

Volume 1/2009

Comparative Legilinguistics

International Journal for Legal
Communication



Institute of Linguistics
Adam Mickiewicz University
Poznań, Poland

INSTITUTE OF LINGUISTICS
LABORATORY OF LEGILINGUISTICS
www.lingualegis.amu.edu.pl lingua.legis@gmail.com

KOMITET REDAKCYJNY/EDITORIAL BOARD

Editor-in-chief: Jerzy Bańczerowski

Co-editor: Aleksandra Matulewska

Sekretarze/Assistants: Karolina Gortych, Joanna Grzybek, Karolina Kaczmarek,

Paweł Korcz, Joanna Nowak, Paulina Nowak-Korcz

Członkowie/Members: Łucja Biel, Susan Blackwell, Olga Burukina, Artur Kubacki,

Peter Sandrini, Iwona Witczak-Plisiecka, Feliks Zedler

Comparative Legilinguistics ukazuje się raz w roku. Zamieszcza artykuły, recenzje, sprawozdania w językach: angielskim, francuskim, niemieckim i rosyjskim.

Redakcja zastrzega sobie prawo recenzowania nadsyłanych materiałów.

Comparative Legilinguistics is published once a year. It contains articles, reviews and reports in English, French, German and Russian.

The editorial board reserves the right to publish selected articles without external review.

Adres Redakcji/Editorial Office

Instytut Językoznawstwa

Pracownia Legilingwistyki

Al. Niepodległości 4, pok. 218B

61-874 Poznań, Poland

legilinguistics@gmail.com

Wydanie publikacji dofinansował Instytut Językoznawstwa

The issue has been published with financial grant from the Institute of Linguistics, Poland.

Copyright by Institute of Linguistics

Printed in Poland

ISBN ...

ISSN ...

Nakład Egz.

Redakcja i skład

Druk:

TABLE OF CONTENTS

ARTICLES

1. Forensic Linguistics and Linguistic Corpora

- Susan BLACKWELL (UK), Why Forensic Linguistics Needs Corpus Linguistics 5

2. Linguistic Rights and Legal Communication

- Milena HADRYAN (Poland), Achievements of the Plain Swedish Movement from the Polish Perspective 19
- Peter SANDRINI (Austria), The Parameters of Multilingual Legal Communication in a Globalized World . 34

3. Sworn Translation and Court Interpreting

- Marcin STYSZYŃSKI (Poland), Arabic in Certified Translators' Work 49
- Niklas TORSTENSTON, Barbara GAWROŃSKA (Sweden), Discourse Disfluencies in Bilingual Court Hearings 60

4. Legal Language

- Karen DESCHAMPS, Hans SMESSAERT (Belgium), The Logical-Semantic Structure of Legislative Sentences 73
- Karolina KACZMAREK (Poland), Interpretation of Legal Texts by Translators. Imperative, Prohibitive and Empowering Clauses in Polish, Hungarian and English Legal Language 88
- Jana LEVICKA (Slovakia) Analysis of 'Classical' and Legislative Definitions for the Term Records of the Slovak Terminology Database 107
- Merike RISTIKIVI (Estonia), Latin Legal Terminology in Estonia 123
- Aleksandra MATULEWSKA (Poland), Methods of Expressing Deontic Modality in English and Polish Statutory Instruments 133
- Wanda WAKUŁA-KUNZ (Poland), Cognitive Consequences of Translations for Rendering the Modality of Legal Documents (A Semantic Study Based on The Amsterdam Treaty as an Example) 146
- Iwona WITCZAK-PLISIECKA (Poland), Legal Speech Acts in a Cognitive Linguistic Perspective – Focus on Modality 159

5. Legal Translation

Łucja BIEL (Poland), Organisation of Background Knowledge Structures in Legal Language and Related Translation Problems	176
Karolina GORTYCH (Poland), The Function of Ancient Greek in Teaching Legal Translation of Modern Greek Language.	190
Joanna GRZYBEK (Poland), Polysemy, Homonymy and Other Sources of Ambiguity in the Language of Chinese Contracts	207
Marcin MICHALSKI (Poland), Legal Themes in the Maqamas of AL-HARĪRĪ (1054 – 1122)	216
Diana YANKOVA (Bulgaria) Translation Approaches in a Multilingual and Plurilegal Setting: Canada and the EU	230

REVIEWS

Łucja BIEL (Poland), The Long-Felt Need of a Legal Translation Textbook: Review of PRZEKŁAD PRAWNY I SĄDOWY by Anna Jopek-Bosiacka	
--	--

LATIN LEGAL TERMINOLOGY IN ESTONIA

ABSTRACT: The article examines the use of Latin in contemporary legal texts and its impact on terminology. The terminology analysed in the article comprises the terms collected from the Estonian juridical periodicals. Attention is paid to the following topics: average size of the vocabulary of the Estonian lawyer; the most frequent Latin terms and phrases; context of Latin terms and phrases; main problems and errors in the use of Latin.

