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ASPECTS OF FORENSIC LINGUISTICS: A SHORT OVERVIEW OF THE EXTERNAL AND UKRAINIAN DEVELOPMENT

АСПЕКТИ СУДОВОЇ ЛІНГВІСТИКИ: КОРОТКИЙ ОГЛЯД ЗАРУБІЖНОГО ТА УКРАЇНСЬКОГО РОЗВИТКУ

Abstract. The article deals with the analysis of the main aspects of forensic linguistics and a short overview of the development of external and Ukrainian linguistic forensics. The research presents the key elements of forensic linguistics, covering it as a whole discipline, its history and development, both abroad and in Ukraine, problematic issues, and features of the development of the theory of linguistic forensics, use of linguistic evidence in court cases. In addition, the attention is drawn to the different views of both foreign and Ukrainian researchers of linguistic forensics as a specialised linguistic study of textual materials, other language objects, as well as non-verbal means of communication. Summarising different views on forensic linguistics, it is indicated that forensic linguistics in Ukraine is a relatively new branch of science in contrast to the countries where common law is applied, and where the field of forensic linguistics began to develop much earlier than in Ukraine.

Key words: forensic linguistics, forensics, legal linguistics, law, legal language, development of forensic linguistics.

Анотація. Статтю присвячено аналізу основних аспектів судової лінгвістики, а також короткому огляду розвитку зарубіжної та української лінгвістичної судової експертизи. У дослідженні представлені ключові елементи судової лінгвістики, що охоплюють її як цілісну дисципліну, її історію та розвиток як за кордоном, так і в Україні, проблемні питання й особливості розвитку теорії судових лінгвістичних експертиз, використання лінгвістичних доказів у судових справах. Крім того, приділена увага різним поглядам як зарубіжних, так і українських учених на лінгвістичну експертизу як спеціалізоване мовознавче дослідження текстових матеріалів, інших мовних об'єктів, а також невербальних засобів комунікації. У процесі узагальнення різних позицій і думок щодо судової лінгвістичної експертизи встановлено, що судова лінгвістика в Україні є відносно новою галуззю науки, на відміну від країн, де застосовується звичайне право та де галузь судової лінгвістики почала розвиватися значно раніше, ніж в Україні.

Ключові слова: лінгвістична експертиза, судова експертиза, юридична лінгвістика, право, юридична мова, розвиток лінгвістичної експертизи.

Articulation of issue. In the last decades, forensic linguistics has experienced a rapid development as a science, the key purpose of which is to bridge the existing

gap between law and linguistics. Considering the latest trends in the field, forensic linguistics has become a well-defined and established discipline in many countries. However, there is a quite long period in the USA and Great Britain, when forensic linguistics was not a separate field. It was so till the beginning of the sixties and eighties of the 20th century when judicial lawyers and judicial police and related professionals started to identify the need of integrating linguistics into the judicial system so that they could utilize their expertise to shed light on issues relating to language and law. As to the development of the forensic linguistics milestones in Ukraine, it should be underlined that the common term “legal linguistics” was used, and it was defined as an interdisciplinary science dealing with the language of legal theory and practice. The tasks of “legal linguistics” included the issues of the language of legislation, authorship of written documents, analysis of recorded speech and other products of communication, etc. Considering these aspects, it would be useful to underline all the main aspects of the development of this forensic study in different systems of law.

Analysis of the recent researches and publications. The issue of forensic linguistics is under the study of a number of scientists of so-called English-speaking countries. The most prominent scientists in this field are G. McMenamin, J. Olsson, D. Masaitien, A. Davies, C. Elder, R. Shuy, M. Coulthard, A. Johnson, R. Haigh, J. Luchjenbroers, J. Gibbons, and others. They studied the issues of forensic linguistics, its development, features of applied linguistics, main peculiarities of the written and spoken language and ways of its study, etc.

Regarding the Ukrainian forensic linguistics, a significant contribution to the development of the study of written language was made by such forensic scientists as L. Arotsker, S. Potapov, M. Sehai, S. Tykhenko, and others. The authors studied the issues of analysis and use of signs of written language. The works of L. Arotsker and S. Vul defined the subject, purpose, and task of forensic linguistics (author's research). The publication of the Kharkiv scientists, L. Arotsker and V. Voinov in 1966 became the impetus for the development of the scientific foundations of forensic linguistics (author's research) [1]. The authors consider the written language as an object of the author's research and indicate the fundamental opportunity to use the set of statistical parameters of the text as one of the methods for identifying the authorship. The modern stage of forensic linguistics is the scope of studies of the following Ukrainian scientists: T. Budko, L. Azhniuk, B. Azhniuk. The authors focused on the up-to-date issues of forensic linguistics and their solutions.

