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LAW LATIN IN LEGAL ENGLISH: REASONS AND FUNCTIONS

ЛАТИНА В ЮРИДИЧНІЙ АНГЛІЙСЬКІЙ МОВІ: ПРИЧИНИ ТА ФУНКЦІЇ

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The article deals with one of the specificities of Legal English, namely the use of Law Latin, given the growing bulk of legal translations related to the voluminous work directed at harmonization of Ukrainian legal framework with that of the European Union and, more widely, with establishment of the rule of law in this country.

The documents at issue belong to different legal genres including both modern legal instruments and theoretical papers dealing with the evolution of European law. Such papers traditionally include numerous Latin inclusions, which may contain potential pitfalls for readers, especially those from this country. The above mentioned facts give relevance to this study.

Despite numerous attempts to fully exclude or, at least limit the incidence of Law Latin and Law French, the article provides evidence to the contrary. Indeed, a number of recent studies proved that Latin has been used more frequently in judgments within the recent 40 years than in the early 20th century. A similar situation can be observed in many European languages of law and, which is especially relevant, in the English language used by European bureaucracy and judiciary. The latter professional jargon is an active participant in the formation of a new variant of the English language (often referred to as *EuroEnglish* or *Eurish*).

The Latin terms and phrases discovered in the process of compilation of English-Ukrainian International Case Law Dictionary on the basis of over 200 acts and opinions of the European judicial bodies and the foreign Latin words and phrases found in Black’s Law dictionary have been chosen as the material for the study.

The article analyses the reasons for vitality of Law Latin in legal English and attempts to classify the functions, which they perform in the legal texts. These include technical, stylistic, professional and terminological functions and determine the methods and techniques necessary for the maximally precise perception.

The problems that readers of English legal texts face primarily lie in the fact that Latin does not have the wide application in the domestic legal sphere, which it enjoys in the English legal prose. Whereas Anglo-American and, more generally, western law has emphasized its close link with the historical tradition, the legal reforms, which followed the 1917 revolution, were primarily aimed at eliminating the connection with the past.

Taking the above said into account, a number of translation techniques were proposed depending on the particular type of the Latin inclusion and the function it performs in the text.

Key words: Legal English, Latin words and phrases, Law Latin, functions of Latin inclusions, translation methods, translation techniques, European English.

У статті розглядається одна із особливостей юридичної англійської мови, а саме використання юридичної латини. Враховуючи зростання обсягу юридичних перекладів, пов’язаних із великою роботою, спрямованою на гармонізацію правової бази України з правовою базою Європейського Союзу та, ширше, із встановленням верховенства права в цій країні.

Документи, про які йде мова, належать до різних юридичних жанрів, включаючи не лише сучасні правові інструменти, а й теоретичні статті, що стосуються еволюції європейського права. Такі документи традиційно містять численні латинські включення, що може містити потенційні підводні камені для перекладачів та створювати певні труднощі для читачів. Вищезазначені факти надають актуальності цьому дослідженню.

Незважаючи на численні спроби виключити або, принаймні, обмежити випадки включення латинської та французької мови права, що відбувалися останнім часом, стаття надає докази протилежного. Дійсно, низка нещодавніх досліджень довела, що латинська мова вживалася в судах частіше за останні 40 років, ніж на початку 20 століття. Подібну ситуацію можна спостерігати в багатьох європейських мовах права і, що особливо актуально, в англійській мові, якою користується європейська бюрократія та судочинство. Зазначений професійний жаргон бере активну участь у формуванні нового варіанту англійської мови.

В якості матеріалу дослідження обрано латинські терміни та фрази, виявлені в процесі складання Англо-українського словника термінології міжнародного права, складеного на основі понад 200 актів і висновків європейських судових органів, а також іншомовні, зокрема латинські слова та фрази, знайдені в словнику права Блека.

У статті аналізуються причини життєздатності латини в юридичній англійській мові та робиться спроба класифікувати функції, які вони виконують у правових текстах. Вони включають технічні, стилістичні, професійні та термінологічні функції і визначають способи та прийоми, необхідні для максимально точного перекладу.