KEY WORDS: legal language, terminology, terminological dictionaries, language contact

1. Introduction

Latin has great significance for law: the Estonian legal system as part of the legal system of continental Europe is based on Roman Law, which is considered the common denominator of European legal systems; it is also called “the *lingua franca* of the world’s jurisconsults” (Wieacer 1978:97). The same consistency can be observed in the language of Roman Law as well – the Latin language. Thus, in Estonian texts we can find juridical terms in Latin, which developed more than two thousand years ago.

In recent decades Latin juridical terminology has been gradually becoming more important as regards the understanding and communication between lawyers representing different languages and legal systems (Benke, Meissel 1997:10). It is also observed that the use of Latin expressions facilitates unifying the European judicial system and makes juridical literature internationally understandable (Knütel 1994:251).

The terminology analysed in my paper comprises the terms collected from the Estonian periodical *Juridica* during the last 13 years. The motivation to survey the usage of Latin from that aspect was caused by the compilation

¹ Lecturer of History of Law, Institute of Private Law, Faculty of Law, University of Tartu. M.A. in Classical Philology (University of Tartu), currently doctoral student in Faculty of Law (University of Tartu). Main areas of research: Latin legal terminology and linguistics of law, Roman law and legal history. In total 23 publications and 14 conference presentations. merike.ristikivi@ut.ee

of a “Latin-Estonian Legal Dictionary” (Adomeit, et al. 2005) (published in 2005). As a member of the group working on it, my main interest and purpose were to find out the Latin terms and phrases which are commonly used by Estonian lawyers and therefore should be included in the Dictionary.

2. Journal *Juridica* as the basis of the research

The reason I chose the *Juridica* as the basis of my research was that the *Juridica* has been the most important Estonian juridical journal. The first issue of the *Juridica* was published in 1993 as a journal of the faculty of law of Tartu University. In 13 years the *Juridica* has developed from a small faculty magazine into the most influential legal journal. The articles in the *Juridica* contain texts dealing with all major areas of law and thus give an objective overview of the different aspects of terminology. In years articles have been published about public and private law in Estonia, as well as international law, the laws of the EU and the theory, history and philosophy of law. Still, it should be specified that articles concerning the history of law and Roman law – that is, topics which in general contain numerous Latin terms – were only few; for instance, there was only one article about Roman Law (Siimets-Gross 2002: 626-634). Hence, the list of the terms and phrases does not include first and foremost legal history, but gives an overview of the general vocabulary of today’s lawyers.

Over the years, the journal *Juridica* has been used as additional study material in teaching lawyers; every year also summaries of the bachelor and master thesis of law students have been published there². Those articles compiled by students enable us to get a good overview of the tendency in using Latin by a future generation of lawyers.

3. Co-authors of the *Juridica*

The circle of co-authors is very wide. Over the years, specialists from different fields have published their articles in the *Juridica*. Besides the professors and students of the faculty of law, the faculty of economics and business administration and

² In special issues of bachelor and master students, Latin is used quite often: on average 29 terms or phrases per issue of *Juridica*: 6/1996 (29 Latin terms), 7/1997 (11), 6/1998 (16), 6/1999 (20), 5/2000 (17); during recent years, the usage of Latin terms and phrases has increased: 5/2001 (47), 5/2002 (64).

the faculty of social sciences of Tartu University – we can see among the authors also professors and students from other Estonian universities, such as Tallinn Technical University and the Public Service Academy.

A large group of co-authors are members of Parliament and civil servants from various ministries. Judicial authorities have also published articles in the journal, such as the legal chancellor, attorneys, prosecutors, and judges. A smaller group of co-authors are specialists from auditing and insurance companies, medical, and religious circles.

4. Results of the research

4.1. Frequency of usage of Latin terms and phrases

The research includes issues of the *Juridica* from the years 1993-2005 (i.e. from the beginning till nowadays). All in all, there are 126 issues³. These 126 issues of the *Juridica* contain 1148 articles and 7251 pages.

