



Merike Ristikivi

Docent of Legal History  
University of Tartu

# Mirror of the European Legal Traditions: Latin Terminology in the Estonian Law Journals *Õigus* and *Juridica*\*

## Introduction

This article analyses the usage of Latin legal terms in Estonian legal language, examining it primarily on the basis of the law journals *Õigus* ('Law', 1920–1940) and *Juridica* (editions from 1993 to 2008). In the historical and cultural framework, Estonian-language-based jurisprudence and its terms are relatively young phenomena, which for the most part developed at the beginning of the 20th century in connection with the founding of the nation-state (1918). Estonian-language jurisprudence developed with the establishment of sovereignty and the opening of the University of Tartu in 1919, with Estonian as the language of instruction for the first time in its history. Along with the establishment of national jurisprudence, the development of Estonian legal language was undertaken. In the 1920s, a wide-scale language reform and language planning movement took place in Estonia, bringing about a legal language reform and enrichment of vocabulary, among other things.<sup>1</sup> This was conditioned by the development of society and the ensuing urgent need and desire to develop the everyday language of the peasants into a functioning cultural language. The language reform led by young intellectuals set as its objective that, by becoming European, the nation still remain Estonian.<sup>2</sup> Considering the history of the Estonia of the beginning of the 20th century<sup>3</sup> we realise that the notion of 'European' suggested turning away from the sphere of influence of Imperialist Russia towards Western culture with its historical traditions, which have, among other things, strong ties with the Latin language that has played an important role in development of the terminology.

In fact, two epochs can be identified in the history of Estonian law and legal language, both characterised by the desire to be 'Western' and the conscious attempt to be European. The present article focuses on these

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<sup>1</sup> About the development of the Estonian legal language during the first half of the 20th century, see A. Vettik, R. Kull. *Tagasivaade eesti õigussõnavara kujunemisloole (1920–1940)* (Review of the Development of Estonian Legal Terminology (1920–1940)). Tallinn: Eesti Teaduste Akadeemia Emakeele Selts 2002 (in Estonian). In more detail about language planning in Estonia at the beginning of the 20th century see T. Ereft. *Eesti keelekorraldus* (Estonian Language Organisation). Tallinn: Eesti Keele Sihtasutus 2002, pp. 46–122 (in Estonian).

<sup>2</sup> More about Noor-Eesti, the society of young Estonian intellectuals at the beginning of the 20th century and the language reform, see N. Andresen. *Noor-Eesti ja keeleuuendus (Noor-Eesti and Language Innovation)*. – *Looming* 1970/9, pp. 1421–1429 (in Estonian).

<sup>3</sup> Concisely but in detail about the history of Estonia and other Baltic states during that period see 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.

two consciously Western-oriented eras: from 1918 to 1940 and from 1991 to the present. The Soviet era, between them, was marked by turning away from the West. This period is excluded from the present study. The periods under observation are interesting primarily because of their cultural-political changes in law and legal language. The first period of independence in Estonia (1918–1940) was an era when sovereignty could be enjoyed for the first time; a parliamentary democracy was established; and the Estonian language began to be used for legal studies, legislation, and practice of law in general.<sup>4</sup> The key elements that characterise this period are drafting of new legislation and development of the Estonian legal language, for until the adoption of new laws, the old laws imposed in tsarist times in the Estonian and Livonian provinces remained in force. Drafting legislation in the native language and preparing lawyers who would have a higher education required a properly functioning systematic legal vocabulary. Hence, the *Õigusteaduse sõnastik* (Dictionary of Law)<sup>5</sup> was published in 1934 as a result of the work done in the field of Estonian legal terminology, which included also terms in Latin and their Estonian counterparts.

In the time of regained independence (beginning in 1991), the Soviet legal system has been replaced with an orientation toward the Western world. Therefore, also the conceptual systems and languages of influence have changed: the importance of Russian has vanished, and the major languages of influence are now English and German, as a result of European Union legislation and the rulings of the European Court of Justice. Through European law and languages of influence, the usage of Latin terms has increased and for the first time in the history of the Estonian legal language a Latin–Estonian legal dictionary has been compiled.<sup>6</sup>

## Legal journals as object of study

The research material for the article is the major legal journals published in Estonian in the 20th and 21st centuries. Periodicals have a special role among the media for law and jurisprudence. In comparison with other types of scholarly texts, such as course books, monographs, or dissertations on jurisprudence, as well as legislation and court rulings, the choice of journals for terminological analysis has a clear advantage with respect to the topicality of the subject matter. Formally, periodicals are the most dynamic medium of law, reflecting the daily life of a particular legal culture.<sup>7</sup> Legal journals respond promptly to the changes in legal affairs, and it is here that pieces of new legislation and topical juridical issues are analysed and commented upon. As a result, juridical periodicals can be called ‘a medial crossing-point’ where jurisprudence, court and administrative practice, regulatory policies, and politics in general meet.<sup>8</sup> In short, this is the everyday life of a particular legal culture. Presenting relevant legal information, a legal journal becomes the memory of the legal culture of a particular age. From the perspective of terminological studies, this enables us to draw conclusions concerning the subject matter and areas that jurists have discussed most in their writing, using Latin terms.

Publication of legal journals in Estonian began in the first decade of the 20th century, in 1909.<sup>9</sup> In total, 16 periodicals have been published over the last hundred years. The 20th century was politically a very controversial time for Estonia, and the need for legal information produced a remarkable number of legal journals. Yet, in terms of substance and volume, all of these journals are very different. Several periodicals were released in only a few single volumes, while others have held considerable influence on jurisprudence and legal competence in Estonia for decades. The latter have been selected as the research material for this article.

