

MERIKE RISTIKIVI, Tartu

Ars et termini artis

Practical Issues in Application of Latin Legal Terms

*The article discusses the accuracy of the form and content of Latin legal terms. Law is a field where linguistic means of expression are of utmost importance. This discipline operates directly through language. The material analysed comprises the terms collected from the law review *Juridica* (published since 1993). The time period looked at in the given research has been a decisive era in the development of Estonian law: it is characterised by turning back to the Western legal environment which largely depends on the Latin language. The legal reform in Estonia has been accompanied by changes in the usage of terms by Estonian lawyers. The integration of Estonian legal language into European legal culture is reflected by a relatively high increase in the usage of terms in Latin. At the same time, there occur several problems when Latin terms are employed.*

Introduction

When legal terminology is analysed, attention is often drawn to the ponderousness and complexity of the wording of juridical texts, and the necessity to compile materials in a clear, concise, unambiguous and comprehensible language is emphasised.¹ A lucid and understandable text must not, however, be written in an incompetent and oversimplified manner. Juridical terms uphold and formulate the body of concepts in this field; they constitute the basic elements of expression for the object and content of the topic,² and as such they are an integral part of law. In this respect, one key issue is the abundance of terms originating from Latin used in legal language as unadapted foreign words. Thus we may ask: do the Latin terms in modern legal language specify the meaning and help the reader to understand or render the texts incomprehensible?

The spread and principles of usage of Latin legal terms in the contemporary world have been determined by the following conditions deriving from historical development, the linguistic economy of Latin terms and their effectiveness in professional discourse. Latin has a strong historical connection with the development of European law: the major part of the legal literature until the past few centuries was written in Latin. Latin terms are also intensely economical; often it is not possible to translate the term word-to-word and the translation into modern languages can easily expand to double its length.³

In recent decades it has been emphasised that Latin legal terminology has been gradually becoming more important as regards the understanding and communication between lawyers representing different languages and legal systems.⁴ It is also observed that the use of Latin expressions facilitates unifying the European judicial system and makes juridical literature

¹ ASPREY, Plain Language; KUKK, Õiguse keel; MELLINKOFF, Language of Law; OKSAAR, Alltagsprache.

² EREL, Oskuskeel 26; KULL, Kirjakeel 95.

³ RISTIKIVI, Latin terms 14.

⁴ BENKE, MEISSEL, Juristenlatein 10.

internationally understandable.⁵ Therefore, avoiding any Latin terms in legal texts would be unjustified and impractical. The problem of lucidity and intelligibility arises when the terms are used incorrectly in a legal text.

The material for the study in the present article comprises the terms collected from the Estonian law journal *Juridica*, published since 1993.⁶ This particular period is of interest first and foremost due to the substantial changes in the development of the state and law in Estonia. After the Republic of Estonia regained her independence in 1991, a radical legal reform followed, which can be characterised in brief as abandoning the former Soviet law and becoming part of the Western legal environment, which largely depends on the Latin language. In this era, also the accession of the Republic of Estonia to the European Union took place (on 1 May 2004). This, in turn, has brought along the application of European law and the rulings of the European Court of Justice within the context of the laws of the Estonian state. The legal reform in Estonia has been accompanied by changes in the usage of terms by Estonian lawyers. In the periodical *Juridica*, the integration of the Estonian legal language into European legal culture is reflected by a relatively great increase in the usage of terms in Latin, both in the sense of the general occurrence of terms and with regard to the adoption of numerous new Latin terms.⁷

The usage of Latin terminology provides an opportunity to assess the educational level of lawyers and situation of legal culture, including the quality of legal education. That is, we can appraise the quality of the preparation of Estonian lawyers, as their usage of Latin legal terms depends on that preparation. During the period

under observation, new textbooks were compiled and published in Estonia addressing virtually all aspects of law, which familiarize law students with European legal traditions and teach them the usage of terminology. In acquisition of technical terminology, a central factor is that a basic course on Roman private law is a compulsory subject for Estonian law students, and closely linked to that course are the special juridical Latin classes.

At the same time, the majority of the authors of *Juridica* belong to a generation for whom classical studies were not officially available at Estonian universities. Study of the speciality of classical philology was abandoned at the University of Tartu in 1954 and resumed in 1990.⁸ Roman law was taught, but the academic research tradition in this field had been interrupted. Since the vocabulary acquired at university was largely of general language rather than professional legal terminology, in practice the efficiency of learning and understanding the terms pertaining to Roman law and other areas of law left to be desired. Virtually a whole generation of lawyers

⁵ KNÜTEL, *Rechtseinheit* 251.

