PROCEDURAL RELATIONSHIP DYNAMICS IN ENCODING PARTIES IN A CIVIL TRIAL

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Abstract

The purpose of this paper is to analyze the specialized legal terms designating the parties to a lawsuit. Civil procedure has selected its terms differently, both from the old vocabulary of the Romanian language (e.g. *pârât*) and by using external means of enriching vocabulary, such as lexical borrowing (*apelant, reclamant, recurent, creditor,* etc.) or internal means, such as derivation (*revizuent*), conversion (*intimat)*, and subsequently, in the jurisprudence, compounding. To these are added such syntagms as *chemat în garanție, intervenient forțat,* which are complex and indispensable terms in the denomination. All these terms form a stable denomination system, which has the merit of transparency and accessibility.

Key words: *civil law*, *party*, *terminology*, *linguistics*, *lexicology*

Résumé

Le but du présent travail est d'analyser les termes juridiques spécialisés pour nommer les parties au procès civil. La procédure civile a choisi de manière différente les termes, aussi bien de l'ancien vocabulaire de la langue roumaine (e.g. *pârât* défendeur), qu'en faisant appel à des moyens externes d'enrichissement du vocabulaire, tel l'emprunt lexical (*apelant* appelant*, reclamant* demandeur*, recurent* récidivant*, creditor* créditeur, etc) ou à des moyens internes, telle la dérivation (*revizuent* réviseur), la conversion (*intimat* intimé*)* et, ultérieurement, dans la jurisprudence, la composition par juxtaposition. On y ajoute également les syntagmes du type *chemat în garanție* appelé en garantie*, intervenient forțat* intervenant forcé*,* qui sont des termes complexes et indispensables pour la dénomination. Tous ces termes forment un système dénominatif stable qui a le mérite de la transparence et de l'accessibilité.

Mots-clés: *droit civil*, *partie*, *terminologie*, *linguistique*, *lexicologie*

I. Actus trium personarum: iudicis, actoris atque rei

Civil procedural law provides that Parties in a civil trial are "the plaintiff (Rom. *reclamant*) and the defendant (*Rom. pârât*), as well as, under the laws, third parties who intervene either voluntarily or enforcedly within the trial" (art. 55 Code of Civil Procedure).

In accordance with these legal provisions, the actors (parties) in a civil trial are natural persons and legal entities which "have a litigation with regard to a civil subjective right submitted to judgment or to a legal situation for the settlement of which a trial is mandatory"[1]. However, the quoted article has in view the ordinary, contentious procedure. In the non- contentious procedure, in which the assertion of a contestant right is not pursued, a party is that person summoned before a court of law to help with settling a legal matter.

[1] Cf. Boroi, Stancu, 2015, p. 78.

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In the development of the civil procedure, third parties can join the initial parties, and there is a possibility for them to be introduced into the trial as well, in capacity of *main intervening party* (Rom. *intervenient principal*), *accessory intervenient party* (Rom. *intervenient accesoriu*)*, forced intervenient party* (Rom. *intervenient forțat*) or *impleaders* (Rom. *chemați în garanție*). These become parties after the admission in principle of the intervention motion, filed under the Code of Civil Procedure. The rest of the people summoned to participate in the judicial procedure bear the name of *participants*.

The concept of "party to a trial" is a general one, which refers both to the protagonists of the trial phase, either in the first instance or in the appeal, as well as in the phase of the forced execution. Designating the trial covering which shall protect a protagonist or a group of protagonists in a civil trial shall be achieved by a limited number of terms.

Therefore, apart from the individual/individuals participating in a trial, conventionally identified by surname and given name, there is also a trial designation, resorting to several terms, with distinct etymologies and peculiar sonority.

II. References, denominations, referents

Unlike an anthroponym, which creates a delimiting line between individuals, in the sense of distinction and individualisation[2] of a person within a community, the designation being the primordial intention, the trial covering is a denomination, crystallised by reference to the set of trial tools allowed by the law, to the dynamics of the relations with the other trial coverings.

In the case of a party, the person/referent blots out his/her peculiar features so as to become an expression of the covering requirements, and undertake that role. This remark has best synthesised the difference between denomination and designation. In essence, denominations are distinct from designations by their capacity of polarising the concrete, which is, unique and current.