The object of study in this article consists of the journals *Õigus* (as mentioned above, published in 1920–1940), the most influential legal journal prior to World War II (i.e., during the first period of independence in Estonia) and *Juridica* (issues from 1993 to 2008), the legal journal containing articles written since independence was regained. *Õigus* was published by the Association of Jurists, in Tartu. The authors and the editorial board

<sup>4</sup> In more detail about the development of Estonian legal order, 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. Järveldaid. The Development of the Estonian Legal System. – Zeitschrift für Europäisches Privatrecht 2000 (8), pp. 873–877.

<sup>5</sup> Compiled by F. Karlson, J. V. Veski, ed. E. Ilus. Tartu: Akadeemiline Kooperatiiv 1934.

<sup>6</sup> K. Adomeit, M. Ristikivi, H. Siimets-Gross. Ladina-eesti õigussõnastik (Latin–Estonian Dictionary of Law). Tallinn: Eesti Keele Sihtasutus 2005 (in Estonian).

<sup>7</sup> About legal journalism in Europe in the 18th–20th centuries, see 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, pp. XII–XIV.

<sup>8</sup> *Ibid.*, p. XII.

<sup>9</sup> About publication of juridical periodicals in the Baltic provinces of the Russian Empire in the 19th century, see M. Luts. Die juristischen Zeitschriften der baltischen Ostseeprovinzen Russlands im 19. Jahrhundert: Medien der Verwissenschaftlichung der lokalen deutschen Partikularrechte. – Juristische Zeitschriften in Europa. M. Stolleis, T. Simon (Hrsg.). Frankfurt am Main: Vittorio Klostermann 2006, pp. 67–116.

included professors at the University of Tartu, judges of the Supreme Court, prominent lawyers, 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* mostly consists of articles and overviews of the activities of the Supreme Court. In addition, some issues contained reviews of new legal literature published in Estonia as well as in foreign countries, overviews of international congresses and conventions, advertisements, and practical legal information, as well as presentations and speeches for *Õigusteadlaste Päev* (Jurists' Day). Much space was dedicated to writings about legal matters and legislation in the neighbouring countries as well as other European countries.

*Juridica* is a periodical issued by the Faculty of Law at the University of Tartu, in which the majority of Estonian juridical publications appear. *Juridica* has a wide circle of authors, thus having become a representative object of linguistic study. Its tenure has seen, besides jurists and lawyers, specialists from other academic fields having had their articles published in it. By 2007 (i.e., in 15 years of publication), the number of authors of pieces in *Juridica* had increased to 540.<sup>10</sup> The range of topics includes, in addition to public and private law in Estonia, also international law and EU law, as well as legal theory, legal history, and legal philosophy. However, articles written about legal history and Roman law, which on account of their subject matter include numerous Latin terms, are rather scarce. Issues of *Juridica* tend to be dedicated to specific themes, and frequently summaries of different areas of law are given: the current problems in legislation are discussed, and theoretical and practical commentaries are printed pertaining to the issues that have arisen in the process of implementing legislative acts.

This article focuses on the following questions: how the usage of Latin terms on sentence level in legal texts in Estonian differs in the above-described two eras—prior to World War II, from the example of the journal *Õigus*, and that of regained independence, on the basis of *Juridica*. From an intralinguistic viewpoint, the paper explores also the question of the role of Latin terms in legal language—i.e., to what extent, in the context of legal reforms and a new legal environment, Latin terms are, for authors of juridical articles, a means of signifying legal structures, relationships, values, and changes. In carrying out of the present survey, lexical-semantic analysis was used as the main research method, an approach that relies on statistical analysis for the quantitative breakdown of the research material. The method chosen enables researching the developments of legal language. Latin-based terms play a significant role in this. Not only do the quantitative data vary in the usage of Latin terms; also the contextual and semantic parameters differ. The ways in which the dynamics and the qualitative characteristics in the usage of Latin terms are connected with the process in the scholarly discourse in law reflect the development of legal language in general. Latin terms are not only an ornamentation and traditional device in the texts; they play an active role in explaining juridical issues. The sphere of legal language in which Latin terms and expressions are used has its roots in European legal culture.

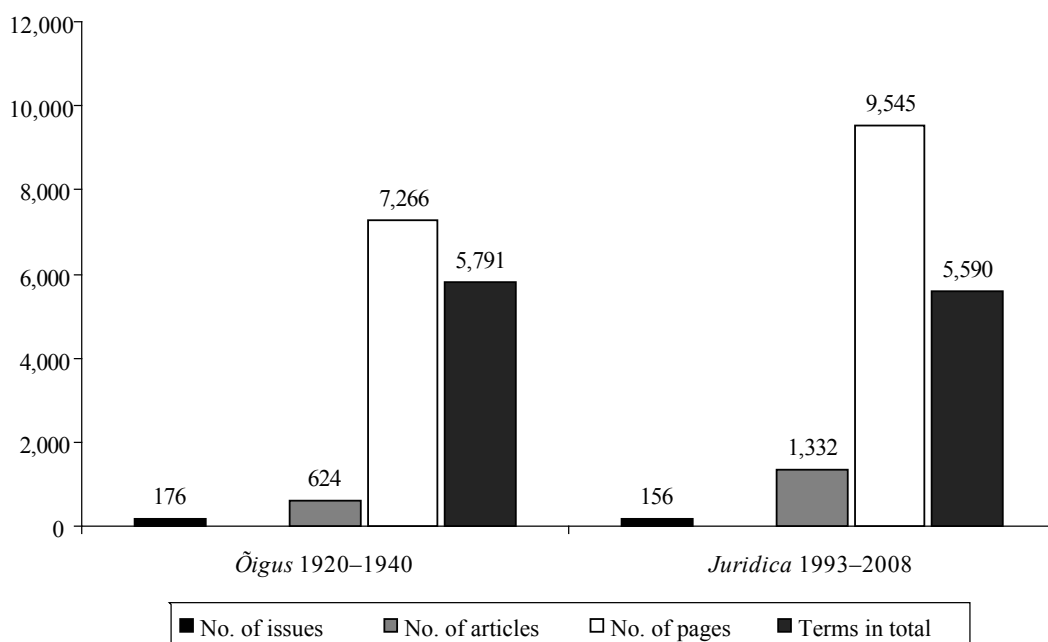
## Statistical data and the dynamics of the usage of terminology