⁶ *Juridica*. Journal of the Faculty of Law, University of Tartu. Tartu 1993-. See also www.juridica.ee

⁷ About Latin terms in the language of today's lawyers see RISTIKIVI, *Lexica iuridica*.

⁸ The abolition of classical philology cannot be explained by the official ideology only, as Classics continued to be taught at universities in Moscow, Leningrad [St. Petersburg], Kiev and Tbilisi. Also in Lithuania, Classical studies were kept alive thanks to very strong (catholic) cultural traditions. Classical philology did not pose a direct ideological threat, since it was not anti-Soviet. In Estonia, both subjective as well as local and objective reasons brought about the change. What was significant was that in studying and researching antiquity, it was possible to be directly in contact with western thought and culture. All similar fields of study vanished in Estonia during the Soviet time. Another significant cause was that within a limited range of means and possibilities first those subjects were closed which were considered to be dispensable because they seemed too impractical and not directly sympathetic to the ideological cause of the regime. More about teaching Classics at Tartu University during the Soviet era see LILL, *Kakssada aastat* 11–12.

failed to receive systematic and methodical instruction in professional terminology in Latin.⁹

Subsequently, on the one hand, the rearrangements in the Estonian legal system compelled the Estonian lawyers to include in their usage of legal language those Latin terms that have become rooted in the legal tradition of Europe. On the other hand, the knowledge of Latin of many authors of legal texts has been inadequate and unsystematic. The analysis in this article focuses on the orthography of Latin legal terms, and the peculiarities of it. I will highlight the problems repeatedly encountered in the articles of Estonian lawyers: knowing or recognising the Latin inflexions; the most frequent mistakes in the spelling of Latin expressions, and errors in the agreement of gender and case endings.

Mistakes in orthography

Jurisprudence is a science based on text where the terminology has a particularly significant impact. Words or expressions acquire juridical power directly through language, which is why terminological accuracy is of high importance. The desired accuracy in professional communication is achieved with Latin terms whose meanings have developed in centuries and are not so easily affected by changes in nuances of meaning, which is characteristic of modern languages. The required precision is not achieved by incorrect usage of Latin terms.

The orthography, or spelling, of Latin terms proves to be the most common problem. In journal *Juridica*, there are mistakes in the spelling of compound words as well as in the use of vowels and consonants. Such mistakes do not necessarily occur in writing less known or seldom used terms – incorrect spelling is also

found in expressions which according to numerical data occur frequently and ought to be part of the general vocabulary of lawyers.

It is generally accepted that Latin legal terms may have variants as regards writing words and prepositions as one or two words, e.g. *iuris prudentia* and *iurisprudentia* ('jurisprudence'). A combination of a verb and a declinable word, for instance *respondeat superior* used in an article in *Juridica*, must definitely be written as two words, though: *respondeat superior* ('a superior person shall be responsible'). The combination of the negative particle, a numeral and a preposition must also be spelt separately in Latin, for example *ne bis in idem* ('not twice for the same thing') instead of *nebis in idem*.

In the usage of vowels the letters *a* and *o* often get mixed up in *Juridica*, e.g. *ultim \bar{o} ratio pro ultim \bar{a} ratio* ('last resort'); *culpa levissim \bar{o} pro culpa levissim \bar{a}* ('the slightest fault'). In the example *vocatio legis pro vacatio legis* ('absence of law', i.e. the period between the proclamation of an act and the moment it enters into force) the mistake made by the user changes the meaning of the term: while *vacatio* means 'lack, absence', *vocatio* stands for 'calling'. Relying on the context we concluded that the author did not intend to use the term in the latter meaning. *Juridica* contains other mistakes in the usage of letters, too, such as *sine qua non pro sine qua non* ('indispensable condition')¹⁰ and *sensus verbor \bar{e} m est anima legis pro sensus verbor \bar{u} m est anima legis* ('the meaning of words is the spirit of the law').

In several instances the pronunciation of the legal term causes the insecurity of the author in using it and the resulting spelling mistakes. Since the beginning of the 19th century, there have been two approaches to the pronunciation

⁹ In brief about the condition of Latin at Tartu University during the Soviet era see RISTIKIVI, Terminological Turn 176.

