techniques); by the legal nature of the act (techniques of normative legal acts and techniques of individual legal acts); by the number of participants involved in legal drafting implementation (techniques of acts adopted collectively and individually); by the status of legal act (techniques of international legal acts; techniques of federal acts; techniques of regional acts; techniques of local acts); by stages of the law-making process (techniques applied at the initial stage of shaping the act; techniques of conceptualization of the act; techniques of legislative initiative; techniques of act composition; techniques of legal act examination, etc.); by scope (general and branch legal techniques); by types of legal systems (Anglo-Saxon, Romano-Germanic, Muslim legal drafting techniques), etc. (Baranov (ed.), 2015:54—63).

The variety of classifications of legal drafting is due to both the objective scope of this phenomenon and the subjective classification criteria proposed by individual researchers. According to the fair remark by V.I. Kruss, “legal drafting should regard the entire law as its field of application” (Kruss, 2000:82—83). The range of opinions on differentiation of legal drafting types is surprisingly wide. However, most legal scholars agree that classification of legal drafting should be realized according to such criteria as “stages of law existence”. At the same time, theorists are divided on the number of such stages, highlighting law-making, law-enforcement, interpretation, systematization, concretization and some others.

Axiological significance of legal drafting

Remarkably, studies devoted to the concept of legal drafting often raise the issue of its axiological meaning. This is not surprising considering its potential. Let us remind you about the value that its originator R. Ihering attached to legal drafting technology. Thus, in his opinion, the importance of legal drafting can be expressed in two goals that can be achieved by its methods and tools: (1) simplification of law, both quantitative and qualitative; (2) ensuring law practicality (Ihering, 1905). Similar objectives of legal drafting are found in the work by A.F. Cherdantsev. According to him, simplification and unification of legal documents, as well as rationalization of legal activity occurs due to legal drafting technologies (Cherdantsev, 2001:429). V.M. Baranov and M.L. Davydova pay attention to their applied instrumental value (Baranov (ed.), 2015:63—67).

The axiological significance of legal drafting technology, in our opinion, should be demonstrated through a functional methodological approach. Understanding the “function” of legal drafting as the role it plays in relation to a certain whole — society (Reutov, 2002), we can conclude that it is aimed at fulfilling the following functions: maintaining law and order; objectification of the current legal paradigm; transformation of the sign system of law into real social relations; instrumental function. Apparently, the specified functions can be in its turn differentiated by their significance; the law enforcement function seems to be the basic one (Artemov, 2001:68). G.I. Muromtsev argues that this function, being by far the core one, acquires fundamental importance at the transitional stages of society development (Muromtsev, 2001:76—77). Such a position faces real embodiment in the modern context of total digitalization of the legal system. Digital phenomena are not novelized spontaneously but with due regard to the actual needs of society, international challenges, and preservation of traditional values, thus ensuring law and order.

According to V.V. Shakhanov’s fair remark, legal drafting predetermines the dynamism of law, providing the law enforcer with tools that allow to be guided by the current legal paradigm in making decisions, without crossing the limits of legal regulation (Shakhanov, 2005). This confirms that legal drafting has the function of objectifying the current legal paradigm.

Legal rules become effective only under the qualitative transformation of the sign system of law into real social relations (Boldyrev, 2021:178—180). Therefore, ensuring efficiency of legal rules and constructions is not an independent function of legal drafting, but a consequence of its realization of other functions, including the function of transforming the sign system of law into real social relations.

N.N. Marshakova takes a different point of view in defining the functions of legal drafting: in her opinion, the limited regulatory impact of legal drafting determines only an auxiliary function (Marshakova, 2007:57).

Without going into polemics regarding the legal drafting functionality but setting the task of a superficial scientific analysis of the issues under study, we may assert that not every impact of legal drafting should be qualified as its function. Thus, the academic literature emphasizes that legal drafting is also a scientific and technical field of legal knowledge, which predetermines its gnoseological significance (Skryabina, 2011:48).

