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Latin Terms in Estonian Legal Journalism in the Interwar Period: Practical Tools for a Young Legal Culture^{*1}

1. Introduction

The time between the two World Wars is of special significance in the history of Estonia: for the first time, the country enjoyed sovereignty, and a parliamentary democracy was established.^{*2} Developing a legal order for our own state and drafting new legislation became undoubtedly one of the priorities in the Republic of Estonia, which was born in 1918. Until the adoption of the new laws, the old ones remained in force, having been imposed in the Estonian and Livonian provinces during the tsarist regime (for example, the Baltic Private Law Act^{*3} with its special legislation such as town law, land law, statutes for peasants, and special regulations regarding the clergy), creating an obvious lack of uniformity from the point of view of the legal system.^{*4} Regrettably, drafting of legislation is a remarkably time-consuming process, and in the few years of independence this process was not completed in some areas of law. Also, the Baltic Private Law Act, on which the new Civil Code was based, and which relied heavily on Roman law and contained a great number of Latin terms, remained in force until the Soviet occupation in 1940. Albeit outdated in essence, the Civil Code formed one of the central elements in the juridical discourse.

At the outset of self-determination, great importance was attached to the Estonian language, which began to be used for legal studies, legislation, and practice of law in general. Consequently, in the interwar period,

¹ This article was published with support from ESF Grant 7923.

² About Estonian history in the period under scrutiny in this article: Z. Kiaupa, A. Mäesalu, A. Pajur, G. Straube. *The History of the Baltic Countries*. 3rd, revised ed. Tallinn: Avita 2002, in particular, the chapter “The Baltic States 1914–1939”, pp. 129–164.

³ *Provincialrecht der Ostseegouvernements. Dritter Theil. Privatrecht. Liv-, Est- und Curlaendisches Privatrecht. Zusammengestellt auf Befehl des Herrn und Kaisers Alexander II.* St. Petersburg: Buchdruckerei der Zweiten Abtheilung Seiner Kaiserlichen Majestät Eigener Kanzlei 1864. More about the Baltic Private Law Act later in the article, in the context of land ownership and the right of succession.

⁴ More about the development of the legal order in Estonia, see T. Anepaio. *Die rechtliche Entwicklung der baltischen Staaten 1918–1940. – Modernisierung durch Transfer zwischen den Weltkriegen.* T. Giaro (Hrsg.). Frankfurt am Main: Vittorio Klostermann 2007, pp. 7–30; M. Luts-Sootak. *Estland. – Handwörterbuch zur deutschen Rechtsgeschichte.* Lfg. 6. (Eid-Familienfideikommiss). 2. Aufl. Berlin: Erich Schmidt Verlag 2007, p. 1430; P. Järvelaid. *The Development of the Estonian Legal System. – Zeitschrift für Europäisches Privatrecht* 2000 (8 Jhg.), pp. 873–877.

the Estonian legal language and the corresponding terminology developed, ousting the Russian and German languages, which had previously been used for legal purposes.⁵

The concept of the relationship between language and nationality in modern society and the idea that each nation is unique, and that in order for a nation to survive, its language and culture must be preserved, stems from the 18th-century German *Sturm und Drang* movement and echoes the ideas of the French Enlightenment.⁶ This national and linguistic ideology was embraced by 19th-century thinkers and sociologists who attempted to find an explanation for the national and linguistic conflicts in the Russian, Austro-Hungarian, and Turkish empires and therefore readily accepted the German national-linguistic model. Furthermore, this model proposed political rights and democracy through national independence.⁷ These concepts and ideas were also mirrored in Estonia at the beginning of the 20th century, when the Estonian language was definitely a component of national identity as well as a political object and resource, particularly in the early years of independence as legislation began to be prepared by lawyers and politicians who were of Estonian origin.⁸

Therefore, the era examined in the present article is, on the one hand, a time when legal terminology in the native language was created and developed. On the other hand, in the territory of Estonia, for centuries laws had been applied whose origins can be detected in the legal history of Europe. Similarly, over the centuries, Latin vocabulary had become an integral part of legal language, having been developed on the basis of Roman law or legal sources from the Europe of the Middle Ages. Accurate and relevant usage of professional terms of foreign origin requires a basic knowledge of the structure of the foreign language concerned. At the beginning of the century and in the interwar period, Latin was a natural part of schooling in Estonia.⁹ At university level, Latin was considered even more important. For instance, the students of the Faculty of Law at the University of Tartu were required to know enough Latin to be able to manage compulsory reading: Caesar's *Commentarii de Bello Gallico* ('Commentaries on the Gallic War'), Cicero's speeches, Ovid's *Metamorphoses*, and excerpts from the works of Horace and Livy.¹⁰ At that time, Roman law was taught in two stages at Tartu: in the first year, the students became familiar with the history and sources of Roman law, and the second year focused on study of the system of Roman law. Knowledge of professional terminology in Latin was perfected in practical classes during those courses, as extracts from the 'Institutes' of Gaius and Justinian were read and translated.¹¹

Thus, against the background of, on the one hand, the desire and urgent need for the development of native terminology and, on the other, the European terminological tradition and the legislation implemented at that time, my research aims at investigating the role and importance of Latin terms in the new legal culture. How and to what extent did Estonian lawyers and jurists use Latin terms in their writing in the time between the two World Wars, and which particular Latin terms were used? The research material is constituted by the Latin legal terms detected in the Estonian-language juridical periodical *Õigus* ('Law')¹² published in 1920–1940. In comparison with other types of scholarly texts, such as course books, monographs, or dissertations on jurisprudence, the choice of a journal for this kind of terminological analysis has a clear advantage with regard to the topicality of its subject matter. Formally, periodicals are the most dynamic medium of law, reflecting the daily life of a particular legal culture.¹³ In addition, the variety of the topics touched upon enables us to draw more specific conclusions about the usage of terms. At the beginning of the 20th century, legal advice in the Estonian language was not widely accessible. Even though several legal course books compiled in Estonian were printed before World War II, material in Estonian about most areas of law was not available at that time.