¹⁰ The shortened form of the term *conditio sine qua non* 'indispensable condition', i.e. an indispensable requirement without which the result cannot be achieved.

of Latin.¹¹ The so-called classical approach follows the pronunciation of Ancient Rome which as a rule does not have differences in the spelling of the word and the way it is spoken (*ti* [ti], *c* [k]). The other, traditional approach favours the pronunciation which had spread by the 4th century during the late Latin period and which became the basis for the Romance languages that developed from Latin. According to this approach, the pronunciation of certain sounds and sound combinations differs from the spelling (e.g. *c* [ts], *ti* [tsi]). In Estonian cultural environment, classical pronunciation is recommended when Latin is studied with the purpose of learning about the Ancient times and reading the texts by ancient authors. But when juridical or medical terminology is studied, it is advisable to follow the traditional pronunciation which better reveals the connections between Latin and foreign words, e.g. Latin *obligatio* – in Estonian: *obligatsioon* ('obligation'), Latin *ius civile* – in Estonian: *tsiviilõigus* ('civil law').

The mistakes in the usage of consonants in the articles in *Juridica* primarily concern the letters whose pronunciation is different from spelling and similar to the pronunciation of another letter. Similarly pronounced and most problematic are *c* and *s*, *q* and *g*, *q* and *c*, *t* and *d*, for instance *ius est ars boni et aequi* pro *ius est ars boni et aequi* ('law is the art of the good and the just'); *lucrum sessum* pro *lucrum cessans* ('ceasing gain'); *numerantur sententiae, non ponderantur* pro *numerantur sententiae, non ponderantur* ('votes are counted not weighed'); *qui prodest* pro *cui prodest* ('who benefits (from it)'). The error in the latter

example alters its meaning: *qui prodest* should be translated into Estonian as '*kes vői mis on kasulik* (who or what is useful)', as the pronoun is in the nominative case, but in the original it is in the dative.

The rule concerning unadapted foreign words and expressions says that those should be spelt like in the original language.¹² However, in the articles in *Juridica* incorrect forms are to be found, in the writing of which the authors have relied on the pronunciation in Latin. Namely, in Estonian, the letters *c* and *x* are not used. In foreign words, the corresponding sounds are represented by *-ts* and *-ks* (e.g. *spetsiaalne* 'special', *ekspress* 'express'). In *Juridica*, some errors occur which reveal the authors' habit of writing down words according to their pronunciation, as in Estonian. For instance, *ekspressis verbis* pro *expressis verbis* ('explicitly'); *lex specialis* pro *lex specialis* ('special statute'); *sine periculo sotsiali* pro *sine periculo sociali* ('without danger to society'). Yet, the terms *expressis verbis* and *lex specialis* are among the most frequently used legal terms in the publications, so we cannot see a correlation between the accurate usage of the term and its being well-known. It must be mentioned, though, that these mistakes were made in the early years of publication of *Juridica*, i.e. in the period of "re-westernisation" of Estonian law, and in later years such errors did not occur.

Gender and case forms and prepositions

In the articles of *Juridica*, errors can be detected in the case and gender forms of Latin legal terms and the use of prepositions. These errors are an indication of the difficulties faced by the users of Latin who are influenced by Estonian language background. For example, the formation of vari-

¹¹ Anglo-American lawyers and jurists follow a different principle, pronouncing Latin according to the pronunciation rules of English. More about this principle of pronunciation of Latin, see KELLY, Lawyers' Latin. See also the instructions for pronouncing Latin terms in: Black's Law Dictionary VII–X. This kind of pronunciation is not common among Estonian lawyers yet, and it does not affect the spelling of Latin terms.

¹² About the principles of using foreign language items in Estonian see EREL, Ortograafia 16.

ous gender forms and the agreement between those is problematic because the Estonian language lacks the category of gender entirely.

In Latin, the noun and the adjective agree in gender. The Latin word *mos* ('custom') is a masculine noun and requires the masculine form of an adjective. In one article in *Juridica*, however, there is an expression in which the feminine adjectival form has been used: *bonae mores pro boni mores* ('good morals'). A common mistake is the wrong usage of the term *ius* ('right, law'), which is neuter in Latin and combines with the neuter form of an attributive adjective. But in several articles we find masculine and feminine endings in adjectives: *ius naturalis* pro *ius naturale* ('natural law'); *ius scripta* pro *ius scriptum* ('written law'). In *Juridica* we may also see phrases *ius commutativa* pro *ius commutivum* and *ius distributiva* pro *ius distributivum*, apparently derived from *iustitia commutativa* ('commutative justice') and *iustitia distributiva* ('distributive justice').

