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Evolution and Continuity in Romance Europe: the Use of Latin in Romanian Contract Law

Abstract: Romania has always been a complex space of culture, language and civilization in Europe, an essential factor of Latin continuity in one form or another. The multiple aspects of Latin inheritance are obvious not only within the Romanian space, but also within Europe. We consider that the European Union is similar to the Roman imperial organisation in many respects, the similarities being of institutional, political, cultural, linguistic nature. The Roman Empire gave a language, institutions and an effective model of state organisation to Europe and the entire world. The Latin language, as an evolution paradigm and element of Romance continuity, was, for eight centuries, the administrative and cultural language of the new post-imperial kingdoms of Western Europe, and is still "alive" today in the specialized languages of certain domains, the legal one offering it the place it deserves, that of fundamental component of our national, spiritual, cultural and, of course, juridical identity. Latin is used in Romanian legal texts in order to render them authentic and authoritative, in order to express various legal notions, concepts and institutions in a clear and concentrated manner, through some terms and maxims whose place was consolidated by practice and tradition. In Romanian contract law, the use of Latin appears as a distinctive, "elitist", but extremely necessary mark that experts in the legal field cannot ignore despite certain attempts to reform legal language, sometimes considered inaccessible, ambiguous. The paper aims to provide an analysis of a series of Latin expressions frequently occurring in the legal, specialized literature on contracts.

Keywords: Latin, Romanian law, contract law

Rezumat: (Evoluţie şi continuitate în Europa romanică: utilizarea limbii latine în dreptul contractual românesc) România a reprezentat dintotdeauna un spaţiu complex de cultură, limbă şi civilizaţie în Europa, fiind un factor esenţial de continuitate a latinităţii într-o formă sau alta. Multiplele aspecte ale moştenirii latine sunt evidente nu numai în spaţiul românesc, ci şi în contextul european. Putem afirma că Uniunea Europeană se aseamănă în multe privinţe cu organizarea imperială romană, asemănările fiind de ordin instituţional, politic, cultural, lingvistic etc. Imperiul Roman a lăsat Europei şi întregii lumi o limbă, instituţii şi un model eficient de organizare statală. Limba latină, ca paradigmă evolutivă şi element de continuitate a romanităţii, a constituit timp de opt secole limba administrativă şi culturală a noilor regate post imperiale din Europa Occidentală, şi „trăieşte" şi astăzi în limbajele specializate din anumite domenii, cel al dreptului acordându-i locul pe care îl merită, acela de componentă fundamentală a identităţii noastre naţionale, spirituale, culturale, şi, bineînţeles, juridice. Limba latină este folosită în textele juridice româneşti pentru a le imprima autenticitate şi autoritate, pentru a exprima diferite noţiuni, concepte, instituţii juridice într-un mod clar şi concentrat, prin intermediul unor termeni şi maxime cărora practica şi tradiţia le-au consolidat locul. În dreptul contractual românesc, folosirea limbii latine apare ca o marcă distinctivă, „elitistă", dar extrem de necesară, de care juriştii nu se pot dispensa în ciuda unor încercări de reformă a limbajului juridic, considerat uneori inaccesibil, ambiguu. Articolul îşi propune să analizeze o serie de expresii latineşti care apar frecvent în literatura juridică referitoare la contracte.

Cuvinte-cheie: limba latină, drept românesc, contracte

1. Introduction

Romania has always been a complex space of culture, language and civilization in Europe, an essential factor of Latin continuity in one form or another. The multiple aspects of Latin inheritance are obvious not only within the Romanian space, but also within Europe.

An accurate and complete image of a Romance Europe reveals itself in the similarities existing between the European Union of today and the Roman imperial

organisation, the similarities being of institutional, political, cultural and linguistic nature. For instance, the concept of *pax romana* is an avant-la-lettre definition of the European Union, the status of the European citizen reminds us of *civis Romanus* and the European single currency of the Roman imperial currency. One should never forget that the Roman Empire gave a language, institutions and an effective model of state organisation to Europe and the entire world.

2. The Latin language - an evolution paradigm in Romance Europe

The Latin language, as an evolution paradigm and element of Romance continuity, was, for eight centuries, the administrative and cultural language of the new post-imperial kingdoms of Western Europe, and is still "alive" today in the specialized languages of certain domains, the legal one offering it the place it deserves, that of fundamental component of our national, spiritual, cultural and, undoubtedly, juridical identity.

2.1. Latin and the language of law

Latin is used in Romanian legal texts in order to render them authentic and authoritative, in order to express various legal notions, concepts and institutions in a clear and concentrated manner, through terms, phrases and maxims whose place was consolidated by practice and tradition. In Romanian contract law, the use of Latin appears as a distinctive, "elitist", but extremely necessary mark that experts in the legal field cannot ignore despite certain attempts to reform legal language, sometimes considered inaccessible, ambiguous. The paper aims to provide an analysis of a series of Latin expressions frequently occurring in the legal, specialist literature on contracts.

