

Freedom of language and the prohibition of discrimination

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Article 18 guarantees that "the freedom to use any language is guaranteed", in Italian "La libertà di lingua è garantita".¹ The freedom of language protects the use of one's own language, including dialects and non-national languages, in private relations and in public life. It does not entitle a person to address a cantonal authority in a language that is not an official language of that canton. The Federal Supreme Court has long reconciled the individual freedom of language with the territorial principle by allowing the cantons to restrict the language of schools and authorities to their official language, provided that the restriction is proportionate.² For the Italian speaker in Zurich, the freedom of language therefore does not mean that the Zurich courts must hear him in Italian. For the German speaker in Lugano, it does not mean that the Ticino courts must hear him in German.

Article 8 paragraph 2 adds that no person may be discriminated against, in particular on grounds of origin, race, gender, age, language, social position, way of life, religious, ideological or political convictions, or because of a disability.³ Language is thus a protected characteristic. The prohibition applies to the federal authorities as employers and as administrators. It forms one of the legal foundations for the rules on the representation of linguistic communities in the federal administration that are examined below.

1 Promotion of Italian in Ticino and the Grisons

Article 70 paragraphs 3 to 5 impose duties of promotion. The Confederation and the cantons shall encourage understanding and exchange between the linguistic communities. The Confederation shall support the plurilingual cantons in the fulfilment of their special duties. It shall also support measures by the Cantons of Graubünden and Ticino to preserve and promote the Romansh and the Italian languages.⁴ Paragraph

5 is the only provision of the Federal Constitution that names Ticino. It recognizes that Italian, although an official language of the Confederation, is a minority language in the country as a whole and needs active support in its home territory. The Languages Act gives this mandate concrete form through financial assistance, which is described in the next section.

2 The Federal Council and the federal courts

Article 175 paragraph 4 requires that "in electing the Federal Council, care must be taken to ensure that the various geographical and language regions of the country are appropriately represented". The Italian version speaks of the "diverse regioni e le componenti linguistiche del Paese". The provision was adopted by popular vote on 7 February 1999 and has been in force since 1 January 2000.⁵ It does not establish a quota. In practice it has supported the claim of Italian-speaking Switzerland to a seat in the Federal Council, a claim that remained unfulfilled for long periods. After Flavio Cotti left the Federal Council in 1999, no Italian speaker sat in the government until the election of Ignazio Cassis in September 2017.⁶

For the federal judiciary the constitution of 1999 originally contained a comparable rule. Article 188 paragraph 4 in its original version required the Federal Assembly to ensure that the official languages were represented when it elected the judges of the Federal Supreme Court.⁷ The reform of the judiciary, approved by the people and the cantons on 12 March 2000 and published in the Official Compilation, rewrote the chapter on the federal courts.⁸ The current Article 188 contains three paragraphs only: the Federal Supreme Court is the supreme judicial authority of the Confederation, its organization and procedure are governed by law, and it has its own administration.⁹ The principle of linguistic representation was not abandoned. It now lives in the legislation on the federal courts and in the practice of the Judicial Committee of the Federal Assembly, which prepares the elections of federal judges. Judge Florence Aubry Girardin of the Federal Supreme Court has described the result: the judges come from the different linguistic regions in a proportion that in principle corresponds to the population, with the exception of Romansh, and the law requires that the representation of the official languages be taken into account when the divisions of the court are composed.¹⁰

Essentials. Italian is a national language (Art. 4 Cst.) and a full official language of the Confederation (Art. 70 para. 1 Cst.). Within the cantons the territorial principle applies (Art. 70 para. 2 Cst.): Ticino defines itself as a republic "di cultura e lingua italiane" (Art. 1 of the Ticino Constitution), and in the Grisons Italian is one of three cantonal official

languages. The freedom of language (Art. 18 Cst.) and the prohibition of discrimination on grounds of language (Art. 8 para. 2 Cst.) protect individuals. The Confederation must support Ticino and the Grisons in preserving Italian (Art. 70 para. 5 Cst.) and ensure appropriate representation of the language regions in the Federal Council (Art. 175 para. 4 Cst.).

3 Notes

1. Federal Constitution, Art. 18, <https://www.droit-bilingue.ch/en-it/1/10/101-18-23.html>. ↩
2. The leading cases on the relationship between the freedom of language and the territorial principle include BGE 91 I 480 (Association de l'École française) and BGE 121 I 196 (Brunner); see also BGE 122 I 236. ↩
3. Federal Constitution, Art. 8 para. 2, <https://www.droit-bilingue.ch/en-it/1/10/101-8-12.html>. ↩
4. Federal Constitution, Art. 70 paras. 3–5 (above). ↩
5. Federal Constitution, Art. 175 para. 4, with the note that the paragraph was adopted by popular vote of 7 February 1999 and entered into force on 1 January 2000, <https://www.droit-bilingue.ch/en-it/1/10/101-175-209.html>. ↩
6. Swiss Federal Council, "Cantoni e lingue nel Consiglio federale", <https://www.admin.ch/it/cantoni-e-langue-nel-consiglio-federale>, which states that Italian-speaking Switzerland had not been represented since Flavio Cotti (1987–1999); Wikipedia, "Ignazio Cassis", https://it.wikipedia.org/wiki/Ignazio_Cassis, for the election of 20 September 2017 (used as a last resort). ↩
7. Costituzione federale della Confederazione Svizzera del 18 aprile 1999, AS 1999 2556, Art. 188 para. 4 in the original version (consideration of the representation of the official languages in the election of the federal judges), original Italian publication at <https://fedlex.admin.ch/filestore/fedlex.data.admin.ch/eli/oc/1999/404/it/pdf-a/fedlex-data-admin-ch-eli-oc-1999-404-it-pdf-a.pdf>. ↩
8. Bundesbeschluss über die Reform der Justiz vom 8. Oktober 1999, accepted in the vote of 12 March 2000, partial entry into force published in AS 2002 3147, <https://fedlex.admin.ch/filestore/fedlex.data.admin.ch/eli/oc/2002/467/de/pdf-a/fedlex-data-admin-ch-eli-oc-2002-467-de-pdf-a.pdf>. ↩

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9. Federal Constitution, Art. 188,
<https://www.droit-bilingue.ch/en-it/1/10/101-188-222.html>. ↩
10. Florence Aubry Girardin, La diffusion de la jurisprudence multilingue numérisée en Suisse, paper presented to AHJUCAF, Beirut, June 2019,
https://www.ahjucaf.org/sites/default/files/2022-03/F_Aubry%20Be%20youth%202019%20Suisse%20.pdf. ↩

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