Thus, the civil procedural rule has established that a party applies to a Court of law with the claim of being called *reclamant* in Romanian (Engl. *plaintiff*). Defendant stands for a party (not necessarily an individual, a *plaintiff's* label also covering a group of persons) towards whom the Plaintiff issues claims. The Romanian denomination *pârât* (Engl. *defendant)*, although it seems obsolete (certain dictionaries enlist it as an *obsolete* term) and malicious, is a legal term which is actually very serious and current. At the lexico-grammatical level, the term is a noun which comes from the participle of the verb *a pârî* (Engl. *to denounce*), originating from the Slavic word *p*[*â*]*rěti*.

Apart from these common terms, there are also other denominations given to parties deriving from the nature of another element of a civil lawsuit such as, for instance, the object. In trials regarding contraventional complaints the parties bear the Romanian denominations of *petent* (Engl. *claimant*) and *intimat* (Rom. *respondent*)*,* and in those having as object the opposition to enforcement, we can find as parties a *contestator* (Engl. *contester*) and *intimat* (Rom. *respondent*).

In the non-contentious procedure, the *claimant* remains the party who resorts to the Court in view of asserting a right. The *claimant* is called the party who appears before a court of law having filed the following petitions: public legal aid, clerical error correction, trial term change, legal aid, although the legal practice prefers to use, most of the times, the denomination established simultaneously with the main claims filing.

[2] Cf. Bidu-Vrănceanu et al., 2001, Moldoveanu, 2010, Zăbavă, 2009, Toma, 2016.

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If the defendant sets claims against the plaintiff (Rom. *reclamant*) by means of a counter claim, he/she shall bear a compound denomination that of *pârât-reclamant* (Engl. *defendant-plaintiff*), and the initial party shall be called *reclamant-pârât* (Engl. *plaintiff-defendant*).

Apart from the initial parties, as I have reminded, in a trial, a party's trial position can be gained by *intervenienții principali* (Engl. *main intervening parties*), *intervenienții accesorii* (Engl. *accessory intervenient parties*), *intervenienții forțați* (Engl. *forced intervenient parties*) or *chemații în garanție* (Engl. *impleaders*).

Remedies at law develop distinct denominations given to participants in the trial: *apelant* (Engl. *appellant/claimant in appeal*) and *intimat* (Engl. *respondent in appeal*), *recurent* (Engl. *claimant in the second appeal*) and *intimat* (Engl. *respondent in the second appeal*), *contestator* (Engl. *contester*) and *intimat* (Engl. *respondent in appeal for annulment*), *revizuent* (Engl. *claimant in review*) and *intimat* (Engl. *respondent in review*).

Within the opposition to enforcement, as well as in litigations with the professionals, there is an opposition between the *creditor* (Rom. *creditor*) and the *debtor* (Rom. *debitor*).

Although these denominations are stated in the official civil law, before courts of law, when judging the remedies at law, parties are assigned compound denominations in the Romanian language, made up of the denomination determined by the the appeal and the one in the first instance: *apelant-reclamant* (Engl. *claimant in appeal/appellant-claimant*), *apelant-pârât* (Engl. *appellant-defendant*), *apelant-intervenient principal* (Engl. *appellant-main intervener*), *recurent-reclamant* (*claimant in the second appeal-claimant*), *revizuent-pârât* (Engl. *claimant in review-defendant*), *contestator-petent* (*Engl. contester-claimant*), *revizuent-pârât* (Engl. *claimant in review-defendant*), *intimat-reclamant* (Engl. *respondent in appeal-plaintiff*), *intimat-petent* (Engl. *respondent-claimant*), etc.

The argument for using these denominations is that of easily recognising the party exercising the relevant remedy at law, especially if that remedy at law is simultaneously asserted by several parties who had shaped the procedure in the first instance[3].

III.Lexico-grammatical mechanisms of the parties' encoding

In the case of simple denominations, the lexical analysis allows the isolation of one of the following suffixes:

-tor or *-or* from Latin *-or/-(a)tor* (e.g. *creditor, debitor, contestator*),

-(a/e)nt, originating from the ancient Latin suffix which would mark the active present participle, *-(a/e)ns/-(a/e)ntis* (e.g. *intervenient, apelant, recurent, reclamant, revizuent, petent*),

-(a)t, specialised to form the participle, which in Latin would mark the perfect participle (e.g. *intimat*).

