

How the Federal Supreme Court resolves discrepancies

*Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland), Solicitor (Hong Kong),
Solicitor (England & Wales)*

Divergences between the three versions are inevitable. They arise from translation errors, from different legal traditions behind the terms of each language, from late amendments in parliamentary debate that are not carried into all versions and from the structural differences of the languages themselves. The Federal Supreme Court has developed a consistent practice for such cases. It starts from the principle that the three versions are of equal value and that no version takes precedence merely because it was the language of drafting. Mathieu Devinat and Pascal Pichonnaz, in a comparative study of Canadian and Swiss law published in 2017, cite a series of judgments that apply this principle, including BGE 140 II 495, BGE 135 IV 113 and BGE 126 V 103.¹

The court determines the meaning of the provision by the usual methods of interpretation, the wording in all three languages, the system of the law, its purpose and its legislative history, and seeks the version that best expresses the true sense of the rule. The divergence between versions is thus treated as an ambiguity of the wording that opens the way to the other methods.² In BGE 127 III 548 the court set aside a cantonal judgment whose judges had relied mainly on the French version of a provision. It held that the Italian version better rendered the sense of the provision, and in that case the choice substantially changed the legal consequences.³ The case is regularly cited as an example of the practical weight of the Italian text, because it shows that the Italian version can be decisive even in a dispute that was not conducted in Italian.

1 The practical weight of the Italian version

The practice of the court has a methodological consequence that every practitioner should know. A lawyer who argues a case on the basis of a single language version takes a risk. If the German text of a provision

appears to support his client, but the French and Italian versions point the other way and are more consistent with the purpose of the rule, the court may follow the majority of the versions or the version that best fits the purpose. Conversely, an Italian-speaking lawyer in Lugano who finds that the Italian version is more precise than the German may rely on it before a German-speaking court. The equality of the versions gives him a legitimate argument that a purely German reading cannot defeat. Devinat and Pichonnaz also draw attention to a related consequence of multilingualism in the case law. Judgments of the Federal Supreme Court are not translated, and only a small proportion of them are published in the official collection. A lawyer cannot excuse himself for ignoring a precedent because it was written in a language that he does not master. The authors cite BGE 134 III 534, in which the court held that a lawyer may be liable for disregarding a precedent of the Federal Supreme Court even if the judgment exists only in another official language and has not been translated.⁴ For a firm in Lugano this means that it must follow the case law in German and French as well as in Italian. For a firm in Zurich advising on a matter that touches Ticino, it means that Italian-language decisions of the Federal Supreme Court and of the Federal Criminal Court form part of the law that it is expected to know.

2 Notes

1. Mathieu Devinat and Pascal Pichonnaz, "L'égalité des langues officielles devant les cours suprêmes: regards croisés sur le droit canadien et le droit suisse", *Zeitschrift für Schweizerisches Recht (ZSR)* 2017 I, 271–287, https://www.legalanthology.ch/t/devinat-pichonnaz_equality-of-official-languages-in-supreme-courts_2017.pdf, citing BGE 140 II 495, 499 consid. 2.3.1, BGE 135 IV 113, 116 consid. 2.4.2 and BGE 126 V 103, 106 consid. 3a. ↩
2. Devinat and Pichonnaz (above), on the equal authority of the three versions under Art. 14 para. 1 PublA and the case law in BGE 140 II 495, 499 consid. 2.3.1; BGE 135 IV 113, 116 consid. 2.4.2; BGE 126 V 103, 106 consid. 3a; and BGE 127 III 548 consid. 3, where the Court held that the Italian version expressed the sense of the provision better than the French version on which the cantonal court had relied. ↩
3. Devinat and Pichonnaz (above), on BGE 127 III 548 consid. 3. ↩

4. Devinat and Pichonnaz (above), on BGE 134 III 534 consid. 3.2.3.3. ↩

For general information only. This article does not constitute legal or tax advice, does not replace advice on an individual case and creates no lawyer-client relationship. It reflects the legal position as of September 2026.

Online version: helveticaregister.com/lugano-how-the-federal-supreme-court-resolves-discrepancies