The research method applied is quantitative and qualitative term analysis, which helps us to determine the total number of Latin terms used and the dynamic changes that occurred in the 20 years of publication of the periodical, as well as the number of distinct terms used in the articles published in the periodical, which in

⁵ As a result of the work done on legal terminology in Estonian, "Õigusteaduse sõnastik" (Dictionary of Law) was published in 1934, compiled by F. Karlson, J. V. Veski, ed. E. Ilus. Tartu: Akadeemiline Kooperatiiv 1934 (in Estonian).

⁶ About this, see J. G. von Herder. *Abhandlungen über den Ursprung der Sprache*. Stuttgart: Reclam 2002, pp. 38–52.

⁷ M. Rannut, Ü. Rannut, A. Verschik. *Keel, võim, ühiskond* (Language, Power, Society). Tallinn: TPÜ Kirjastus 2003, pp. 44–47 (in Estonian).

⁸ A. Vettik, R. Kull. *Tagasivaade eesti õigussõnavara kujunemisloole (1920–1940)* (A Historical Overview of the Development of Estonian Legal Vocabulary (1920–1940)). Tallinn: Eesti Teaduste Akadeemia, Emakeele Selts 2002, p. 10 (in Estonian).

⁹ A good example would be the memoirs of E. Nurm, the author of several Latin grammars, who wrote about his school years and organisation of studies at a grammar school in Tallinn: E. Nurm. *Mälestusi Tallinna Nikolai Gümnaasiumist 1907–1914* (Memoirs about Tallinn Nikolai Grammar School 1907–1914). – Keel ja Kirjandus 1981, pp. 300–309 (in Estonian).

¹⁰ The decision of the Faculty Council from 18.12.1923. *Eesti Ajalooarhiiv* (Estonian Historical Archives), 2100.10.17, pp. 28–29, 40–43.

¹¹ H. Siimets-Gross. *Die Lehre des römischen Rechts an der Universität Tartu in den Jahren 1919–1940. – Juristische Fakultäten und Juristen- ausbildung im Ostseeraum: zweiter Rechtshistorikertag im Ostseeraum*, Lund 12.–17.03.2002. Stockholm: Rönnels Antikvariat AB 2005, pp. 343–347.

¹² Juridical monthly *Õigus*, 1920–1940. Editor-in-chief F. Karlson; published by the Association of Legal Scientists in Tartu.

¹³ M. Stolleis. *Juristische Zeitschriften – die neuen Medien des 18.–20. Jahrhunderts. – Juristische Zeitschriften. Die neuen Medien des 18.–20. Jahrhunderts*. Ius Commune Sonderhefte, Studien zur Europäischen Rechtsgeschichte, 128. M. Stolleis (Hrsg.). Frankfurt a.M.: Klostermann 1999, p. XIV.

turn enables us to assess the knowledge of foreign terms of the jurists of the time. Analysis of the terms on the basis of the frequency of their occurrence additionally allows us to draw important conclusions about the range of subjects and the areas of law that required more frequent usage of Latin terms but simultaneously required more attention on the part of lawyers and were under close scrutiny in the juridical discourse.

2. Research material

The journal *Õigus* began to be published in October 1920. Even though *Õigus* was the first juridical periodical in the Republic of Estonia, it cannot be said to have been the very first journal in the Estonian language that contained text about legal matters. Since 1909, a few publications had already been printed in Estonian as newspaper supplements or separate periodicals in Tallinn, Tartu, and even St. Petersburg.¹⁴ However, these attempts were short-lived and rarely produced more than two or three issues, because, as the editorial board wrote in the introduction to the first issue of *Õigus*, in 1920, “there existed no national courts, nor government, thus rendering it unnecessary to have a national juridical periodical. Besides, because of strict censorship, it was impossible to publish certain pieces that needed to be published. Therefore, it is understandable why no progress was made in this area. Nevertheless, the situation has changed radically since the establishment of our independent state.”¹⁵

There was undoubtedly a need for primary legal information when the new state was created, and numerous questions arose pertaining to drafting and implementation of new laws. What is remarkable is that throughout its 20 years of publication, *Õigus* was the only juridical periodical to be published. This can be explained by the limited number of professional jurists in Estonia. Also later, after the Second World War and since the restoration of independence, there has usually been one legal journal at a time — e.g., *Nõukogude Õigus* (‘Soviet Law’)¹⁶ during the Soviet era and at present *Juridica*.¹⁷ *Õigus* was issued by the Association of Legal Scientists in Tartu, which had been formed only a few months prior to the release of the first issue. The editors and authors were professors from the University of Tartu, judges of the Supreme Court, well-known lawyers, and the Chancellor of Justice — the most active and renowned figures in the field of law in Estonia at the beginning of the 20th century.

Õigus appeared for 20 years without interruption. The last issue was printed in March 1940, only a few months before Estonia was occupied by Soviet Russia. In total, 176 issues were published in 20 years. In both the first and the last year of its publication, only three issues appeared. From 1921 to 1928, eight issues of *Õigus* were published per year, on average¹⁸, and from 1929 onwards, as many as 10 issues per year. All in all, the research material comprises 7,266 pages and 624 articles.