2.2. Latin terms, phrases and maxims used in Romanian contract law

Different authors (see *Bibliography)* have noted the presence of Latin in legal language and, in this context, it is not surprising that Romanian contract law encapsulates the essence of its notions and principles in such Latin expressions of which we could mention:

Debitum cum re iunctum ('Debt related to a thing')

This expression occurs in relation to the right of retention, which is not expressly defined in the Romanian Civil Code, but is applicable in several fields, including contracts. One of the cases in which the right of retention functions makes reference to contracts as an application of the *non adimpleti contractus* ('failure to perform the contract') exception.

The main condition for the recognition of a right of retention is the existence of a connection between the debt claimed and the thing retained. This right entitles the person detaining another person's thing which he has to give back, to retain it until the owner of that thing pays the amount of money he spent for the preservation, maintenance or improvement of the thing. In other words, the owner is bound to reimburse him for any expenses incurred.

Dies interpellat pro homine ('The time limit summonses the man/debtor'). In another translation, this adage means "The time limit summonses (in full right) on behalf of the person (the creditor)" and involves the (debatable) rule that a debt subject to a time limit does not compel the creditor to summon (*interpellatio*) the debtor and place a formal notice when the latter did not pay his debt on the due date.

Locatio rei (<Lat. *locare* to let; *locatio rei* letting of a thing) is a contract whose object is the use of a thing or fund (e.g. hiring) or performance of works or services for a certain price within a certain period. Therefore, the hirer gains the temporary use of the

thing. As opposed to a contractor agreement, for instance, the price is determined in relation to the duration of the use.

It is also defined as "a bailment or lease in which the bailee or lessee may use the item for a fee".

In case of *locatio rei*, if the time limit of the rental was determined by mutual agreement of the parties or, in the absence of a clause, by law, the rental lawfully terminates (*dies interpellat pro homine*) when the time limit was reached.

Commodatum (<Lat. *commodum datum,* where *commodum,-i* means 'use, interest') roughly translated as "a loan on anything, but money; commodate", is a real contract by which a person, called a lender, transfers a thing for temporary use to another person, called a borrower, with the obligation for the latter to return it in kind.

Together with *mutum* and *locatio, commodatum* is a type of contract for permissive use.

Mutuum (<Lat. *mutuum,-i* loan), meaning "a consumption contract" is a real, unilateral contract by which a person, called a lender, transfers a fraction of things to another person, called a borrower, with the obligation for the latter to return, on the due date, things of the same quality, quantity and type.

In Roman law, it denotes a loan in which the borrower is entitled to consume the goods lent and give back an equivalent amount just as in civil law systems, where it refers to a similar type of transaction, whereas at common law, such a transaction is regarded as a sale or exchange, because the particular goods are not returned.

Negotiorum gestio ('management of affairs') and *negotiorum gestor* ('a manager of affairs') are two Latin phrases of great density in Roman and civil law. If the former denotes the situation, the latter indicates the person. Thus, *negotiorum gestio* is not a genuine contract, it actually refers to a quasi-contractual situation in which a person, called *negotiorum gestor,* manages or interferes in the business transaction of another person, called *dominus negotii,* in the absence of the latter, without his authority, but out of friendship or concern.

The idea of "merit" and "just" explain the functioning of this institution which would not exist if the *gestor* acted self-interestedly or if the owner expressly prohibited any action on his behalf, on the part of the *gestor*.

Mutuo consensu and *mutuo dissensu* denote mutual agreement and mutual disagreement.

When the parties conclude a juridical act, they express their agreement, *mutuo consensu.*

Mutuo dissensu is an expression used in relation to the mutual agreement of the parties when terminating or cancelling a contract.

Procuratio means "management of another's affairs; agency". It mainly occurs in the expression *procuratio unicus rei,* which refers to power of attorney or representation for one juridical operation or certain operations, whereas *procuratio omnium bonorum* refers to a general representation of this type.

Res inter alios acta, aliis neque nocere, neque prodesse potest ('an agreement between certain persons cannot prejudice or benefit other persons').The agreement binding the parties to a juridical act does not affect third parties .

Resoluto iure dantis, resolvitur ius accipientis ('the annulment of the giver's right entails the annulment of the receiver's right') is a principle applicable within the scope of nullity effects.

There are several phrases and maxims firmly rooted in the matter of donations/gifts. They convey and emphasize the idea of giving, of offering, and, at the same time, they demand the fusion of gratification and gratitude:

Donari videtur quod nullo iure cogente conceditur ('It is called a donation what is given out of the donor's will, with no coercion'). No legal compulsion is involved in the case of donations. The main feature of the donation contract is the intention of the donor to gratify (*animus donanadi*), with no defect in his declaration of consent.

Donatio sub modo ('Donation subject to a modification or qualification')

This type of donation contract imposes on the donee the performance of a determined obligation, either in favour of the donor (e.g. payment of a debt), or in favour of a third party (e.g. giving an item of property), or in favour of the donee himself (e.g. giving a great amount of money on condition that the donee continues studies).