Проблеми, з якими стикаються перекладачі юридичних текстів українською мовою, передусім полягають у тому, що латина не має такого широкого застосування у вітчизняній правовій сфері, яким вона користується в англійській юридичній прозі. У той час як англо-американське і, в цілому, західне право підкреслювало свій зв'язок з історичною традицією, правові реформи, що відбулися після революції 1917 року, були спрямовані насамперед на усунення зв'язку з минулим.

Ключові слова: юридична англійська мова, латинські слова та фрази, юридична латинська мова, функції латинських включень, методи перекладу, європейська англійська мова.

The important work directed at harmonization of Ukrainian legislation with that of the EU countries and, more generally, at Ukraine's admission to the civilized nations' legal space is closely related to processing an immense bulk of legal instruments including legal acts, European bodies' legal opinions, European courts' judgments as well as theoretical works and historical documents. Moreover, the ongoing process in the opposite direction can also be observed, e.g. the complaints are submitted to the European Court of Human Rights, Ukrainian draft legislation is forwarded to the European Commission for Democracy through Law (Venice Commission) with the aim of evaluation thereof, the document exchange between Ukrainian bodies and OSCE, EU Parliament as well as other organizations is constantly performed. Within the recent several decades, English has become the language of inter-European communication both in political and legal spheres; furthermore, it appears highly likely that English will persist as lingua franca for European bureaucracy and judiciary in the foreseeable future [1, p. 165].

Within centuries of evolution, Legal English has developed a number of specificities, among which practically all researchers mention extensive use of Latin words and phrases alongside complex terminological apparatus, tendency to use outdated grammar and express the ideas in long and complex sentences [2, 3]. This is especially apparent when compared to Ukrainian texts of the similar genres. The problems, which are encountered by the readers in this respect account for the **relevance** of this study. The **aim** of this research, therefore, is to define different types of Latin words and phrases and develop the methods and techniques necessary for the maximally precise translation thereof. The function of the above mentioned words and phrases as well as the reasons for their use in particular situation serve as the **object** of the study. The Latin terms and phrases discovered in the process of compilation of English-Ukrainian International Case Law Dictionary [4] on the basis of over 200 acts and opinions of the European judicial bodies and the foreign Latin words and phrases found in Black's Law dictionary [5] are the **material** for the study.

1975 is frequently regarded as the starting date of the Plain language movement – a series of actions, often voluntary, as well as development of principles aimed at making legal writing more comprehensible, particularly by the general public and consumers of legal services. Since then much effort has been aimed at making Legalese (i.e. legal jargon spoken and written by lawyers) understandable by the general public rather that solely by legal technicians. One of the targets of the attacks was the use of Latin and Old French in legal writing. It could, therefore, be expected that the occurrence of such inclusions as well as other archaisms be considerably limited as was advised by, for example, A. Scalla and B. Gardner [6, p. 114] who proposed to exclude Latin from court proceedings.

Indeed, constant joint efforts of linguists and lawyers have resulted in making legal writing clearer, especially where it concerns practical documents – contracts, deeds, promissory notes (e.g. Citibank of New York promissory note of 1975).

Paradoxically, the research by P. Macleod has revealed that Latin has been used more frequently in judgments within the recent 40 years than in the early 20th century [7]. Interestingly, most of the Latin words and phrases chosen as the material for the research have English equivalents, e.g. *mutatis mutandis* (with the appropriate changes); *res gestae* (things done); *dictum* (words said); *jus tertii* (the right of a third party); *vet non* (or not); *locus* (place); *malum in se* (bad in itself); *noscitur a sociis* (it is known by those around it); *sua sponte* (of its own accord); *inter alia* (among other things); *sub silentio* (in silence); *obiter ratio decidendi* (reason for decision); and *nuns pro tune* (now for then) [7, p. 238–239]. The author sees the explanation to this phenomenon in, firstly, the history of legal English; secondly, history of American legal community; and thirdly, specificities of legal education in the USA.

Macleod's research deals with the American variant of the English language of law, however, Latin inclusions remain characteristic of the language of European lawyers to which numerous recommendations, guides and glossaries developed by European universities and legal practitioners can serve an indirect evidence.

"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 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." [8].

Moreover, according to M. Restikivi, there are particular Latin terms and phrases, which are characteristic of certain European languages – her examples are Finish and Estonian – whereas they are scarce or even not used in some or all other European languages. Furthermore, a very special phenomenon has been discovered:

"… 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" [8].