Purpose statement. The purpose of this paper is to describe the development of forensic linguistics, trends, methods, and application of forensic linguistics in the last period. Additionally, the article describes the factors contributing to the growth of this discipline and their current impact on justice.

Materials and methods. John Olsson made a significant contribution to the research of forensic linguistics. The scientist stated that “Forensic linguistics, legal

linguistics, or language and law is the application of linguistic knowledge, methods, and insights to the forensic context of law, language, crime investigation, trial, and judicial procedure. It is a branch of applied linguistics. Forensic linguistics is the interface between language, crime, and law, 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” [2].

The other point of view states that forensic linguistics involves the application of scientific knowledge to language in the context of criminal and civil law. Forensic linguists are concerned with understanding the language of the written law, its complexity, and its origin, as well as the use of language in forensic procedures. Forensic linguistics is commonly defined as application of linguistic knowledge and methods to various legal issues as part of legal proceedings or private disputes, which may potentially result in a legal action [3, p. 94].

The term “forensic linguistics” was used for the first time by the linguistics professor Jan Svartvik (1968) in his book “The Evans Statements: A Case for Forensic Linguistics”, and it was used in the analysis of statements by Timothy John Evans. In this book, he demonstrated that the disputed and incriminating parts of a series of four statements, which had been made to police officers by Timothy Evans about the deaths of his wife and baby, daughter, had a grammatical style measurably different from that of uncontested parts of the statements, and thus a new field of forensics was born. It is interesting that the term “forensic English” was used by Philbrick (1949) almost 20 years earlier in the title of his book on legal English, *Language and the Law: The Semantics of Forensic English*, but that phrase was never taken up [4, p. 5]. So, in the second half of the 20th century in the English-speaking countries, linguistic methods started to be used for the authorship identification and securing suspects’ rights before and during an interrogation.

In the 1980s, the Australian linguists discussed the application of linguistics and sociolinguistics to legal issues. They discovered that such a phrase as “the same language” is open to interpretation. The Federal Criminal Police Office (BKA) Germany arranged a two-day conference in forensic linguistics in 1988. The First British Seminar on Forensic Linguistics was held at the University of Birmingham in 1992 and was attended by the delegates from Australia, Brazil, Ireland, the Netherlands, Greece, Ukraine, and Germany as well as the UK. Moreover, the first MA course in forensic linguistics was introduced at Cardiff University in 1999, and the Centre for Forensic Linguistics was established at Birmingham’s Aston University to cope with the increasing demand for forensic linguistic skills in 2008 [5, p. 55–75].

Another powerful driving force, which stimulated the development of forensic linguistics, originates from the peculiarities of legal language that is often referred to as legalese. As indicated by Rupert Haigh, legal English, with vast borrowings

from Latin and French, is characterised by a complex syntax, insufficient punctuation, foreign phrases, Latin words, unusual pronouns and set phrases, archaisms, and technical terms [6, p. 2–3].

Forensic linguistics has now come of age as a discipline. It has its own professional association “The International Association of Forensic Linguists”, founded in 1993. This is a professional organisation consisting primarily of linguists working in the fields related to the area of language and law, or forensic linguistics. Since the year 2021, it is called the International Association for Forensic and Legal Linguistics (IAFLL). The IAFLL holds biennial international conferences and edits the International Journal of Speech, Language and the Law (formerly Forensic Linguistics), a peer-reviewed journal that publishes articles on any aspect of forensic language, speech and audio analysis [7].

Different views on this discipline appeared due to the development of forensic linguistics. A short overview of some of them is to be presented. Mostly, these views would be applied to the English-speaking countries, where this discipline originates.

Scientist G. McMenamain argues, “Forensic Linguistics is the scientific study of language as applied to forensic purposes and contexts”. It is not purely based on traditional studies of language, which might leave many cases open-ended. Statistics, subjective and objective points of view in addition to top-down and bottom-up approaches are all valid techniques in forensic linguistics as long as solid evidence and palpable results are achieved. Science as such, whether primary or advanced, the substance of forensic linguistics since linguistics, in broad terms, is considered to be the scientific study of language [8, p. 67].

R. Shuy, a prominent linguist, disputes that “a good way to test a potential of a publishable book or article is first to give a presentation on it at academic meetings such as the International Association of Forensic Linguistics, the Linguistic Society of America, the American Dialect Society, the American Association of Applied Linguistics, the International Pragmatics Association, and many others. Conference papers beget journal articles, and clusters of journal articles beget books on the same theme. The more your curriculum vitae displays peer-reviewed and accepted articles on forensic linguistics, the more you are considered an expert forensic linguist” [9, p. 123].