In summary, legal drafting is aimed at performing the following functions: law enforcement; objectification of the current legal paradigm; transformation of the sign system of law into real social relations; instrumental function.

Legal drafting within the categorical framework of the theory of law

Before determining the place and role of legal drafting within the categorical framework of the theory of law, it should be noted that it is one of the important elements of the legal system that manifests itself at all of its levels. Moreover, embracing the entire legal system, legal drafting is conditioned by its specifics. It is a means of creating and formalizing law, and the fact, that law is constituted in various ways in different legal systems, determines the relevant features of legal drafting (Davydova, 2009:82).

The analyzed concept of “legal drafting” is based on such a generic feature as legal activity. Legal activity involves legal practice — the core of legal drafting potential. Legal practice, like any production activity, has its own unique technology. According to V.N. Kartashov, legal drafting acts as one of the elements of legal practice technology (Kartashov, 2007:16—17). His study centers on the idea that legal drafting technology is a broader concept than legal drafting technique. At the same time, in author’s interpretation, legal drafting serves as an instrumental part of legal technology, which beside drafting technique includes legal tactics, legal strategy and some other aspects of legal practice. (Kartashov, 2007:18). In fact, V.N. Kartashov draws such conclusion driven by the works of classics of the given subject (F. Bacon, I. Bentham, I.L. Braude and others), who by “legal drafting technique” meant “legal drafting technology”, a term that is more characteristic of production area. The use of the term “legal drafting technique” is subjected to thorough criticism in V.N. Kartashov’s study: the scholar believes that this conservative tradition and template thinking significantly complicate gaining new knowledge. Agreeing with most of the arguments put forward by the researcher it is possible to outline the following conclusion regarding the correlation of such concepts as “legal drafting technique” and “legal drafting technology”. Generic concepts of the compared terms — “technique” and “technology” — do not have legal content in the strict sense of the word. This fact plays the role of a restraining mechanism that prevents the extensive use of relevant concepts. However, the modern legal discourse around the compared concepts comes down to the following: with a broad approach to “legal drafting technique”, it is equated with “legal drafting technology”, and with a narrow approach, it acts as an integral part of the latter. At the same time, the term “legal drafting technology” seems to us highly appropriate.

Let us focus on the main scientific positions regarding the correlation between the concepts “legal drafting technique” and “legal drafting technology”, expressed by leading theorists. Thus, S.S. Alekseev argues that the structural components of legal drafting technique are technical means and methods. The latter, according to the scholar, can also be identified as “legal drafting technology” (Alekseev, 1982:268). A.K. Chernenko asserts that legal drafting technology is a “method of constructing a stable legal system” (Chernenko, 1997:25). Focusing on the content of the term “legal drafting technology”, N.A. Vlasenko, concludes that it determines the procedure for applying methods and techniques to ensure preparation and adoption of any legal decision (Vlasenko, 2001:7—8). According to V.V. Lazarev, “legal drafting technique” can be interpreted in narrow and broad senses: in a broad sense — as a means of expressing legislative will, in a narrow sense — as relations accompanying the process of the bill drafting in general (that is, technology) (Lazarev, 2001:47). A.N. Mironov suggests that “legal drafting technology” should be understood as activity of applying technical and legal means (Mironov, 2007:46). It is possible to continue these cited records, but it is unlikely that such a compilation will be of real scientific value. It is obvious that, interpreting their unique author’s approach to the correlation between “legal drafting technique” and, scholars adhere to the scientific positions in the doctrine in any case. We accede to the position expressed by T.V. Kashanina: “since everyone is used to apply the term “legal drafting technique”, it is better to maintain it in the legal lexicon, but to keep in mind that it means “legal drafting technology” (Kashanina, 2010:172).