From the terminology of the contracts and civil obligations there have been taken over the Romanian terms of *creditor* (Engl. *creditor*) and *debitor* (Engl. *debtor*), which refer to the Parties of a simple and typical legal relation[4]. While the term *creditor* is listed with a multiple etymon in MDA (Fr. *crediteur*, It. *creditore*) and makes reference

[3] Boroi et al., 2012, p. 146.

[4] See the explanations in Gioroceanu, 2016.

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to the holder of a right of claim[5], for the current word *debitor* there are specified the etymons *debiteur* (Fr.) and *debitor* (Lat.)[6].

Contestator (Engl. contester) is derived from the verb *a contesta* (Engl. *to contest*). Although in the lexicographic recordings it is specified to be an internal formation, an equivalent of the term *objector,* its legal valence is not mentioned; in French there appears *contestateur,* even as a scholarly derivative (*contestation* + *-eur*), certified from the XVIIth century (http://www.cnrtl.fr/etymologie/contestateur).

The terms in which the suffixes–ant/ent are detected are *apelant, intervenient, petent, recurent, revizuent.* The etymology is different, there is reference either to a French etymon, a Latin or Italian one, or the etymology is uncertain (in the case of *revizuent* –Engl. *claimant in review*). The suffix, inherited from Latin, was chosen to create an active present participle. But as a nominal suffix it makes reference to the person performing an action: appeals, intervenes (in a trial), he/she requests for a specific right or a legal situation to be acknowledge to him/her (Latin peto, -ere "to request"), he/she claims, asks for a right, files a second appeal against a judgment ("brings to trial by means of a second appeal filing") or wishes the revision of another ("uses the review remedy at law").

Apelant (Engl. *appellant*) occurs in dictionaries as a French borrowing (Fr. *appelant*). In French, certified from the very XIXth century, it is a derivation from the verb *appeler,* which has also recorded the meaning of "recourir à un tribunal supérieur"[7]. The verbal etymon can be found in the Latin verb *appelare* "to resort to", "to plaint".

Intervenient (intervenient party) has been recorded in the neologisms dictionaries and in MDA as a legal term, with both a French and a Latin etymon. In the dictionary – French thesaurus, made available online by the Centre National de Ressource Textuelle et Lexicale, it is certified from the very XVth century in the case-law, and in the XVIIth century its meaning is mentioned: "celui qui intervient dans un process". Romanian also captured its Latin etymon *interveniens*.

*Petent (*Engl. *claimant, petitioning party)* is, according to MDA, an obsolete term, with the meaning of "petitionary". The explicative dictionary of Romanian directs to a German etymon (Petent). The term also exists in Italian, *petente,* with exactly the same meaning, "chi presenta una petizione, una richiesta..."[8] respectively, the corresponding verb *petere* having the identical meaning with the Latin etymon *peto, -ere* "to request, to question". The forming mechanism which can be identified by the lexical analysis makes it accessible and can be perfectly integrated into the denominative system.

With regard to *reclamant* (Engl. *plaintiff*)*,* the unanimous etymon indicated by

[5] In the Romanian etymologic dictionaries it is recorded the fact that the word *crediteur* is formed in French, from the verbal base *crediter*, and the French etymologic dictionaries make reference to several etymons, *creditum* respectively, the supine of the Latin verb *credo, -ere*. The nominal suffix in French, *–eur*, indicating a person involved in an action, originates from the Latin –or / –(a)tor, present in the current form (*–eur)* even from Medieval French.

[6] In MDA, *debitor* (debtor) has as etymon the French word *debiteur* and the Latin word *debitor.* Formed in French from the root *debit* and suffix *–eur*, it makes reference, in its turn to *debit* originating from the neutral passive participle of the verb *debere* "to owe, must"*, debitum* "obligation, duty" respectively. The suffix has its origin, as in the case of the word *crediteur,* in the Latin *–or/-(a)tor*.

