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Language Law and Language Rights

Joseph-G. Turi

There are, in many political contexts, contacts, conflicts and inequalities among languages used within the same territory. The political and legal intervention of modern States and public authorities (at all levels, national, regional, local and municipal) on languages, id est the language law, is to resolve the linguistic problems arising from those linguistic contacts, conflicts and inequalities phenomena. Comparative Emphasis is put on the different ways used by the States in legally determining and establishing the status and use of the languages in question, especially in the official usage of languages. There are official and non-official language legislation. There are also institutionalizing, standardizing and liberal language legislation and the historical and universal linguistic rights (the right to "the" language and the right to "a language"). This kind of intervention is relatively new due especially to three relatively recent social phenomena and problems, the democratization of education, the globalization of communications and the growing importance of linguistic diversity in our world.

Keywords: language and law, comparative language law, language rights, usage of language, liberal language legislation, Call to UNESCO, Canadian bijuralism, International Academy of Linguistic Law

1 Introduction

There are, in many political contexts, contacts, conflicts and inequalities among languages used within the same territory. Objectively or

apparently, these languages co-exist often in an uneasily dominant-dominated relationship, thereby leading to a situation of conflicting linguistic majorities and minorities.

The fundamental goal of modern linguistic legislation is to resolve, in one way or another, the linguistic problems arising from those linguistic contacts, conflicts and inequalities, by legally determining and establishing the status and use of the languages in question. Absolute or relative preference is given to the promotion and protection of one or some designated languages through legal language obligations and language rights drawn up to that end. The legal language policy of a State is constituted by the all legal measures on language field. These legal measures are the linguistic law (or *language law*) of a State.

Canadian linguistic legislation (the Official Languages Act) is an example of official legislation that applies language obligations and language rights to two designated official languages, English and French.[1] Quebec's linguistic legislation (the Charter of the French Language) is an example of exhaustive legislation that applies, in a different way, language obligations and language rights to the official language, French, to the English language, to a few more or less designated languages and to other languages to the extent that they are not designated.[2]

Increasing legal intervention in language policy gave birth, or recognition, to a new legal science, comparative linguistic law. Comparative linguistic law (or *language law*) refers to the different legal and linguistic norms pertinent to the law of language, the language of law and the linguistic rights (or *language rights*) as fundamental rights all over the world. To the extent that language, which is the main tool of the law, becomes both the object and the subject of law, linguistic law becomes metajuridical law. To the extent that comparative linguistic law recognizes and enshrines linguistic rights in our world, albeit sometimes rather timidly and implicitly, it becomes futuristic law, since it builds on historical roots.

This in itself is remarkable, since the growing recognition or historical enshrinement, in time and space, of linguistic rights promotes the linguistic diversity of our word and the cultural right to be different,

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[1] Official Languages Act, R.S.C., 1970, c. C-02.

[2] Charter of the French Language, R.S.Q., c. C-11. The Charter is popularly known as *Loi 101* (*Bill 101*).

which is a promise of creativity for individuals and families, as well as for societies, nations and the international community.

The intervention of States and public authorities (at all levels, international, national, regional, local, municipal, etc...) is relatively recent due especially to three relatively recent social phenomena and problems, the democratization of education and the globalization of communications and the growing importance of linguistic diversity in our world.

The great importance of such intervention gave birth, in September 1984 in Montreal and Paris, to the International Academy of Linguistic Law. Since then, our Academy has held thirteen international conferences on language and law. Our next international conferences will be held in Barcelona, Spain, in 2014 and in Hangzhou, China, in 2016. I am pleased to remember that our Second and Ninth International Conferences were held in Hong Kong (February 1990) and Beijing (September 2004).

2 Linguistic legislation

Linguistic legislation is divided into two categories, depending on its **field of application**: legislation which deals with the **official (**or *public*) usage of languages and that which deals with their **non-official** (or *private)* usage. *Needless to say, there are grey areas in this classification.*

Linguistic legislation can be divided into four categories, depending on its **function**; it can be official, institutionalizing, standardizing or liberal. *Legislation that fills all these functions is* ***exhaustive*** *linguistic* legislation, while other linguistic legislation is **non-exhaustive**.

The majority of modern countries are linguistically multilingual. However, the majority of modern States are legally unilingual or moderately bilingual or multilingual, by virtue of their official linguistic legislations.

Official linguistic legislation is legislation intended to make one or more designated, or more or less identifiable languages totally or partially, countrywide or regionally, in a symmetric or asymmetric way, official in the domains of legislation, justice, public administration and education, to the exclusion of other languages. The other languages existing in the State are not official. A language is legally official as far as

it implies, *substantially and explicitly de jure,* legal rights and legal obligations in the official domains, no matter how it is formally defined (official, national, the language of...). An official language then is a legally usage compulsory language for the States and their inhabitants and citizens in the language official domains. Depending on the circumstances, one of two principles is applied: linguistic **territoriality** (basically, the obligation to use one designated language within a given territory) or linguistic **personality** (basically, the right to choose a language among official languages).

In principle, in the multilingual States, the obligation to use the official languages stands only the public authorities, while the inhabitants and the citizens have the choice among the official languages. Save exceptions, the majority of people in an officially bilingual or multilingual State are not necessarily bilingual or multilingual.

Generally speaking, the official language of a unilingual State is the most spoken language of the country while in the multilingual State the official languages are the most spoken languages or the historical national languages of the country. This is not the case in many States of black Africa and in some States of Asia where the languages of foreign colonizers is still important. In Ethiopia, however, while all the Ethiopian languages are legally recognized, Amharic is the working language of the federal government. In Indonesia, Malay of Indonesia (Bahasa Indonesia) is the official language while the most spoken language is Javanese. In Malaysia, Malay of Malaysia (Bahasa Malaysia) is the official language even though it is not yet the most spoken language of the country. In some States, there is more than one language which is official, even though the official languages are the same language about linguistic point of view, like for instance in Bosnia-Herzegovina where Bosnian, Croat and Serb are the official languages of the country, for evident political reasons. This is not unusual in itself if we think for example to Catalan and Valencian, Portuguese and Galician, Hindi and Urdu, Romanian and Moldovian.

In China, acccording Section 9 of the linguistic law of 2000-2001, "Putonghua and the standardized Chinese Characters shall be used by the State organs as the official language".[3] However, it is the only Section of

[3] Law of the People's Republic of China on the Standard Spoken and Written Chinese Language. Law adopted October 31, 2000; into force January 1, 2001.

the Act where the adjective "official" is used (in the English translation).

Making one or more designated languages official does not necessarily or automatically entail major legal consequences. The legal sense and scope of officializing a language depends on the effective legal treatment accorded to that language. Otherwise, an official language without legal teeth is not substantially official; in this case, it is only formally official and then only a symbolic official language. In Bolivia, Section 5 of the new Constitution of 2009 recognizes 38 official languages, Castilian and 37 Indigenous languages. Actually, Castilian is still, for the moment at least, the only official language used, even though the official recognition of the 37 Indigenous languages is a very significant step towards the recognition of the historical linguistic diversity of the country.

About linguistic point of view, the domain of education is the most important domain in the field of an important officially legal language policy.[4]

The majority of modern States have their own official linguistic legislations. In some countries, there are also, apart from the official(s) language(s), *implicitly de facto* official languages. In Morocco, by instance, the only *de jure* official language is Arabic, but French remains an important *de facto* official language since it is used in many official documents. Moreover, many important States like the USA (at the federal level), the United Kingdom, Germany (at the federal level), Japan, Australia and Argentina (at the federal level) do not have any official language.

Institutionalizing linguistic legislation is legislation which seeks to make one or more designated languages the normal, usual or common languages, in the non-official domains of labour, communications, culture, commerce and business. About linguistic point of view, the domain of communications is the most important domain in the field of an important legal language policy. The interventions of modern States on the non-official domains are relatively less important than in the official domains.

Standardizing linguistic legislation is legislation designed to make

[4] Fleiner, Thomas, Nelde, Peter H. & Turi, Joseph-G.(2001).Ed.,dir., *Law and Languages of Education - Droit et langues d'enseignement*, Institut du Fédéralisme de Fribourg, Bâle, Genève, Munich : Helbing & Lichtenhahn, 561 p.

one or more designated languages respect certain language standards and linguistic terminology in very specific and clearly defined domains, usually official or highly technical. The intervention of modern States on the domain of linguistic terminology is rather minor, save exceptions.

The standardizing process had good success in the past century with Afrikaans, Hebrew, Malay and Hindi. Moreover, there are some linguistic international agreements in the field of linguistic standardization, like for instance, between Malaysia, Brunei Darussalam and Indonesia for the Malay language, between Brazil and Portugal for the Portuguese language and between Belgium and Netherlands for the Dutch language.

It is the written form (the language as medium) and not the written linguistic content (the language as message) that is usually targeted by legal rules dealing explicitly with language. The linguistic content can be the object of legislation that generally is not explicitly linguistic, such as the Civil, Commercial and Criminal Codes or Acts, the Charters of Human Rights or the Consumer Protection Acts. Moreover, while the presence of a language or the "quantity" of its usage can be the object of exhaustive language legislation, language "quality" or correct usage (what the ancient Greeks called “analogy” against “anomaly”) belongs to the realm of example and persuasion where language usage is non-official, and to the schools and government where language usage is official.

Liberal linguistic legislation is legislation designed to enshrine legal recognition of language rights implicitly or explicitly, in one way or another. Linguistic law, viewed objectively (as legal rules on language), make a distinction on linguistic rights, which are subjective so that they belong to any person. There are the right to "the" language (the historical right to use one or more designated languages, belonging to majorities or some historical minorities, in various domains, especially in official domains) and the right to "a" language (the universal right to use any language in various domains, particularly in non-official domains). These linguistic rights, based respectively on the principle of territoriality and the principle of personality, allowing for specific exceptions, are essentially individual about legal point of view, particularly for linguistic minorities, for evident political reasons, id est to avoid possible coincidence with the self determination principle. These rights are naturally individual and collective about cultural point of view. However,

according to section 16.1 of the Canadian Charter of Rights and Freedom (enacted by the 1993 Constitution Amendment concerning New Brunswick), linguistic rights in the Canadian province of New Brunswick belong equally to the "English linguistic community" (the majority one) and to the "French linguistic community" (the minority one). Moreover, the Supreme Court of Canada stated, in the 1998 **Secession of Quebec Case**, 1999 **Beaulac Case** and 2000 **Arsenault Case**, that some historical rights to French and English in Canada had to be interpreted in a liberal and collective way.[5] In any case, the linguistic rights of Indigenous people are indeed considered to be collective ones, according to the 1991 Indigenous and Tribal Convention.[6]

The important but non-official Barcelona Universal Declaration of Linguistic Rights, of June 9, 1996, states that linguistic rights are historical and both individual and collective.

3 Comparative linguistic law

Linguistic legislation never obliges anyone to use one or more languages in absolute terms. The obligation stands only to the extent that a legal act of fact covered by language legislation is accomplished. For example, the obligation to use one or more languages on product labels stands only if there is, in non-linguistic legislation, an obligation to put labels on products.

Generally speaking, linguistic terms and expressions or linguistic concepts (mother tongue, for instance) are the focus of language legislation only to the extent that they are formally understandable, intelligible, translatable or identifiable, in one way or another, or have some meaning in a given language. According to the Supreme Court of Canada, in the 1988 **Forget Case**, "The concept of language is not limited to the mother language but also includes the language of use or habitual communication. There is no reason to adopt a narrow interpretation which does not take into account the possibility that the mother tongue and

[5] **Reference re Secession of Quebec,** [1998] 2 S.C.R. 217; **R. v. Beaulac, [**1999] 1 S.C.R. 768; **Arsenault-Cameron v. Prince Edward Island,** [2000] 1 S.C.R. 3.

[6] Indigenous and Tribal Peoples Convention of the International Organization of Labour, of June 27, 1989, enforced September 5, 1991. The Convention has been so far ratified by 22 States, including 14 States from Latin America. The rights protected by the Convention belong to "peoples".

language of use may differ".[7] This being said, anything that is linguistically "neutral" is not generally targeted by language legislation according for example to Quebec's Regulation respecting the language of commerce and business.[8]

Section 58 of Quebec's Charter of the French Language stated that, allowing for exceptions, non-official signs had to be solely in French (the practical target of this prohibition was the English language). Therefore, if a word was posted and it was understandable in French, it was legally a French word (for instance, "ouvert"). In other respects, if a word was posted and it was not understandable in French, it was not legally a French word only if it has some meaning in another specific language and it was translatable into French. In this case, the public sign was illegal (for instance, "open"). However, this Section has been partially repealed, after the Supreme Court of Canada, in the 1998 **Ford Case**, stated that that Section 58 contravened the freedom of expression and the principle of non-discrimination and was then incompatible with the Canada's and Quebec's Charters of Human Rights. According to the Supreme Court of Canada, a State can impose a language on non-official public signs, but it can't forbid other languages. In this Case, the Court declared that "Language is so intimately related to the form and content of expression that there cannot be true freedom of expression by means of language if one is prohibited from using the language of one's choice".[9] The Court also stated that section 58 was discriminatory since it had the effect of "nullifying the fundamental right to express oneself in the language of one's choice". This decision was partially upheld by the United Nations Human Right Committee, in 1993, which declared that Section 58 was incompatible with the freedom of expression as foreseen by the

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[7] **The Attorney General of Quebec v. Nancy Forget,** [1988], 2 S.C.R. 100.