It is worth noting that the trend to seek for a more universal concept than “legal drafting technique”, witnessed in modern scientific literature, leads to formulation of new concepts. Thus, supporting the discussion on relationship between the “legal drafting technique” and “legal drafting technology” and adhering to the opinion that the first one is linked to legal and technical tools, and the second one — to its application, V.I. Chervonjuk suggests using the term “legal engineering”, understood as the art of applying practically proven tools for implementing law into human consciousness, behavior and activity (Chervonjuk, 2010:191). At the same time, the scholar uses the terms “legal drafting engineering” and “legal drafting technology” as synonyms, qualifying them as a certain scope of knowledge that can be used in various legal proceedings. In its turn, legal drafting technologies are the process of practical application of legal technology tools. Thus, legal drafting technologies (or “legal drafting engineering”) using the tools of this technology cater to legal activities. The emergence of the concepts of “legal drafting engineering” and “legal drafting technologies” along with the concept of “legal drafting technique” seems to be conditioned by universalization of legal and technical knowledge and expansion of its actual scope.

Another neologism within the framework of the issues under study is the term “legal technosphere”, proposed by V.M. Baranov. The scholar notes that the content of legal technosphere is predetermined by the methods of implementing all types of legal practice, which is formed with the help of “legal drafting technology” (Baranov, 2000:13).

In our opinion, applicability/inapplicability of these concepts to designate the traditional set of phenomena called “legal drafting” should be assessed by the actual content of generic categories — “engineering”, “technology”, etc. Using open reference resources, we succeeded to clarify that “engineering” is usually understood as “usage of scientific principles in designing and constructing objects”; “technology” — as “application of scientific knowledge to solve practical problems”; “technique” — as a set of “methods, processes and technologies of certain skillful activity”. As you can see, all these concepts are applicable to legal drafting. The difference lies in the scope of these concepts. It seems that “legal engineering” is the broadest of all; its components are both legal drafting technology and legal drafting technique.

Legal tactics and legal strategy are strongly connected with “legal drafting”. Thus, legal tactics is usually understood as the art of managing the technological process. As for the legal strategy, it is the quintessence of fundamental planning and forecasting. Legal drafting correlates to the legal strategy, which relates to the competence of politics: thanks to the arsenal of legal drafting techniques, legal strategy is brought to life. The strategic potential of legal activity often finds real embodiment in the relevant norms of law. In fact, more than thirty different strategies have been adopted and are operating in the Russian Federation². From a legal and technical point of view, acts of strategic

² For example: On the National Security Strategy of the Russian Federation: Decree of the President of the Russian Federation No. 400 dated July 02, 2021. Official Internet Portal of Legal Information: <http://pravo.gov.ru> (date of publication: July 03, 2021); On the Economic Security Strategy of the Russian Federation until 2030: Decree of the President of the Russian Federation No. 208 dated May 13, 2017. Official Internet Portal of Legal Information: <http://www.pravo.gov.ru> (date of publication: May 15, 2017); On the Environmental Security Strategy of the Russian Federation until 2025: Decree of the President of the

planning are often represented by Decrees of the President of the Russian Federation (less often — orders of the Government of the Russian Federation and other public authorities); they are limited by a time period, have an internal structure that includes the state of a relevant sphere of public relations; threats and challenges; goals, objectives and priorities; state assessment mechanisms; stages and expected results of the strategy implementation. The legal strategy has a direct impact on the legal drafting, and the latter predetermines creation of the strategy itself. Consequently, there is a mutually deterministic relationship between the compared concepts. We emphasize that the legal strategy has a particular impact on the law-making legal drafting since strategic documents often predetermine the adoption of new regulations.

In addition to the concepts outlined above, legal drafting is immanently associated with legal forecasting, which, unfortunately, traditionally receives insufficient attention from both the legislator and the scientific community. In general, legal forecasting can be interpreted as foreseeing the trends of the legal system development, dynamics of separate industries and institutions, and prospects for the specific regulations functioning. Legal forecasting is associated with the so-called “concept of the future”, which is understood as an assumed vision of the future Russian reality (Gavrilov, 1982:44).