Graph 1 shows that in the first 10 years of publication the capacity of the journal was 230 pages a year on average, increasing by half by the end of the decade — 352 pages in 1929. In the second decade of its publication, from 1930, the capacity doubled in comparison with that of the early years, reaching 480 pages on average. This was made possible by the improved economic situation of the publisher of the journal. Summarising the first decade of publication, the editorial board stated that in the beginning they had faced serious financial difficulties and even paying fees to the authors of articles had been problematic. Thanks to support from the state and private donors, the second half of the 1920s was financially more favourable, and also a solid base of subscribers had been built, enabling the publishers to increase the number of issues per year from eight to 10 in 1929.¹⁹

¹⁴ Prior to the journal *Õigus* the following Estonian-language periodicals had been published: *Seadus ja Kohus*: õigusteadline ajakiri. Peterburi Teataja kaasanne (1909, 1911, 1913); Pealinna Teataja kaasanne (1910) (*Law and Court*: juridical journal. Supplement to gazette *Peterburi Teataja* (1909, 1911, 1913); supplement to gazette *Pealinna Teataja* (1910)). Published by A. Einer, A. Vares, M. Jaakson; St. Petersburg 1909–1911, 1913; *Õigus*: õigusteadline ajakiri (*Law*: juridical journal). Ed. J. Reinthal, M. Pung. Tallinn: Ühiselu, 1912; *Õigus ja Kohus*: õigusteadusline ajakiri: Päevalehe, Aja, Koidu hinnata eralisa. (*Justice and Court*: juridical journal: free special supplement to *Päevaleht, Aeg, Koit*). Issued by B. Mäns, J. Luiga; Tallinn: Pert, 1912–1914; *Õigus*: Meie Aastasada, Sakala, Meie Kodumaa õigusteadline hinnata kaasanne (*Law*: free juridical supplement to *Meie Aastasada, Sakala, Meie Kodumaa*). Editor-in-chief K. Pikk, Tartu, 1913–1914; *Õigus*: õigusteadline lisa: Tallinna Teataja, Tallinna Uudiste, Meie elu, Peterburi Teataja, Tartu Päevalehe, Meie Aastasaja, Oleviku, Sakala, Meie Kodumaa hinnata lisa nr 1; Tallinna Teataja hinnata kaasanne nr 2 (*Law*: juridical supplement: free supplement No. 1 to *Tallinna Teataja, Tallinna Uudised, Meie Elu, Peterburi Teataja, Tartu Päevaleht, Meie Aastasada, Sakala, Meie Kodumaa*; free supplement No. 2 to *Tallinna Teataja*). Ed. A. Birk, Tallinn: Ühiselu, 1914; issues 1–2.

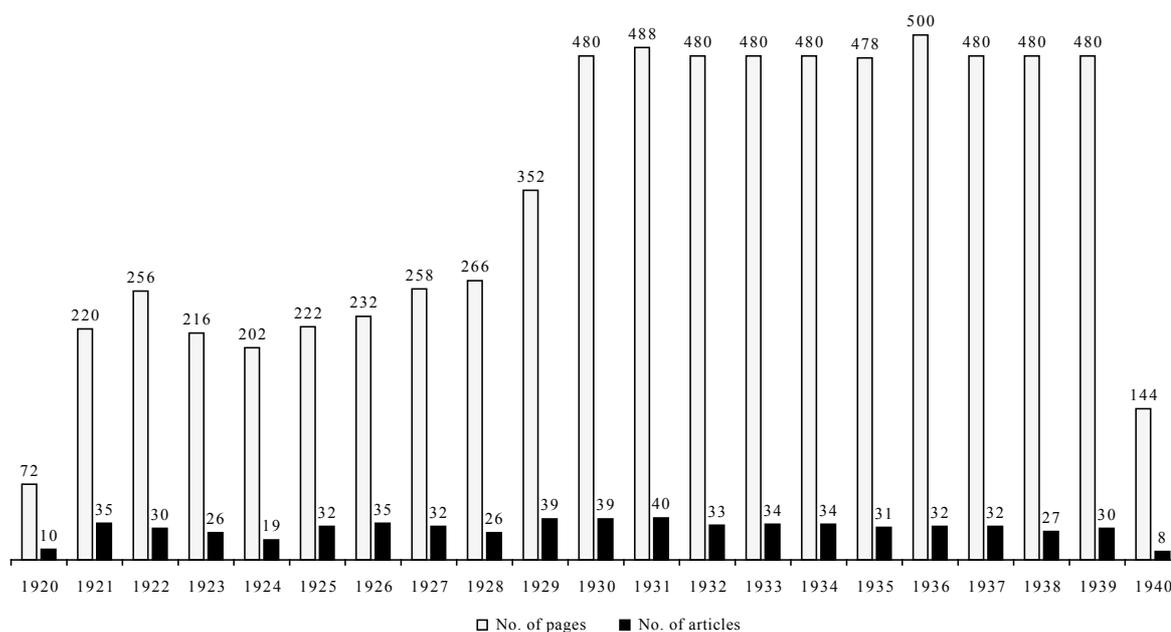
¹⁵ Editorial board of *Õigus* (in 1920: J. Lõo, N. Maim, R. Rägo). To the Readers. – *Õigus* 1920/1, p. 1.

¹⁶ *Nõukogude Õigus/Soviet Law*: Juridical Bulletin of the Ministry of Justice of Estonian SSR. Tallinn: Eesti NSV Justiitsministeerium, 1967–1989.

¹⁷ *Juridica*: University of Tartu Faculty of Law periodical. Editor-in-chief P. Varul. Tartu: Iuridicum Foundation, 1993–present.

¹⁸ In 1921 and 1928, several issues appeared as voluminous and thematically compiled editions containing for instance the presentations made at the conferences of the Association of Legal Scientists.

¹⁹ A. Mägi. Märkmeld *Õiguse* kümneaastase ilmumise puhul (Notes on 10 Years of Publication of *Õigus*). – *Õigus* 1931/3, pp. 126–132 (in Estonian).