[8] L.R.Q., c. C-11, r. 9.01, sections 9, 14 and 26.

[9] **Ford v. Quebec,** [1988] 2 S.C.R. 712, p. 748 and 787.

As regards to the non-discriminatory nature of certain provisions of Bill 101 (Section 35 of the Act requires that professionals have an appropriate knowledge of French language), see the Supreme Court of Canada decision in the **Forget Case,** *supra* note 7.

In the **Attorney General of Quebec v. Irving Toy Limited**, [1989] 1 S.C.R. 927, p. 970, the Supreme Court gave this definition of freedom of speech: "Indeed, freedom of expression ensures that we can convey our thoughts and feelings in non-violent ways without fear of censure". For the Court, freedom of speech means, in principle, any content (any message, including commercial messages) in any form (any medium, and therefore, any language), except violence.

International Covenant on Political and Social Rights of December 16, 1966, enforced March 23, 1976.[10] However, the Committee Stated that section 58 was not discriminatory. Moreover, the European Court of Justice declared, in the 1991 **Peeters Case**, that a State cannot impose an exclusive regional language on the labels of products if the information is made in an "easy understandable language" so to respect the principle of free trade in Europe.

In principle, linguistic legislation is aimed at the speakers of a language (as consumers or users) rather than at the language itself (as an integral part of the cultural heritage of a nation) unless legislation establishes the contrary or is clearly a public policy law. A public policy law is any law comprising legal standards so fundamental and essential, individually and collectively, in the interests of the community, that they become imperative or prohibitive in absolute terms so that they cannot be avoided in any way.

Legal rules in linguistic matters are less severe than grammatical rules. There are three fundamental reasons for this (apart from the one which says that the best laws are those that legislate the least, particularly in the non-official usage of languages): firstly, language, as an individual and collective way of expression and communication, is an essential cultural phenomenon, in principle difficult to appropriate and define legally; secondly, legal rules, like socio-linguistic rules, are only applied and applicable as far as they respect local custom and usage and the behaviour of reasonable people (who are not necessarily linguistic paragons) while grammatical rules are based on the teacher-pupil relationship; thirdly, legal sanctions in the field of language like criminal sanctions (fines or imprisonment) and civil sanctions (damages, partial or total illegality), being generally harsher than possible language sanctions (low marks, loss of social prestige or loss of clients), are usually limited to low and symbolic fines or damages.

Since the legal sanctions of a public policy law are formidable (partial or total illegality, for instance), many jurists prefer not to think of language laws as being exclusively public policy laws, except when their legal context is clearly in favour of such an interpretation, as it could be in

[10] **Ballantyne, Davidson and McIntyre v. Canada** (March 31 and May 5, 1993). Communications Nos. 359/1989 and 385/1989,U.N.Doc. CCPR/C47/D/359/1989 and 385/1989/Rev.1 (1993).

some official domains of languages. True, the French *Cour de cassation* declared implicitly, in the **France Quick Case** (October 20, 1986) that French Language legislation was a public policy law. But that did not prevent the *Cour d'appel de Versailles,* in the **France Quick Case** (June 24, 1987) from considering terms such as "spaghettis" and "plum-pudding" to be, for all practical purposes, French terms that is to say to be in keeping with such legislation, because they were "known to the general public". The fundamental goal of this legislation, then, is to protect both francophones and the French language. A francophone is anyone whose language of use is French, that is to say, from legal point of view, any person who can speak and understand French, in an ordinary and relatively intelligible manner.[11]

In the **Macdonald Case** (May 1, 1986) and the **Ford Case** (December 15, 1988), the Court recognized and enshrined then the main differences between the "governmental" (official) and "non-governmental" (unofficial) usage of languages. The Supreme Court of Canada recognized and enshrined also, to all intents and purposes, the distinction between the right to "the" language (principal right for English and French languages, foreseen as such in the Canadian Constitution, explicitly historical owing to the historic background of the country, in the domains of the official usage of languages) and the right to "a" language (accessory right, not explicitly foreseen as such in the Canadian Constitution, *being implicitly an integral part of the human rights and fundamental freedoms category*, in the domains of the unofficial usage of languages). According to the Supreme Court of Canada, the right to "a" language is therefore implicitly an integral part of the explicit fundamental right of freedom of speech.[12]

An old research enquiry carried for the United Nations in 1979, the Capotorti Report, indicated that, although the use of languages other than the official language(s) in the domains of official usage was restricted or forbidden in various parts of the world, the use of languages in the domains of non-official usage was generally not restricted or forbidden.[13]

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[11] Arrêt no 85-90-934, October 20, 1986, Chambre de criminelle de la Cour de cassation. Arrêt no 69-87, June 24, 1987, 7e Chambre de la Cour d'appel de Versailles.

[12] **Macdonald v. City of Montreal**, [1986] 1 S.C.R. 460.

[13] Capotorti, Francesco. (1979). *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*, United Nations, New York (see p. 81 and 103, in particular). It must

We arrived at the same conclusion, in the late 1970s, when we made an analysis of the constitutional clauses of 147 States in the field of languages.[14] Since then, many States, among others Algeria, Malaysia, South Africa, East Timor, 29 States of USA and especially the ones that are issued from the former USSR and the former Yugoslavia, have made important and often drastic linguistic legislation.

France has made French the official language of the State in 1992 (the "language" of the Republic, according to Section 2 of the French constitution). The Constitutional Council of France has declared unexpectedly the 15th of June of 1999 that the 1992 European Charter for Regional or Minority Languages (that applies only to historical and individual linguistic rights) was incompatible with the French Constitution and his principle of equality among French citizens. However, the situation has changed since 2008 when the French Constitution was amended so to recognize the "regional languages" as being part of the "Heritage of the Republic" (Section 75-1).

There are only a few prohibitive linguistic legislations in the world in the field of non-official linguistic legislation. We had in the past some examples of this kind of linguistic legislation in francoist Spain and fascist Italy (among others, in public signs, trademarks and firm names). There were also some examples in the recent past of some prohibitive linguistic legislation in Quebec and in Turkey (and also indirectly in Indonesia by permitting only Latin characters in the public signs) in the field of non-official usage of languages, but this kind of linguistic legislation has been totally or partially revoked. Turkey prohibited, in some cases, the use of some languages, languages other than the first official language of each country which recognizes the Republic of Turkey, practically the use of the Kurdish language.[15] These prohibitive measures contravened, Section 27 of the International Covenant on Civil

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be pointed out that according to the Capotorti Report, however, not only the right to be different is a human right, but also the right to be assimilated is of the kind of a human right (p. 103).

[14] Turi, Joseph-G. (1977).*Les dispositions juridico-constitutionnelles de 147 Etats en matière de politique linguistique*, Québec : CIRB-Université Laval, 165 p. Turi, Joseph-G. (1996). "Législation linguistique", in Goebl, Hans, Nelde, Peter H., Stary, Zdeněk & Wolck,Wolfang, Ed., dir., *Kontaklinguistik – Contact Linguistics - Linguistique de contact*, volume 1, tome I, Berlin-New York : Walter de Gruyter, pp. 160-168.

[15] Republic of Turkey, Law regarding publications in languages other than Turkish, Law No 2832 (October 19, 1983).

and Political Rights, which recognizes to members of linguistic minorities the right to use their own language. This Turkish law has been therefore revoked. The International Covenant applies, moreover, to individual linguistic rights (to "members" only, not to "linguistic minorities"), no matter if they are historical or not.[16]

In other respects, we have some examples of legal linguistic tolerance and freedom in many countries like among others Finland (with 2 official languages and where the Swedish minority have the same linguistic rights than the Finnish majority), South Africa (with 11 official languages and where the right to "a" language is explicitly recognized), Canada and Australia (for their policy of multiculturalism for example) and Singapore (with 4 official languages). It makes us relatively optimistic and still absolutely vigilant about the future of comparative linguistic law.

4 Language of law

Comparative linguistic law includes naturally, especially in bilingual or multilingual official States, the branch of the language of law. When a State is officially bilingual or multilingual, it means in principle that the linguistic different official texts have the same legal authority. To avoid major problems, it is clear that the translation or the co-drafting of official texts in more than one language is a very important and serious matter, especially in the countries where all the official texts have the same legal value. In some countries, like for instance in Luxembourg, where the languages of legislation are French, German and Luxembourgeois, but only the French text is authentic, the situation is in principle less serious.

The situation is quite different in Canada, at the federal level, and in the Province of Quebec, where the official languages of legislation are English and French and where the legislative acts have the same legal value in both languages. Actually, The Quebec Charter of French Language qualifies formally as “official” only the French language. However, substantially, the official languages of legislation are French and English since the legislative acts of Quebec have the same legal authority in both languages.

[16] General Comment No. 23 of the UN Human Rights Committee April 6, 1994.

Canada and Quebec use a different kind of drafting legislative acts in the two official languages. Since 1978, in Canada, at the federal level, the legislative acts are co-drafted in both official languages. Co-drafting involves two language version of legislation at the same time by using a team of two drafters one of whom is responsible for the English version while the other is responsible for the French version. This technique ensures that each language version is properly drafted and reflects both the civil law and the common law systems. The same rule also generally applies to the drafting and examination of subordinate legislation. In Quebec, on the contrary, the legislative acts are drafted in French and then translated in English.

Canada is not only a bilingual country, at the federal level; it is also a bijural country since it has two legal systems in the law of property and civil rights: the French Civil Law in Québec and the English common law system elsewhere. According to Canadian Constitution, property and civil rights belong to provincial jurisdiction.[17] However, an important part of the private law is of federal jurisdiction, like marriage and divorce, bankruptcy and insolvency, bills of exchange and promissory notes, interest on money, admiralty law, patents of invention and copyright. The "private" federal statutes do not create an independent legal system. There is a complementary relationship in this matter between federal legislation and the *jus commune* of the provinces. Canada, at the federal level, has taken the leadership in this field with the legislative bijuralism with the *2001 Federal Law-Civil Law Harmonization Act No 1* and the *2004 Federal Law-Civil Law Harmonization Act No 4* and also with the 2011 Bill S-12 of the Canadian Senate (the *Federal Law-Civil Law Harmonization Act No 3*).[18] These acts recognize in the preamble that the "civil law reflects the unique character of the Quebec society". The general principle of these acts is the following: when an enactment contains both civil law and common law terminology, or terminology that has different meanings in the civil law and the common law, the civil law terminology or meaning is to be adopted in the Province of Quebec and the common law terminology or meaning is to be adopted by other provinces. It means that in provisions where a legal concept is expressed

[17] The Canada Constitution Act, 1867, sections 91 and 92.
[18] S.C. 2001, c. 4; S.C. 2004, c. 25. See also Canada Interpretation Act: R.S.C. c.I-21 sections 8.1 and 8.2.

using distinct common law and civil law terminology, the common law term appears first in the English version and the civil law term appears first in the French version. For example, the terms “real property” will be followed by the “or immovable” in the English version, and the term “immeuble” will be followed by “ou bien réel” in the French version.

It must be said that co-drafting is possible in bilingual countries. In multilingual countries, the translation is the only way to assure a good treatment of different official languages. In any case, it is imperative for legal translation to be as perfect as possible to avoid serious legal problems. Canada and Quebec give us a god example of what can be done in this domain.

Other solutions can be found in some international organizations. In the United Nations and UNESCO, for instance, Arab, Chinese, English, French, Russian and Spanish are the official languages while the working languages of the Secretariat are English and French. However, all the official texts are equally authentic. In the European Union, there are 23 official and working languages but only three procedural languages, English, French and German, in the European Commission. The official languages of the International Court of Justice are English and French. However, when a decision is taken in both English and French, the Court determines which of the two texts shall be considered as authoritative.

5 Conclusion

The right to "a" language will become an effective fundamental right only to the extent that it is explicitly enshrined not simply in higher legal norms, but also in norms with mandatory provisions that identify as precisely as possible the holders and the beneficiaries of language rights and language obligations, as well as the legal sanctions that accompany them. Otherwise, the right to "a" language will be but a theoretical fundamental right, like some human rights, proclaimed in norms with directive provisions that do not have real legal corresponding sanctions and obligations.

Whereas the law inhabits a grey zone, especially regarding the usage of languages, we do believe that the right to "a" language (and therefore the right to be different) will only have meaning, legally speaking, if it is enshrined (especially for historical linguistic minorities), in one way or

another (particularly, in the official usage of languages), in norms with mandatory provisions, as the right to "the" language generally is.
As an historical right (that takes into account the historic background of each country), the right to "the" language deserves special treatment in certain political contexts, even if it is not in itself a fundamental right. As a fundamental right (right and freedom to which every person is entitled), the right to "a" language, even if it enshrines the dignity of all languages, cannot be considered an absolute right under all circumstances. A hierarchy exists that must take into account, in ways which are legally different and not discriminatory, the historical and fundamental linguistic imperative of the nations and individuals concerned, including also the imperative of establishing a legally equity treatment between languages coexisting in a given political context.