The comparison of the results from the analysis of the journals *Õigus* and *Juridica* is justified by the similarity of the cultural-political context: a few years before each of *Õigus* and *Juridica* began to be published, Estonia became an independent state, and in both periods there was a conscious attempt of orientation toward Western legal thinking. Both periodicals were the principal means of circulating juridical material in Estonian in their respective periods, and, additionally, the periods of publication of both are comparable: *Õigus* was published for 21 years, in 1920–1940, while *Juridica* has been issued since 1993. Accordingly, information regarding 16 years of publication of *Juridica* is included in this research. The general statistical data concerning the material in the corpus and the terms examined are summarised in Graph 1.

With regard to the breadth of the research material, it must be pointed out that, in total, 176 issues of *Õigus* were published, in 21 years. In both the first and the last year of the journal's publication, only three issues appeared. From 1921 to 1928, eight issues of *Õigus* were published per year, on average<sup>11</sup>, and from 1929 onwards, there were as many as 10 issues a year. In all, the research material consists of 624 articles and 7,266 pages. The 16 years of *Juridica* studied involve 156 issues, 1,332, articles, and 9,545 pages. In the first year, 1993, six issues were printed, but in each subsequent year there were 10 issues published.

<sup>10</sup> P. Pruks. *Juridica* 150 numbrit ja 15 aastat – kuidas edasi? (150 Issues of *Juridica* and 15 Years—What Next?) – *Juridica* 2008/4, p. 263 (in Estonian).

<sup>11</sup> 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.

Graph 1: General statistical data: the periodicals *Õigus* and *Juridica*

In comparison of the two journals, it is noteworthy that, even though throughout the years of its publication *Õigus* had 20 issues more than *Juridica* has, the latter has had twice as many articles and about 2,300 more pages. This means that, while 35 articles per year appeared in *Õigus*, more than twice as many have appeared in *Juridica*, amounting to approximately 85 articles per year. As both were edited in times marked by influential changes and significant reforms in Estonian legal history, the differences in the scope of the materials cannot be explained by alterations in the legal order and the ensuing need for up-to-date juridical information. Rather, the differences can be explained, on the one hand, by the dissimilarities of the content—in *Juridica*, the main focus is on analytical articles, with little space being devoted to information about conferences and recent literature. *Õigus* contained, next to the articles on jurisprudence and commentaries on legislation, also 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 (listing 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 Parliament (*Riigikogu*), overviews of new literature on law in Estonia as well as abroad, reviews of international congresses and conventions, and summaries of the presentations of the speakers at the *Õigusteadlaste Päev* conferences.<sup>12</sup>

On the other hand, the average number of articles in *Juridica* is greater because the pieces of writing printed in it are more exhaustive. In the earlier years of publication, the articles were relatively short, at only 2–3 pages, on average, and only a few more than a hundred articles were published in a year. The greatest qualitative change in this respect occurred in 2000, when the periodical had 687 pages all told and the number of articles decreased to 74, making the average length about nine pages.<sup>13</sup> In the last five years, 2004–2008, the same volume-to-article-number ratio has been maintained—i.e., about 70 articles for every 734 pages published in a year, with the average length about 10 pages. Hence, the articles have become longer and more comprehensive over the years, and the brief reviews and commentaries of the early years have been replaced with more extensive and detailed analyses.

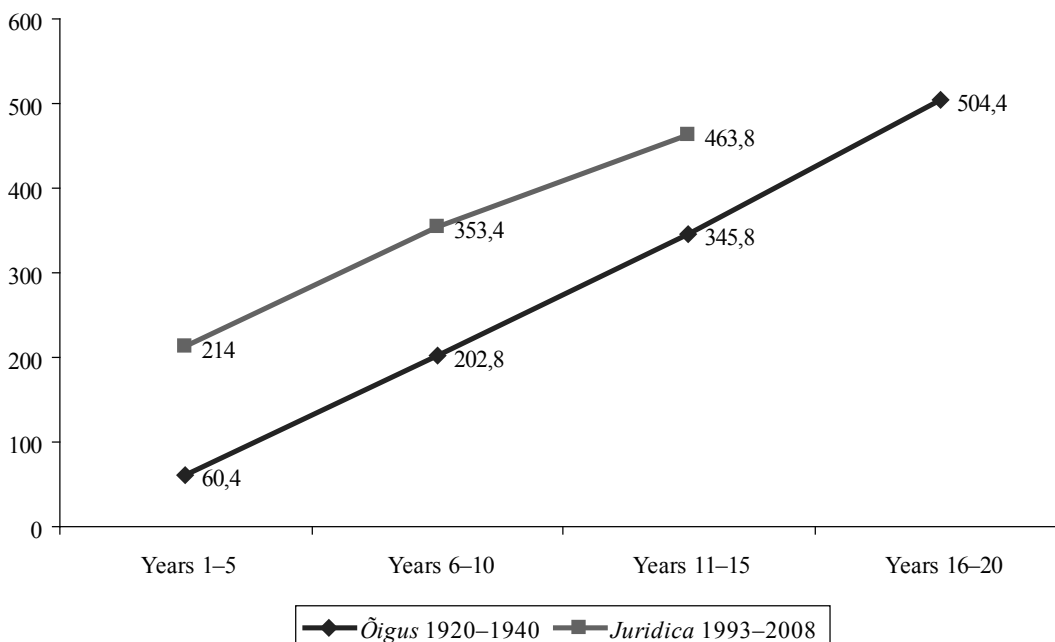
Comparison of the frequency of Latin terms in the two journals reveals that in *Õigus* Latin terms were used 5,791 times, with 32 Latin expressions per issue and nine Latin terms per article, on average. If we divide the number of pages by the number of terms, we can see that, on average, 0.8 expressions per page were used; i.e., the Latin language appears on almost every single page of *Õigus*. In *Juridica*, the number of Latin terms in the 16 years of publication is 5,590. In comparison with *Õigus*, there is a greater number of terms per issue—on average, 35 terms. However, calculating the frequency of occurrence per article and per page, we find that in comparison with *Õigus*, in *Juridica* only half as many Latin terms are used—four expressions per article and 0.5 per page; i.e., the Latin language appears on every second page of *Juridica*, on average.

