

THE IMPORTANCE OF LATIN IN JUDICIAL ITALIAN

1. Introduction

Latin was, for centuries, the language of Europe, a language which spread quickly on the territories dominated by the Roman Empire, eliminating the use of the corresponding local languages not only in the public, but also in the private space. Most documents were written in Latin between the Xth and the XIIIth centuries, and the XIIth century was particularly important for the development of the Roman law, both as a result of the Bologna School of Lexicographers and of the strong influence of the Sacred Roman Empire.

The Latin language survived for a long period of time, being used to express cultural, philosophical and religious ideas. The XXIst century mentions Latin only in relation to the European languages it influenced, contaminated and enriched. Although Latin is now a dead language, impossible to use in everyday life, it has nevertheless been preserved in a series of domain specific languages, the Italian judicial domain being very well represented in this respect. The persistence of Latin in the judicial domain was favoured by the use of this language in the administrative documents specific to the Middle Ages (certain words denoting positions in the Italian administration, e.g. *console* - consule(m) and *podesta* - protestate(m), were borrowed from Latin). Although the Italian legal language has been consolidated along the centuries, Latin still plays an important part in the Italian judicial domain due to the terminology and to the specific sintagms, expressions and fixed lexical patterns used. This domain, more than any other, preserves the constant use of Latin and reflects a series of practices, traditions and rules developed along the centuries. This explains why the Italian judicial language is regarded as rigid and conservative by many specialists in the field.

2. The use of Latin in Italian judicial texts

Any legal system is the result of a complex socio-political background adapted to the history and habits of a specific ethnic group or nation. This complex structure is hardly, if ever, identical in two countries, even if the corresponding legal systems have common origins.

Judicial Italian is the result of secular historical traditions, numerous terms and expressions which originated in the Roman Law being still used nowadays. It

has various sources, but an important part of judicial Italian is represented by the Latin maxims and terms used in judicial texts and procedures.

In fact, such Latin terms and expressions are often selected in order to appropriately refer to specific judicial issues. They are included in the judicial terminology and are used not only in Italian, but also in Spanish, French and English in order to express a legal concept and to facilitate the jurists', the notaries' and the legal operators'/consultants' activity.

Analysing the most recurrent Latin expressions found in such judicial texts as special powers of attorney, contracts, proxies a.s.o., the fact could be noticed that the expressions analysed illustrate the legal concepts and realities envisaged better. Examples such as: *ad litteram*, *in primis*, *a posteriori*, *ad honores*, *alter ego*, *iter*, *latu sensu*, *modus vivendi*, *mea culpa*, *iuris et de iure*, *ab intestato*, *imprimatur*, *more uxorio*, *erga omnes* are illustrative for the role of Latin terminology in judicial practice. An interesting example is the Latin term *societas* which resulted in the Italian „soccida“, having the semantic equivalents „lega“ in Public Law and „compagnia“ in Public and Private Law.

Specialists have identified numerous Latin terms and expressions used in judicial Italian. Nevertheless, besides the various Latin expressions, mention should be made that judicial Italian also includes expressions which are not judicial proper, but which are selected by the legal operators in order to simplify the judicial texts. Some of the most common Latin expressions used in Italian judicial texts will be analysed and exemplified in the following sections.

2.1. Used to refer to translations or quotations, the expression *ad litteram* denotes a reading, a translation or an interpretation made according to the literal meaning of the words used. Translations may be made „*ad litteram*“, („*alla lettera*“) or „*ad sensum*“ („*a senso*“). The former type of translation implies preserving as much as possible of the original text, whereas the latter focuses on rendering the idea in the source text:

„Riportiamo qui i consigli pratici *ad litteram* cui facciamo seguire un testo commentato in cui ciascuna istruzione è spiegata in linguaggio più semplice e meno tecnico“ [EurLex-Comunicazione della Commissione al Consiglio, COM/2001/0529];

“[...] aspetto disponiamo di elementi certi circa l'illiceità del comportamento ed il relativo danno, giacché la situazione nel servizio giuridico era nota, e poiché ho l'impressione che la Corte, seguendo le considerazioni suesposte, possa andare troppo lontano nella giurisprudenza *ad sensum*, vorrei proporre di disattendere anche la domanda di risarcimento del danno morale“ [EurLex Conclusioni - Causa 77-70];

2.2. Certain Latin expressions are sometimes used in Italian judicial texts addressing the citizens. For example, *more uxorio* is an expression denoting family proper [1] and may be found only in Family Law. Similarly, *ope legis* is a Latin syntagm meaning „per forza di legge” or „in forza della legge” [2],