It is clear that the States (at all levels) have the right to legally impose as official, in one way or another, a language or some languages (especially the national ones and some minority historical languages) to assure, according to circumstances, a kind of a social cohesion among citizens. It is also clear that citizens and inhabitants have the duty to respect legally the official language(s) of their States. However, the modern States must respect the linguistic diversity of our world. This has to be done in an equitable way. Equity is the key word to find acceptable solutions in the linguistic comparative law.[19] There are thousands languages and dialects in our world (even if about 75 % of the population speak twenty-three languages one of which is spoken by more than 1 % of the word population). According to UNESCO, there more than 6000 languages in the world (among them almost 3000 are considered endangered languages). The Bible has been translated in more than 2000 languages and dialects. There are international, national, regional and local languages and dialects. All languages and dialects are equally dignified. But they are not all equal among them. A natural and sometimes artificial hierarchy is setting up among languages. The most spoken languages in the word are Chinese and Hindi-Urdu while the most international languages are English and French, especially English-

[19] Su Jinzhi, Turi, Joseph-G. & Wang, Jie (2006). Ed., *Law, Language and Linguistic Diversity* Beijing: Law Press China, 507 p. Turi, Joseph-G. (1989.) "Introduction au droit linguistique", in Pupier, Paul & Woehrling, José. Ed., dir,. *Language and Law – Langue et Droit*, Montréal : Wilson et Lafleur, pp.55-84.

American since is spoken by millions of native and millions of non-native people.

Lingua francas are essential for technical and scientific international communications, not necessarily for deep cultural expressions (in the past, Latin and French, now English-American, and tomorrow maybe Portuguese-Brazilian and Chinese). The only real "danger" we can see from the lingua francas is that a strong lingua franca could prevent a good teaching and a good learning or third languages as foreign languages. However, the dangers are not coming only from "globalization" but also from "localization" as far as localization becomes "ultra-nationalization".

The recent political trend in favour of linguistic and cultural *diversity* is inspiring if it promotes the right to "a" language. It is not so inspiring if it is only in favour of the right to "the" language, as far as is aimed to defend above all strong languages like for instance French, German, Italian, Spanish Russian and Portuguese. This trend should also defend and promote the ones that are lesser used (less than a million speakers and in some cases some with a few million speakers) or the ones that are in minority situation, id est where their speakers represent less than 50% of the population of a country or of a region, as far as they are vulnerable. It is the historical minority languages that have to be promoted and protected above all! For his reason, the International Academy of Linguistic Law adopted, on June 16, 2006, a *Call to UNESCO* for an International Convention on Linguistic Diversity.

By ruling, in Section 89 for instance, that "Where this act does not require the use of the official language (French) exclusively, the official language and another language may be used together", Quebec's Charter of the French language recognizes and enshrines the right to "a" language and the right to "the" language, by creating an interesting hierarchical solution between them in the field of language policy. The problem was that the "exclusive" use of French was too much important at the enactment of the Charter. It is not any more totally the case now, since the Charter has been substantially modified on this regard.

The importance of linguistic law, that is the heavy legal intervention of States in the field of languages, shows that the globalization of communications seems so dramatic that it has to be controlled by promoting and protecting, according to circumstances, national, regional and local languages and identities, in other words the linguistic and

cultural diversity of the our world. In this respect, linguistic law is the realm of "linguistic regionalisation".

Let us hope that it will not become the triumph of "linguistic ultra-nationalization", where nationalisation means in some public territories both the right to "the" language and the realm of linguistic fundamentalism. In this respect, it will create new walls and boundaries and therefore major and new conflicts among nations. To paraphrase Clausewitz, is language becoming a new way to wage war? Let us hope not. Language must not become the new religion of the new Millennium and will not, if we remain vigilant on this matter.

For all these reasons and others, we are relatively satisfied that the natural Tower of Babel is stronger than the artificial and technical globalization of communications. However, we are relatively worried that the Tower of Babel is not necessarily stronger than the possible and dangerous ultra-nationalisation of languages.

In conclusion let me mention an extract of the 2006 Galway Call to UNESCO:

> "The linguistic diversity of our world must be recognized in a clear and effective way. We consider, therefore, that an International Convention on Linguistic Diversity is necessary if we want linguistic rights to become effective fundamental rights at the beginning of the new Millennium. *The world needs an International Convention on Linguistic Diversity".*[20]

Let us hope that UNESCO will react positively in this matter as soon as possible since the linguistic diversity of our word is indeed an integral part of our biodiversity. As the Supreme Court of Canada said in the 1990 **Mahé Case,** "Language is more than a mere means of communication, it is part and parcel of the identity and culture of the people speaking it".[21]

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[20] Call to UNESCO and to Member States of the United Nations for an International Convention on Linguistic Rights, June 16, 2006, Galway, Ireland, 10th International Conference on Language and Law.

[21] **Mahé v. Alberta,** [1990] 1 S.C.R. 342, p.362.

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Application of Multimodal Information Corpus Techniques in Legal English Teaching

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Multimodal information has gradually become increasingly involved in legal English teaching in China, as different media are increasingly used in the classroom. Multimodal information is so complex that it cannot be fully utilized by teachers. The use of the Multimodal Information Corpus (MIC) offers a feasible solution to the problem. This paper presents the design of applying MIC techniques to the teaching of legal English, including the principles, procedures and methods. This study focuses on processing of multimodal information which involves the collection, selection, compilation, integration and presentation of comprehensive information in the classroom context. The study shows that it is possible and, in fact, practical for teachers to manage multimodal information and measure students' ability reflected in the way they process such information in their legal English learning.

Keywords: multimodal information corpus techniques, legal English teaching, information processing, class modules, assessment

1 Introduction

Multimodal information refers to the information transmitted through various media and perceived by human beings through their sensory organs. The processing of this information includes the creation,

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transmission, transformation, presentation, reception and other uses of this information.

With the rapid development of technology, legal English teaching increasingly involves multimodal information processing, due to the use of videos, pictures, music, sound, scratches, films, slides and so forth. The forms of information created or transmitted by such means are various. In the legal English class, multimodal information either appears in teaching materials, in class activities, or in the assessment of learning. With the increasing awareness of teachers and students, some forms of information become significantly relevant whose functions, without an in-depth and systematic study, cannot be fully exploited.

To meet the need of processing multimodal information, the Multimodal Information Corpus (MIC), an integral part of the Corpus for the Legal Information Processing System (CLIPS) that is under construction with some basic functions having been realized, was created. The CLIPS was built with the mechanism underlying the Tree Model of Discourse Information (Du, 2007). This corpus can facilitate the processing of discourse based on the information analyzed and annotated. The CLIPS, with the MIC as a constitutive part, can also facilitate the processing of multimodal nonverbal information that has been discoursalized.

This paper focuses on the application of the MIC techniques to legal English teaching in the classroom environment. It introduces and explains some relevant critical concepts, presents the techniques that can be used, discusses the procedures, methods and skills for information processing, and analyzes the principles and problems in teaching legal English. It also discusses assessment of students' ability concerning multimodal information processing.

2 Relevant literatures

In the field of English for Specific Purposes (ESP), legal English is in a sense one of the most demanding, in that the teaching is costly, painstaking, complex, resource demanding and the learning is time consuming and intellectually challenging. In the context of second or foreign language teaching, the load is even more overwhelming. This is not only felt by teachers of legal English but also expressed by

researchers (see Budikova and Steflova, 2001; Deller and Price, 2007; Du, 2006; Liatukaitė, 2005; Weber, 1999).

When different languages and more cultures, especially legal cultures, are involved, teachers and students have to manage less familiar content and skills. They must base their practice on the language features, traditions, cultural particularities, legal principles and perplexing legal contexts that are pertinent. They have to fully master how legal English should function, in addition to the basic features of legal English recognized by researchers, such as Bhatia (1983), Krois-Lindner and Day (2006), Wydick (2005), Tiersma (2006) and Charrow and Charrow (1979). Educators make efforts to ensure that teaching can be effective, by employing, for example, teaching approaches and models like task-based, case-oriented, problem-oriented, video-based, and internet-based teaching and learning (see for example Heiner et al., 2004).

Legal English teaching and learning become even more complex when multimedia facilities are employed. This has been drawing increasing attention of teachers and researchers in the area of legal English teaching in China. The hits for relevant articles in the search of the China Integrated Knowledge Resources Database rise from 5 in the year 2005 to 18 in 2011. Some models of legal English teaching, which in particular deal with information processing involving multimodality (see e.g., Yuan, 2010) have been proposed. This reflects the increasing use of multimedia by legal English teachers.

Multimodal information processing refers to the processing of information involving more than one mode of communication, i.e., information picked up by human perception through different sensory channels. Studies under the umbrella term ‘multimodality’ are copious which cover various topical areas like music and sound (van Leeuwen, 1999), architecture (O’Toole, 1994; Pang, 2004: Stenglin, 2004), video texts (Baldry and Thibault, 2006; Iedema, 2001; Lemke, 2002); gesture (Thompson and Massaro, 1986; Martinec, 2000), digital media (O’Halloran, 2008) and corpus linguistics (Blache et al., 2009; Kipp et al., 2009).

Scollon and Levine (2004) note that “[A]ll discourse is multimodal. That is, language in use, whether this is in the form of spoken language or text, is always and inevitably constructed across multiple modes of

communication….” This point of view explicitly describes the relation between multimodality and discourse and implicitly emphasizes discourse information in communication.

Multimodal discourse analysis (O’Halloran, 2008; Page, 2009; Bednarek and Martin, 2010; Golumbia, 2011; Kress and van Leeuwen, 2001; LeVine and Scollon, 2004) is concerned with the combination of multimodality and discourse that involves linguistic and non-linguistic considerations, and disciplines like systemic functional linguistics (Halliday, 1994) and social semiotics (van Leeuwen, 2005) are incorporated. In the broad interdisciplinary context, especially with the interactive use of multimedia, multimodal discourse analysis faces all the more complex task of information processing.

Corpus studies concerning multimodality, such as Blache et al.’s (2009), reflect researchers and educators’ awareness of the new technological elements that should be built into corpus techniques. Among the many facets of multimodal corpus design, those dealing with graphics are in a sense typical in that they focus on basic techniques concerning visual message.

Bateman and Henschel (2002), Bernhardt (1985) and Thomas et al. (2010) all examine and discuss treatment of graphics. Bateman and Henschel (2002) focuses on XML realization of representing graphics and texts in corpus design. Bernhardt (1985) focuses on the interface between text and graphics. Thomas et al. (2010) propose a framework for annotating and presenting discourse that is signaled by graphics. Such studies all benefit multimodal discourse information processing.

Knight (2011) and Carter and Adolphs (2008) both study multimodal corpora by working on gestures. Carter and Adolphs (2008) investigate approaches that can help researchers “to review and analyse video, audio and textual records of naturally occurring communication” (*ibid*: 288). They suggest that:

> Communication processes are multi-modal in nature and there is now a distinct need for the development of corpora that enable the user to carry out analyses of both the speech and gestures of the participants in a conversation, and of how the verbal and non-verbal complement one another. (*ibid*: 275)

What the authors deal with are gestures in oral communication, with a corpus built and a set of tools developed. They not only focus on tagging of gestures, but also representation of the tagged data, which makes their research easily acceptable for application.

Studies on multimodal corpus techniques for language teaching, however, are relatively new (see Harris and Moreno Jaén, 2010), while those for legal English teaching in particular are rare since legal English teaching is a more specialized area.

3 Basic techniques of the multimodal information corpus

3.1 Categories of information

In the MIC, information is classified according to the physical forms, implicit functions and modes of perception. For example, videos, pictures, music and sound are discriminated according to their physical forms and the media they rely on; text, speech, dialog and signs are determined according to what functions they mainly have; whereas audio information, visual information, tactile information etc. are ascertained according to what sensory organs are mainly involved.

3.2 Multimodal information processing mechanisms

The processing mechanism of the MIC mainly deals with discourse information. That is, when discourse is processed, it is usually analyzed through the information, for instance, the macro information structure of the discourse, the micro structure of the information unit and the parameters that go along with the information (Du, 2007). While dealing with multimodal information, each information unit is considered a part of the discourse wherein it rests or the discourse the information unit is related to.

Take video information as an example. Two kinds of discourse are related, one being the truthful and parallel textual transcript of the video, the other the textual description of the video. Usually the latter is more useful if the description is duly detailed. In tagging, the discourse information structure is marked and the clip of the video corresponding to each information unit is annotated with the tags marking where the clip starts and ends. Thus there is the exact correspondence between the video and the discourse. Such data is stored in the corpus for later retrieval.

3.3 Retrieval of multimodal information

Multimodal information stored in the MIC can be retrieved through the parallel discourse attached to it. When a discourse is located, the searching engine will, as one of the steps, check whether a video clip is attached to it and thus facilitating the possible retrieval of the video clip as well. In retrieving a video clip, the parameters in the information unit of the discourse is obtained for determining the length of the clip. The message concerning the discourse information and the corresponding video clip is processed and activated for instant display.

The result of information retrieval is displayed in different forms, such as statistics, figures, information trees, aggregate datasheets, diagrams, texts, pictures, sounds and videos as a relevant medium is required and accessed. Parallel presentations of the multimodal information can be done when necessary.

4 Essential features of legal English teaching based on Multimodal Information Processing

4.1 Categories of information needed

Legal English teaching involves utilization of various media and modes of information. As the design of the class may require, legal English is learned through different presentations of information, including language features, knowledge of law, background materials, and especially relevant legal cases. Such information may have different forms. How the information is integrated into serial presentations needs the clear categorization and arrangement of the content.