732 different Latin terms and phrases can be found in the articles. In total, Latin was used 4110 times; consequently, on average 30 terms or phrases *per* issue and 3-4 terms or phrases *per* article. If we divide the number of pages by the number of terms and phrases, we can see that the Latin language appears on average on every second page of the *Juridica*.

4.1.1. The number of terms and phrases in issues of *Juridica*

TABLE 1: Terms in issues

Issue/ Year	1	2	3	4	5	6	7	8	9	10
1993	8	7	11	6	26	8	-	-	-	-
1994	2	5	22	18	13	23	27	27	20	6
1995	1	21	23	1	11	47	63	22	59	11
1996	27	24	11	12	3	29	43	156	60	12
1997	56	29	0	1	17	11	11	28	31	21
1998	31	10	40	51	44	16	24	27	15	8
1999	52	14	24	195	6	20	26	19	24	30
2000	31	17	14	26	17	47	61	6	10	23
2001	58	41	10	9	47	91	53	55	7	20
2002	34	23	44	46	27	37	52	25	36	69
2003	32	42	33	38	46	53	36	47	65	32
2004	108	9	12	68	64	10	65	7	86	19
2005	22	34	28	155	32	44	35	28	41	37

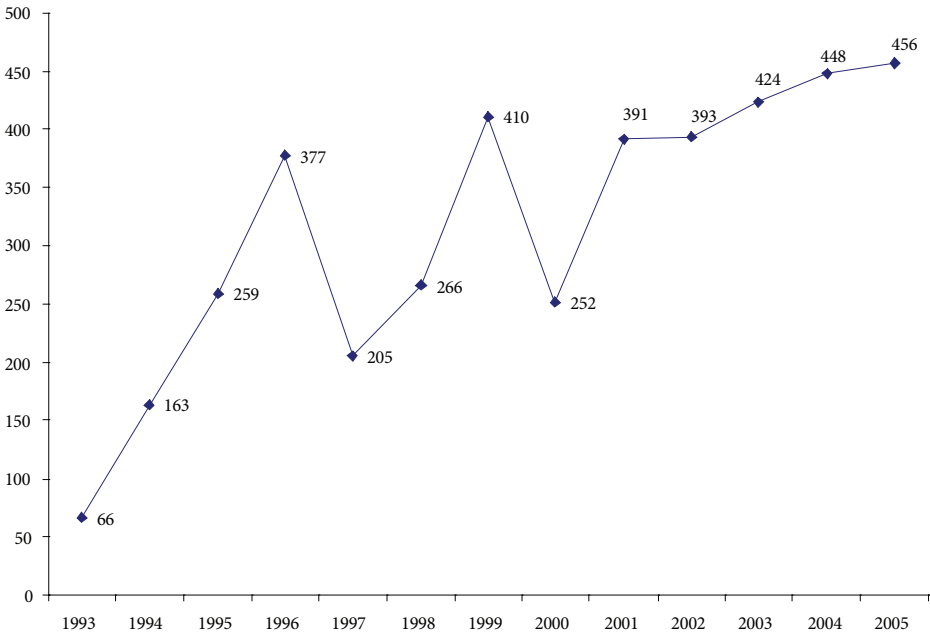
³ In the first year, 1993, 6 issues were published, the years 1994-2002 contain 10 issues *per annum* each.

Some issues do not include any Latin terms, for instance in the 3rd issue of 1997 not a single Latin term is used. The 4th issue of 1997 and the 1st and 4th issue of 1995 contain only one term. On the other hand, a great number of terms and phrases can be found in the 1st and 9th issue of 2004 – 108 and 86 terms respectively. The 6th issue of 2001 contained 91 terms, the 4th issue of 2005 155 terms, the 8th issue of 1996 156 terms and the 4th issue of 1999 included as many as 195 terms.

The usage of Latin terms primarily depends on the historical development of the particular area of law. Latin terms and phrases are often used in articles on legal theory, philosophy of law, criminal law, international law, succession, and the law of obligation. In all these areas the body of terminology in use nowadays, developed in ancient times already, or during the Middle Ages.

Very few terms or no terms at all are to be seen in articles on labour law, family law, and business law. The development and study of these fields has mostly taken place in the 20th century. Hence there is very little or no connection with Roman Law from which the greater part of Latin legal terms originates.

TABLE 2: Terms and phrases through the years



4.1.2. Terms and phrases through the years

According to the graph, there are two major falls in the rising line – in the years 1997 and 2000⁴.