In presenza di figli a carico della vittima nati da rapporti di convivenza *more uxorio*, l'elargizione di cui al comma 1 è assegnata al convivente *more uxorio* con lo stesso ordine di priorità previsto per i beneficiari di cui al comma 3, lettera a)” (Art. 3-bis Legge nr. 107/2012);

„L'autorizzazione provvisoria si intende concessa se non è rifiutata entro sei mesi dalla data della presentazione della relativa domanda, fermo restando il potere dell'autorità competente di revocare l'autorizzazione *ope legis* o di rilasciare l'autorizzazione espressa con le eventuali prescrizioni del caso” (Art. 15 Legge nr. 319/1976);

2.3. The expression „*condicio sine qua non*” meaning „condizione senza la quale non si può verificare un evento” is used to indicate a condition which has to be fulfilled in order for a certain event to take place. When used in judicial Italian, this expression denotes essential conditions for the validity of the written legal documents:

„La realizzazione in tempi ragionevolmente brevi di un sistema di procedure e di formalità espletate per via elettronica costituirà la *condicio sine qua non* della semplificazione amministrativa nel settore delle attività di servizi, a beneficio dei prestatori, dei destinatari e delle autorità competenti” [EurLex Direttiva 2006/123/CE del Parlamento europeo]

2.4. Last, but not least, the term „*iter legis*”, meaning *cammino della legge* is used to denote the various stages that a law has to go through before passing. The so-called „*iter legis*” originally began with what the Romans called „*promulgazio*” (esposizione al pubblico), and was followed by three intervals of 8 days each, i.e. „*trinundinum*”, in which the law was discussed on and analysed:

„[...] implichera la trasposizione nel diritto tedesco delle due direttive in questione, pero sostiene che il ritardo che ha subito l' *iter legis* non costituisce inosservanza degli obblighi comunitari” [EurLex Causa 29/84, Sentenza della Corte del 23/05/1985]

The use of Latin terms and expressions in judicial language represents a tool for international communication in all legal systems. This is due to the fact that there is a close relationship between the Latin judicial terms used and the reality they denote. The relevance of Latin nowadays is given not only by the existence of numerous Latin terms still active in various judicial languages, but also by the

way in which these terms are used to express fundamental judicial principles in every area of law.

Judicial language represents a complex phenomenon, difficult to approach and understand by those who are not specialists in the field. Nevertheless, the linguistic richness specific to this domain makes the study of judicial language interesting and challenging. When language and culture come together to highlight the legal values of a people, the language in which Law is expressed becomes worth taking into account and analysing.

As far the Italian judicial language is concerned, it is very important to closely look at the use of Latin as a means of transmitting the values of an influential judicial culture. That is why special attention should be paid to the influence exerted by Latin texts on the international culture. Judicial Latin is considered to be common historical heritage for numerous European countries as it expresses the continuity of the Roman Law and it represents an interesting cultural mixture and a valuable tool of knowledge.

NOTES:

- [1]. The collocation *famiglia di fatto* refers to: „l'unione tra due persone che, pur non avendo contratto matrimonio tra loro, convivono *more uxorio*, cioè come in matrimonio, ripetendo lo stile di vita proprio delle coppie sposate” <http://dizio.org/it/more-uxorio>
- [2]. The expression is used to indicate that the action was carried out according to the law in force – „perché lo dice la legge” <http://dizio.org/it/ope-legis>

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CORPUS:

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L'importance du latin dans l'italien juridique

Sommaire: *L'étude ci-présent se propose d'analyser certaines expressions latines et leur application et utilisation dans des textes juridiques italiens. Même quand la langue italienne s'est consolidée, le latin est resté en effet une part de la terminologie juridique à travers les expressions, les syntagmes et les locutions typiques. Néanmoins, dans le cadre du langage juridique, il devient particulièrement important de réfléchir sur l'utilisation du latin comme moyen de transmission de l'origine de la culture juridique. Et, en outre, on ne peut pas ignorer le fait que le latin juridique est un patrimoine culturel commun de beaucoup de pays européens, autant qu'exprime la continuité et l'hérité universelle du droit romain et développe le rôle de mix culturel et d'instrument de connaître.*

Mots clés: *expressions latines, terminologie juridique, langage juridique, textes juridiques italiens.*

Acknowledgement

This article is included in the project carried out with a grant of excellence awarded by the Agency of Credits and Scholarships, Bucharest, The Ministry of National Education and Scientific Research.