4.2 Teaching process based on multimodal information processing

4.2.1 Teaching models based on discourse information

However, presentation of information should usually conform to the underlying principles of teaching. For case-based legal English teaching, for example, legal cases should form coherent scenarios exhibiting the underlying knowledge network that embodies the teaching aim (Du, 2006). Underlying the teaching activities is the discourse-centered axiom. Only with optimal discourse processing can activities be sufficiently fruitful.

4.2.2 Discourse Information Processing influenced by teaching models
Teaching models and principles have an impact on both teaching and learning activities. If, for instance, the teaching is case-oriented and an interactive teaching model is dominant, clips of video or films may be used. The information is mainly audio and visual and students will be required to process such information and manifest their understanding or operational ability. When multimodal information is involved, both the students and the teacher are required to decipher whatever is conveyed, either for presenting the idea or making pertinent responses.

With the change of the teaching model, modes of information may alternatively become dominant. Thus the presentations and responses should be attuned thereto. The teacher is responsible for leading the class towards the optimal processing of information and for evaluating dynamically students' reaction.

Whatever the teaching models employed, some modules of teaching are basic, for example, preparation either before or in class, delivering the lecture, assessing the achievements, and organizing class activities, as is shown in Table 1.

Table 1 Class Modules

Preparation	***Lecture***	***Assessment***	***Activity***
Identifying	Presentation	Production	Presentation
Collecting	Monitoring	Processing	Q and A
Classifying	Guiding	Reponses	Discussion
Compiling	Adapting	Scoring	Concluding
…	…	…	…

The preparation module comprises identifying teaching objectives, content coverage and all other factors that will have an impact on teaching. Is also includes collecting, classifying and compiling relevant materials, such as court decisions, casebooks, law reports, court observation reports, and so forth. Lecture is mostly teacher-centered, with the teacher's presenting, monitoring the progress and guiding the students which necessitate adaptation to the instantaneous requirement. Assessment covers the production, processing information, responses and necessary scoring of the achievements. Students will also evaluate

the teacher's performance in class. Activity is more inclusive, but it mainly refers to the interaction between students and between students and the teacher. This includes presentation of opinions, questions and answers, discussions in whatever form, and conclusions that are possibly drawn.

Such modules are not clear-cut. They may, with the progress of class communication, get interlaced, and the serial orders may be various. For instance, when lecturing, the teacher may need a brief discussion on a concept. He would also have to evaluate students' responses before he moves on with his lecture.

When multimedia are involved in class and the teaching is significantly interactive, the modules may be more complicated. Each module will involve interactions between the teacher and the students, and different modes of information will have to be processed by participants, as shown in Figure 1.

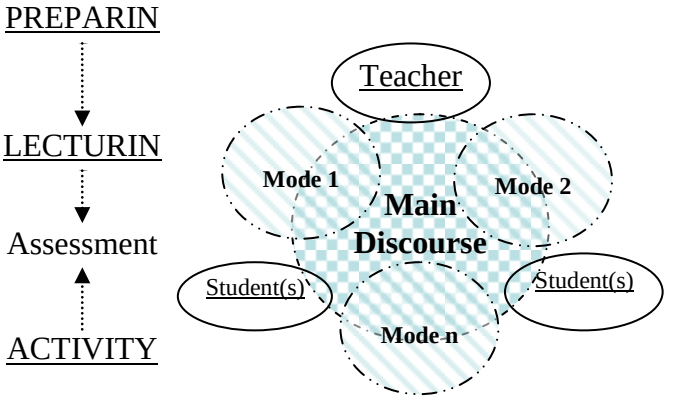

Figure 1 Information Management in Class

Main discourse refers to what the teacher uses as the principal material, such as the text. The teaching is supposed to be based on the main discourse around which other modes of information center. Participants tend to implicitly or expressly discoursalize nonverbal information, i.e., convert information into discourse, and integrate different discourses and attune them in conformity with the ideas in the main discourse. In this way, participant's information processing can be more easily monitored with reference to the main discourse. Such efforts can be

explained within the framework of discourse information theory (see Du 2007, 2010; Chen 2011a, 2011b, 2011c; Zhao 2011). According to the theory, a discourse has a hierarchical information structure, with the kernel proposition developed by the subordinate information units that are represented with 15 interrogative words such as “Who”, “How”, “Where”, “When”, among others. In addition, relevant multimodal information, when discoursalized, can be mapped to the structure of the main discourse. As a result, all the information clustering around the main discourse can be sorted out, which facilitates the measurement of information processing. As for the modules, one thing of note is that assessment/evaluation is always reciprocal, with the teacher’s more prominent than the students’.

4.3 Pre-treatment of multimodal information

Awareness of multimodal information helps a full-scale exploitation of resources. The use of information requires the pre-treatment of the information that comes on hand. If the media used in a class happen to be various, the significance level of each kind should be first determined, so that more resources can be allocated to the most significant. The pre-treatment of information varies with the information type but the preliminary step is discoursalization. Discoursalization may be explicit or implicit. When it is explicit, the processor analyzes, interprets and finally transcribes the nonverbal information into verbal text. Sometimes the processor implicitly deals with the nonverbal information impromptu, as if it were in a transcribed text.

4.4 Difficulties in using comprehensive information

Still, difficulties are not infrequent, such as where to get the resources, what to select, how to compile, and how to integrate and present comprehensive information.

1) The sources of information are so various that without experts’ pre-treatment, ordinary users may feel at a loss where to find appropriate information. The search may be too time-consuming and painstaking so it would discourage users. Where copyright is concerned, ordinary users may have no experience to handle it appropriately as required.

2) Even experienced teachers may have difficulty in selecting appropriate materials to be incorporated into their course. Their preparation and compilation of the materials are often instinctive, sporadic or experience-based, lacking examination by peers or supervision by experienced teaching staff. Once prepared, the comprehensive information is inflexible and cannot be easily updated, since the improvement is often costly.

3) The multimodal information integration process is complex. It requires the teacher's acute understanding of the teaching objectives, principles, focuses, reactions of the audience, among many others. Such consideration and management necessitate powerful assistant tools that can allow efficient adaptation of comprehensive information.

4) Usually multimodal information has to be presented forthwith so that it can in essence be incorporated into the content of teaching. Manual operation of comprehensive information often frustrates teachers. In contrast, instant or even simultaneous retrieval of information with powerful software and hardware can guarantee more fluent and coherent presentation of information.

5 Management of multimodal information in interactive teaching

5.1 Preparing course stuff

With the MIC, preparation for classroom teaching is easy to handle. The procedures and specific methods pertinent to multimodal information processing are as follows: 1) Clarification of teaching aims; 2) Determination of basic points and content coverage; 3) Selection of information types; 4) Analysis of logical relations between types of information; 5) Arrangement of serial placement of information; 6) Determination of presentation scheme; and 7) Creation of the template for instant retrieval and presentation of information.

Clarification of the aims is based on the syllabus of the course. The aims should be specific and operational, according to which basic points and content coverage can be decided. Selection of information types is in line with the teaching model adopted, with some types dominant while others subsidiary. Logical relations are considered for serial placement of information which in turn facilitates presentation arrangement. When all these are in place, the template can be created.

Creation of the template marks the end of the preparation. The

template is like a circuit or an operation board with all the elements integrated whose interrelations are logically built and explicitly displayed. Often, the template is in the form of a hyperlink page and, when necessary, has its super-ordinate or subordinate pages. In class, this template serves as a map, providing timely guidance and instant access to the pertinent content stored in the corpus, at a click of the mouse.

5.2 Lecturing

The teacher's lecturing should be well planned and inherently procedural when multimodal information is involved. The following rules of thumb help explain the requirements concerned.

1) The template is kept handy all the time in class.
2) Lecturing should be as smooth, authentic and suitably temporal as in a normal class.
3) Distracting information should be under strict control to prevent overloading.
4) Where necessary, repetition should be facilitated.
5) Branching of information should be followed by instant backtracking.

The template can provide the blueprint of the teaching session since it includes all the hierarchical information needed in the session. While reading the template, the teacher can also locate himself/herself and has a good command of the interrelationships between various elements of the teaching resources involved. This helps the teacher to have an authentic teaching pace which will approximate normal teaching to the best.

When multimodal information is used, one thing that puzzles the teacher is overloading of information, that is, too much information may come to hand at the same time. The teacher thus has to guard against overuse of information which may distract the focus of teaching.

To facilitate students' ease of understanding, repetition is often helpful. This actually often happens in an ordinary class where the teacher may shift his emphasis on points deemed necessary.

Backtracking refers to returning to the previous point of departure where the branching off began. This, according to discourse information theory, means after providing details, authors or speakers

tend to iterate the upper level information, highlighting the focal point.

5.3 Class activities

The management of class interactions is another challenge for the teacher due to the involvement of various forms of information. With the corpus-based technique, the results of interactions can be collected conveniently. This necessitates the following considerations.

1) How to manage the interactions;
2) How to elicit interactive reactions;
3) How to categorize information produced;
4) How to store the information produced.

Class interaction, when under control, can go along the path designed by the teacher. But over control may harm students' initiatives. The teacher's timely guidance rather than control is often desirable. Guidance is given as regards to the form of information anticipated, for example, whether the interaction can produce information that is in conformity with the information type in focus. When the interaction goes astray, the teacher has to redirect the students' action.

Active reactions are usually expected of students. But with multimodal information used, students may feel puzzled as to what to do, how to react, and what information should be used. The teacher's guidance here, such as confirmation, negation, acceptance or denial, will be of great necessity. Such are about the direction to which students' efforts are targeted. With these directions clearly set, specific details of instruction concerning the desired information the teacher wants can be offered.

The information collected in class has to be processed by the teacher instantly. While processing such information, the teacher has to first categorize it based on its accessibility, relying on his facilities at hand. The categorization is in accordance with the main discourse he disposes. If he highly evaluates a kind of information, it is usually most pertinent to the main discourse and best serves the teacher's teaching purpose. The least pertinent the information is to the main discourse, the least attention and effort the teacher will pay to it.

Storing the information produced impromptu in class is handled by the teacher simultaneously. The collecting mechanism permits storing different kinds of information onto the storage section of the corpus.

Such information can be later refined and incorporated into the corpus. With the accessibility permission, the teacher and other teachers can reuse such information when they retrieve the same data again and repeat the same class session.

5.4 Information processing based assessment

With the use of multimodal information in class, the assessment of students' legal English ability becomes complicated. The traditional and even updated testing measurements fail to monitor comprehensively students' ability change resulting from classroom teaching. Some measurements can, to a certain extent, reflect discretely one aspect of ability, for example, whether the students have confidence after being exposed to a picture explaining the concept "bar" or "grand jury". This rough monitoring, however, cannot be directly integrated into the total assessment of their ability.

The comprehensive assessment of ability, if based on measurement of information, can be realized by means of transferring all indicators into statistical data. Such data, when analyzed to conform to an ideal mechanism, can be projected onto an all-inclusive index as an academic score.

5.4.1 Assessment rationale

The rationale of assessment is based on the stability and fundamental features of information. Information processing underlies all human activities, either verbal or nonverbal. And information is between the layer of language and the layer of cognition (Du 2007). Since assessment of legal English ability necessarily involves measurement of language ability, it involves measurement of information processing as well. In contrast with the measurement of dynamic language performance which would frustrate testing efforts, measurement of information processing tends to be stable, reliable and easy to manage.

Acquisition of knowledge unavoidably involves information processing and takes information processing as the necessary channel. This gives the measurement of information sufficient propriety, and the convenience this measurement offers also makes it the ideal way of testing comprehensive ability.

5.4.2 Assessment technique

The technique of assessment involving multimodal information processing requires comprehensive management of performances that produce various kinds of information. Though the information categories may be varied, the relation between them can be determined. In measuring multimodal information processing, according to discourse information theory (Du 2007; Chen 2011a), discourse information analysis is regarded as the most promising treatment. This technique comprises the following aspects: ascertaining the relationship between information types, determining the significance level of the information type, measuring the intensity of the information in question, converting the measurement result into scores, calculating the ratio of the information score in the total score of the more general measurement, and representing the total score that contains information scores.

Amongst such technique requirements, calculating the ratio of information score is critical, since this involves the ideally balanced weighting of significantly different indexes, such as language performance index and nonverbal response index. Nearly equally critical is the conversion of information index into scores. Information intensity is relative to the total value of information involved. Thus the conversion should take into consideration the full-scale measurement of all kinds of information concerned. Any omission can skew the result of the general measurement.

5.4.3 Assessment method

The assessment methods that can be employed depend on the information processed. The following table displays, as an example, the scoring scheme, with teaching aim, team work and performance taken into consideration.

Table 2 Assessment for Achievements Based on Information Processing

Teaching Aim (Embodied in the Main Discourse)	*score*	*Team work*	*score*	*Performance*	*score*	*Total score*
Comprehension	80	Discussion	70	Role play	80	
Performing		Presentation	85	Speech		
Problem solving		Q and A	60	Drawing		

Memory		…		Dressing		
…				Mimicking	75	
				…		
Aggregated	80		215		155	
Average	80		71.67		77.50	
Weighting	0.7		0.15		0.15	
Net	56		10.75		11.63	78.38

Teaching aims are the main reference for assessment, according to which specific criteria for measuring ability can be worked out. For example, if the main discourse is targeted at comprehension, evaluation may comprise how effectively a student deals with the main discourse and gets involved in team work and/or in a performance. The scores are based on the result of the student's information processing when he participates in dealing with the main discourse, in discussion, presentation, questions and answers, and in role play and mimicking. His scores for team work and performance are decided based on the information he contributed in relation to the idea from the main discourse.