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

Moreover, there have been voiced arguments in favor of choosing Latin as a new (or, rather old?) European legal lingua franca. M. Ristikivi [8] reasonably holds that the English language that has been playing this role lately can hardly be regarded as an absolutely adequate option being primarily the language of common law rather than of Romano-Germanic legal system. Indeed, European legal writers frequently have to adjust English legal terms to the existing European situation where they acquire new meanings. Thus, ECtHR refers to the Procedural Code of the republic of Croatia, which, in particular, reads, "The first-instance court shall forward a copy of the appeal to the opposing party, which may submit a **reply**", [9] where "reply" is obviously understood as the answer to an appeal whereas according to Black's Law Dictionary, "reply" is "… the plaintiff's response to the defendant's counterclaim (or, by court order, to the defendant's or third party's answer)" [5, p. 1492] Hence, the term "reply" is used in European legal language with a new meaning uncharacteristic of Anglo-American application of this term.

Although the above mentioned arguments appear relevant, the M. Ristikivi's proposal reminds of the attempts to create artificial languages, like Esperanto that failed despite apparent advantages. Anglo-American legal English is a live language having vast potential for changes and evolution and ongoing attempts to adjust it to the realities of Continental law appear to be more practical. The movement in this direction may ultimately result in the formation of a recognized European variant of the English language. Meanwhile, English native speaking members of translator and legal community critically regard "incorrect" usage of English vocabulary by European speakers.

"… those fluent in Euro-English were genuinely surprised when they found out native English speakers struggle to understand them. A senior person never says or states something but he 'emphasises' or 'stresses'; or if those words have already been used you'll find him 'underlining'" [10].

In the preface to the guide of "Misused English words and expressions in EU publications" Jeremy Gardner notes,

"Over the years, the European institutions have developed a vocabulary that differs from that of any recognized form of English. It includes words that do not exist or are relatively unknown to native English speakers outside the EU institutions and often even to standard spellcheckers/grammar checkers ('planification', 'to precise' or 'telematics' for example) and words that are used with a meaning, often derived from other languages, that is not usually found in English dictionaries ('coherent' being a case in point)" [10].

The study of English-Ukrainian International Case Law Dictionary, which is based on over 200 legal acts and expert opinions of European Court of Human Rights, European Court of Justice and European Commission for Democracy through

Law (Venice Commission) reveals a number of Latin words and phrases with both terminological and more general "organizational" meaning, e.g. *res judicata, ipso jure, a contrario, locus standi, ad hoc, inter alia, amicus curie, mutatis mutandis, de minimis, ex officio, moratorium, ex post facto, in fine, in abstracto, actus reus, mens rea, in extremis, ibid, lex specialis, restitutio in integrum ad interim* [4]. The above mentioned examples of European legal writing also include legal maxims, like *nullum crimen, nulla poena sine lege.*

Generally speaking, the translation of the direct meaning of these inclusions can rarely pose problems for an experienced translator given the availability of the relevant translation software. Moreover, specialized law dictionaries can give the necessary explanation to their particular legal meaning. It should, however, be kept in mind that translation is a maximally full recreation of both the content and form of the source text, which should preserve its expressive, stylistic and other features.

Many works dedicated to legal writing call for abstaining from the most notorious features of legalese, including outdated vocabulary, Latin and Old French; they, however, rarely analyze the reasons for their continuous usage and functions they perform in legal texts, occasionally mentioning "great impact that the Roman legal system had on the legal systems of the majority of western countries" [11, p. 7]. Strictly speaking, this argument frequently fails to work in case of common law countries, which is our case.

The correct understanding and the choice of the translation technique depend upon the function played by the relevant Latin inclusion in the text, which can be classified into:

- Technical;
- Stylistic;
- Professional and
- Terminological.

According to P. Macleod, the first group includes Latin words and word combinations, which are used where "English lacks clear equivalent". Such words have settled meanings accepted and comprehended by professionals [7, p. 240]. Some of them have been anglicized and become technical terms, some of them have retained their Latin form and unusual pronunciation.

Another reason for the use of Latin can be found both in the history of the English law and that of legal education in Great Britain and, notably, the USA. The general principle of common law is precedent, which can be justly regarded as a look back at the past, which connects modern legal reality with the centuries-long experience. On the other hand, Latin was deeply rooted in the legal education; in fact, until the 20th century, learning law without learning Latin was hardly possible. Hence, the use of Latin becomes symbolic emphasizing the link with centuries-long tradition and thus performing the function of a stylistic device aimed at adding authority to the particular piece of legal writing, be it historical study, scientific research or judgment.