According to V.N. Kartashov, forecasting is an element of legal strategy and legal drafting (Kartashov, 2007:21). Thus, from the perspective of the current domestic legal system, we can predict a trend towards further import substitution in all spheres of public life (we are talking not only about economy), informatization of society through digitalization of all its objectively digitalized spheres, optimization of the activities of public authorities and their reduction and reduction of legislative inflation.

Drawing terminological boundaries between “legal drafting” and related concepts, it is necessary to make some general remarks concerning correlation between the concepts of “legal drafting technique” and “legislative drafting technique”. A researcher with a sufficient level of professional legal competencies will easily formulate the main aspects of such a correlation. Legislative drafting technique is a kind of legal drafting technique and therefore is a concept, which is narrower in scope. Such seemingly obvious remarks are predetermined by the fact that in the history of theoretical thought (and in modern scientific developments) one can find a conceptual position of identifying the compared concepts, reducing legal drafting technique solely to legislative drafting technique. However, as T.V. Kashanina correctly noted, “identifying legal drafting technique and law—making technique is a relic of the past” (Kashanina, 2010:172).

Conclusion

In summary, the concept of “legal drafting” belongs to a special system of terminological coordinates, which is predetermined both by the difference in approaches to its interpretation and by its massive content. Thus, the concepts of “legal drafting

Russian Federation No. 176 dated April 19, 2017. Official Internet Portal of Legal Information: <http://www.pravo.gov.ru> (date of publication: April 20, 2017); On the Strategy of the Information Society Development in the Russian Federation for 2017-2030: Decree of the President of the Russian Federation No. 203 dated May 9, 2017. Official Internet Portal of Legal Information: <http://www.pravo.gov.ru> (date of publication: May 10, 2017), etc.

technique”, “legal drafting technology”, “legal drafting engineering”, “legal tactics”, “legal strategy” and “legal forecasting” form a conceptual terminological cluster, where “legal drafting” (or, more precisely, “legal drafting technology”) serves as a generic term.

References / Список литературы

- Aleksandrov, A.S. (2000) Legal Drafting Technique — Forensic Linguistics — Grammar of Law. In: Baranov, V.M. (ed.). *Problems of Legal technique*. Nizhny Novgorod, Nizhny Novgorod Academy of the Ministry of Internal Affairs of the Russian Federation. pp. 101—108. (in Russian).
Александров А.С. Юридическая техника — судебная лингвистика — грамматика права // Проблемы юридической техники: сб. ст. / под ред. В.М. Баранова. Нижний Новгород: Нижегородская академия Министерства внутренних дел Российской Федерации, 2000. С. 101—108.
- Alekseev, S.S. (1982) *General theory of law*: in two vols. Vol. 2. Moscow, Yuridicheskaya literatura Publ. (in Russian).
Алексеев С.С. Общая теория права: в 2 томах. Т. 2. М.: Юридическая литература, 1982. 360 с.
- Artemov, V.M. (2001) Law and Order as a Goal-Setting Resource for the Development of Legislative Drafting Techniques in Modern Society. In: Baranov, V.M. (ed.). *Law-making technique of modern Russia: state, problems, improvement: Materials of the scientific and methodological seminar: collection of articles*. In two vols. Nizhny Novgorod, September 1, 2001. Nizhny Novgorod, Nizhny Novgorod Book Publishing House. (in Russian).
Артемов В.М. Правопорядок как целеполагающий ресурс развития законодательной техники в современном обществе // Законотворческая техника современной России: состояние, проблемы, совершенствование: материалы научно-методического семинара, Нижний Новгород, 1 сентября 2001 года: сборник статей: в 2 томах / под ред. В.М. Баранова. Нижний Новгород: Нижегородское книжное изд-во, 2001. С. 68—76.
- Babaev, V.K. (ed.). (1993) *General theory of law. Course of lectures*. Nizhny Novgorod, Nizhegor. Higher School of the Ministry of Internal Affairs of the Russian Federation. (in Russian).
Общая теория права : курс лекций / под общ. ред. В.К. Бабаева. Нижний Новгород: изд-во Нижегород. ВШ МВД РФ, 1993. 544 с.
- Baranov, V.M. (2000) Foreword. In: Baranov, V.M. (ed.). *Problems of Legal Drafting Technique*. Nizhny Novgorod, Nizhny Novgorod Academy of the Ministry of Internal Affairs of the Russian Federation. pp. 11—13. (in Russian).
Баранов В.М. Предисловие // Проблемы юридической техники: сб. ст. / под ред. В.М. Баранова. Нижний Новгород: Нижегородская академия Министерства внутренних дел Российской Федерации, 2000. С. 11—13.
- Baranov, V.M. (ed.). (2015) *Legal Drafting Technique: A Course of Lectures*. Nizhny Novgorod, Nizhny Novgorod Academy of the Ministry of Internal Affairs of Russia. (in Russian).
Юридическая техника: курс лекций / под ред. В.М. Баранова. Н. Новгород: Нижегородская академия МВД России, 2015. 830 с.
- Boldyrev, S.N. (2021) Legal drafting techniques in ensuring the effectiveness of law. *Law and State: The Theory and Practice*. 1(193), 178—180. https://doi.org/10.47643/1815-1337_2021_1_178 (in Russian).
Болдырев С.Н. Юридическая техника в обеспечении эффективности права // Право и государство: теория и практика. 2021. № 1(193). С. 178—180. https://doi.org/10.47643/1815-1337_2021_1_178
- Cherdantsev, A.F. (2001) *Theory of Government and Rights*. Moscow, Yurayt Publ. (in Russian).
Черданцев А.Ф. Теория государства и права. М.: Юрайт, 2001. 429 с.
- Chernenko, A.K. (1997) *Philosophy of Law*. Novosibirsk, Nauka Publ. (in Russian).
Черненко А.К. Философия права. Новосибирск: Наука, 1997. 153 с.