Graph 1: Number of articles and pages in *Õigus*

Contrasting the number of pages and articles, we notice that, despite the significantly increased volume, the average number of articles remained the same — approximately 30 to 33 articles a year. Subsequently, the quality of the pieces improved in *Õigus* in the second half of its lifetime: gradually the articles written became longer and more detailed. While in the beginning it was necessary to deal with juridical issues that surfaced in everyday life and to print articles often containing reviews and summaries of new legislation, the later period also witnessed the publication of exhaustive research articles in addition to papers focusing on legislation. Thus in the 1930s *Õigus* published on its pages several studies that have found a firm place in the history of legal science in Estonia. By way of illustration, three most detailed and extensive pieces of writing about Old Estonia (i.e., the time before and around the introduction of Christianity) can be mentioned: an article published in two parts (in 1935 and 1936) discussed the agreements between the Estonians and foreign conquerors in the 13th century, and an article published in 1937 concentrated on public assemblies in Old Estonia. All three articles were written by distinguished jurist Jüri Uluots, professor of the history of Estonian law at the University of Tartu and a politician.²⁰ In the context of the present study, not only do scholars find these articles interesting from the viewpoint of legal history, but they are also fascinated by the philological aspect of the pieces, because all three quoted extensively the original *Heinrici Chronicon Lyvoniae*²¹ in Latin, which had been written in the 13th century. Additionally, the use of those quotations is a sign of the author's mastery of Latin: the translations provided by the author himself for many of the quotations demonstrate his good knowledge of the vocabulary of the Middle Ages, in which the meanings of terms may differ greatly from those applied in Roman law. References to such sources verify that the role of Latin in *Õigus* was not limited to a few practical legal terms; also lengthy citations from sources of legal history in Latin had their firm place in juridical argumentation.

Besides articles on legal science and commentaries on legislation, *Õigus* contained information about legal practice: each issue ended with a summary of the decisions made by the Supreme Court (*Riigikohus*). Once a year, a statistical review of the activities of different court instances in various towns in Estonia was printed (the number of cases heard, the number of cases settled, and the number of pending cases). In addition, some issues included summaries of the activities of the Parliament (*Riigikogu*), overviews of new legal literature in Estonia as well as abroad, reviews of international congresses and conventions, announcements and practical legal information, and summaries of the presentations of the speakers at the *Õigusteadlaste päev* ('Day of the Jurists') conferences. A great deal of attention is paid to introducing the legal affairs and legislation of the country's closest neighbours — Finland, Latvia, and Soviet Russia — as well as other European countries, among them Poland, Hungary, Italy, Germany, and Belgium. In 1939, even an article about China's new Civil Code was published. Latin terms are to be found in articles about all of these topics.

Next, the results of quantitative statistical analysis are presented. Besides the frequency of usage of Latin terms, terminological variety is considered, with examination of which different Latin terms occur in the articles

²⁰ J. Uluots (1890–1945) was many times a member of the parliament, Prime Minister in 1939–1940, and 1940–1945 Prime Minister in the capacity of the President. More about J. Uluots: K. Merusk. *Sissejuhatus* (Introduction), pp. 7–13; R. Ränk. *Professor Jüri Uluots juristina ja ajaloolasena* (Professor Jüri Uluots as a Lawyer and Historian), pp. 407–421. – Seaduse sünn: Eesti õiguse lugu (Birth of Law: The History of Estonian Legislation). Compiled by H. Runnel. Tartu: Ilmamaa 2004 (in Estonian).

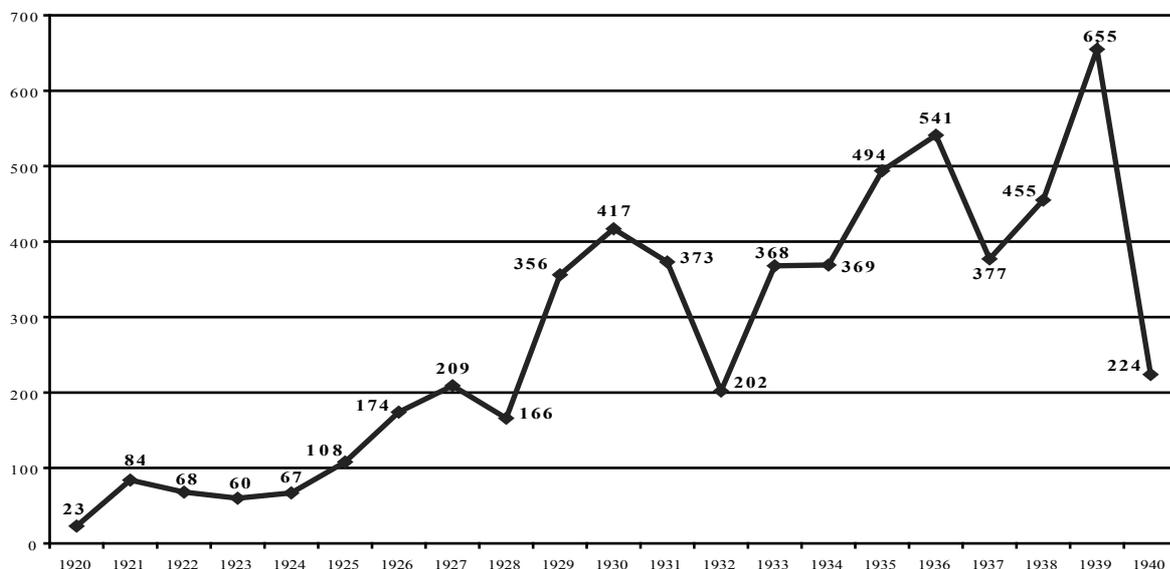
²¹ *Heinrici Chronicon Lyvoniae*. Ex recensione W. Arndt. Hannover: Hahn 1874.

in *Õigus* and in what relationship. The usage of Latin terms with regard to land ownership and the right of succession is handled separately because these issues, more than others, generated heated debate among the authors of *Õigus* and thus a great deal of associated vocabulary in Latin was included. Therefore, the question of why the topics mentioned were so popular on the pages of *Õigus* and which Latin terms the writers used to discuss them ought to be delved into.