6 Conclusion

This paper mainly deals with the design, and application, of a set of corpus-based multimodal information processing techniques to legal English teaching. First discourse information theory which provides the rationale and principles for MIC is presented. MIC techniques are enumerated and discussed. Needs for multimodal information processing in teaching are analyzed, with emphasis on the utilization of information. On the basis of the above study, problems that may arise in teaching and in assessing students' ability are predicted and analyzed.

This study reveals that multimodal information processing, complex as it is, can be better employed in legal English teaching if handled appropriately. When MIC techniques are used, multimodal information can be easily processed by following the principles and procedures in discourse information theory. Thus students' ability can be assessed and incorporated into their academic scores, which otherwise is a frustrating issue for teachers of legal English and general English as well.

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A Discourse Analysis Approach to Legal Translator Training: More than words

Catherine Way

Legal translation trainees are frequently not experts in the field of Law. This poses considerable problems for legal translator trainers when attempting to introduce their trainees into the legal discourse community, requiring them to translate texts which are completely alien to their prior experience and social practices. In this paper we propose a discourse analysis methodology adapted from Fairclough's model ([1992] 1996) which provides trainees with the tools to develop a structured analytical process when approaching the translation of legal texts. Traditionally translation classes revolve around the text to be translated, and more specifically the terminology which poses problems for the trainees. In this model trainees are guided through a step-by step procedure which firstly situates the text within the social process and social events which surround it. By locating the text within the discursive practice (production, distribution, consumption) the trainees become familiar with the internalized social structures and conventions governing the text, allowing them access to what Fairclough (*ibid.)* calls "members resources". When this information is combined with the social practice in which the text participates, seemingly obscure elements in the text become immediately clearer. The process in then also applied in the Target Language and Target Culture to discover whether parallel discursive and social practices exist, thereby leading to parallel or similar texts. Only then will the translation process proper commence.

Keywords: legal translator training, discourse analysis, discursive practice, social practice, structured analytical process

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1 Introduction

This paper will describe the use of a discourse analysis approach to legal translator training. The use of this approach provides trainees with the tools to develop a structured analytical process when facing the translation of legal texts, thereby avoiding many of the problems encountered in legal translator training, particularly for trainees with little or no legal background. The approach has been implemented increasingly at the Faculty of Translating and Interpreting of the University of Granada in Spain over the last ten years in an attempt to overcome the problems typically found in legal translator training. We will first situate the training programme in its educational context, before considering the current situation in legal translator training and finally present the discourse analysis model with examples of its application.

2 The legal translator training context

The inclusion of courses of legal translation in the four-year undergraduate course in Translating and Interpreting in the Faculty of Translating and Interpreting in the University of Granada, Spain, is a reflection of the growing demand for specialised translators in the field of Law and International Commerce. If we consider the ever-expanding field of international business and Spain's entry into the EU in 1986, including the free circulation of EU workers in Spain as of January 1, 1992, then we can grasp the enormous amount of translation work which our graduates may encounter. Furthermore, with the introduction of the EU Directive 2010/64/EU of 20 October 2010 on the right to interpreting and translation in criminal proceedings and of the Directive 2012/13/EU of 22 May 2012 on the right to information in criminal proceedings we can anticipate even more demand for legal translation.

Besides working into their mother-tongue or A language (as they will in international organisations and as free-lancers), we also provide training into their first foreign language or B language, which has often

been described as not necessarily ideal[1], but is, however, is common in the Spanish translation market and increasingly so throughout Europe. The growing flow of international commercial documents provides enormous scope for translation activity, particularly between Spanish and English. We cannot exclude, however, the local and regional peculiarity (partially provoked by the tourist industry) which is reflected by the fact that in some Andalusian coastal resorts in Southern Spain as many as 50% of lawyers' clients and an enormous volume of court cases involve foreign citizens. We must also bear in mind that English is often used as a *lingua franca* and that translators are often dealing with clients from diverse legal cultures (China, India, Russia, etc.).

The peculiar nature of legal translation, which perhaps requires the "bridging of cultures" skills of the translator more than the other fields of specialised translation, is aggravated by several other factors that we will address in section 3. As any legal translator knows, it is not so much the transfer from one language to another as the crossing from one culture to another, from one legal system to another, attempting to overcome conceptual differences, which is one of the fundamental difficulties of legal translation.

The other specialised areas of translation, scientific/technical and to a certain extent economic translation have the advantage of working, in general, with universal concepts. This is not as true of legal translation, with the exception, to some extent, of certain elements of Business Law. The future translator will find that not only must s/he work between two languages and two cultures, but between legal systems which are very different due to the strong socio-cultural and historical influence exerted on them. This is aggravated by the fact that the systems are not even synonymous with countries: Common Law, as the basis of the legal system, may apply in the U.S.A./England and Wales, but not in Scotland, nor entirely in the state of Louisiana which has a mixed legal system due to the French influence there; Mauritius and the Seychelles have mixed

[1] For a detailed review of directionality in translating see "La traducción A-B en el mercado profesional" in Dorothy Kelly, Anne Martín, Marie-Louise Nobs, Dolores Sánchez y Catherine Way (eds) *La direccionalidad en Traducción e Interpretación.* Granada: Atrio (2003: 43-64).

systems too; Australia may use Common Law, but this has developed in accordance with its own sociocultural context. In the U.S.A. the division of Federal (national) law and State Law (in each of the states) also complicates the task in hand: which is translation.

Our students receive a grounding in translation theory and courses in general translation in their first two years, designed to illustrate the use of translation strategies and procedures. How then do we apply this knowledge to legal translation, given the difficulties posed by the problems of: initial rejection of a field considered to be inaccessible to non-specialists; of comprehension of the Source Language (SL) text and reformulation in the Target Language (TL), given their basic grounding in Law and the fact that they are working into their B language; of working between legal systems which may share some basic concepts, but which have many more differences than similarities when searching for equivalents.

In their third year students are introduced to legal and economic translation, whilst at the same time they follow courses in Terminology, Law, Economics and related fields over two fifteen week semesters. It is in their fourth and final year that they are faced with the translation of legal, administrative and commercial documents from a wide variety of fields: Administrative Law, Property Law, Criminal Law, Contract Law, Succession, and so on. In just fifteen weeks (one semester) they must reach a level of translator competence which will allow them to enter the professional market as novice translators. Graduates who complete certain courses, including the legal translation courses are named as sworn/certified translators by the Spanish Ministry of Foreign Affairs.

3 Legal translator training

Until the 1990's very little had been written about legal translator training. Since Gémar (1979) defended the fact that legal translators can be trained a great deal more has been written. Sparer (1988) defended the fact that legal translators can be trained without necessarily being legal experts, whilst in the 1990's, Hickey (1996) proposed legal translator training which established a series of rules

applicable to a variety of situations or circumstances based on his experience in both Law and Translation.

The enormous growth in the number of translation faculties in Spain and the demand for legal translation has led to a boom in research in this field. At the University of Granada Mayoral (for example: 1991, 1999a, 1999b, 2003) has written extensively on legal translation, Gallardo and Way (1996) have described the structure of legal translator training and since then Way (1996, 1997, 1999, 2000,) has presented research on structuring introductory courses in legal translation, exercises prior to legal translation, an interdisciplinary project with Law students to improve thematic, instrumental, psychophysiological and interpersonal competences [2] (2002, 2003), assessing legal translator competence (2008), bringing professional practices into the classroom (2009) and creating a framework for decision making in legal translator training courses (2012, forthcoming a). Legal translator training has also been addressed by Borja (1996, 1997, 2000), who suggest a variety of training techniques by requiring trainees to become familiar with the field of Law, the specialised language and the text genres.

3.1 Student profiles and problems

Bearing in mind that most of students have a background in Humanities in their secondary education we strongly advise that they follow courses in Law offered as electives in the Faculty. As students now design their own itineraries to a great extent, we find ourselves faced with heterogeneous groups with some or no legal training at all. Despite this, since research, IT and terminology skills have improved tremendously thanks to the courses introduced in the curriculum, it is still surprising to find that the trainees find a considerable degree of difficulty when faced with the translations (Deeds of Sale, Contracts, sentences, etc.).

After over twenty years training legal translators and, in recent years, careful observation of the development of the necessary translator competence by using the Achille's Heel self-analysis of

[2] Our training is based on Kelly's translator competence model (2002, 2005, 2007).

individual student competences (Way, 2008) we have found that there are three main reasons for the continuing difficulties:

1. The trainees' prior pedagogical translation experience in language learning tends to lead to
2. an obsession with words or, in later stages of their training, terminology and
3. their lack of vital experience.

Few students have been involved in a court case, bought a house or signed a contract. These processes are completely alien to them. As a certain lack of confidence is inevitable when translating legal texts in fields with which they are unfamiliar, trainees tend to rely on the resources they feel capable of using well by immediately searching for the unfamiliar terminology in an attempt to understand their source texts (ST).

However, as legal and, particularly, administrative texts are pregnant with suppositions and references to social practices that they have never experienced, the searches are often not successful and they experience great difficulty choosing between the possible solutions they encounter. Recent process research by Dam-Jensen (2012, p. 160) discusses decision-making and dictionary use by MA students in Denmark, highlighting the fact that in many cases students make unjustified decisions with which they are not particularly convinced. This led us to adopt a new approach in order to overcome these difficulties and to provide them with a tool they will be able to use in the future when faced with new fields and texts.

4 The discourse analysis approach

Using Discourse Analysis (DA) is not new in Translation Studies (TS), where the idea of analyzing texts through discourse, used as a means of structuring social practices or fields of knowledge (see for example Sánchez, 2007) has been applied to different fields of translation. Critical Discourse Analysis (CDA), however, has not been used as frequently in TS research. During my Ph.D. research (Way, 2003,

2005a, 2005b, 2005c) I used the perspective of CDA for the study of the problems posed in a social practice which requires the intervention of a certified/sworn translator. As a basis I adopted the tridimensional model suggested by Fairclough (1992), suggesting the description of a text, the interpretation of the discursive practice (production, distribution, and reception of the text) and the explanation of how the discursive practice is related to the social process, besides how the three elements relate to each other.

> Any discursive 'event' (i.e. any instance of discourse) is seen as being simultaneously a piece of text, an instance of discursive practice and an instance of social practice. The 'text' dimension attends to language analysis of texts. The 'discursive practice' dimension, like 'interaction' in the 'text-and-interaction' view of discourse, specifies the nature of the processes of text production and interpretation, for example which types of discourse (including 'discourses' in the more social-theoretical sense) are drawn upon and how are they combined. The 'social practice dimension' attends to issues of concern in social analysis such as the institutional and organizational circumstances of the discursive event and how that shapes the nature of the discursive practice and the constitutive/constructive effects of discourse referred to above. (Fairclough, 1992, p. 3)

Discourse is understood, then, as a form of practice and of social action as it organises our interpretation of society and of what happens in society. For translators this has often been a useful tool in textual analysis, as Fairclough underlines, however, this textual analysis cannot only be at a linguistic level:

> …textual analysis demands diversity of focus not only with respect to functions but also with respect to levels of analysis... My view is that 'discourse' is use of language seen as a form of social practice, and discourse analysis is analysis of how texts work within sociocultural practice. (1995, p. 7)

Fairclough's model can be represented as:

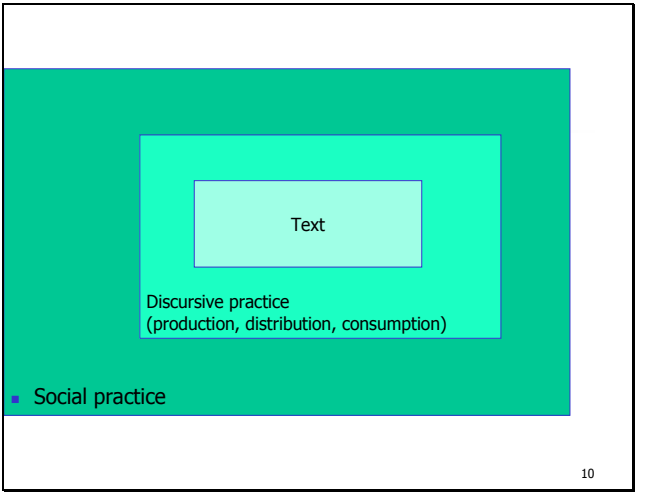

Figure 1: Fairclough's tridemensional conception of discourse (1992: 73)

In TS Neubert (1985, p. 74) defined a communicative situation as a context where information transfer occurs. He also underlined the importance of language use not only as a channel of communication, but also as a reflection of social reality:

> ...neither the speech chain nor a piece of continuous text are ever just neutral vessels filled with information. They always fulfill a communicative purpose. And any communicative event carries with it a segment of the world-view of the language users (ibid., p. 15)

Bearing this in mind, I adapted this model for the purpose of my doctoral study by adding the element of translation and the translator as an agent participating in the process, thus extending the study to texts which must move between two languages and cultures. From this perspective I performed a study of the social context and of the translation context surrounding a discursive act (translating and

recognizing degrees) in its entirety, thereby forcing us to traverse the borders of several disciplines involved in the social process in question. In order to move from the text to the social context and to the translation context, I designed a research model which allowed me to analyse the discursive act from the perspective of the agents involved, particularly that of the sworn/certified translator.