Nouns and adjectives in Latin always agree in case, too. In the expression *mala fide* ('in bad faith') the headword and the attribute must both be in the ablative case, but in *Juridica* we found the variant *mala fidem*, with the adjective in the ablative and the noun in the accusative. Problems also occur in the usage of the expression *lex posterior derogat legi priori* ('new laws are given preference over old laws'), in which *lex posterior* agrees in the nominative and *legi priori* in the dative singular. In the variant discovered in one article, *lex posteriori derogat leges priori*, several grammar rules have been ignored: there is no agreement between the nominative and the dative of *lex posteriori*; *leges priori* has no agreement in number: here we have the plural nominative combined with the singular dative. In the articles there are several occurrences of the term *stricto sensu* 'in the strict sense' in the incorrect form *strictu sensu*, in which the adjective is used with a noun case ending.

In addition, there are inaccuracies in the use of a Latin preposition and the required case. The preposition *ad* 'at, towards, to' requires the accusative case, but in an article in *Juridica* we see the ablative used: *poena absoluta ad effectu* pro *poena absoluta ad effectum* 'full penalty to gain an effect'. The preposition *ex* 'from, out of' must be used with the ablative, but in one article the genitive has been used: *ex iniuria* pro *ex iniuria* *ius non oritur* 'illegal acts cannot create law'.

In these errors, too, there is no correlation between how widely the term has spread and whether it is used correctly. Several terms were used in incorrect forms, which according to the frequency of usage should be widely known and which might thus be expected to appear in text in the correct form. Taking into account the Estonian language, which lacks the category of gender as well as prepositions, the authors ought to be more attentive to the spelling of foreign terms.

Latin citations in Estonian sentences

In using Latin terms, the most general problem is incorporating citations into the Estonian text. Latin, which is principally a synthetic language, denotes grammatical relationships with the help of suffixes, unlike the major modern languages in Europe, such as English, French, or German, which employ analytic means for that. In Estonian, grammatical relationships are also indicated with inflectional endings, which ought to give the Estonian user of Latin an advantage when writing the terms, as the language systems are similar in this respect and it should enable an Estonian speaker to understand and use the terms in Latin with less effort.

Yet, the research material reveals that the similar principle of grammatical endings applied in both Latin and Estonian is of little help to the

user and the recognisability and comprehensibility of a Latin expression may even be hampered by the alteration of the singular and the plural. Most often this problem arises when using Latin neuter nouns of the 2nd declension ending in *-um* with the plural ending *-a*, such as *pactum*, pl. *pacta* ('pact, agreement'); *argumentum*, pl. *argumenta* ('proof, evidence'); *obiter dictum*, pl. *obiter dicta* ('something said in passing'). The named plural ending coincides with the singular ending of the nouns of the 1st declension: *culpa*, pl. *culpa*e ('guilt, negligence'). Therefore the word *digestum*, pl. *digesta* ('arranging, composing') is often translated into Estonian as *Digestad* (pro *Digestid*), making a mistake in the agreement in the plural, using simultaneously the plural endings of both Latin and Estonian.

A specific type of error occurs when instead of the nominative basic form of the term its genitive stem is written. For example, in *Juridica*, instead of the word *natio* ('nation, people') the form *natiō* has been used: "*Kannavad ju ka kreekakeelne ethnos ja ladinakeelne natiō sama tähendust.*" [The Greek *ethnos* and Latin *nation* carry the same meaning.] Similarly, the stem *iur* has been used instead of the object in the accusative *ius*:¹³ "*Tööjaotust kohtuniku ja protsessiosaliste vahel näitab tabavalt sentents – Narra mihi factum, ego tibi narrabo iur – näita mulle asjaolud ja mina näitan sulle õigust.*" [Division of labour between the judge and the parties to a proceeding is well demonstrated by the maxim *Narra mihi factum, ego tibi narrabo iur* – tell me the facts and I'll tell you the law.] Such mistakes usually occur because a great number of Latin terms (particularly those of the 3rd declension) appear in foreign words and foreign languages on the basis of their stems. The words *natio* and *ius*, too, are known in Estonian and other languages by their stems *nation-* and *iur-* (compare with the Estoni-

an *natsionaalne*, *juuriidiline*; English *national*, *juridical*; German *national*, *juristisch*; French *national*, *juridique*).