Scientists Malcolm Coulthard and Alison Johnson believe that “forensic linguistics has now come of age as a discipline. It has its own professional association, The International Association of Forensic Linguistics, founded in 1993; its own journal, International Journal of Speech, Language and the Law, founded in 1994; and a biennial international conference” [10, p. 2].

John Olsson and June Luchjenbroers widen the scope of forensic linguistics and determine that “forensic linguistics is not a single science or study, but an umbrella discipline composed of many facets. Thus, any forensic linguistic enquiry or

investigation can draw upon any branch of theoretical or applied linguistics in order to analyse the language of some area of human life, which has relevance to the law, whether criminal or civil. The discipline is mainly populated by academics, there being few full-time practitioners. Forensic linguists are consulted by lawyers <...> Sometimes, rarely, a judge will seek an opinion on a forensic linguistic matter and the linguist will be appointed by the court” [11, p. 16].

In addition, John Olsson believes that “forensic linguistics began life as an instrument to correct miscarriages of justice”. It is not intended to be with one party against the other, rather intended to correct criminal as well as judicial mistakes. It is not only crime scenes and court pleadings. Olsson comments, “Forensic linguistics is not all hate mail cases. Every day brings a unique enquiry: the father who wants to know if the letter he has received from his daughter is really in her style, the mother who is concerned her teenager’s writing is becoming influenced by “gang speak”, the insurance company trying to identify a fraudster’s voice from among several possible clients, the police detective trying to interpret a coded letter from a prisoner to an accomplice, the prisoner who claims innocence, the solicitor working on an appeal for her client, the employee who feels his bosses are trying to frame him by saying he wrote an anonymous email” [12, p. 4–5].

John Gibbons and M. Turell state, “Forensic linguistics, in its now widely accepted broader definition, has many aspects. Major areas of study include the written language of the law, particularly the language of legislation; spoken legal discourse, particularly the language of court proceedings and police questioning; the social justice issues that emerge from the written and spoken language of the law; the provision of linguistic evidence, which can be divided into evidence on identity/authorship, and evidence on communication; the teaching and learning of spoken and written legal language; and legal translation and interpreting” [13, p. 1].

M. Halliday and J. Webster point that forensic linguistics focuses on the notion of enabling, which denotes two things; regulating texts in linguistic discourses of the law and reporting them in the courtrooms. It also focuses on texts that are used in investigative purposes, as in the linguistic investigations of authorship [11, p. 38].

According to Guy Cook, forensic linguistics is “the deployment of linguistic evidence in criminal and other legal investigations, for example, to establish the authorship of a document, or a profile of a speaker from a tape-recording” [12, p. 128].

James Simpson decides that “one cannot investigate language in any setting or system without first understanding significant and sufficient aspects of phonetics, phonology, morphology, syntax, semantics, sociolinguistics, pragmatics, discourse and so on and without being willing to push the boundaries of one’s knowledge according to the challenges presented by the data and contexts encountered” [13, p. 148].

However, John Olsson states that alongside with procedural use of linguistic evidence, in its broadest sense forensic linguistics studies any use of language in a legal

setting, including the language of legislation, cross-cultural and bilingual communication, interaction of legal professionals with laypeople in and out of the courtroom [14].

In the book “Forensic Linguistics”, M. Coulthard and A. Johnson made a significant distinction between written and spoken language of law, and therefore they also underlined the expert linguist’s role. According to the authors, brevity made written statements to be considered as the main references during subsequent investigations, meaning written statements shape the evidence in the legal system [15]. Similar arguments were made by Scientist Flowerdew. He argued that the deployment of linguistic theory and methods in addressing legal questions would be a unique sense through which forensic linguistics would be considered an applied science, where different linguistic procedures could be applied in analysing a language sample in the legal proceeding [16].

The reliance of linguistics on a broad spectrum of law is based on the understanding of how an average person can recognise a specific language made by speakers or writers during a conversation or in a written text. This may be achieved through establishment of structures that explain how the language is constructed in the court to help explain an issue based on the sentence structure and phrase [17].

Summarising, it can be stated that in the legal system forensic linguistics applies linguistic techniques and knowledge to the language implicated in private disputes that has a potency to escalate into a legal action and legal proceedings or cases.