As we can see, the usage of Latin terms and phrases has noticeably increased over the years, especially during the last couple of years. In 1993, in total 66 terms were used, which makes on average a rather modest 1.08 Latin expressions per article. 5 years later, in comparison, (in 1998) already 266 terms were used, which is on average 2.9 expressions per article. And last year, in 2005, there were 456 instances of Latin terms used in the articles, which is on average 5.3 Latin expressions per article.

4.1.3. Most frequent terms and phrases

Latin juridical terms are typically single words – stem words or compound words. In addition to nouns, also verbs, adjectives, pronouns, numerals and adverbs are used as terms. Latin terms are concise and economical, enabling one to convey the notion which otherwise in one's native language might require a lengthy explanation.

The most frequent words in *Juridica* are *lex* (610 times), *ius* (384), *corpus* (176) and *forum* (138). The result is not very surprising as 'the law', 'the right', 'the body' and 'the court of justice' are the basic elements of the law. Similarly, the words following in the list correspond to expectations: *culpa* (76 'fault, negligence'), *ratio* (70 'reason'), *res* (60 'thing, object'), *factum* (54 'fact; deed'), *poena* (41 'punishment'), *crimen* (37 'crime'), *vis* (28 'force or violence'), *pactum* (27 'pact'), *locus* (26 'place'), *causa* (25 'a cause'), *actio* (23 'a claim or legal action'), *fides* (18 'faith or trust') and *status* (17 'state or condition').

The most frequent terms and phrases are *corpus iuris* (159 'body of law'), *lex mercatoria* (96 'commercial law'), *de lege ferenda* (88 'desirable to establish according to the law'), *culpa in contrahendo* (58 'pre-contractual liability'), *lex fori* (48 'the law of the court'), *de facto* (42 'in fact'), *de lege lata* (38 'according to the law in force'), *pacta sunt servanda* (21 'agreements of the parties must be observed'), *lex specialis derogat generali* (18 'a special statute overrules a general one'), *nullum crimen nulla poena sine lege* (14 'there should be no crime and no punishment without a law fixing the penalty'), *in*

⁴ 3/1997 special issue: civil law (0 Latin terms), 4/1997 special issue: labour law (1 Latin term), 8/2000 special issue: corruption (6 Latin terms), 9/2000 special issue: criminal proceedings (10 Latin terms).

dubio pro reo (12 ‘in a doubtful case, the defendant is to be preferred’), *ne bis in idem* (9 ‘not twice for the same’, *i.e.* an individual may not be tried twice for the same crime).

In addition to juridical terms, also wide-spread Latin expressions and abbreviations are often used in articles: *op. cit.* – *opus citatum* or *opere citato* (141 ‘quoted book, in the quoted book’) *expressis verbis* (128 ‘pointedly’), *ca.* – *circa* (51 ‘about, around’), *sui generis* (34 ‘of its own kind’), *ib.*, *ibid.* – *ibidem* (31 ‘in the same place or book’), *ad hoc* (26 ‘for this, for this special purpose’), *a priori* (23 ‘from the former’), *supra* (22 ‘above, upon’), *prima facie* (21 ‘at first sight’) and many others.

According to the frequency of usage, at least 5 times 118 terms and phrases were used, at least 3 times 185 were mentioned and at least 2 times I found 262 Latin terms and phrases. If we look at the frequency of usage, we can say that approximately 200 Latin terms and phrases are contained in the active vocabulary of Estonian lawyers.

4.2. The context of Latin terms and phrases

Whilst analysing the collected material, I was also interested in when and in what context the terms and phrases are used. In general, Latin can be found in two ways:

1. The terms are used in rhetoric or for illustrative purposes, *e.g.*,

“The appendix of the Directive is *mutatis mutandis*⁵ in the Law of Obligations Act § 42.” (Ginter 2001:506)

2. The terms are normative arguments and contain specific juridical information, *e.g.*,

“Therefore the legal definition of the delict in modern Penal Codes contains primarily principle *nullum crimen nulla poena sine lege*.” (Sootak 2001:448)

In my research I very often noticed that although Estonian lawyers like to use Latin expressions in their articles, the translation into Estonian is usually missing. It is clear that sometimes Latin expressions in the text can cause misunderstanding and misinterpretation on the part of the reader. The problem is not very acute when well-known juridical terms are used. For example, the

⁵ *Mutatis mutandis* (‘with the necessary changes’).