Incorporation of two forms of Latin terms – the basic form in the nominative and the ablative adverbial form – into Estonian sentences proves complicated for the authors of *Juridica*. For instance, the Latin terms *ultima ratio* 'last resort' and *lex artis* 'law of the art' are used in text in their basic form in the nominative, not agreeing with the rest of the sentence grammatically: "*Abinõud on halduslikud ning neid kohaldatakse nagu likvideerimistki ultima ratio.*" [The measures are administrative and those will be taken, like abolition, *ultima ratio*.] The ablative form would be more appropriate in this sentence: *ultima ratione* 'as a last resort' or add an Estonian explanatory word in the required form, e.g. *ultima ratio-põhimõttel* ('according to the *ultima ratio* principle'). In the sentence "*Üldtunnustatud on seisukoht, et arst peab ravi läbi viima arstikunsti reeglite kohaselt ehk lex artis.*" [Generally accepted is the viewpoint that a doctor is to treat a patient in accordance with the laws of the art, i.e. *lex artis*.] it would have been more accurate to use the ablative of the term: *lege artis* 'in accordance with the law of the art' or to place the term towards the beginning of the sentence with the necessary Estonian case marker: "*arstikunsti reeglite ehk lex artis'e kohaselt*" [in accordance with the laws of the art, i.e. with *lex artis*].

In the sentence "*Kohus otsustas, et Inglise kohtuotsuses kasutatud mõiste "hästi käituda", see on mitte käituda bonos mores (ld. k. head kombed) vastaselt, mida Inglise õiguses on defineeritud kui käitumist, mis on "enamiku kaasinimeste arvates pigem vale kui õige", on ilmselt ebaselge ega anna piisavat juhust selleks, kuidas tulevikus käituda.*" [The court decided that the concept "to behave well", used in a British court judgement, i.e. not to behave contrary to *bonos mores* (Latin for good morals), which in English law has been defined as behaviour that is "in the opinion of most other people, wrong rather than right", is obviously

¹³ *Ius* 'right, law' is a neuter noun whose nominative and accusative (the object case) forms coincide.

vague and does not give good guidance for future.] the Latin term *contra bonos mores* 'against good morals' is unfinished, as instead of the Latin preposition *contra* the Estonian postposition *vastaselt* is used. The author also added an inaccurate translation of the term: *bonos mores* is the accusative (object case) of 'good morals', which does not agree with the rest of the sentence.

Many mistakes made when incorporating Latin citations into Estonian text in the articles in *Juridica* seem to be attributable to relying on juridical texts in foreign languages and using secondary sources. In German or English text, where grammatical relationships are not always marked with the grammatical forms of the words (declensional or personal endings) the Latin terms agree with the rest of the sentence with the help of auxiliary words. In order to use a Latin term correctly in an Estonian sentence, however, also the inflectional endings in Estonian must be taken into account in addition to the grammatical forms of the Latin words. Avoiding such mistakes and using terms in their accurate form is all the more important when we wish to prevent inaccurate forms from recurring in juridical texts.

Conclusion

The reforms in the Estonian legal system have had the impact on the usage of language and terminology. The integration into European legal culture is reflected by a high increase in the usage of terms in Latin; yet, the usage of foreign language material has caused several practical problems. The study of the accuracy of the form and content of Latin legal terms revealed the characteristic problems that Estonian-speaking users of foreign terminology have. As regards mistakes in orthography, the most conspicuous errors are those conditioned by the peculiarities of Latin pronunciation. In addition, the writing

of letters that look similar may be faulty and the form of unadapted foreign words often appears to be incorrect. In the usage of Latin terms, the most common problem is the conceptual suitability and grammatical agreement of the foreign expressions in the Estonian sentences.

Another issue that arises in connection with journal as research material is the question of language editors and their preparation for recognising and correcting specific Latin terms. A language editor is more likely to recognise and correct, if necessary, the mistakes in the usage of widespread foreign terms. But when very specific, rarely used terms are employed, even legal glossaries may be of no help because the particular expression may not be included. One more difficulty may arise when the author uses a term in some case form but incorrectly. In order to detect such problems, good knowledge of Latin grammar is indispensable. At the same time, the correctness of Latin terms in legal language needs to be paid special attention to because spelling mistakes can change the meaning of the word. In such cases, the usage of Latin terms fails to fulfil its purpose of rendering ideas in a concise and unambiguous way.

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