<sup>12</sup> M. Ristikivi. Latin Terms in Estonian Legal Journalism in the Interwar Period: Practical Tools for a Young Legal Culture. – *Juridica International* 2009 (16), p. 234.

<sup>13</sup> M. Ristikivi. *Lexica iuridica* in *Juridica*: Latin Terms as a Reflection of Europeanisation of Estonian Legal Culture. – *Juridica International* 2007 (12), p. 174.

The dynamics of the occurrence of Latin terms over the years (as shown in Graph 2) reveal that in the years of its publication, *Õigus* enjoyed a steady growth in the usage of Latin terminology. The graph shows us the average frequency by five-year period. The number of Latin terms used, around 60 terms per year in the initial years of publication, steadily rose to 300 and even more in later years, finally totalling 500.

Graph 2: Dynamics of terminology usage: the periodicals *Õigus* and *Juridica*



In *Juridica*, Latin terms have been used more frequently from the very beginning of the publication of the journal, at 200 instances per year, on average. In the middle years of publication, this number is *ca* 350, and in recent years the trend has continued, with a total of 464 Latin terms per year in 2003–2007. The average for 2008—at 434 instances of usage—indicates that the trend is continuing.

In both *Õigus* and *Juridica*, the dynamics of the usage of terminology reflect the situation of the Estonian legal order and its changes during the years of publication of the periodicals. *Õigus* appeared when legal science in the Estonian language was being established. A major task faced by the new legal culture was to draft new laws and develop terminology in the native language. The widespread usage of Latin terms in the writings of the jurists of the time did not reduce the importance of the efforts to introduce and popularise legal terminology in the native language, though. On the contrary, Latin terms supplemented and specified the new vocabulary and served as an intermediary when the German and the Russian legal language employed earlier were replaced by the Estonian legal language. Making use of the Latin terms that the jurists were already familiar with alongside the new Estonian terms made it easier to understand and explain the latter.

The use of Latin terms in *Õigus* was conditioned directly by the existing laws. 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. One example is the Baltic Private Law Act<sup>14</sup>, which relied heavily on Roman law<sup>15</sup> and contained a large number of Latin terms. The Baltic Private Law Act, the basis for the new Estonian Civil Code, which was then being drafted, remained in force until the Soviet occupation in 1940 and formed one

<sup>14</sup> Provincialrecht der Ostseegouvernements. Dritter Theil. Privatrecht. Liv-, Est- und Curlaendisches Privatrecht. Zusammen gestellt auf Befehl des Herrn und Kaisers Alexander II. St. Petersburg: Buchdruckerei der Zweiten Abtheilung Seiner Kaiserlichen Majestät Eigener Kanzlei 1864. The original version of the code was prepared in German, the Russian version was also compiled and published immediately: Svod mestnyh uzakonenij gubernij ostzejskih. Cast' tretja. Zakony grazdanskije. St. Petersburg 1864. About the different redactions of the Baltic Private Law Act, see T. Anepaio. Tuntud tundmatu seadustik. Baltieraseaduse väljaanded (Renowned Unknown Code. Issues of Baltic Private Law). – Õpetatud Eesti Seltsi Aastaraamat 1994–1999 (in Estonian). Tartu: Õpetatud Eesti Selts 2002, pp. 302–324. About compiling the Baltic Private Law Act and its importance, see M. Luts. Private Law of the Baltic Provinces as a Patriotic Act. – *Juridica International* 2000 (5), pp. 157–167; B. Dölemeyer. Das Privatrecht Liv-, Est- und Kurlands von 1864. – *Handbuch der Quellen und Literatur der neueren europäischen Privatrechtsgeschichte*. H. Coing (Hrsg.). Bd. 3. Teilbd. 2. München: Beck 1982, pp. 2076–2090.

<sup>15</sup> 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.

of the central elements in the juridical discourse.<sup>16</sup> The usage of Latin terms in the middle and at the end of the 1930s was influenced in an upward direction by the drafts of the new Civil Code prepared in those years, which naturally led to corresponding scholarly discussions.<sup>17</sup> Thus, Latin terms had an intermediary role not only in the process of developing a new legal language but also in preparation and, above all, in expounding on new regulatory policies.