Obviously, the Ukrainian modern forensic linguistics is characterised by its development in the context of a new scientific paradigm that defines the state and achievements of the global linguistic idea. Regarding the situation in Ukraine, the formation and development of this type of forensics proceeded phenomenally quickly, in the face of the highest need for practice in attracting the special knowledge of linguists, a shortage of professional expert personnel, a lack of expert methods, and a massive supply of everyday and “classic” philological knowledge on the expert services market. In Ukraine, in the scholarly literature, the term “legal linguistics” is used to refer to the area of studies, which investigates the legal language and communication. Legal linguistics is defined as an interdisciplinary science, which deals with the language of legal theory and practice [18, p. 32]. The goals of legal linguistics include the issues of the language of legislation, authorship of written documents, analysis of recorded speech and other products of communication, specifics of the courtroom discourse, which correlates with a wider interpretation of the objectives of forensic linguistics by some prominent western scholars [19].

In Ukraine, forensic linguistics or legal linguistics explores a variety of subjects ranging from lexical, stylistic, and pragmatic features of legal discourse and its subtypes to the history of the language of law. Alongside with the theoretical issues, it tackles practical tasks, which include the performance of forensic linguistics to be used in crime investigation and in court.

In accordance with the Instructions on the Appointment and Conduct of Forensic Examination and Expert Analysis issued by the Ministry of Justice of Ukraine in 1998, forensic linguistics is a type of forensics, which may be appointed. The subject matter of forensic linguistics is a speech or written language, which may be live or recorded. The scope of tasks a forensic linguistic examination is applicable to includes the analysis of proper names, slogans, texts of advertisements, company names in order to establish similarity; identification of emotional colouring of texts, and the degree of their impact on the addressee; resolution of problems stemming from multiple interpretations of legal texts when different interpretations may result in different legal ramifications; evaluation of discourse in light of the existing speech norms and principles [20].

Generally speaking, forensic linguistics is an independent type of expert examination, the subject of which is facts (circumstances) that are significant for a criminal or civil case and are established basing on a speech analysis.

The object of forensic linguistics is speech activity products (from a single word to a whole text or a group of texts), recorded in writing (including recorded verbal texts).

The forensic linguistic expert examination is based on different types of linguistic analysis, such as semantic, grammatical, spelling, and therefore philological education is fundamental for experts working in this field. However, it should be emphasised that methods of psychological, graphological and other types of analysis are also used, if necessary, as part of a comprehensive examination. It should also be noted that the term “linguistic expert examination” has established itself in common use over the past few years. The quantitative growth and emergence of new types of court proceedings related to the oral activity required a single and understandable name, which is now used as the term “forensic linguistic expert examination”, and which already had a generally accepted foreign language analogue “forensic linguistics”, as already mentioned above.

Regarding the tasks forensic linguistics is expected to perform as well as the types of data it deals with, there are three major types of forensic linguistic expert examination: general, detailed and enhanced expert examination. General forensic linguistic expert examination aims at analysing the degree of the text correspondence to the existing norms of the language and providing relevant corrections. Detailed forensic linguistic expert examination is applied when it is necessary to avoid multiple interpretations of a legal document, for instance, in the text of a contract or in the translation of legislative documents. Enhanced forensic linguistic expert examination may be called for in cases of disputes caused by the specific use of words in a specific context [21, p. 155].

The Ukrainian scientist, L. Azhniuk, has offered another typology of forensic linguistics. She stipulates the following major types of forensic linguistic analysis:

1) expert examination of disputed legal documents; 2) expert examination in the cases of protection of dignity and reputation of an individual or a business; 3) expert examination in the cases of violence, national security, stirring up inter-ethnic hostility; 4) expert examination in the cases of threats, blackmail, and extortion; 5) expert examination in the cases of fraud; 6) expert examination of documentary records of proper names; 7) expert examination in the cases of registered trademark protection [22, p. 15].

In addition to the application of forensic linguistic expert examination to the analysis of legislation texts or the data used as evidence in court, the range of tasks of forensic linguistics in Ukraine may be expanded to resolve the problems of text authorship identification as cultural phenomena, the impact of texts on social norms and values, and expert analysis of the effectiveness of advertising texts and user manuals [23, p. 222–223].

Conclusions. To summarise the aforementioned, it should be noted that forensic linguistics in Ukraine is a relatively new field of science, unlike countries where common law is applied, and this branch has been developing for many years. The history of the emergence and development of forensic linguistics as a branch of applied linguistics in Great Britain and the United States shows the most significant findings of prominent scholars in the field of forensic linguistics. In the case of Ukraine, the practical application of forensic linguistics is referred to as forensic linguistic expert examination, which stemmed from the authorship analysis but is gradually expanding its sphere of use to include the issues of national security, protection of non-proprietary rights of an individual, intellectual property rights protection. However, the growing importance and application of forensic linguistics are vital both in common law countries and Ukraine.

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