Captatio benevolentia ('Attracting/Attempt to attract goodwill')

In simple words, it is an attempt to persuade other people. In legal language, it refers to the will expressed when concluding legal acts. A person's will must be expressed freely, it must not be either under undue influence or imposed.

The purpose is often that of fraudulently persuading someone to make a donation or leave a legacy.

The phrase *donandi causa* ('for donation') occurs in the matter of donations and contracts in general. For instance, the agency or representation relationship between parties may be doubled by a donation (power of attorney *donandi causa*), by a loan pre-contract (*credendi causa*), by an offer to pay the debt that the principal to an agent has to this agent (*solvendi causa*) or another legal act.

Ubi lex non distinguit, nec nos distinguere debemus ('Where the law does not distinguish, we ought not to distinguish')

This maxim is actually a rule of interpretation. According to this rule, if a law text is formulated in general terms, its application will be general. This principle, which can be extrapolated to contracts, has the purpose to limit the possibility of making distinctions as a restrictive interpretation process.

3. Conclusions

Legal language is characterized by a plurality of sources, and one such important, ever-lasting source is Latin. Since many current legal concepts, mechanisms, institutions in the Romanian legal system originate in Roman law, the occurrence of Latin borrowings is more than legitimate.

Latin legal terms and expressions, like all legal terminology, provide the advantage that they are not subject to semantic changes, having precise, constant meanings within the legal and social context and once again proving that Latin is an essential element of Romance continuity in Europe.

Many authors have emphasized it directly or impliedly, from various perspectives, but the conclusions are similar.

Thus, meditating on the legal implications of the *pacta sunt servanda* maxim (meaning 'treaties/conventions must be observed' and governing the contracts in civil law countries), Richard Hyland wonders: "Why did the *pacta* maxim arise and triumph in the civil law while remaining foreign to the common law tradition?", and he answers: "One

explanation is self-evident: *pacta sunt servanda* is formulated in Latin. (…) The success of the maxim may be due to the peculiarly intimate relationship between continental European culture and the Latin language". Taking the opportunity to generalize , we can say that not only this maxim, but Latin itself is triumphant in present civil law systems and we should not be surprised that this language is still exploring its potential as a vehicle for legal culture and European civilization.

Along the same line, as Henri Rolland rightly notes in the *Avant-propos* to his book, what Latin words, phrases and adages have in common is the fact that they are formulated in the language of Cicero and Virgil, the same language as that of Justinian. The advantages are the density of information which avoids the elaborate periphrases of contemporary technocrats, as well as international visibility.

After defying time for centuries by its presence in various fields of knowledge, Latin remains an instrument of communication between scientific communities, an element of evolution and continuity in Romance Europe, acquiring and imprinting universality.

Bibliography

Avram, V.I.; Roibu, M.; Stârc-Meclejan, F.N.F.; Olteanu, A.V., *The Language of Law*, Timişoara, Editura Universităţii de Vest, 2006.

Burtea-Cioroianu, C.E., Ştefan, V.E., *Limba latină pentru facultăţile de drept*, Craiova, Editura Universitaria, 2007.

Deak, Francisc, *Tratat de drept civil – contracte speciale*, vol. I, II, III, Bucureşti, Universul Juridic, 2006.

Garner, Bryan A. (ed. in chief), *Black's Law Dictionary*, St. Paul, Minn., West Group, 1999.

Hanga, Vladimir, *Adagii juridice latineşti*, Bucureşti, Lumina Lex, 2007.

Mic dicţionar juridic, Bucureşti, Lumina Lex, 1999.

Hanga, Vladimir ; Calciu, Rodica, *Dicţionar juridic român-englez, englez-român*, Bucureşti, Lumina Lex, 1998.

Hyland, Richard, *Pacta Sunt Servanda*: *A Meditation*, 34 VJIL 1994, pp. 405 et seq., available at *http://www.trans-lex.org/124500*.

Martin, A. Elizabeth (editor), *Oxford Dictionary of Law*, Oxford, Oxford University Press, 1997.

Pitiriciu, Silvia, „La terminologie du droit pénal: l'infraction (aspects lexico-sémantiques)", in *Studii şi Cercetări de Onomastică şi Lexicologie (SCOL)*, year V, nos.1-2/2012, Craiova, Ed. Sitech, 2012, pp. 189-192.

Rolland, Henri, *Lexique juridique – expressions latines*, (IIe éd.), Paris, Litec, 2002.

Săuleanu, Lucian; Răduleţu, Sebastian – *Dicţionar de expresii juridice latine*, Bucureşti, C. H. Beck, 2007;

Strechie, Mădălina, „Similitudini între Imperiul Roman şi Uniunea Europeană", in *Analele Universităţii din Craiova - Istorie*, year XIV, no. 2(16)/2009, Craiova, Universitaria, 2009, pp. 81-88.

Strechie, Mădălina, *Noţiuni de civilizaţie latină*, Craiova, Universitaria, 2008.