- Chervonjuk, V.I. (2010) Legal drafting technologies (“law engineering”): methodological value, nature, relationship with legal drafting technics, the status in jurisprudence system. *Vestnik of Moscow University of the Ministry of Internal Affairs of Russia*. (5), 189—194. (in Russian).
Червонюк В.И. Юридические технологии («правовая инженерия»): методологическое значение, природа, соотношение с юридической техникой, статус в системе правоведения // Вестник Московского университета МВД России. 2010. № 5. С. 189—194.
- Davydova, M.L. (2009) *Legal technique: problems of theory and methodology*. Volgograd, VolGU Publ. (in Russian).
Давыдова М.Л. Юридическая техника: проблемы теории и методологии. Волгоград: Изд-во ВолГУ, 2009. 318 с.
- Derevniin, A.A. (2001) On the concept of legal drafting technique. *Academic Law Journal*. 3(5), 27—33. (in Russian).
Деревнин А.А. О понятии юридической техники // Академический юридический журнал. 2001. № 3(5). С. 27—33.
- Gavrilov, O.A. (1982) Law-making and relevant issues of social development. *Law and law-making: Issues of theory*. Moscow, IGI P AN SSSR Publ., pp. 43—47. (in Russian).
Гаврилов О.А. Правотворчество и актуальные проблемы социального развития // Право и правотворчество: вопросы теории. М.: Изд-во ИГиП АН СССР, 1982. С. 43—47.
- Ihering, R. (1905) *Legal drafting technique*. Translation from German by Schoendorf F.S. Saint Petersburg, Tipo-lit. Rosen A.G. (Landau A.E.) Publ. (in Russian).
Иеринг Р. Юридическая техника / пер. с нем. Ф.С. Шендорфа. Санкт-Петербург, Типо-лит. А.Г. Розена (А.Е. Ландау), 1905. 106 с.
- Kartashov, V.N. (2000) Legal drafting technique, tactics, strategy and technology (to the question of correlation). In: Baranov, V.M. (ed.). *Issues of legal drafting technique*. Nizhny Novgorod, Nizhny Novgorod Academy of the Ministry of Internal Affairs of the Russian Federation, pp. 14—18. (in Russian).
Карташов В.Н. Юридическая техника, тактика, стратегия и технология (к вопросу о соотношении) // Проблемы юридической техники: сб. ст. / под ред. Баранова В.М. Нижний Новгород: Нижегородская академия Министерства внутренних дел Российской Федерации, 2000. С. 14—18.
- Kartashov, V.N. (2007) Legal drafting technology or legal drafting technique? Some methodological aspects of the study. *Juridical drafting techniques*. (1), 16—23. (in Russian).
Карташов В.Н. Юридическая технология или юридическая техника? Некоторые методологические аспекты исследования // Юридическая техника. 2007. № 1. С. 16—23.
- Kashanina, T.V. (2010) Legal drafting technique or legislative drafting technique? *Journal of Russian law*. 3 (159), 171—173. (in Russian).
Кашанина Т.В. Юридическая техника или законодательная техника? // Журнал российского права. 2010. № 3 (159). С. 171—173.
- Kruss, V.I. (2000) Legal Drafting Technique — Legal Hermeneutics — Constitutional Order. In: Baranov, V.M. (ed.). *Issues of Legal technique*. Nizhny Novgorod, Nizhny Novgorod Academy of the Ministry of Internal Affairs of the Russian Federation, pp. 80—88. (in Russian).
Крусс В.И. Юридическая техника — юридическая герменевтика — конституционный порядок // Проблемы юридической техники: сб. ст. / под ред. Баранова В.М. Нижний Новгород: Нижегородская академия Министерства внутренних дел Российской Федерации, 2000. С. 80—88.
- Lazarev, V.V. (2001) Technique for taking into account decisions of the Constitutional Court of the Russian Federation in legislative activity. In: Baranov, V.M. (ed.). *Law-making technique of modern Russia: state, problems, improvement: Materials of the scientific and methodological seminar: collection of articles*. In two vols. Nizhny Novgorod, September 1, 2001. Nizhny Novgorod, Nizhny Novgorod Publishing House. (in Russian).