The substantial changes in the development of the law in Estonia have also had an effect on the usage of terminology in *Juridica*. After the Republic of Estonia regained independence in 1991, a radical legal reform followed, which can be characterised in brief as abandoning the former Soviet law and becoming part of the Western legal environment, which largely depends on the Latin language. In this era, also the accession of the Republic of Estonia to the European Union took place (on 1 May 2004). This, in turn, has brought about the application of European law and the rulings of the European Court of Justice within the context of the laws of the Estonian state. The integration into international trade and cross-border transactions additionally entails growing import of private international law.

The legal reform in Estonia has been accompanied by changes in the usage of terms by Estonian lawyers. In the periodical *Juridica*, the integration of the Estonian legal language into European legal culture is reflected by a relatively strong increase in the usage of terms in Latin, both in the sense of the general occurrence of terms and with regard to the adoption of numerous new Latin terms. The data on the dynamics of terminology usage in *Õigus* and *Juridica* show that in both journals there has been a steady increase in the usage of Latin terms over the years. The conscious desire to be European is mirrored in the language usage of the authors who are jurists, as well as in their vocabulary, which traditionally has relied heavily on the Latin language.

## Terminological variety and Latin terms in context

In addition to the quantitative analysis of Latin terms, also a qualitative study of this material has been carried out, with a view to detecting terminological variety. Qualitative analysis makes it possible to compare and draw conclusions about the linguistic diversity employed by the jurists of the periods under observation: how many different terms are known and used in professional writing, which terms are the most numerous, and what major terminological changes have occurred. Table 1 summarises the years of publication of the journals studied, the total number of Latin terms, and the number of distinct terms.

**Table 1:** The total number of Latin terms and the number of different terms

Journal	Publication	Latin terms, in total	Different terms
<i>Õigus</i>	21 years	5,791	1,342
<i>Juridica</i>	16 years	5,590	807

The results reveal that the number of different terms in Latin is greater in *Õigus*—while the total number of terms is 5,791, the number of individual terms used is 1,342. Dividing the total number of terms by the number of different terms, we see that each term is found slightly more than four times per article, on average. In *Juridica*, the total number of terms used in the 16 years of publication is also huge—5,590 instances of occurrence of Latin phrases in all. If this frequency of usage continues, it is likely that in the next five years this number will exceed the total number of Latin terms found in *Õigus*. Simultaneously, the number of different terms in *Juridica*, at 807, is about a third smaller than that for *Õigus*, and calculations show that a given term occurs approximately seven times per article, on average. It must be noted, though, that the great number of different terms in both *Õigus* and *Juridica* is accounted for by a considerable variety of Latin expressions. This indicates that the authors of pieces in *Õigus* and *Juridica* have not limited themselves to merely a few practical legal terms. The willingness and readiness to rely in their work on vocabulary derived from Latin were remarkable in the periods studied.

The majority of terms in both periodicals have been used just once. About half of the terms in *Juridica* have been used at least twice, whereas in *Õigus* about a third of all terms are used twice. Terms that occur five

<sup>16</sup> The influence of the Baltic Private Law Act goes back further in time: for instance, in regulation of types of servitudes it was transmitted into the 1993 Law of Property Act through the 1940 draft Civil Code Act. More about that, see M. Luts. Textbook of Pandects or New Style of Legislation in Estonia. – *Juridica International* 2001 (6), pp. 152–158. In 2003, the corresponding sections in the Law of Property Act were repealed, see *Asjaõigusseaduse, kinnistusraamatusseaduse ja nendega seonduvate seaduste muutmise seadus* (Act to Amend Law of Property Act, Land Register Act and Related Acts). – RT I 2003, 13, 64 (in Estonian).

<sup>17</sup> In 1935 (No. 6) and 1936 (No. 7), special issues of *Õigus* were published, introducing the drafts of the Civil Code and its differences in comparison with the Baltic Private Law Act.

times or more are even less commonplace: only 12 to 15 per cent of all terms found in the journal *Õigus*. In *Juridica*, this figure is bigger: nearly 21 per cent of terms have been used five or more times. Considering the length of the period studied, we may infer from the results that the vocabulary used in the articles does not abound in repetition of the same terms and for the most part the authors have resorted to expressions not found in the texts by the other authors. In contrast, the terms that do recur throughout the articles become all the more prominent. Table 2 introduces the Latin terms employed most frequently in the periodicals. The 10 most common terms are given with the number of occurrences in brackets.

**Table 2:** The most frequent Latin terms

Journal No.	<i>Õigus</i>	<i>Juridica</i>
1	<i>laesio enormis</i> (197 times)	<i>versus</i> (478 times)
2	<i>expressis verbis</i> (118)	<i>corpus iuris</i> (248)
3	<i>ex officio</i> (72)	<i>expressis verbis</i> (233)
4	<i>de lege ferenda</i> (47)	<i>op. cit.</i> ( <i>opus citatum</i> / <i>opere citato</i> ) (156)
5	<i>contra legem</i> (35)	<i>lex mercatoria</i> (145)
6	<i>ipso iure</i> (34)	<i>ius cogens</i> (144)
7	<i>detentor</i> (32)	<i>de lege ferenda</i> (143)
8	<i>detentio</i> (31)	<i>culpa in contrahendo</i> (83)
9	<i>in solidum</i> (30)	<i>ad hoc</i> (78)
10	<i>praeter legem</i> (27)	<i>de facto</i> (71)

Table 2 shows the great variety of terms being used recurrently in the periodicals examined. Juxtaposing the results of the study, we realise that the term that occurs most commonly is *de lege ferenda* (meaning ‘desirable to establish according to the law’). This term is used in discussions about laws that are being drafted as opposed to the legislation in force (*lex lata*). In fact, it is to be expected that such a term should be found so often in legal journals, as these constitute a forum for debates on current legislation and the laws being drafted. Both in *Õigus* and in *Juridica*, the term *expressis verbis* (explicitly) occurs frequently. This term semantically belongs to the general vocabulary of law and can be found equally in articles discussing all areas of law. In *Juridica*, the most frequently used term is *versus*, which is typically used to distinguish between the opposing parties in court cases.