3. Frequency of usage of Latin terms

In total, in 20 years Latin terms were used 5,791 times, while, on average, 32 Latin expressions per issue and nine Latin terms per article were employed. If we divide the number of pages by the number of terms, we can see that, on average, 0.8 expressions per page were used; i.e., the Latin language appears on almost every single page of *Õigus*. In comparison with the current usage of Latin legal terms, this is a remarkably large number. For instance, in *Juridica*, the only juridical journal in the time of regained independence, the average number of Latin terms in the 16 years of publication is 3–4 expressions per article.^{*22} In the articles in *Soviet Law*, only 0.2 Latin terms per article were used.^{*23}

Graph 2: Latin terms in *Õigus*



Graph 2 illustrates the usage of Latin terminology in *Õigus* over the years. Looking at the total numbers, we clearly see a steady increase in the usage of Latin terms throughout the years of publication of the journal. There is a sharp difference between the first and last year of publication of *Õigus* — both in 1920 and 1940, only three issues were printed, but the usage of Latin expressions increased tenfold in 20 years, from 23 instances in the first year to 224 instances in the last year of publication. In the 1920s, the average number of Latin phrases used per year is 117, whereas by the end of the decade, in 1929, this number had tripled to 356. In the 1930s, 400 Latin terms were used in articles per year, and, again, the most noticeable increase appeared at the end of the decade, in 1939, when 655 Latin expressions were used.

The exponential increase in the usage of Latin terms in 1929–1931 (356 Latin expressions in 1929, 417 in 1930, and 373 in 1931), 1935–1936 (494 Latin expressions in 1935 and 541 in 1936), and 1939 (with 655 Latin expressions) can be explained by the topics analysed in those years: the greatest number of articles printed in the above-mentioned years focused on civil law, whose historical connection with Roman law and terminology based on Latin justify more frequent use of phrases originating from Latin. The use of terminology in 1935 and 1936 was influenced by the drafts of the Civil Code prepared in those years, which naturally led

²² More about the usage of Latin terms in juridical texts in re-independent Estonia, see M. Ristikivi. *Lexica iuridica in Juridica: Latin Terms as a Reflection of Europeanisation of Estonian Legal Culture*. – *Juridica International* 2007 (12), p. 175.

²³ About Latin terms in juridical articles in Estonian during the Soviet era, see M. Ristikivi. *Terminological Turn as a Turn of Legal Culture*. – *Juridica International* 2008 (15), p. 178.

to corresponding scholarly discussions.^{*24} By comparison, in 1935 also the new Penal Code was adopted^{*25}, which had already been drafted in 1925. In the issues of *Õigus* from 1935, and even earlier, articles about the Penal Code were printed, but this topic failed to elicit such a wide response as the preparation of the new Civil Code. The lack of interest expressed in the articles of *Õigus* in the new Penal Code can be explained by the fact that, even though it was not an exact copy of the old Penal Code that had been enforced under the tsarist regime, it was based on it and obviously the changes in the content were not extensive enough to prompt more specific arguments. Similarly, the adoption of the Penal Code did not bring about marked changes in the usage of Latin terms. In comparison with what is seen in the articles written about the Civil Code, Latin terms are very few in the pieces dealing with the Penal Code.

In 1939, three articles were published, with one in two parts discussing the history of the Estonian Bar Association and the other focusing on the so-called Law of Vigala — the regional special law for 18th-century Estonian peasants. History is also typically an area in which the usage of Latin terms seems rather natural, since for centuries the law was developed on the basis of Latin and all major sources of our knowledge of Roman law are written in Latin.

However, considering the issues of *Õigus* in 1932 and 1937, in which the occurrence of Latin terms is clearly less frequent, we cannot very easily single out one particular cause for that: also in these years, articles about civil law and history were written, so such topics are not the only reason for resorting to Latin phrases. A common feature, though, is that in both years articles appeared that touched upon the legal orders of foreign states (e.g., Poland, Hungary, Latvia, and Italy), and apparently the authors' lack of use of Latin is due to the descriptive nature of these pieces.

4. Terminological variety

4.1 The most frequent terms

While the total number of Latin terms in *Õigus* in its 20 years of publication was 5,791, the number of distinct terms used was 1,342. This figure is surprising and is accounted for by a remarkable variety of Latin expressions.^{*26} Dividing the total number of terms by the number of distinct terms, we see that one and the same term occurs slightly more than four times per article on average. Nevertheless, it must be pointed out that the majority of terms have been used just once, and only 490 terms appear at least twice per article. There are 297 terms that occur at least three times and 167 terms that appear five or more times — hence the conspicuousness of the most recurrently used expressions in the material researched. The 10 most frequently found Latin legal terms in *Õigus* are *laesio enormis*, *expressis verbis*, *ex officio*, *de lege ferenda*, *contra legem*, *ipso iure*, *detentor*, *detentio*, *in solidum*, and *praeter legem*.

The term the reader encounters most often in the articles in *Õigus* is *laesio enormis* ('gross disparity'), used 197 times. The term *laesio enormis* denotes the injury sustained by one of the parties to an onerous contract when he has been overreached by the other to the extent of more than half the value of the subject matter (e.g., when a vendor has not received half the value of the property sold, or the purchaser has paid more than double the value). In *Õigus*, the term *laesio enormis* enters the articles written by lawyers from 1930 and can be found in nine issues, in rather lengthy pieces of writing drawing attention to the shortcomings of the legislation imposed earlier in Estonia, in the Baltic Private Law Act. Analysing the development of this very term, the authors come to the conclusion in their articles that the legislation in force referring to *laesio enormis* ought to be amended or replaced in its entirety by a more specific regulation drafted along the lines of the German BGB.

