

Why language equality matters: legal certainty and access to justice

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The equality of the official languages is sometimes discussed as a question of identity and national cohesion. For lawyers, banks and their clients it is above all a question of legal certainty and of access to justice. A legal order can claim obedience only if those subject to it can know its content. In a multilingual state that requirement is met only if the law is available, in equal quality, in the languages of its addressees.

1 Knowing the law in one's own language

The principle that ignorance of the law is no excuse presupposes that the law is accessible. Swiss criminal law recognizes an error of law only within narrow limits.¹ For the resident of Ticino, the Italian version of the Criminal Code, of the Anti- Money Laundering Act and of the tax statutes is the text from which he must learn his obligations. If that version were of lower quality or of lesser authority, the Italianspeaking citizen would be held to a standard that he could only meet by reading German or French. The rule of Article 14 of the Publications Act avoids this by making the Italian version binding. Its practical value depends on the quality of the translation work described above. An error in the Italian version can mislead those who rely on it and creates a divergence that the courts must later resolve.

The Federal Supreme Court's practice gives the Italian-speaking citizen a degree of protection. Because no version prevails automatically, a person who relied in good faith on the Italian text can argue that the Italian version expresses the meaning of the rule, or at least that the divergence makes the rule ambiguous. In criminal matters, where the principle of legality requires that the punishable conduct be defined with sufficient precision, a material divergence between the versions may even support the argument that the conduct was not clearly prohibited.² Such arguments succeed

rarely, since the courts usually find the true meaning through the other methods of interpretation. Their availability nevertheless shows that the equality of versions protects the individual and is more than a technical rule of publication.

2 Procedural rights and the language of proceedings

Access to justice in one's own language is guaranteed in several layers. The Federal Constitution requires that any person deprived of liberty be informed promptly, in a language that he or she understands, of the reasons for the deprivation and of his or her rights.³ The European Convention on Human Rights guarantees everyone charged with a criminal offence the right to be informed promptly, in a language which he understands, of the nature and cause of the accusation, and the right to the free assistance of an interpreter if he cannot understand or speak the language used in court.⁴ The Criminal Procedure Code grants the same right to an interpreter.⁵ In civil and administrative proceedings, the language of the proceedings is the official language of the forum, and a party who does not master it must bear the cost of a lawyer or translator who does.

For Italian speakers these rules have a particular importance in federal proceedings. Before the Federal Supreme Court an Italian speaker can, as a rule, obtain a judgment in Italian. Before the Federal Criminal Court in Bellinzona, a defendant in a federal money-laundering case may be tried in Italian, and Chapter J.II discusses the rules under which the court determines the language of the proceedings. Before the Federal Administrative Court and before FINMA, the language of the contested decision or of the proceedings determines the language of the case. An Italian-speaking bank in Lugano that is the subject of enforcement proceedings by FINMA can therefore expect a decision in Italian. Its Italian-speaking directors can follow the case in their language and challenge the decision in Italian.

3 Notes

1. Swiss Criminal Code of 21 December 1937 (SCC), SR 311.0, Art. 21 (error as to unlawfulness), <https://www.droit-bilingue.ch/en-it/3/31/311.0-21-24.html>. ↩
2. SCC, Art. 1 (no penalty without a law), <https://www.droit-bilingue.ch/en-it/3/31/311.0-1-4.html>; Federal Constitution, Art. 5 para. 1, <https://www.droit-bilingue.ch/en-it/1/10/101-5-8.html>. ↩

3. Federal Constitution, Art. 31 para. 2,
<https://www.droit-bilingue.ch/en-it/1/10/101-31-37.html>. ↩
4. Convention for the Protection of Human Rights and Fundamental
Freedoms of 4 November 1950, SR 0.101, Art. 6 para. 3 (a) and (e),
<https://www.droit-bilingue.ch/de-it/0.1/0.10/0.101-6-9.html>. ↩
5. CrimPC, Art. 68 para. 1 (above). ↩

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