The terms from professional vocabulary are among the 10 most common terms characteristically used in discussions about particular areas of law. These include the concepts of *laesio enormis* (gross disparity), *detentor* (detainer), *detentio* (detention), *in solidum* (for the whole), and *culpa in contrahendo* (pre-contractual liability) in the context of civil law, or, in the context of international law and international private law, *ius cogens* (peremptory norm) and *lex mercatoria* ((international) commercial law). Among the top 10 terms in *Õigus* and *Juridica*, there are also terms that do not belong to any particular field and that are used in the context of different topics; these concepts include *corpus iuris* (body of law), *ex officio* (by virtue of office or position), *contra legem* (contrary to the law), *praeter legem* (beyond the law), *ipso iure* (by the law itself), and *ad hoc* (that is, ‘for this’ or ‘for this special purpose’). The abbreviation *op. cit.*, standing for *opus citatum* or *opere citato* (meaning ‘the quoted book’ or ‘in the quoted book’), frequently used in *Juridica*, is fairly commonplace in scholarly writings for referring the reader to an earlier citation.

## Functional usage of Latin terms

Analysing the research material from the standpoint of the meaning and function of the terms, we realise that professional juridical vocabulary is the most prominent. This category comprises the terms that, as normative arguments, precisely and fully convey the concepts they express; i.e., they carry specific juridical information.<sup>\*18</sup>

A common feature in the periodicals examined is that the more frequently a term occurs, the broader the scope of topics it is used to discuss. For instance, the ideas of *de lege ferenda* (desirable to establish according to the law), *de lege lata* (according to the law in force), *contra legem* (contrary to the law), *praeter legem*

<sup>18</sup> E. A. Kramer. Lateinische Parömien zur Methode der Rechtsanwendung. – Steuerrecht. Ausgewählte Probleme am Ende des 20. Jahrhunderts. Festschrift zum 65. Geburtstag von Ernst Höhn. Bern: Verlag Paul Haupt 1995, p. 142.

(beyond the law), *intra legem* (within the law), *causa* (cause), *ex lege* (from the law), *sine lege* (without a law), *ipso iure* (by the law itself), *conditio* (condition), and *lex specialis* (special statute) cannot be identified as topic-specific. Such terms, applied in various areas of law, constitute basic juridical terminology and are part of the vocabulary of all lawyers.

It also appears that the less frequently a term occurs, the more specific it is and the more likely it is to be related to a specific area of law. For example, in *Õigus*, the term *mare clausum* (closed sea), used once, denotes in international law a sea under the jurisdiction of a particular country and not open to other nations<sup>19</sup>; in *Juridica*, the expression *lex superior derogat legi inferiori* (superior law overrules inferior law) denotes the primacy of the Constitution in the hierarchy of legislation.

The greatest number of specific legal terms can be detected in articles about civil law, whose vocabulary is derived from Roman law. Field-specific legal terms can also be found in articles that discuss penal law, legal theory, and the philosophy of law. The terms in these areas originate from the sources compiled in modern times and the Middle Ages, rather than in antiquity. Typically, such terms are lengthy expressions, often consisting of more than one sentence. There is a clear link with the topic: the more general the issues the article discusses and the greater the number of lawyers and jurists dealing with these issues in practice, the more frequently the well-known terms are used. The opposite is true also: the more specific the content of the article, the more numerous are the foreign terms applied in that particular area only.

The frequent use of professional vocabulary in Latin in the articles about international law and EU law attests to the practical value of Latin terms in international exchange of information and multi-language communication. Using specific legal terms and even coining new terms in Latin in these areas is justified and indeed expected. In the context of the above-mentioned specialities, legislative drafting and legal practice operate across the boundaries of national languages, and foreign language units that can be considered neutral as to style and connotation enable us to ensure that the text is understood in the same way by everyone involved in the discourse.<sup>20</sup> Hence, Latin terms are universal aids in international legal relationships and facilitate communication between other languages.

## Historical conditions and changes in the usage of Latin terms

Both journals examined for the purposes of this article were published in periods marked by profound political changes and the ensuing reforms in the Estonian legal order. Legal reforms have also influenced the usage of Latin terminology. While *Õigus* was being published, the most extensive changes in the usage of terminology concerned the development of Estonian legal language and drafting of legislation in Estonian, with Latin having a specific function. Latin terms played an intermediary role in the communication between Estonian and two foreign languages (German and Russian) and provided the required specificity of concepts. From the very first issue up to 1922, lists of terms appear in *Õigus*, providing Estonian translations of the previously used Russian and German terms. In order to allow determining the semantic accuracy and meaning of the new words, also Latin versions were given in addition to Russian and German translations. The new Civil Code was being drafted throughout the inter-war period, and this topic was constantly under discussion on the pages of *Õigus*. Thus, the usage of language by the lawyers of that time was noticeably affected by the abundance of Latin terms occurring in the previous legislation, the Baltic Private Law Act. The topics written about in *Õigus* that required particularly frequent use of Latin included land ownership and the right of succession, which needed to be analysed in detail in the context of the new legal situation.<sup>21</sup>

Subsequently, the usage of Latin terms was a reflection of the development of the contemporary legal order and accompanied it. However, when the legal situation changes, linguistic needs change too and terminology is adjusted. Accordingly, the recent reorganisation of the legal system has changed the vocabulary of the lawyers active at present and we detect in the pieces of writing in *Juridica* only a few Latin expressions commonly

<sup>19</sup> The term *mare clausum* has been taken from John Selden's 1635 book by the same title, written as a response to Hugo Grotius's 1609 work entitled "Mare liberum" which dealt with the principle of the freedom of the seas. More about this, see W. S. M. Knight. *The Life and Works of Hugo Grotius*. London: Sweet & Maxwell 1925, pp. 110–112.