The expressions next on the list of the most frequently used Latin terms — i.e., *expressis verbis* ('explicitly', with 118 occurrences), *ex officio* (meaning 'by virtue of office or position', with 72), *de lege ferenda* ('desirable to establish according to the law', 47), *contra legem* ('contrary to the law', 35), and *ipso iure* ('by the law itself', 34) — semantically belong to the general vocabulary of law, and they can be found equally in articles discussing all areas of law throughout the years of publication of the journal.

²⁴ In 1935 and 1936, special issues of *Õigus* were published, introducing the drafts of the Civil Code and its differences in comparison with the Baltic Private Law Act. More about this, see *Õigus* 1935/6 and *Õigus* 1936/7.

²⁵ Kriminaalseadustik (Penal Code). Adopted on 26.03.1929. – RT 1929, 56 (in Estonian). Muudetud ja täiendatud Riigivanema poolt 19.09.1934 dekreedina antud Kriminaalseadustiku maksmapanemise seadusega (Amended and complemented by the Act of Enforcement of the Criminal Code issued on 19.09.1934 as a decree by the State Head). – RT 1934, 85 (in Estonian).

²⁶ Such a considerable number of terms would be sufficient for an average glossary. A case in point is a glossary compiled by W. Schwab and R. Pagé „Les locutions latines et le droit positif québécois. Nomenclature des usages de la jurisprudence“ (Québec: Editeur officiel du Québec 1981). It consists of the Latin terms found in the documents concerning Québec court proceedings and contains approximately 700 juridical terms and phrases. In the Latin–Estonian Legal Dictionary compiled by K. Adomeit, H. Siimets-Gross, M. Ristikivi and printed in 2005 there are over 3,400 entries.

The next expressions on the list of the most frequently used terms were first printed in *Õigus* at the end of the 1920s in the articles about the right of obligation. Those terms are *detentor* ('detainer', 32) and *detentio* ('detention', 31), referring to holding a thing while having neither possession nor ownership thereof, nor the use of possessory remedies, and the term *in solidum* ('for the whole', 30) in the context of a joint obligation in full — if several co-obligants are bound *in solidum*, each is liable for full payment or performance, and the creditor may choose which of the obligants he will sue.

The next term in the order of frequency of usage, *praeter legem* ('beyond the law', 27), refers to norms not imposed as laws but supplementing the right defined in existing legislation within the given framework.

This term is typically used in combination with the above-mentioned phrase *contra legem* as well as *intra legem* ('within the law', 7), which denote regulations: a *praeter legem* regulation is a legal instrument that governs an area not regulated by legislation — i.e., a regulation that replaces or amends a law. The authors use the term '*contra legem* regulation' to refer to an act that is essentially incompatible with formal law, and the term '*intra legem* regulation' denotes an instrument specifying a law. All three of these terms are to be found in the journal throughout its 20 years of publication.

When we take a closer look at the phrases that follow the top 10 on the list of the most commonly used terms, we notice that they fall into two thematic groups: land ownership and the right of succession — these two matters are also among the most widely discussed problems throughout the issues of *Õigus* published over 20 years.

4.2. Succession

The issues of the right of succession were thoroughly discussed in the articles in *Õigus* because of the process of drafting of the Estonian Civil Code, which failed to be adopted before World War II, though. Consequently, until Soviet rule was imposed, the Baltic Private Law Act²⁷ (1864/1865) was in force. The Baltic Private Law Act, which in 1856–1864 had been codified by Friedrich Georg von Bunge, professor of provincial law at the University of Tartu²⁸, and which had entered into force on 1 July 1865, contained, besides German general law, also a great number of rules of Roman law.²⁹ Now, in a new era, particularly after the adoption in 1920 of the act that abolished the nobility³⁰, the right of succession in particular (and family law) in this legal act was rather problematic and outdated. As had the Baltic Private Law Act as a whole, these parts had been drafted in the interests of the landed gentry but were now taken as the basis of civil law to be applied to every citizen. As a result, the right of succession was one of the first subjects that the codification committee concentrated on, and in 1925 draft legislation of the Civil Code prepared by the Ministry of Courts was published.³¹

The part of the new Civil Code concerning the right of succession was under active discussion in *Õigus* throughout its 20 years. The authors paid the most attention to the *hereditas iacens* as a legal person, the form and types of the will, the compulsory portion and the beneficiaries, and the scope of the liability of the heirs. The most commonly used Latin term related to the right of succession, *hereditas iacens* ('resting inheritance', with 23 occurrences), denotes succession that has been opened but where the inheritance has not been transferred to heirs. In the draft of the new Civil Code, the *hereditas iacens* was to be deemed a legal person, but the expediency of this provision was questioned in several articles, and it was suggested that it should be excluded. In this context, also the exclusion in the new law of *transmissio hereditatis* ('transmission of the inheritance', 10) and *ius accrescendi* ('right of survivorship', 10) of institutes, as well as a *donatio mortis causa* ('gift in prospect of death', 7) and *cessio hereditatis* ('cession of an inheritance', 6), originating from Roman law, was considered.

Other, more frequently used terms in articles about the right of succession were *hereditatis petitio* ('petition of an inheritance', 6), *beneficium inventarii* ('benefit of inventory', 5), *beneficium separationis* ('right to have the goods of an heir separated from those of the testator in favour of creditors', 4), *successio singularis* ('singular succession', 4), and *successio universalis* ('universal succession', 3).