The study arose from the need to verify the reality of professional practice and daily working of sworn/certified translators in Spain and, particularly, of what occurs in the translation of academic degree certificates between Spain and the United Kingdom. It also arose from the need to verify whether what we propound to be current practices to out translator trainees (possibly future certified/sworn translators), based on our own personal experience or on the shared experience of colleagues, truly reflects the common practices in the whole profession. The impetus for the study also arose from a need to discover and analyse the role that official sworn translators play in the social process surrounding the translation of these documents and the effects that their translation decisions may have on the outcome of the process in which they participate. The research model is represented as:

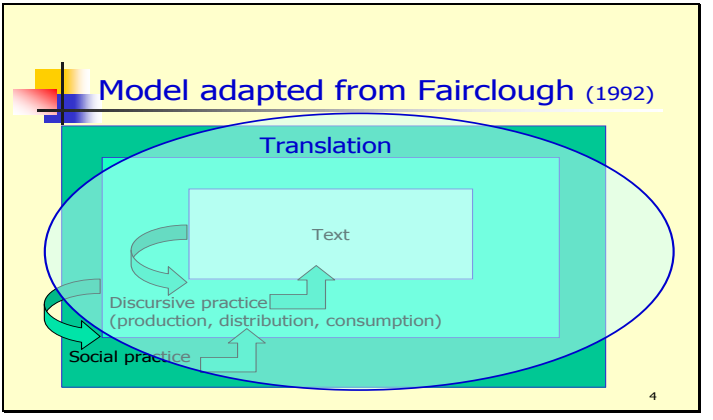

Figure 2: Model adapted from Fairclough (1992)

The research implied several phases, a descriptive study of the social context surrounding the translation act, an analysis of the

macrostructure of the degree certificates from the UK and Spain and the translation of one Spanish and one English text by professional translators (53), and an empirical study with questionnaires addressed to practicing sworn/certified translators on their experience in translating these documents.

It was from this research that we extracted part of the research model to create the discourse analysis approach we now use in our training to palliate the student problems mentioned in section 2. The parts which have proved to be significantly useful in modifying the way students approach their translation tasks were:

Level One: Description and analysis

1. The study of the social context surrounding the production of a given text type between two cultures and languages (the university degree certificate).

2. The study of the social context in which the text will be received in the Target Culture (TC) (recognition of university degrees).

3. The study of the context which surrounds and governs their translation in Spain (official sworn translation).

4. The compilation of a corpus of complete authentic texts in each of the two languages and from each of the two cultures.

Level Two: empirical study

Having outlined the background to the movement of these texts, we then proposed:

5. The analysis of the macrostructures of the texts comprising the corpus compiled.

The research model obviously continued on other levels with the collection of quantitative and qualitative data, but this is not pertinent for the training purposes addressed here.

In an attempt to draw students away from their frequent obsession with words or unfamiliar terminology, it became clear that they needed to be guided step-by-step through a process which would become a tool that they could then use themselves in the future in their professional practice. The approach can be visualised as follows:

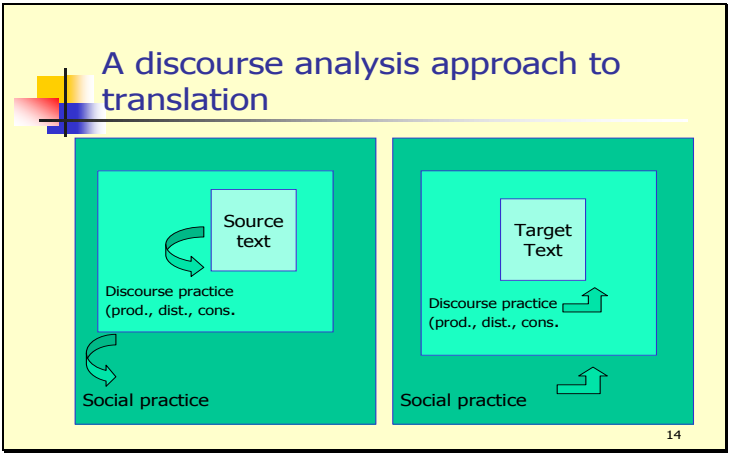

Figure 3: A discourse analysis approach to translation

5 Applying the discourse analysis approach

The final year legal translation course presents students with an array of legal, commercial and administrative texts. Students are provided with all materials: bibliography, translation briefs and texts, some complementary material in initial stages and a calendar of deadlines. The texts to be translated have been selected to provide an array of translation decisions which become progressively more complicated. At the same time certain decision-making tasks are repeated to allow students to interiorize their decision-making and gain confidence (Way, 2012 and forthcoming a). After introductory sessions which reinforce

the legal translation theory seen in their third year introductory course and sessions on translation revision, which is a key element in their final year course, groups are formed and students prepare their translation commissions according to the brief provided. One group will upload their translation to a virtual platform so that another group can present a revision of the translation too.

To avoid the common practice of simply starting to translate, which many students have acquired in language learning, they are asked to present their translation using a Project Management Sheet (for a more detailed description of this process see Way, 2009) which compels them to perform their task in a structured way by breaking down the translation task into different phases and introducing them to the workflow they will find in the translation market. It is also used as a tool to increase efficiency and encourage peer learning. The presentation requires the Project Manager to describe the whole organizational process, the Researcher(s) to describe the sources used and the materials they have prepared for the rest of the group. The Terminologist(s) explain their terminological choices with reasoned argument supported by sources and present the terminology given to the Translator(s). Initially heavy dependence on dictionaries is apparent, although as the course progresses they are rarely used. The translators describe the translation process and finally the Editor and Revisor any amendments made to the translators' text. As they describe their difficulties and keep careful record of the time invested lively debate ensues about how to improve their competence in each of the areas and how to improve their efficiency. Enormous emphasis is placed on externalizing the problem-solving and decision-making process by requiring the students to justify their choices and at the same time guiding them to acquire the necessary metalanguage to do so. Interestingly, Dam-Jensen (2012, p. 160) discovered in her research that the inability to do this was a major problem in her subjects, concluding that:

> Furthermore, it can be assumed that translators who have the ability to communicate about problems, decisions and solutions are also capable of making choices which they can justify; that

> they 'know why they act as they do'. A consequence of this is that the ability to communicate has to do with the level of competence.

Finally the group who has revised the translation presents the revised translation, including alternative sources, solutions and any queries which are debated by the whole class.

Despite having instituted this system some years ago, it was evident from the student presentations that they often revert to old habits and continue to dive headfirst into terminological searches before performing preliminary research on the text and the social practice surrounding it. Hence the need to make this approach more explicit in the introductory sessions, so that the students can appreciate how much simpler all the tasks become once they fully understand the three dimensions (text, discursive practice and social practice) involved in their task.

The first texts are normally administrative documents from the authorities, a birth certificate for example. Whilst the actual text may be relatively short and the information often schematic, presenting personal data, these texts are an excellent way of easing the students gently into the approach.

Administrative documents are part of our daily lives and describe parts of them. They are, nevertheless, not a trivial matter as they reflect and conform the social reality in which we live and a poor translation may have far reaching, serious consequences for our clients. Data is presented differently in different cultures, however, and as the authorities frequently mistrust the information provided by citizens, this is even truer when it comes from a different culture or is presented in an unfamiliar way (Iedema, 1998; Iedema and Wodak, 1999). Thus, when a translator makes a decision about a particular translation strategy or terminological choice, rejecting other alternatives, s/he is not always aware of the real consequences this may have on someone's life. These choices, nevertheless, are not only taken at a purely individual level, but are influenced by the social and cultural processes with which the translator is familiar. This is particularly important for the translator as a text receiver and producer as s/he must be capable of

approaching the translation task from the perspective of both cultures, assimilating and acquiring sufficient knowledge of the practices in force in the Target Culture (TC). The interaction between discourse and society rests, therefore, on the socially acquired and shared mental representations that define cultures and the groups that administer or organise and supervise their beliefs (or worldview as represented in the documents), social practices and discourses (van Dijk, 1997a). Administrative texts perform a role within a social process which is governed by and replicates the rules, relations and institutional resources in play. The social agents involved use language resources to construct forms of interaction between the text producer and the receiver, thereby constructing a social reality within the text based on common practices and terminology. An enormous amount of this information, however, relies on what Gutt (2000) called *communicative cues* which the translator must detect and resolve for the TC reader (Munday, 2012, p. 36).

6 Practical examples

As our graduates will be faced with a myriad of legal and, particularly, administrative texts in their professional practice, texts are selected and sequenced to pose problems that they will frequently find. The complexity of the problems is gradually increased and, through repetition, interiorised by the trainees (see Way, 2012 and forthcoming a).

Example 1
One of the first texts students approach is a Spanish birth certificate. Whilst less schematic than most English birth certificates, they provide an excellent initial exercise for students to put into practice their research, terminology and thematic skills.

Spanish birth certificates bear the information

Ministerio de Justicia
Registros civiles

in the top left hand corner to indicate the issuing authority.

As students have already seen the translation of cultural references, such as institutional names, in earlier courses they often consider this to be a simple element in the translation. If they use their prior knowledge and basic word/dictionary approach they inevitably present the solution of:

Ministry of Justice
Civil Registries/Registry Offices

before moving on to endless terminological searches for other problematic elements in the text.

By using the discourse approach, if they first research the text producer (the Spanish Ministry of Justice) and its organisation, they may access the Ministry's web page, which offers an English version, thereby resolving doubts as to the institutionally accepted translation of the proper name or even prompting them to consider proposing *Spanish Ministry of Justice* to situate the Target Text (TT) reader. Furthermore, by examining which part of the Ministry is responsible for issuing birth certificates they will find that there is a Department named *Dirección General de Registros y Notariado* which is the national office dealing with civil registries. The fact that the members of the discursive group producing the text refer commonly to this office as *Registros civiles*, even in documents meant for the public, is impossible for them to imagine without this research process as it forms part of the 'members resources' mentioned earlier. This practice is found in most administrative texts in Spain and may thus be reinforced in later texts issued by other areas of the Spanish administration.

Example 2
Besides an identification number for each birth certificate, the information of exactly where the birth is registered will follow:

Sección 1ª Tomo XXX Página YY Folio: Z.

The continued discourse approach which requires them to delve deeper into the information concerning the text producer will lead them to

discover how civil registries are organised in Spain and how information is recorded. Thus they will find that *Sección 1ª* refers to one of four divisions within the civil registries. The first division deals with births and other general matters; the second with marriages; the third with deaths; and the fourth with legal representation and wards of court. Furthermore they discover that civil registries have a set of rules which explain how the processes involved should be performed. For example Article 105 explains the use of the registers, on stamped sheets and exactly how this information will be stated on each certificate:

> *Los libros estarán formados por hojas fijas o por hojas móviles, foliadas y selladas y en las que se expresará la Sección y tomo del Registro. Se encabezarán con diligencia de apertura, en la que se indicará el Registro, la Sección o clase de libro, el número correlativo que le corresponde entre los de su Sección o clase, y el de páginas destinadas a asientos.*

Familiarity with the whole process of text production not only clarifies problematic areas of the translation that dictionary or terminological searches will rarely resolve, but also reinforces their confidence when approaching the translation task and later justifying their decision-making process and solution.

Example 3

Birth certificates in Spain are frequently issued by the Judge in charge of the Civil Registry (*Juez Encargado del Registro Civil*) and the Court clerk (*El Secretario*). A lack of familiarity with the organisation of the civil registry will often disconcert them at this point. If they are aware of the rules and regulations concerning the social process the differing signatures and posts are no longer a problem.

At this point, a parallel research process of the issuing authorities for birth certificates and organisation of civil registries in English speaking systems allows them to draw parallels and suggest solutions such as *Registrar* and *Deputy Registrar* which will be more familiar to their ST readers and eliminates the need to explain why a Judge is signing this document, an unfamiliar occurrence in the TC.

These are just three simple examples which will be repeated to reinforce this approach in later texts and which will be escalated to more complex elements in later texts (see Way, 2012). As the course progresses texts become longer and more complicated, repeating problems requiring decision-making before and introducing others gradually.

7 Conclusion

The rationale behind this discourse analysis approach to legal translator training stems from observation of the difficulties students find when faced with decision-making at all levels of translator competence. The introduction of the presentation of translations by fragmenting the task into different roles, requiring different areas of expertise or translator competence, was only the first step towards making students conscious of exactly what they are doing, and more importantly, how they arrive at their solutions.

The second stage of the development of the approach has been guiding the students towards the three stage discourse analysis approach, levering them gently away from the three main difficulties mentioned in section 2. Familiarity with the discursive and social practices surrounding the ST and the parallel process in the TC dissipates many of the initially potential problems that students detect in the ST. As a result, the hurdle of lack of vital experience is overcome; the complete approach eliminates, to a great extent, the need to search for unfamiliar terms as the prior research attenuates this lack of familiarity with the terms and the discourse required; finally, the old habit of immediately delving into a dictionary becomes a thing of the past quite painlessly.

