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Latin: The Common Legal Language of Europe?

In the current debate about European legal integration, it is frequently asserted that for integration of the national systems to succeed, it is necessary to develop a common legal language for Europe. The diversity of legal languages is an obstacle to integration, and therefore the plurality must be eliminated.*¹ This raises the issue of whether Europe can possibly develop a common legal language when it does not even have a common general language.

If we consider the relationship between language and law, we find the common opinion that the language of law differs from most other sub-languages in one important respect: while the language of natural science in particular is a universal language used by scientists across different societal and cultural boundaries*², legal language is culture-bound and intertwined with one particular society and its legal system.

The position of Latin in the development of law

In past centuries, Latin played the role of a common legal language, which was applied across the boundaries of local law. In a way, Latin can be called the common mother tongue of Western European culture, which has influenced the development of all major European languages. Its influence on the development of other languages began with the conquests by the Roman forces, which left their imprint first and foremost on the vocabulary and the syntactic rules of literary language. The Latin language was carried by Roman soldiers, administrators, settlers, and traders to the various parts of their growing empire. Sicily, Sardinia, Corsica, Dalmatia, and the southern and eastern coasts of Spain had been brought under Roman sway by the end of the third century BC, and the expansion continued until with Trajan's conquest of Dacia the Roman Empire reached its greatest extent, including Britain in the far west and the Hellenistic kingdoms in the east, with the northern frontier on the Rhine and the Danube. The consequence was that a common civilisation was developed that varied little from country to country.*³ Latin, the language of the new ruling power, was from this point on the language of government and administration, legislation and the judiciary, trade and army operations.

¹ S. Wright. *A Community That Can Communicate? The Linguistic Factor in European Integration. – Whose Europe? The Turn Towards Democracy.* Oxford: Blackwell 1999, pp. 79–103.

² A.L. Kjaer. *Epistemology and Methodology of Comparative Law.* M. van Hoecke (ed.). Oxford and Portland, Oregon: Hart Publishing 2004, p. 377.

³ L.R. Palmer. *The Latin Language.* London: Faber and Faber 1988, pp. 173–174.

After the collapse of the Roman Empire in 476 AD, Rome lost its political independence, but the significance of Latin, on the contrary, did not lessen. During the Middle Ages and in the Renaissance and Reformation and beyond, Latin was used in particular as the language of the church, education, and scientific realms. Communication between states and nations was conducted in Latin, as was the correspondence of intellectuals and scholars.

The place of Latin in the history of the development of the law in Western civilisation is also notable. The importance of Latin as a legal language may be traced back to 450–451 BC, when the Twelve Tables were created, forming the basis of the subsequent development of Roman law.^{*4} All major sources of our knowledge of Roman law are written in Latin — e.g., the collection of Roman Emperor Justinian known as the *Corpus Iuris Civilis*. This codification had a direct impact on the development of the legal systems of Europe, and it has even been considered^{*5} to be the most influential law book ever written. In addition, Latin was the language of the most prominent works on jurisprudence and legal philosophy, including famous tractates of Cicero, St. Thomas Aquinas, Hugo Grotius, and many others.

English — a new *lingua franca*?

Europe today does not have such a legal *lingua franca*. It follows that lawyers belonging to different legal systems have no shared language. Legal languages are dependent on the legal systems and cultures to which they belong. Therefore, communication between European lawyers is often hindered by language barriers and is typically characterised by misunderstandings caused by differences in legal experience.

For instance, when a French lawyer refers to *contrat*, this concept is radically different from the notion of *contract* in the mind of a common-law lawyer. Superficially, the concepts are the same, but, at the deep level of legal thinking, they form opposite approaches to contract formation.^{*6}

Lawyers from differing speech communities generally use English, but a good command of English is no guarantee of successful legal communication. On the contrary, English is probably the most inadequate language to apply as a legal *lingua franca*, because legal English is the language of Common Law.^{*7}

Likewise, the lack of immediate understanding among Europeans can be remedied by translation only imperfectly, because translation of legal texts is always unidirectional, transferring the legal concepts of the source language's legal systems into another language (the target language).^{*8} Hence, neither English nor legal translation can compensate for the lack of a neutral common ground for international legal communication in Europe. Legal languages are dependent on the legal systems and cultures to which they belong.^{*9}

Tammelo: creation of a methodical artificial language

Ilmar Tammelo in his 'Zur Philosophie der Gerechtigkeit' asserts that languages used for national-level and international communication have proven irrational and deficient for forming expressions that correspond adequately to the meaning desired.