"Latin adds mystery to law and … complicates approach thereto. It separates members of the public from this profession, today, probably more than ever" [7, p. 250].

Although lawyers are reluctant to admit the fact, the desire to preserve the professional monopoly is likely to explain the existence of professional language incomprehensible for outsiders. The wish (need) to mark the membership of the profession and demonstrate availability of the relevant legal education can be achieved through the use of professional jargon.

The fourth group encompasses the Latin names, often abbreviated, for the types of legal actions, names for laws, precedents and legal principles, the latter frequently taking form of maxims, e.g. *mens rea, actus reus, writ of sertiorary, writ of mandamus*, *habeas corpus*, *Nulla sasina, nulla terra, Lex semper dabit remedium,* etc.

Many of the Latin terms refer to a specific historical realia with the meaning relevant for the particular event or a legal situation, which is presently nonexistent and, therefore, cannot be renamed, e.g. "*cum fossa et furca* – with pit and gallows. In ancient charters this phrase granted Baron courts the right to try capital offences and inflict capital punishment" [5, p. 462]. An attempt to translate them into modern English or, more generally, change them in any way will result in total confusion in historical interpretations and inability to work with or, at least, numerous problems in understanding historical legal texts.

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

The problems that Ukrainian readers and translators of legal texts face primarily lie in the fact that Latin does not have that wide application in the domestic legal sphere, which it enjoys in the English

legal prose. Whereas Anglo-American and, more generally, western law emphasized its connection with the historical tradition, the legal reforms, which followed the 1917 revolution were primarily aimed at eliminating the connection with the past. The communist authorities specifically underlined that the whole legal sphere was to become essentially new, which also resulted in the change of the form of legal texts' representation and comprehensive modernization of the language of law including the rejection of Latin and archaic vocabulary. In addition, Latin was practically excluded from the sphere of education, where it had occupied a sizable place before the 1917 revolution. It was only in the 1960s – 1970s that the development of the legal framework in the Soviet Union determined the revival of interest in the historical background of law and awareness of the importance of Latin in the area of legal education and science. It was about that period that Latin was renewed as an educational subject at some law faculties. However, the prevailing view remains that "Latin is important for jurisprudence primarily at the theoretical level being less important in practice since the modern legislation is more developed than that at the times of ancient Rome. It is for this reason that Latin has lost its importance for the practical legal activity" [11].

On the other hand, many lawyers deem that "… it is important when a lawyer uses a popular expression in the course of debate, for instance, '*Salus populi suprema lex'* ('The good of the people is supreme law'), emphasizing his/her professionalism thus providing a positive status" [11]. It should be, however, remarked that Black's Law dictionary provides a somewhat different translation for the quoted Latin maxim, namely "The safety of the people is the supreme law". It also provides a variant of the maxim in imperative '*Salus populi suprema lex esto'* (let the safety of the people be the supreme law) [5, p. 1960]. This example is to warn the users and translators of the possible pitfalls in the use and translation of Latin.

This is, obviously, not in line with the paradigm for the use of Latin in the English language of law where it is used not only in theoretical papers on jurisprudence but also in practical documents – judgments, deeds, wills and contracts.

With account to the above said, the attempts to preserve all Latin in translations of English texts will inevitably create the impression of artificial, archaic and incomprehensible language. Technical Latin words like *de facto, ex post facto, de minimis, a contrario, in fine, in abstracto, ibid*, etc., which create the aura of competence, knowledge and erudition in the English text are largely unknown to Ukrainian readers and should be translated into Ukrainian directly. The corresponding "atmosphere" of the text could be communicated through the use of formal legal vocabulary of the target language. The translator, in this case, should be careful not to over-use outdated and formal linguistic means.

It is, therefore, possible to arrive at the following **conclusions**:

− Latin words, phrases and maxims remain a characteristic feature of the English language of law despite persistent criticism;

− Their vitality is predetermined by the functions they perform in the text, which may be classified as technical, stylistic, professional and terminological;

− The translation techniques applicable for the translation of Latin inclusions depend upon the functions they perform.

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