- Лазарев В.В. Техника учета решений Конституционного Суда Российской Федерации в законодательной деятельности // Законотворческая техника современной России: состояние, проблемы, совершенствование: материалы научно-методического семинара, Нижний Новгород, 1 сентября 2001 года: сборник статей: в 2 томах / под ред. В.М. Баранова. Нижний Новгород: Нижегородское книжное изд-во, 2001. С. 47—58.
- Marshakova, N.N. (2007) Legal drafting technique: concept, types, means, main functions and meaning. *Juridical drafting techniques*. (1), 52—59. (in Russian).
- Маршакова Н.Н. Юридическая техника: понятие, виды, средства, основные функции и значение // Юридическая техника. 2007. № 1. С. 52—59.
- Mironov, A.N. (2007) To the question of the concept and elements of legal drafting technology. *Juridical drafting techniques*. (1), 44—47. (in Russian).
- Миронов А.Н. К вопросу о понятии и элементах юридической технологии // Юридическая техника. 2007. № 1. С. 44—47.
- Muromtsev, G.I. (2000) Legal drafting technique (some theoretical aspects). *Proceedings of Higher Educational Institutions. Pravovedenie*. 1(228), 9—20. (in Russian).
- Муромцев Г.И. Юридическая техника (некоторые теоретические аспекты) // Известия высших учебных заведений. Правоведение. 2000. № 1(228). С. 9—20.
- Muromtsev, G.I. (2001) On some features of law-making technique and methodology of its research in modern Russia. In: Baranov, V.M. (ed.). *Law-making technique of modern Russia: state, problems, improvement: Materials of the scientific and methodological seminar: collection of articles*. In two vols. Nizhny Novgorod, September 1, 2001. Nizhny Novgorod, Nizhny Novgorod Publishing House. (in Russian).
- Муромцев Г.И. О некоторых особенностях законотворческой техники и методологии ее исследования в современной России // Законотворческая техника современной России: состояние, проблемы, совершенствование: материалы научно-методического семинара, Нижний Новгород, 1 сентября 2001 года: сборник статей: в 2 томах / под ред. В.М. Баранова. Нижний Новгород: Нижегородское книжное изд-во, 2001. 543 с.
- Polenina, S.V. (1987) The quality of law and improvement of lawmaking. *Soviet state and law*. (7), 12—19. (in Russian).
- Поленина С.В. Качество закона и совершенствование правотворчества // Советское государство и право. 1987. № 7. С. 12—19.
- Reutov, V.P. (2002) *The functional nature of the system of law*. Perm, Perm State University. (in Russian).
- Рейтов В.П. Функциональная природа системы права. Пермь: Изд-во Перм. гос. ун-та. 2002. 163 с.
- Shakhanov, V.V. (2005) *Legal paradigms*: Abstract of. dis. of Cand. of Legal Sciences. Vladimir. Шаханов В.В. Правовые парадигмы: автореф. дис. ... канд. юрид. наук. Владимир, 2005. 28 с.
- Skryabina, O.G. (2011) Juridical technique: modern methodological approaches. *Bulletin of the Kostroma State Technological University. State and Law: Issues of Theory and Practice (Series "Juridical Sciences")*. 1(1), 46—50. (in Russian).
- Скрябина О.Г. Юридическая техника: современные методологические подходы // Вестник Костромского государственного технологического университета. Государство и право: вопросы теории и практики (Серия «Юридические науки»). 2011. № 1(1). С. 46—50.
- Tarasov, N.N. (2007) Legal drafting technique in the structure of jurisprudence (methodological research issues). *Juridical drafting techniques*. (1), 7—11. (in Russian).
- Тарасов Н.Н. Юридическая техника в структуре юриспруденции (методологическое проблемы исследования) // Юридическая техника. 2007. № 1. С. 7—11.
- Tikhomirov, Yu. A. (2007) Legal drafting technique — a tool for lawmaking and law enforcement. *Juridical drafting techniques*. (1), 12—15. (in Russian).