To avoid the linguistic unfairness and constant problems with legal translations, he suggests creating a special methodical artificial language — an ideal language in the form of a 'trans-linguistic' instrument for communication.^{*10}

⁴ D. Tamm. *Roman Law and European Legal History*. Copenhagen: DJØF Publishing 1997, p. 191.

⁵ P. Birks, G. McLeod. *Justinian's Institutes*. London: Gerald Duckworth & Co 1987, p. 18.

⁶ P. Legrand. *European Legal Systems Are Not Converging*. – *International and Comparative Law Quarterly* 1996 (45), pp. 63–64; P. Legrand. *How to Compare Now*. – *Legal Studies* 1996 (16), p. 234.

⁷ A.L. Kjaer (Note 2), p. 384. More detailed description of the problems connected with the use of English as a legal *lingua franca*: M. Weston. *The Role of Translation at the European Court of Human Rights*. – *Protecting Human Rights: The European Dimension*. Köln, Berlin, Bonn, München: Carl Heymanns 1988, pp. 679–689.

⁸ See esp.: S. Sarcevic. *New Approach to Legal Translation*. The Hague, London, Boston: Kluwer 1997; P. Sandrini. *Übersetzen von Rechtstexten*. – *Fachkommunikation im Spannungsfeld zwischen Rechtsordnung und Sprache*. Tübingen: Narr 1999.

⁹ A.L. Kjaer (Note 2), p. 385.

¹⁰ I. Tammelo. *Zur Philosophie der Gerechtigkeit*; reference from: *Õiglus ja hool (Justice and Care)*. R. Narits, M. Luts (eds.). Tartu: Ilmamaa 2001, pp. 31–50 (in Estonian).

Mutual understanding is achievable, irrespective of the linguistic and cultural differences of the communicators, if Latin is used as the neutral and common ground. For grasping the connections between English and other languages, including matters of verbal logic and conceptual extent, basic knowledge of Latin is often essential.*¹¹

The position of Latin in the modern legal literature

The usage of Latin terms and phrases in legal literature has increased markedly over the years, especially in the last couple of years. From the recent studies concerning the usage of the Latin language in Estonia and Finland*¹² we can see that Latin today retains a certain and firm position in legal writings and terminology. More than 600 Latin terms and phrases are part of the active vocabulary of Estonian and Finnish lawyers, used in rhetoric and for illustrative purposes or as normative arguments with specific juridical information.

The principles of the usage of Latin in Estonia and in Finland are very similar. The words most frequently occurring in legal language are *lex*, *ius*, *corpus*, and *forum*. This is not very surprising, as ‘the law’, ‘the right’, ‘the body’, and ‘the court of justice’ are the basic elements of the law. Similarly, the words that follow on the list correspond to the expectations: *culpa* (‘the fault, the negligence’), *ratio* (‘the reason’), *res* (‘the thing, the object’), *factum* (‘the fact, the deed’), *poena* (‘the punishment’), *crimen* (‘the crime’), *vis* (‘the force or violence’), and *pactum* (‘the pact’).

Commonly used terms and phrases in the legal works examined are *corpus iuris* (‘the body of law’), *lex mercatoria* (‘commercial law’), *de lege ferenda* (‘according to the law it is desirable to establish’), *culpa in contrahendo* (‘pre-contractual liability’), *lex fori* (‘the law of the court’), *de facto* (‘in fact’), *de lege lata* (‘according to the law in force’), *pacta sunt servanda* (‘agreements of the parties must be observed’), *lex specialis derogat generali* (‘a special statute overrules a general one’), *nullum crimen nulla poena sine lege* (‘there should be no crime and no punishment without a law fixing the penalty’), *in dubio pro reo* (‘in the case of doubt, the defendant is to be preferred’, the presumption of innocence), and *ne bis in idem* (‘not twice for the same’ — i.e., a man shall not be tried twice for the same crime).

In addition to juridical terms, commonplace Latin expressions and abbreviations are often used in legal texts: *op. cit.* for *opus citatum* or *opere citato* (‘quoted book, in the quoted book’) *expressis verbis* (‘pointedly’), *ca.* for *circa* (‘about, around’, usually in a temporal context), *sui generis* (‘of its own kind’), *ib.* or *ibid.* for *ibidem* (‘in the same place or book’), *ad hoc* (‘for this, for this special purpose’), *a priori* (‘from the former’), *supra* (‘above, upon’), *prima facie* (‘at first sight’), and many others.

The above-mentioned terms and phrases are not found solely in the legal materials of Estonia and Finland. Also, even more Latin terms can be found in the languages used by Western European lawyers, especially German. More precisely, many new Latin terms have been created in recent years — for example, *Societas Europaea* and *fumus boni iuris*, which is in use in the European Court of Justice.