<sup>20</sup> Naturally, even Latin legal terms cannot avoid polysemy completely. In different legal systems, or in the course of centuries, several terms have acquired new meanings which express similar as well as not so closely related notions. However, polysemous terms are not particularly numerous and they are not considered a difficulty in professional usage. More about this, see H. E. S. Mattila. *De aequalitate Latinitatis jurispritorum*. – *Revue internationale de droit compare* 2002/3, pp. 717–758; M. Ristikivi. *Ladina keelest pärit terminite polüsemia ja sünonüümia eesti õiguskeeles* (Polysemy and Synonymy of Latin Terms in Estonian Legal Language). – *Eesti Rakenduslingvistika Ühingu aastaraamat 3*. *Estonian Papers in Applied Linguistics 3*. Tallinn: Eesti Keele Sihtasutus 2007, pp. 253–267 (in Estonian).

<sup>21</sup> In more detail about the usage of Latin terms in the context of the right of succession and ownership of land, see M. Ristikivi (Note 12), pp. 237–239.



found in *Õigus* in articles about the right of succession, such as *hereditas iacens* (resting inheritance), which denotes succession that has been opened where the inheritance has not been transferred to heirs. Also the ideas of *beneficium inventarii* (benefit of inventory), *beneficium separationis* (the right to have the goods of an heir separated from those of the testator in favour of creditors), *successio singularis* (singular succession), and *successio universalis* (universal succession) have been expressed in Latin once each in *Juridica* in an article about the draft Law of Succession Act. These are now both well-known institutes, as they were in the earlier period, so these Latin terms are part of the active vocabulary today.

By contrast, all of the important terms used in *Õigus* in writings about relations regarding land and ownership relations have failed to find their way into the vocabulary of today's jurists. Examples of these concepts are *dominium directum* (referring to strict ownership, or the right of a landlord), *dominium utile* (ownership of the soil itself, or the right of a tenant), *dominus directus* (direct owner), *dominus utilis* (tenant or person who uses the property), and *emphyteusis* (denoting 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). Such disappearance is not surprising, since the laws concerning ownership of land have changed completely. The divided property principle, created in the Middle Ages and discarded in the process of development of modern private law, was adhered to in Estonia between the World Wars.<sup>22</sup> It was conditioned, on the one hand, by the existing legislation pertaining to private law inherited from the Russian tsarist regime.<sup>23</sup> At the same time, it was used to solve the regulatory problems that came with the new social reforms.<sup>24</sup> In *Juridica*, these terms do not occur because in the new legal environment there is no practical need for such terms. The divided property principle could be found in the Baltic Private Law Act, but current private law in Estonia recognises undivided or absolute property.

The periodical *Juridica* has been issued on a regular basis after the Republic of Estonia's accession to the European Union in 2004. The harmonisation of local legislation with EU law and the European Court of Justice rulings has introduced the terminology used in the EU, resulting in the appearance of quite a few new Latin terms in the articles in *Juridica*. However, it is important to note that the qualitative change in usage of Latin terms did not occur only after Estonia became a member of the EU. The most significant changes in terminology started years earlier when the readiness to try to again become part of the European legal environment surfaced.<sup>25</sup> Thus, the rearrangements in the Estonian legal system have caused Estonian lawyers to include in their usage of legal language those Latin terms that have become rooted in the legal tradition of Europe.

Through the decisions of the European Court of Justice, such concepts as *fumus boni iuris* and *fumus non mali iuris* were adopted in Latin in 2007. Word-for-word translations of the terms would be 'an air of good law' and 'an air of the not-bad law'. In the European Court of Justice, these terms are used in application of interim measures, and in that context *fumus boni iuris* has the meaning 'probability of the alleged claim'<sup>26</sup>—i.e., a strong presumption that the action is well founded or that it should at least be *prima facie* clearly well founded.<sup>27</sup> *Fumus boni iuris* can be altered into the weaker requirement *fumus non mali iuris*; i.e., the applicant is under the latter not required to demonstrate that the allegations in the main action are *prima facie* well founded but merely must show that the case is not obviously unfounded.<sup>28</sup> These are strictly professional terms whose direct meaning does not seem closely related to the concepts the words denote, and because they have limited application, they are not very common in legal texts yet. Therefore, before these become firmly rooted in our legal language, it would be practical to add translations or clarifying comments to them.

The term *fumus boni iuris* is also a good example of the spread of Latin legal terms in the European legal environment. A decade ago, when legal language was discussed, the prevailing view was that Europe's legal systems have developed in too different directions for detection of any common vocabulary and that Latin's role as a *lingua franca* in Europe is an illusion.<sup>29</sup> This standpoint was exemplified by pointing out that the term *fumus boni iuris* is found in the writings of Italian lawyers but not in other legal orders. Nonetheless, the

<sup>22</sup> More detailed contemporary studies about the *obrok* in *Õigus*, see J. Tjutrumov. Pärilikust obroki õigusest Balti õiguse järele (On the Hereditary Right of *Obrok* for Baltic Law). – *Õigus* 1929/7, pp. 209–216 (in Estonian); T. Grünthal. Otsese omaniku õigustest kruntrendile (obrokile) antud kinnisvara suhtes (On the Rights of the Direct Owner on Real Property Given in *Obrok*). – *Õigus* 1931/8, pp. 358–364 (in Estonian).