²⁷ Provinzialrecht der Ostseegouvernements. Dritter Theil. Privatrecht. Liv-, Est- und Curlaendisches Privatrecht. Zusammengestellt auf Befehl des Herrn und Kaisers Alexander II. St. Petersburg: Buchdruckerei der Zweiten Abtheilung Seiner Kaiserlichen Majestät Eigener Kanzlei 1864.

²⁸ More about F. G. von Bunge (1802–1897) and his teaching of law, see M. Luts. Juhuslik ja isamaaline: F. G. von Bunge provintsiaalõigus-teadus (Accidental and Patriotic: The Provincial Legal Science of F. G. von Bunge). Dissertationes iuridicae Universitatis Tartuensis, 3. Tartu: TÜ Kirjastus 2000 (in Estonian); by the same author, see also Tundmatu Friedrich Georg von Bunge (Unknown Friedrich Georg von Bunge), in a collection of publications by the Learned Estonian Society and the Faculty of Law of the University of Tartu. Tartu: Õpetatud Eesti Selts 2006 (in Estonian).

²⁹ More about the role of Roman law in the Baltic Private Law Act, see H. Siimets-Gross. Roman Law in the Baltic Private Law Act — the Triumph of Roman Law in the Baltic Sea Provinces? – *Juridica International* 2007 (12), pp. 180–189.

³⁰ Seisuste kaotamise seadus (Law on the Abolition of Nobility), 9.06.1920, adopted by the Estonian Constituent Assembly. – RT 1920, 129/130, 254 (in Estonian).

³¹ Tsiviil seadustik. Pärandusõigus (Civil Code. Succession). Tallinn 1925 (in Estonian).

The abundance of Latin terms in the articles in *Õigus* discussing these problems can be explained by the strong influence of Roman law on the right of succession in the Baltic Private Law Act. Also, it should be mentioned that, even though the Baltic Private Law Act remained in force practically throughout the first period of independence in Estonia, it failed to be translated into Estonian. Therefore, close study of the articles in *Õigus* gives the impression that Latin terms, in addition to conveying juridical notions, had to play an intermediary role in the communication between the two languages (German and Estonian) and provide the required specificity of concepts.

4.3. The Land Reform Act, real estate, and ownership relations

The fact that so much was written about land ownership and immovable property can be explained with the Land Reform Act.³² At the very beginning of self-government, Estonia underwent a number of economic, social, and political reforms necessary for coming to terms with its new status as a sovereign state. Economically and socially, a radical land reform in 1919 was an important step in abolishing the previous feudal system. As expressed by then Prime Minister Otto Strandman³³, the lack of land in Estonia had been a problem for centuries. The government considered it a priority that an opportunity to acquire and cultivate land be given to everyone who had the desire, courage, and strength to do so.³⁴ Hence, after reduction, or expropriation of manor estates belonging to the Baltic nobility, in many instances the main part of an estate remained in the possession of the former owners but the rest of a large estate holding was redistributed among the peasants and especially among volunteers in the Estonian War of Independence (1918–1920). According to § 21 of the Land Reform Act, the primary beneficiaries to receive land from the state were the individuals who had demonstrated remarkable bravery in the War of Independence, as well as the families of the soldiers who had fought and died in that war. As a result, more than 30,000 new farms were established. As expected, the land reform resulted in tense relations between Estonia, on one hand, and Germany and other countries whose citizens had been large landowners in Estonia.³⁵

Thus a new legal situation had been created and, naturally, various problems with real estate and ownership relations arose in everyday life. Latin legal terms in the articles focusing on these topics vary from short one-word terms, such as *fundus* (meaning ‘land’, with 3 occurrences) and *pignus* (‘pledge’, with 1), to longer phrases of several words — for instance, citations from Roman law: *illius fit aedificium, cuius et solum est*³⁶ (‘the building belongs to the one who also owns the land’, 1) and *qui ad certum tempus conducit, finito quoque tempore colonus est; intelligitur enim dominus, quum patitur colonum in fundo esse, ex intergo locare, et huius modi contractus, [...] nudo consensu conualescunt*³⁷ (‘the one who pays rent for the place for a certain period shall be the tenant also after the end of this period, for it shall be deemed the case that the owner, allowing the tenant to live on his land, continues to lease the place out and this type of contract [...] shall be valid by mere consent’, 1), or the last citation from the Digests, modified: *dominus non patitur colonum in fundo esse* (‘the owner does not have to allow the tenant to be on his land’, 1).

In several articles, the authors discuss the divided property in Estonian towns (*dominium divisum*) — i.e., *obrok* or ground rent. The Latin terms used in such cases are *dominium directum* (‘strict ownership, the right of a landlord’, 2) and *dominium utile* (‘ownership of the soil itself, the right of a tenant’, 6). According to this form of ownership, real estate was first owned by the primary or direct owner, the *dominus directus* (four occurrences), and secondly owned by the *dominus utilis* (‘tenant or person who uses the property’, 5) who had

³² Maareformi seadus. – RT 1919, 79/80 (in Estonian).

³³ O. Strandman (1875–1941) was Estonian politician and diplomat, Prime Minister in 1919 and State Head in 1929–1931. More about O. Strandman, see H. Tuulik, J. Valge. Otto Strandman 1875–1941. – Looming 1989/7, pp. 963–973 (in Estonian).

³⁴ O. Strandman’s speech to the Estonian Constituent Assembly at the reading of the Land Reform Act on 29 July 1919. Asutava Kogu II istungjärg. Protokollid Nr. 28–97 (2nd session of the Constituent Assembly. Minutes Nos. 28–97). Tallinn 1920, columns 430–435. *Ibid.*: “Also politically we are compelled to wipe out the estate holdings, whether we like it or not. [...] When we look at what kind of role large landowners have played in the life of our nation, we see that there is no other way. [...] 5,000–6,000 individuals should not be allowed to have power over the whole country and its people. They should not be allowed to have the economic power [...] to establish the political order and supremacy in this country to serve their own interests. This power should be taken from them and given to the people.”