*nemo iudex*⁶ principle, the *lex specialis*⁷ precept, or the *stare decisis*⁸ concept or the quotation from the 2nd issue of *Juridica* of the year 1999:

“On certain conditions it can be claimed, that what in Germany is with the status of the prosecutor in the criminal procedure *de facto*, is in Estonia at the moment *de lege lata*, and in my opinion, it could also be, with slight modifications, *de lege ferenda*.” (Kergandberg 1999:65)

Although the sentence was long and difficult to follow, according to the frequency of usage, all the terms used belong to the basic vocabulary of lawyers and are therefore actually known.

However, quite often very rare terms can be found, which contain specific juridical information. It seems to me that, for those readers without a background in legal studies or special commentaries and explanations, those sentences might not be completely understandable. A good knowledge of Latin alone is not sufficient for the correct interpretation here. Even more, it might happen that the whole concept of the context will be unclear if the meaning of the Latin word or term is misunderstood. For example, a quotation from the year 2000:

“The doctor must replace the paternalistic hippocratic approach *salus aegroti suprema lex*⁹ with the current principles of contemporary society *voluntas aegroti suprema lex*, which is specified by the sentence *nihil nocere*.” (Nõmper 2000:447)

Here, on the contrary, the sentence can be easily followed by philologists, but it is difficult for lawyers.

4.3. Problems and mistakes

There occur several problems when using Latin terms. In Latin, a synthetic language, grammatical relationships are represented in the words by applying inflectional endings and suffixes. As a result, the recognition and understanding of a Latin term may be affected by the use of the singular and the plural form, as well as the use of a term in different case forms or with various prepositions. For example: *actio* – *actiones* (‘action – actions’),

⁶ *Nemo iudex in causa sua* (‘no man can be a judge in his own case’).

⁷ *Lex specialis derogat legi generali* (‘a special statute overrules a general one’).

⁸ *Stare decisis* (‘to stand by matters decided’).

⁹ *Salus aegroti suprema lex* (‘the welfare of the unhealthy is the supreme law’), *voluntas aegroti suprema lex* (‘the wish of the unhealthy is the supreme law’), *nihil nocere* (‘make no harm’).

pactum – pacta ('pact – pacts'), *lex – leges* ('law – laws'), *ius – iura* ('right – rights'); *tacitus consensus – tacito consensu* ('tacit consent – in or with tacit consent'), *bona fides – bona fide – ex bona fide* ('good faith – in or with good faith – according to good faith').

Mistakes frequently appear in the orthography of Latin terms, as well as in the agreement between case forms and gender forms and in translation of Latin terms. The most common problem when using Latin terms, however, is adapting the foreign words to the context and incorporating them into the Estonian sentences. Ordinarily mistakes occur in the usage of two forms – the basic form in the nominative case and the adverbial in the ablative – in the proper context.

The most common errors in *Juridica* were misprints:

Mistakes	Correct form
<i>vocatio legis</i>	<i>vacatio legis</i>
<i>preater/prater legem</i>	<i>praeter legem</i>
<i>numerantur sententie, non ponderander</i>	<i>numerantur sententiae, non ponderantur</i>
<i>summa summarium</i>	<i>summa summarum</i>
<i>nebisin idem</i>	<i>ne bis in idem</i>
<i>op. cot.</i>	<i>op. cit.</i>
<i>ubiquae</i>	<i>ubique</i>
<i>ekspressis verbis</i>	<i>expressis verbis</i>
<i>lex spetsialis</i>	<i>lex specialis</i>
<i>sine periculo sotsiali</i>	<i>sine periculo sociali</i>
<i>lucrum sessum</i>	<i>lucrum cessans</i>

Also, mistakes of declination and agreement were found:

Mistakes	Correct form
<i>strictu sensu</i>	<i>stricto sensu</i>
<i>ultimo ratio</i>	<i>ultima ratio</i>
<i>ex iniuriae ius non oritur</i>	<i>ex iniuria ius non oritur</i>
<i>poena absoluta ad effectu</i>	<i>poena absoluta ad effectum</i>
<i>bonae mores</i>	<i>boni mores</i>
<i>ius naturalis</i>	<i>ius naturale</i>
<i>ius animatus</i>	<i>ius animatum</i>
<i>lex posteriori derogat priori</i>	<i>lex posterior derogat priori</i>
<i>lex posteriori derogat leges priori</i>	<i>lex posterior derogat legi priori</i>
<i>lex generalī</i>	<i>lex generalis</i>