<sup>23</sup> Definition and general regulation of the divided property in the Baltic Private Law Act, see 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, Art. 942–952; about *obrok* see Art. 1324–1334.

<sup>24</sup> About the Land Reform, see A. Weller. The agrarian reform in Esthonia from the legal point of view. Berlin: Baltischer Verlag und Ostbuchhandlung 1922.

<sup>25</sup> M. Ristikivi (Note 13), pp. 175–176.

<sup>26</sup> W. A. Kennett. Enforcement of judgements in Europe. Oxford University Press 2000, p. 160.

<sup>27</sup> D. Sinanotis. Interim Protection before the European and National Courts. Alphen aan den Rijn: Kluwer Law International 2006, p. 23; also W. Frenz. Handbuch Europarecht. Band 3: Beihilfe- und Vergaberecht. Berlin, Heidelberg: Springer 2007, p. 507.

<sup>28</sup> K. Lenaerts, D. Arts. Procedural Law of the European Union. London: Sweet and Maxwell 1999, p. 300.

<sup>29</sup> P. Berteloot. Der Rahmen juristischer Übersetzungen. – Recht und Übersetzen. G. R. de Groot, R. Schulze (Hrsg.). Baden-Baden: Nomos 1999, p. 101.

materials included in the current research indicate that now this term has entered the professional literature in Estonia as well as other countries through the decisions of the European Court of Justice. Thus it can be inferred that in the past 10 years Latin terminology has acquired greater significance and is the connecting link between the legal languages in Europe.

The rulings of the European Court of Justice and the European Court of Human Rights have altered the usage of the term *versus* in the Estonian legal language. Earlier, the term was relatively rare in the articles in *Juridica* and was primarily used for juxtaposition of two situations or circumstances: ‘the meaning of law *versus* provision of law’, ‘personal interest *versus* public interest’, ‘minor infringements *versus* serious violations’, ‘guilt *versus* harmfulness’, etc. In recent years, this term has become noticeably more frequent. It mostly occurs in the abbreviated form *ver.*, *vs.*, or *v.*, referring to particular European court judgements, and denoting the parties to a court case (e.g. ‘X *vs.* Y’).

However, not all new terms appearing in *Juridica* lately are part of the terminology needed for discussing the topics related to the European Union. In 2008, *speculum practici* (mirror of practice) was referred to for the first time to name a new column in *Juridica*, in which commentaries mainly on the practice of the Supreme Court are presented. The word *speculum* (mirror) is a reference to a tradition dating back to the Middle Ages when the so-called Mirror of Wisdom, Mirror of Morality, and Mirror of Law were compiled.<sup>30</sup> In legal history, the best-known mirror is ‘Sachsenspiegel’ (The Saxon Mirror), compiled by Eike von Repgow in the 13th century, on which was modelled also the 14th-century Law Mirror of Livonia.<sup>31</sup>

In 2006, an article was printed in *Juridica* about the scholarly traditions of Roman law<sup>32</sup>, which added to the corpus several terms originating from Roman law. Among the concepts expressed in these are *accessio* (increase), *acquisitioes naturales* (natural acquisitions), *acquisitioes originariae* (original acquisitions), *animus rem sibi habendi* (intention to keep the thing in one’s possession), *nova species* (new species, or a new shape or form given to materials), *res nullius* (property of nobody), and *usus modernus pandectarum* (new use of the Pandects). The article focuses on the institute of *specificatio* (specification)—i.e., giving of form to materials—and describes the basic features of the scientific methods of two different legal scholarly traditions: *usus modernus pandectarum* and the historical school, which came after it.

Thus, not only modern law and EU vocabulary are represented in the usage of terminology in *Juridica* as a result of socio-political changes. New terms derived from Latin have been appropriated in the articles in *Juridica* also through work with materials considering legal history. As we can see in the *speculum practici* example, the term from the Middle Ages has found new application, establishing a link with the historical tradition.

## Conclusions

The analysis of the Latin vocabulary detected in the research material established that during the years of publishing of *Õigus* and *Juridica*—i.e., in the two periods of independence in Estonia, Latin terms have been used widely. In both periods, the Estonian legal order underwent reform, and in drafting of new legislation, European legal culture, which had developed on the basis of the Latin language, was looked upon as a good model. The total number of Latin terms used is great in those two periods, and also the number of different terms is significant.

The results of the research allow us to infer that language usage keeps up with the developments in society. When the legal environment changes, language usage in legal texts changes, too. The terminology used in *Õigus* was directly related to the regulations dating back to the tsarist period, resulting in the appearance of terms used in the Middle Ages and pertaining to the divided property institute as in effect in Estonia then. Such an institute is absent in modern law, so these terms are unnecessary from a practical point of view and do not occur in the articles of the later publications. Today’s language is to a large extent influenced by the terms adopted through European law and the rulings of the European Court of Justice.

<sup>30</sup> More about on the way Roman and medieval authors used the mirror as both instrument and metaphor, see E. P. Nolan. Now through a glass darkly: specular images of being and knowing from Virgil to Chaucer. Michigan: University of Michigan Press 1990, pp. 290–291.

<sup>31</sup> J. Sootak. Uus rubriik – *Speculum practici* (New Heading—*Speculum practici*). – *Juridica* 2008/8, pp. 127–128 (in Estonian).

<sup>32</sup> H. Siimets-Gross. Rooma õiguse uurimistraditsioon Tartu Ülikoolis 19. sajandi keskel (Research Tradition of Roman Law in the University of Tartu in the Middle of the 19th Century). – *Juridica* 2006/10, pp. 720–729 (in Estonian).