³⁵ E.g., compare G. von Rauch. Balti riikide ajalugu 1918–1940 (The History of the Baltic States 1918–1940). Tallinn: Detlar 1995, p. 48: “Already at the first reading of the Act, it was clearly stated [...] that the purpose was to deprive the German gentry of their economic and political power. The German delegates had a specially difficult time in June and July 1919. The suggestion that a third of the utilised agricultural land of the large estates be given for a reasonable price to the state to be distributed as individual farms (*asundustalud*) was not even considered. The proposal made by the moderate parties to gradually reduce the large estates to the minimum was also rejected. [...] As a result of numerous debates, the Expropriation Act was passed on 10 October 1919, with 63 votes in favour, nine votes against, and one remained undecided. However, in protest before voting the representatives of the Estonian National Party and the Christian Party had left. The expropriation of manor estates constituted the intervention by the state in ownership relations, which can be deemed a revolutionary measure.” Original book in German: Geschichte der baltischen Staaten 3. Aufl. München: Dt. Taschenbuch-Verlag 1990.

³⁶ Gaius. Dig. 41.1.7.12.

³⁷ Ulp. Dig. 19.2.14.

the hereditary right to ground rent and the right of ownership of the buildings on the lot. The divided property institute was also observed in dealings with the new farms established as a result of the land reform — the primary owner was the state, and the *obrok* tenant (*asunik*) had the right to use the property. It is not surprising, then, that the divided property principle, alien to ancient Roman law, created in the Middle Ages, and discarded in the process of developing modern private law, was adhered to in Estonia between the World Wars. It was conditioned, on the one hand, by the existing legislation pertaining to private law inherited from the Russian tsarist regime. At the same time, it was used to solve the regulatory problems that came with the new social reforms.

The basis of the hereditary right of *obrok* rent in the Baltic law was the Roman institute of *emphyteusis*. The term *emphyteusis* (used in the articles 20 times) denotes a contract by which a landed estate was leased to a tenant, either in perpetuity or for a long term, of many years, upon the reservation of annual rent and upon the condition that the tenant improve the property, by building, cultivating, or otherwise, and with a right vested in the tenant to alienate the estate or pass it to his heirs. Likewise, according to the Baltic law, two conditions had to be met for the hereditary right of *obrok* rent (as real right of use of another owner's property) to apply: 1) use of another owner's immovable property for an unspecified term and 2) paying the annual *obrok* rent in a specified amount. These two conditions set the right of *obrok* rent apart from a tenancy agreement and *ususfructus* ('usufruct', 7), which denotes a right to use of the profits by one person while the ownership belongs to another.

In the 1935 draft of the Civil Code, *superficies* (referring to building rights, right of superficies, 2), which had disappeared from private law in Western Europe, could again be found as a separate institute, also mostly derived from the Russian tsarist legislation, and this was reviewed in *Õigus*, too. A right of superficies could be given for only a specified term, no less than 36 and no more than 99 years, and it could be terminated upon the demand of the owner if the superficiary had not erected the required constructions within the specified term.

Together with the term *condominium* ('co-ownership', 10), there are expressions in the articles that denote forms of such limited ownership as *hypotheca* ('obligation by which property of a debtor was made over to his creditor in security of his debt', 1), *usus* ('use', 8), and *habitatio* ('habitation or dwelling, right of free residence in another's house', 3).

The majority of Latin terms pertaining to the right of ownership and possession used by the authors in their articles in the corpus examined here originate from Roman law. On the one hand, this was conditioned by the reception of this area of law and application of the terminology in existing legislation — these institutions denoted by Latin terms had a legal basis in Estonian private law at the time in the form of the Baltic Private Law Act. On the other hand, the above-mentioned Latin terms, with their precision, conciseness, and clarity, are an attestation to the efficiency of the professional communication on the pages of the journal between the lawyers concerned.

5. Conclusions

The analysis of the articles published in the Estonian-language juridical journal *Õigus* in the interwar period reveals that, alongside the creation and development of legal terminology in the native language, expressions in Latin had a major role in Estonian legal language. In the 20 years of the journal's publication, Latin terms were used approximately 5,800 times on its pages. This was an era that witnessed more extensive use of Latin terminology than any other period in the history of juridical journalism in Estonian. Also, the terminological variety of the vocabulary of the jurists was remarkable — more than 1,300 different Latin terms could be found in their writings. It ought to be emphasised that the common use of Latin terms did not minimise the importance of the effort put into introducing and expanding legal terminology in the native language; on the contrary, Latin phrases helped to increase and improve it, functioning as intermediaries between the two languages while the German and Russian legal languages were replaced by the Estonian legal language, and adding Latin terms to the new technical vocabulary in Estonian facilitated understanding of their meaning and scope.

The preconditions for the effective use of Latin terms were created by the educational achievements in the given period, which allowed the professionals not only to quote short technical terms consisting of a few words but also to cite the Digests of Justinian and sources in Latin originating from the Middle Ages. On the other hand, the use of Latin terms was conditioned by the legal environment, since between the two World Wars the government failed to adopt the new Civil Code and the Baltic Private Law was in force, relying largely on the norms of Roman law. The examples of the right of succession and land ownership illustrate well the occurrence of Latin terminology in such circumstances: not only are the Latin terms in the relevant articles a manifestation of the historical development of these areas of law, but they also stemmed directly from the legislation enforced. Thus, we come to the realisation that Latin terms used in the interwar period were an essential part of the active vocabulary of lawyers and a practical tool for jurists in the course of legal reforms when drafting, explaining, and assessing the new legislation.