Polysemy

Language, the instrument for communication, is created, adapted, and refined in response to the manifold and ever-changing demands of society and the environment in which it is set.*¹³ Accordingly, it must be noted that the traditions of the usage of Latin can vary a lot among major legal cultures. The difference is distinguishable between Latin terms as applied in Common Law and Continental Law. For example, the term *exitus* comes from the Latin word *exire* (‘to go out or away’). In Continental Law it signifies ‘the death’; dictionaries of Common Law, on the contrary, denote the meaning as ‘the children, offspring; the rents, issues, and profits of lands and tenements; an export duty; the conclusion of the pleadings’.*¹⁴

¹¹ A. Lill. Ladina keel õiguskeele alusena (Latin as the basis of legal language). – Õiguskeel 1996/4, p. 11 (in Estonian).

¹² M. Ristikivi. Ladina keel ajakirjas Juridica 1993–2002 (Latin in the Journal Juridica 1993–2002). – Juridica 2003/10, pp. 727–732; H.E. S. Mattila. Latinet i den finländska juridiska litteraturen. – Tidskrift utgiven av Juridiska Föreningen i Finland 2000/3, pp. 269–322; on the results of the research also: H.E.S. Mattila. Vertaileva oikeuslingvistiikka. Helsinki: Kauppakaari Lakimiesliiton Kustannus 2002, pp. 227–236.

¹³ L.R. Palmer (Note 3), p. 95.

¹⁴ *Exitus* – Black’s Law Dictionary by H.C. Black. 6th edition. by the publisher’s editorial staff; J.R. Nolan et al. (eds). St. Paul, Minnesota: West Group 1998, p. 574.

As most of the legal terms and phrases in Latin were adopted more than two thousand years ago, it is understandable that their meaning has changed over the centuries. For example, the term *ius civile* ('civil law') has numerous meanings. First, there are oppositions even within Roman law itself. There, *ius civile* refers to the portion of the law peculiar to one state (*civitas*) as opposed to that common to all peoples, the *ius gentium*. A different opposition contrasts the part of the law derived from statutes and juristic utterances against that part of the law based on the edicts of a magistrate, especially the urban praetor (*ius honorarium*).^{*15}

During the time of the Byzantine Empire and the Middle Ages in Europe, the *ius civile* signified Roman law in general. In a wider sense, its meaning was also the positive (in the sense of prescribed) law, in contrast with the divine law (*ius divinum*) and natural law (*ius naturae*).^{*16} The Middle Ages also saw the development of the meaning of the *ius civile* concept as we use it today. At that time, jurisprudence focused on the study of the *Corpus Iuris Civilis*, especially the examination of those passages in which legal relations between private persons were explained. At times, this discourse affected the usage of the term as well. From this derives the meaning of civil law in contemporary Europe — the body of law regulating the relations between private persons.^{*17}

Synonymy

Usage of Latin terms helps us improve and gain better knowledge of our own legal languages. Studies of legal language show that the synonyms are generally spread evenly through terminology, especially in legal translations.^{*18} Usually, except in the Romance languages, the same concept can be expressed both with a foreign word (with the Latin root) and with an 'original' word developed later, an example of this being *delictum* — delict — tort.

In legal language, partial synonymy (so-called quasi-synonymy) is used as well. In this case, particular care must be taken — if the meaning of the words coincides only partly, this may cause misunderstanding and misinterpretation. For example, the term 'agreement' can be expressed in Latin with the following words: *contractus*, *pactum*, *conventio*, *consensus*, and *stipulatio* — all coincide semantically, yet, according to their legal definitions, they are different concepts.

Conclusion

Usage of modern languages in international communication can often create misunderstanding. Therefore, the application of Latin in the position of common legal language of Europe would be effective in many ways, on account of:

- 1) this language's strong historical connection with the development of European law (a major portion of the legal literature until the most recent centuries was written in Latin),
- 2) Latin being an intensely economical language (translation into modern languages easily expands the original text to double its length), and
- 3) its complete and well-formed body of terminology (Latin terms and phrases create a basis for a legal discourse spanning the different legal cultures and various language boundaries of Europe).

The history of a language is nothing less than the history of a culture. Although we cannot use Latin today as extensively as in past centuries, it still helps us to understand better the meaning of legal concepts and use the terminology adequately.

¹⁵ P. Birks, G. McLeod (Note 5), pp. 8–9.

¹⁶ H.E.S. Mattila. *Vertaileva oikeuslingvistiikka* (Note 12), p. 172.

¹⁷ H. Roland, L. Boyer. *Locutions latines du droit français*. Paris: Litec 1998, pp. 240–241.

¹⁸ H.E.S. Mattila. *Vertaileva oikeuslingvistiikka* (Note 12), pp. 177–178.