- Тихомиров Ю.А.* Юридическая техника — инструмент правотворчества и правоприменения // *Юридическая техника*. 2007. № 1. С. 12—15.
- Uspensky, L. (1927) *Essays on legal drafting technique*. Tashkent, Sredazkniga Publ. (in Russian).
- Успенский Л.* Очерки по юридической технике. Ташкент: Средазкнига, 1927. 219 с.
- Ushakov, A.A. (1963) On the method of legal drafting technique. *Uchenyye zapiski: Juridical sciences. Scientific notes of the Perm University*. 104(1), 101—118. (in Russian).
- Ушаков А.А.* О методе юридической техники // *Ученые записки: Юридические науки. Ученые записки Пермского университета*. 1963. Т. 104. Ч. 1. С. 101—118.
- Yukov, M.K. (1979) The legal drafting technique in law making. *Proceedings of Higher Educational Institutions. Pravovedenie*. (5), 45—49. (in Russian).
- Юков М.К.* Место юридической техники в правотворчестве // *Известия высших учебных заведений. Правоведение*. 1979. № 5. С. 45—49.
- Voevodin, L.D. (1997) Legal Drafting Technique in Constitutional Law. *Moscow University Bulletin. Series 11. Law*. (3), 4—7. (in Russian).
- Воеводин Л.Д.* Юридическая техника в конституционном праве // *Вестник МГУ. Серия 11: Право*. 1997. № 3. С. 4—7.
- Vlasenko, N.A. (2001) *Legislative technology: theory, experience, rules*. Irkutsk, Vost.-Sib. Publishing House. (in Russian).
- Власенко Н.А.* Законодательная технология: теория, опыт, правила. Иркутск: Вост.-Сиб. кн. изд-во, 2001. 144 с.

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