It must be pointed out that such mistakes were typical of the first issues and first years of the *Juridica* journal. During recent years, serious errors can no longer be found. Avoiding mistakes and controlling Latin and other foreign terms is particularly important, because the journal *Juridica* is also used as study material. Incorrect grammatical forms, especially in an article of a professor, can be misleading to the students. For example, the term *strictu sensu* – with the wrong grammatical ending – first appeared in an article by a professor and later in the article of one student.¹⁰

5. Conclusion

The research on the usage of Latin terms and phrases in the journal *Juridica* has proved to be useful and practical in many ways. It was proven that even today the Latin language has a certain and firm position in legal writing and terminology. The usage of Latin over 4000 times and more than 700 different Latin expressions is a remarkable result, which confirms that the compilation of the “Latin-Estonian Legal Dictionary” was far from unnecessary.

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

Bibliography

- Adomeit, K., Ristikivi, M., Siimets-Gross, H. 2005. *Ladina-eesti õigussõnastik*. Tallinn: Eesti Keele Sihtasutus.
- Benke, N., Meissel, F. S. 1997. *Juristenlatein. Lateinische Fachausdrücke und Redewendungen der Juristensprache, übersetzt und erläutert*. Wien: Juridica.
- Ginter, C. 2001. Tüüptingimustest VÕS ja direktiivis 93/13/EMÜ. (Standard terms in the Law of Obligations Act and Directive 93/13/ECC) *Juridica*, 7, pp. 501-514. (in Estonian)
- Kergandberg, E. 1999. Kümme märkust seoses prokuröri funktsionaalse rolliga Eesti

¹⁰ Uibopuu, H.-J. 1997. Üldised inimõigused Eesti 1920., 1937. ja 1992. aasta põhiseadustes. (Fundamental human rights compared in the constitutions of 1920, 1937 and 1992) *Juridica*, 5, p. 237; Parmas, A. 2002. Inimsusevastased kuriteod rahvusvaheliste kriminaalkohtute käsitluses. (Crimes against humanity in the context of international criminal courts) *Juridica*, 5, p. 324. (in Estonian)

- tänases ja tulevases kriminaalmenetluses. (Ten remarks on the functional role of prosecutors in proceedings in criminal matters in Estonia at present and in the future) *Juridica*, 2, pp. 60-72. (in Estonian)
- Knütel, R. 1994. Rechtseinheit in Europa und römisches Recht. *Zeitschrift für Europäisches Privatrecht*.
- Nõmper, A. 2000. Stigma abordi kaasus. (The abortion case of Stigma. Proposal to amend the draft Penal Code) *Juridica*, 7, pp. 442-453 (in Estonian)
- Parmas, A. 2002. Inimsusevastased kuriteod rahvusvaheliste kriminaalkohtute käsitluses. (Crimes against humanity in the context of international criminal courts) *Juridica*, 5, pp. 321-334. (in Estonian)
- Siimets-Gross, H. 2002. Rooma õigusteaduse kujunemine ja õitseng. (Development and flourishing of Roman jurisprudence) *Juridica*, 9, pp. 626-634. (in Estonian)
- Sootak, J. 2001. Karistusseadustiku süüteomõiste ja deliktistruktuur. (The definition and structure of offence in the Penal Code) *Juridica*, 7, pp. 443-452. (in Estonian)
- Uibopuu, H.-J. 1997. Üldised inimõigused Eesti 1920., 1937. ja 1992. aasta põhiseadustes. (Fundamental human rights compared in the constitutions of 1920, 1937 and 1992) *Juridica*, 5, pp. 230-241. (in Estonian)
- Wieacker, F. 1978. Vom Lebenswert des römischen Rechts. *Latein und Europa*. Hrsg. K. Büchner. Stuttgart: Philipp Reclam jun.

Ladina õigusterminoloogia eestis

Euroopa õigussüsteemi ühiseks nimetajaks peetakse Rooma õiguse pärandit. See järjepidevus ilmneb ka Rooma õiguse keele – ladina keele tasandil. Käesolev artikkel puudutab ladina keele esinemist kaasaegsetes juriidilistes tekstides ning selle mõju terminoloogiale. Analüüsitav materjal hõlmab Eesti juriidilistest ajakirjadest kogutud ladina termineid. Artikkel keskendub järgmistele küsimustele: kui suurel määral kasutavad Eesti juristid ladina termineid, millised on kõige enam tekstides kasutatud ladina terminid ja fraasid, millises kontekstis ladina terminid esinevad. Käsitlemist leiavad samuti peamised probleemid ja eksimused ladina õigusterminite kasutamisel.