[7] http://www.cnrtl.fr/etymologie/appelant - accessed on 5th of May 2017.

[8] http://www.dizionario-italiano.it/dizionario-italiano.php?parola=petente – accessed on 5th of May 2017.

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dictionaries is French – *reclamant.* The legal meaning of the verb existing in French, *reclamer,* is certified from the XVII[th] century, by specialisation of the common meaning "to set a motion", "to claim for oneself". The Latin verb from which it is claimed is reclamo, -are "to plaint, to protest against".

A reference to the equivalent French term is also noticed in the case of the word *recurent (*Engl. *claimant in the second appeal).* The etymon *recurrent* originates from the Latin *recurrens, -entis,* the present participle of *recurro, -ere* "to run again". The verb *a recura* is explained through the French word *recourir,* which originates from the Latin *recurrere* "to come back quickly".

Revizuent (claimant in review) is recorded in MDA through reference to the verb *a revizui (to revise)*, a French borrowing from the verb *reviser*, certified from the very XIII[th] century in French, with the meaning of "to examine, to consider". In the XVI[th] century its meaning got closer to the current legal one – to examine again so as to notice if any changes occurred"[9].

Intimat (Engl. *respondent in the first or second appeal*)*,* designating the opponent party in the remedies at law, regardless of their nature, is a noun which, according to dictionaries, is formed by conversion from the participle of the verb *a intima* (to respond in appeal) of which legal significance is "to subpoena, to file a lawsuit against someone before a higher court of justice", with multiple etymology: French *intimer*, Latin *intimare.* In medieval French, *parte intimée* is that party which defends him/herself in the matter of appeal "défendeur en matière d'appel"[10].

The compound terms of the type *apelant-reclamant* (Engl. *claimant in appeal/appellant-claimant*)*, apelant-pârât* (Engl. *appellant-defendant*)*, apelant-intervenient principal* (Engl. *appellant-main intervener*)*, recurent-reclamant* (*claimant in the second appeal-claimant*)*, revizuent-pârât* (Engl. *claimant in review-defendant*)*, contestator-petent* (Engl. *contester-claimant*)*, revizuent-pârât* (Engl. *claimant in review-defendant*)*,* etc. follow the pattern of composition through apposition. In judicial decisions, precisely to mark up the fact that it designates a unique entity, hyphenation is used[11], which indicates an average degree of 'joining'[12].

From the flexional perspective, the general rule of compound terms is followed with an average degree of 'joining': pl. *apelanți-reclamanți, apelanți-pârâți, revizuenți-pârâți, recurenți-intervenienți,* etc.

Conclusions

We keep in mind as valid the remark of Adriana Stoichițoiu-Ichim from the work *Semiotica limbajului juridic*[13]*,* according to which the legal vocabulary takes over words from the general vocabulary, the main semantic modification being that of limitation and singularisation of meaning, as in the case of the term *pârât*. The main judgment resides in the limits of the common vocabulary beginning with the moment when the legal term was introduced.

Gradually, the lexical borrowing (*apelant, reclamant, recurent, creditor,* etc.), to which are added the derivation (*revizuent*), conversion (*intimat, pârât)* and, subsequently,

[9] http://www.cnrtl.fr/etymologie/reviser- accessed on 10[th] of May 2017.
[10] http://www.cnrtl.fr/etymologie/intimer – accessed on 10[th] of May 2017.
[11] See DOOM2, Hristea, 1984, Zugun, 2000.
[12] Cf. DOOM2: XXXII.
[13] http://ebooks.unibuc.ro/filologie/discurs/Capitolul%206.htm – accessed on 11[th] of May 2017.

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in the case law, composition through apposition represent means of creating a new coherent legal terminology. Moreover, the collocation of the type *chemat în garanție* (Engl. *impleader*) and *intervenient forțat* (Engl. *forced intervenient party*) are complex and indispensable terms in denomination, within the same denominative logic.

Particularly, all these terms make up a stable denominative system, which has the quality of transparency and accessibility. It does not indicate only the denominations of individuals participating in the civil trial, but also the type of civil litigation, the stage, the parties' position in a trial. The procedural dynamics comes out from the very denomination of the civil litigation actors.

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