As we are all aware, a translator's working day is made up of a multitude of choices: Which is the best term or equivalent? Which is the most appropriate register? What are the TC reader's expectations? By using the discourse analysis approach to legal translator training students find that after only 6-7 weeks they are capable of moving from one legal field to another, from one text type to another, with increasing confidence and efficiency. Easing the students away from the initial

idea that they expect to be given absolute solutions for translation problems, particularly terminological problems, which they will then replicate in their professional practice is not an easy task. Nevertheless, this approach has proven, over the last ten years with some 1,000 graduates, that it is possible to tackle legal translator training from another angle and hence, provide the students with a tool that will be applicable to any translation they may face in the future. Recent research on graduate satisfaction with their legal translator training (Vigier, 2010) has confirmed this fact. By reducing the number of decisions to be taken each day as they interiorize the 'how to solve a problem' rather than simply seeking 'what is the solution to this problem?' reduces their level of uncertainty and boosts their confidence and self-concept as translators which can only be beneficial for the professional status and recognition of legal translators.

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Legal Bilingualisation[1] and Factual Multilingualisation[2]: A comparative study of the protection of linguistic minorities in civil proceedings between Finland and Italy

Laura Ervo and Carlo Rasia[3]

The post-modern court culture in civil litigation is based on communication and interaction between the parties and the judge. There has been a radical change from the adjudication, ideals of material law and a substantively correct judgment towards the ideal of negotiated law and pragmatically acceptable compromise. Currently, the most important function in the adjudication is that the contextual decisions, which the parties are satisfied with, are produced through fair proceedings. There has even been a change from the formal justice towards a perceived procedural justice and from the judicial power towards court service. In achieving these aims, communication and interaction of judges and parties are the most important tools. From this point of view, the language and the linguistic rights play currently a very significant role in the current civil procedural court culture. At the same time, the free movement guaranteed by EU, the global phenomenon of immigration and the refugee problems are current worldwide issues. The linguistic context is complex and multilingualisation has become a commonplace. The current question is how these challenges can be met? In this article, we shall exam the bilingual system in civil proceedings in Finland and in Italy.

Keywords: Linguistic minorities, linguistic legal rights, factual linguistic situation, Finnish Law, Italian Law, international regulation, civil litigation.

[1] With this concept we refer to the linguistic legal rights.
[2] With this concept we refer to the factual linguistic situation.
[3] Sections 1 and 2 were authored by Laura Ervo whilst section 3 is written by Carlo Rasia. Sections 4 and 5 are common parts.

1 Background

1.1 Post-modern court culture

There has been a radical change in the Finnish court culture since the beginning of the 1990´s based on the wide reforms in civil proceedings[4] as well as the change in attitudes and policy making in civil litigation and dispute resolution.[5] The current, post-modern court culture is based on communication and interaction between the parties and the judge. There has been a big change from the adjudication, ideals of material law and a substantively correct judgment towards the ideal of negotiated law and pragmatically acceptable compromise. In this kind of procedure the judge is seen more as a helper of the parties than the actor who is using his/her public power to make final decisions. The development has gone from the judicial power towards court service.[6] At the same time there has been a wide-ranging discussion, especially in Sweden, of the ultimate functions of civil litigation.[7] It has affected even the Finnish legal tradition, where conflict resolution, rather than traditional dispute resolution or legal protection, is the most important function of court work. In this change, the role of parties in the relation to the judge has been changed from the subservient towards clients which means that parties are nowadays much more in the center of the proceedings than before.

Proceedings can even be seen as micro politics[8] and the place for moral discussions. Recently there have been many cases in Finland which have societal meaning even outside the court room and where the discussion and argumentation during the proceedings has general relevance beyond the single case. Some examples can be mentioned: the cases against the tobacco industry, cases concerning the bank crises in the beginning of 1990´s and cases concerning bullying. In these situations, with the help of the media, the public procedure is a new place for moral discussions. This also affects the professional way of

[4] More information in English, Ervo 1995: 56 – 64 and Ervo 2007: 466 – 483.
[5] More information in English, Ervo 2007: 466 – 483 and Ervo 2009: 361 – 376.
[6] Ervasti 2004: 433, Haavisto 2001: 98 – 102 and 2002: 165 – 251, 260 – 262 and 287.
[7] Ervasti 2002: 56 – 62, Leppänen 1998: 32 - 41, Lindell 2003: 82 - 101, Lindblom 2000: 46 – 58 and Virolainen 1995: 80 – 89.
[8] Sometimes judges make even political resolutions.

using legal language.[9] In their best, proceedings can be places for moral discussions even in multicultural situations where different ethical and cultural codes easily come up or even collide[10]. The current multicultural societal challenges are challenges for both the law and the courts. It has even been asked if globalization involves not only the duty to be attentive to the differences between cultures but also whether culture becomes a genuine source of law.[11] For these reasons, the language and the way of communication is an even more important factor in (fair) proceedings than before.

There has also been a change from formal justice towards a perceived procedural justice, which means that it is not enough that proceedings fulfill the requirements of formal justice but that parties and other actors like witnesses and experts as well as all actors involved in proceedings should in addition subjectively feel that the procedure was fair. The most important function in the adjudication is that the contextual decisions, which the parties are satisfied with, are produced through fair proceedings. In achieving these aims, the communication and interaction of judges and parties are the most important tools.[12] Therefore new kinds of professional skills are needed. To respond correctly to these current demands the judge must know not only the jurisprudence and the contents of law but s/he must also have linguistic and social skills.

1.2 Linguistic aspects

The challenge of multilingualisation can be met from different points of view. First of all, it is a question of linguistic diversity and equality. Multilingualisation has been mostly seen as a fertility and richness like

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[9] Wilhelmsson 2002: 252 – 253.

[10] For instance, in Sweden there has been lot of discussion based on the case of the Svea court of appeal judgment B 3101-00, 2000-06-09. There African adults were found guilty because they had tried to exorcized evil spirits from children, when child died and the other was hurt. The court followed the Swedish criminal law and did not argument at all that parents had really believed that there were evil spirits affecting their children and that it was typical in their culture to believe in this and to try to exorcize them. The court was criticized in the doctrine that they totally ignored this cultural collision and its possible effects to national criminal law. On this discussion see SOU 2006:30.

[11] Gephart 2010:32.

[12] Ervasti 2004; 168, Haavisto 2002: 20, Laukkanen 1995: 214, Takala 1998: 3 – 5, Tala 2002: 21 – 23, Tyler 1990: 94 and Virolainen – Martikainen 2003: 5.

biodiversity and therefore worthy of protection. Of course, it is also a question of fundamental human rights even if it is more common to find the linguistic rights presented as instruments to realise other human rights like fair trial than as a right itself.[13] However, linguistic rights can and should be seen as rights themselves as well even if they have a significant practical value as instruments and tools to realise other rights. From the point of diversity and its absolute value also raises the question of linguistic equality, especially if linguistic rights are seen as independent rights, the legal equality between different linguistic groups can be defended. Equality can be achieved from two perspectives, namely from the prohibition of discrimination or from the duty to protect, when the first one involves the passive attitude of refraining from discriminating acts and the latter active action in the field of protection. As for legal equality, it can either involve only formal equality or it can require factual equality[14], in the other words, practical tools to realise the right in practice.

Linguistic rights can be collective or individual. The first sees linguistic rights as group rights, like the protection of minorities and their culture and is societal and communal. Linguistic rights can even be met geographically. Do we need national (or even global) protection or is it enough to have territorial protection in the areas, where most of the people live. In the case, the territorial protection is defended; the linguistic right is seen mostly as a collective right even if there can be also practical reasons to territorial protection only. In the case when the linguistic right is seen as an absolute human right for individuals, there is no reason to make geographical differences in legal protection.

The big question is whether the linguistic rights should be seen as

[13] For instance according to Tallroth language has generally been recognised as an instrument for the realisation of other fundamental rights like a right to a fair trial as opposed to as a right itself. This means also that lacks in linguistic rights and linguistic competence means usually more or less automatically lacks or violations realising other rights. Tallroth paid attention even to the main core of the legal system, which is based on language. There is namely no legal system without language. Therefore language has central significance not only for individuals but also for the society itself. Tallroth 2004: 368 – 369 and 380.

[14] Compare with the liberal and social procedural conception, where the first one covers only formal equality to parties to advocate their cases at the court, when the latter covers even factual tools for that like free legal aid when needed. More on these conceptions and their significance in the history of procedural law see for instance Ervo 2005: 98 – 103 and Laukkanen 1995: 35 – 36, 58 – 98.

the protection of ethnical and linguistic minorities and their culture or whether they should be seen as practical instruments to realise other human rights, like the right to fair trial, and therefore as a tool to guarantee the best possible communication[15] during the proceedings. The main division is therefore made between the protection of the diversity of minorities and the maximisation of communication.

1.3 Challenges

Different approaches to linguistic protection can be found: in Finland linguistic rights have primarily been seen as practical tools for communication whereas in Italy it is more a question of cultural protection.[16] However, the main problems are common. How to survive? How to turn factual multilingualisation into legal bilingualisation in the current multicultural globe? Or are we obliged to renounce linguistic rights in the name of the current multicultural and multilingual one world? Does globalisation in practice mean linguistic unification or do we still have resources and tools to meet linguistic diversity as a human right in itself and in addition, as a practical instrument to realise other rights? Are we too mixed to struggle for linguistic rights any longer? Do we have to confess that bad English is the most spoken language? Will it be the court language in the future in the name of equality and in the name of factual resources, or is there still space for historical and cultural needs and the special protection of some ethnical groups in some areas or worldwide? Have we reached the end or is this just a new beginning for the new communication skills, such as multilingualisation, interaction and factual communication?

One response to this challenge is to use interpreting and translation more and more. Still, even this does not solve the communication problem. Namely, the widespread use of interpretation and translation by professionals means that communication moves from judges and

[15] The main core of the fair trial guaranteed in the article 6 of the European Convention for Human Rights is the parties right to participate and advocate in the procedure in an active, equal and factual way. See Ervo 2005: 451–58.

[16] Of course, in both countries and in both perspectives the both points of views are included. Even if we guarantee the communication it means at the same time the protection of linguistic cultural rights and the opposite, the protection of cultural rights included the language, require better possibilities to communicate.

parties towards interpreters and judges and parties.[17] The language is no longer direct interaction between original actors but it is interceded communication via the interpreter. By doing so, communication is no longer authentic. Interpreted communication is always something other than what the original speech act was.[18]

Summa summarum, language and linguistic rights play a very significant role in the current civil procedural court culture. At the same time, the free movement guaranteed by European Union[19], the global phenomenon of immigration and the refugee problems are worldwide issues. The linguistic context is complex and factual multilingualisation

[17] Tallroth and Åman have paid attention to the same problem. According to them it is possible to get through a trial, even a fair trial with the help of interpretation, but it is not possible to live with the help of interceded communication alone in a long run. They underline that this kind of solution cannot actually solve the problem but it is a tool to go over the current emergency situation only. In addition, they stress that there are deep lacks even in the status of linguistic rights in the form of interpretation and translation in many legal systems and national legislations. (Tallroth 2004: 380 and Åman 2008: 78) I would like to go even further and wonder if we can achieve a fair trial by means of translation and interpreters only. Because the communication and the right to participate and advocate in an actual, factual, active and equal way are the main components of a fair trial, the level of this standard becomes centrally poorer if the actors cannot communicate directly but only via third parties. This is the problem of interceded communication in general. In addition, there is one specific problem. Namely interpreters and translators are mostly language professionals. They are not professionals in legal matters; they are not decision makers like judges and the case does not concern them personally as it does parties. All that affects the communication as well and it becomes more and more interceded language and the communication differs more and more from the original and authentic speech acts. It is not only the question of a foreign language; it is also a question of professional communication and communication in "my case". An interpreter and a translator are outsiders and third parties from many points of view. The communication should therefore not focus on interpreters and translations. In practice, this is however unfortunately mostly the situation. The judge puts his/her questions to the interpreter and not to the party and when the party would like to give information to the court, s/he is talking to the interpreter. The main actor from both judge´s and party´s perspective seems to be the interpreter. This is, however, no wonder. The whole trial, namely, stands or falls with the help of interpreter in the cases where all actors cannot same languages.

[18] This has nothing to do with the professional skills of the interpreter or translator. This is a fact despite of the knowledge and professional skills of the current actors. What it means in legal context and in legally linked situations can be explained for instance by means of legal ethnology. See for instance Audun Kjus: in Muntlighet vid domstol i Norden: en rättsvetenskaplig, rättspsykologisk och rättsetnologisk studie av presentationsformernas betydelse i förfarandet vid domstol i Norden ed. by Eric Bylander and Per Henrik Lindblom. Iustus, 2005 or Audun Kjus: Sakens fakta fortellingsstrategier i straffesaker. Unipub forl. 2008.

[19] Åman has paid attention to the same question and added that immigrated people usually have a special need for authority contacts and at the same time there are less and less authorities who can serve these European citizens in their own languages. Åman 2008: 9.

has become commonplace. Therefore the current question is how can these challenges be met?

2 The Finnish situation

2.1 Historical background

Finland gained its independence in 1917. Until 1809 Finland and Sweden were one country and in Sweden-Finland, Swedish was the official language. Between 1809 and 1917 Finland had autonomy as a part of Russia and during that period, the Finnish language became more powerful. In 1902 Finnish and Swedish became official languages. In 1917 Finland became independent and had its constitution in 1919, where both languages (Finnish and Swedish) were national languages. The same situation exists in the current constitution from the year 2000.[20]

2.2 Factual situation

About 92% of the population have Finnish and 5.5 % have Swedish as their mother tongue.[21] There are about 6-7000 Sámi people, but only 50% of them can speak Sámi.[22] In addition, there are about 10,000 Romanies but not all of them can speak Romani language[23], with 514,000 using sign language.[24] Finally, due to immigration, some 120155 other languages are spoken as mother tongues in Finland.[25] In

[20] Kansalliskielten historiallinen, kulttuurinen ja sosiologinen tausta 2000: 5 – 9.

[21] http://pxweb2.stat.fi/Dialog/Saveshow.asp Visiting date 2012-07-05 and Valtioneuvoston kertomus kielilainsäädännön soveltamisesta 2009: 8.

[22] Totally there are nine different Sámi languages spoken in the Northeast parts of Scandinavia, Finland and Russia. Three of them are spoken in Finland. Sometimes they are called dialects but the differences between them are very huge and people who speak one Sámi language cannot understand other Sámi languages if they don´t learn them like other foreign languages. http://www.kotus.fi/index.phtml?s=207 Visiting date 2012-07-05.

[23] Hedman 2009: 10 – 11.

[24] The amount includes debts and people, who otherwise use sign language. However, only 48 have sign language as their mother tongue according to the population register. There is different sign language for Finnish and Swedish. http://www.kl-deaf.fi/fi-FI/Viittomakieliset/ and http://pxweb2.stat.fi/Dialog/varval.asp?ma=030_vaerak_tau_102_fi&ti=Kiei+i%E4n+ja+sukuupuolen+mukaan+maakunnittain+1990+%2D+2011&path=../Database/StatFin/vrm/vaerak/&lang=3&multilang=fi Visiting date 2012-07-05.

[25] Kansalliskielten historiallinen, kulttuurinen ja sosiologinen tausta 2000: 5 – 9.52 and Valtioneuvoston kertomus kielilainsäädännön soveltamisesta 2009: 10.

2008, 3,3 % of the population spoke languages other than Finnish and Swedish as their mother tongue.[26]

2.3 Legal situation

2.3.1 Constitutional Linguistic rights

Linguistic rights are fundamental rights in Finland, which means that the main rules are included in the Constitution whereas the specific legislation includes regulation in detail.

According to the Constitution:

The national[27] languages are Finnish and Swedish.

The right of everyone[28] to use his or her own language, either Finnish or Swedish, before courts of law and other authorities, and to receive official documents in that language, shall be guaranteed by an Act. The public authorities shall provide for the cultural and societal needs of the Finnish-speaking and Swedish-speaking populations of the country on an equal basis.

The Sámi, as an indigenous people, as well as the Romani and other groups, have the right to maintain and develop their own language and culture. Provisions on the right of the Sámi to use the Sámi language before the authorities are laid down by an Act. The rights of persons using sign language and of persons in need of interpretation or translation aid owing to disability shall be guaranteed by an Act.[29]

In addition, special linguistic legislation exists. In the Language Act, there are specific rules on the status and use of the official and minority languages in Finland. The Sámi Language Act covers a

[26] Valtioneuvoston kertomus kielilainsäädännön soveltamisesta 2009: 10.

[27] "National" refers to language, which can be used in official relations and situations. Government bill 92/2002: 64. The term "national" can even have some symbolic value. Tallroth 2004 a: 516.

[28] It should be noticed that "everyone" refers even to foreigners like Swedish citizens or Finns who have moved abroad and who no longer are Finnish citizens. It covers all situations, when Finnish or Swedish is someone's own language. The individual can decide and choose the language between Finnish and Swedish as s/he wants. Tallroth 2004 a: 516, footnote 1 and Tallroth 2008: 9. This interpretation meets very well the requirements of EU law as well. According to the European Court of Justice (the case Bickel and Franz (24.11.1998), C-274/96) all European citizens must have the same linguistic rights in each member state. In the other words for instance Swedish citizens has to have the right to use Swedish in Finland because even Finnish citizens has the same right.

[29] Constitution of Finland (731/1999), Section 17.

specific regulation on the status and use of the Sámi language. The Code for Judicial Procedure includes linguistic rules for civil proceedings.[30]

Based on the Constitution, it can be said that the reason for bilingualisation is the aim to maximize the possibilities for communication in both languages. There is no difference between Finnish and Swedish, but both are equal and official languages in Finland.

The term "national" languages does not mean anything extra but the term has a symbolic value (please, see Janny Leung´s chapter in the same volume).[31] In practice, Swedish is factually a minority language[32] but according to the Constitution, there is no difference between Finnish and Swedish. The Constitution is, from this point of view, neutral and Finland is a bilinguistic country where both official languages have an equal status.

Since 1992 the Sámi language has had an official status as a minority language in some areas in Finnish Lapland.[33] The protection is territorially based. The Sámi linguistic rights differ fundamentally from the Swedish even if in practice Swedish is also a minority language. The linguistic rights covering Swedish are intended to maximize its use as an instrument for communication and therefore as a tool to realize other fundamental rights. Concerning Sámi language, the starting point is to help the minority linguistic group to protect its culture, tradition,

[30] Act for Criminal Procedure includes the similar rules covering criminal proceedings.

[31] Tallroth 2004: 516.

[32] In practice, Swedish speaking minority also rather often meets linguistic problems which are typical to minority languages. That kind of factual challenges can be that authorities cannot fluent Swedish even if they should, they have negative attitudes or fear (because they don't know the language well enough to use it perfectly) to use it and at the same time Swedish speaking clients have the same fear to contact authorities in Swedish. Clients can think that they will get poorer service because of authorities'´ attitudes or lack of knowledge in Swedish language and therefore they sometimes try to avoid using their mother tongue and they just speak Finnish instead. The similar situation can exists also in Swedish speaking areas where Finnish speaking minority may have the same problems. More information on factual situation in practice in Valtioneuvoston kertomus kielilainsäädännön soveltamisesta 2009.

[33] The Act on the Use of the Sámi Language Before the Authorities (516/1991) entered into force in 1992. Since 2004 the act has been replaced by The Sámi Language Act (1086/2003). Sámi Language has been protected as a minority language in the Finnish Constitution since 1995, when the constitutional fundamental rights were reformed as a whole in Finland (Constitution Act 969/1995).

with language as one part in it. The Sámi, as an indigenous people, need special protection. Language as an instrument comes only just on the second level of this protection and it is – of course - an automatic result of the above mentioned cultural protection. If the language is alive and used and linguistic rights exist, it is at the same time a tool for communication.

The Romani are also mentioned in the Constitution. However, there is no specific legislation covering the use of Romani language in court proceedings and the contents of this part of the Constitution have mostly only cultural value. The Romani and all the other groups have linguistic rights in their cultural meaning.[34] However, the authorities may not discriminate against people based on their language and this equality has been guaranteed in Chapter 2, Section 6 in the Constitution.[35] This prohibition of discrimination and guarantee of equality as fundamental rights covers all linguistic groups but it does not imply any active protection or any linguistic rights in itself.

The expression "other groups" refers to traditional and newer national and ethnic minorities. The group must be compact and stay permanently in Finland before it can be seen as a minority in the sense of the paragraph.[36]

There are therefore three levels of Finnish linguistic rights. The first level consists of national languages, in other words, of Finnish and Swedish. The second level consists of other languages named in the Constitution, namely Sámi, Romani and sign language. The third level

[34] Maybe this kind of cultural value of language is stronger and more important for ethnical minorities compared with the main population. Their identity is probably stronger connected with the own language and this kinds of things in comparison with the identity of the majority. The reason is simple and practical: There is no risk to lose this kind of values as long as culture and traditions, language included have a majority status in the society. In addition, the minority languages can also have a special significance as a mirror of the culture and lifestyle if the language differs from the major languages for instance from its vocabulary. For example just Romani language includes a rich vocabulary on horses and transport. Therefore it is not only the question of language and communication but also the lifestyle and its contents. Hedman 2009: 62.

[35] Everyone is equal before the law. No one shall, without an acceptable reason, be treated differently from other persons on the ground of sex, age, origin, language, religion, conviction, opinion, health, disability or other reason that concerns his or her person. The Constitution, Chapter 2, Section 6, Paragraph 1.

[36] Government bill 309/1993.

is "others".[37]

2.3.2 Specific legislation

How to use different languages at the courts is regulated by the Language Act[38], the Code for Judicial Procedure and the Sámi Language Act.[39]

The purpose of the Language Act, according to Section 2, is to ensure the constitutional right of every person to use his or her own language, either Finnish or Swedish, before courts and other authorities and to ensure the right of everyone to a fair trial and good administration irrespective of language and to secure the linguistic rights of an individual person without him or her needing specifically to refer to these rights. According to the same Section, an authority may provide even better linguistic services than what is required in this Act.[40]

The purpose of the Act therefore illustrates clearly how language and linguistic rights are seen as instruments to realize other rights and as a tool for communication, as already mentioned earlier.

The Language Act refers to Finnish and Swedish as national languages. An additional regulation is included in the Code of Judicial Procedure and there all languages are covered. Finnish and Swedish are equal languages, Sámi can be used territorially, and the other languages are possible if the parties so wish and if they organize and pay for that.

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[37] Tallroth 2004 a: 515. It must be noticed that even if other languages come at third level, this Finnish style protection can be seen to be quite positive and covering. In some other countries, the official languages are namely protected against foreign influences and therefore it can be prohibited to use other than official languages in official situations. Tallroth 2004 a: 517, footnote 6 and Kielilainsäädäntö – kansainvälisoikeudelliset ja velvoitteet ja kansainvälinen vertailu 2000: 65 and 33.

[38] Even if the Language Act is seen as detailed instrument for using national languages at authorities and so on, it has also symbolic value and one of the aims is to promote and protect even bicultural and by the same means indirectly multicultural culture. It has also been mentioned in the *travaux preparatoires* that one of the aims is to keep Finnish-Swedish bilingual culture alive in internationalising world. Kielilakikomitean mietintö 2001:3.

[39] Criminal Procedure Act includes specific regulation in criminal cases.

[40] For instance, documents written in foreign languages can be used as pieces of evidence at courts without translating them if the court as well as parties understands the contents. This is in practice very common way to work and one example on how also languages and linguistic rights which are not mentioned in the constitution can factually exits and be taken into consideration. Tallroth 2004 a: 518.

The only exceptions are the right to access to court, which can require that the court organizes language consultation even in other situations and also covering other languages and Nordic languages.[41] Both exceptions are based on international regulations (see chapter 4).

If the linguistic rights have not been followed at the court, first the ordinary and after that even extraordinary channels of appeal may be possible according to Chapter 31, Code of Judicial Procedure. Both the complaint[42] based on the procedural fault and the reversal of a final judgment can be used. The latter requires that a judge has committed an offence in office and this may be assumed to have influenced the result of the case.[43]

The Linguistic Act does not include any sanctions. However, if civil servants do not follow the regulation, they can commit an offence in office according to the criminal law. There has been some discussion as to whether the Language Act should include specific sanctions to better fulfil the linguistic needs.[44]

[41] Code of Judicial Procedure, Chapter 4, Sections 1 and 2 and The Sámi Language Act, Chapter 2, Section 4.

[42] Code of Judicial Procedure, Chapter 31 (109/1960), Complaint, Section 1: (1) On the basis of a complaint on the basis of procedural fault, a final judgment may be annulled: (1) if the court had no quorum or if the case had been taken up for consideration of the merits even though there was a circumstance on the basis of which the court should have dismissed the case on its own motion without considering the merits; (2) if an absent person who had not been summoned is convicted or if a person who had not been heard otherwise suffers inconvenience on the basis of the judgment; (3) if the judgment is so confused or defective that it is not apparent from the judgment what has been decided in the case; or (4) if another procedural error has occurred in the proceedings which is found or can be assumed to have essentially influenced the result of the case.

[43] Code of Judicial Procedure, Chapter 31 (109/1960), Reversal of a final judgment, Section 7 (109/1960): (1) A final judgment in a civil case may be reversed: (1) if a member or official of the court or a representative or counsel of a party has, in connection with the case, been guilty of criminal conduct that may be assumed to have influenced the result of the case; (2) if a document that has been used as evidence was false or its contents did not accord with the truth and the person who presented the document was aware of the same, or if a party heard under affirmation or a witness or expert witness has deliberately given a false statement and it may be assumed that the document or the statement has influenced the result; (3) if reference is made to a circumstance or piece of evidence that has not been presented earlier, and its presentation would probably have led to a different result; or (4) if the judgment is manifestly based on misapplication of the law.

[44] Due to the lack of sanctions, the Language Act has said to be toothless. Tallroth 2008: 11.

3 The Italian situation

3.1 Constitutional Protection

In 1979 a famous Italian linguist and future Minister of Education, Tullio de Mauro, wrote that in Italy, more than in any other European country, communities have been experiencing native multilingualism, deeply rooted in the local society and history. Besides multilingualism, which is due to the contemporary presence of different languages belonging to the Indo-European group, notably Romance ones, a wide range of dialects should be added.[45]

Being aware of this situation, which was also due to a peculiar historical-political situation characterizing the Italian peninsula, the authors of the Italian constitution of 1948 felt it necessary to devise an *ad hoc* provision in the constitution.

Art. 6 reads: "the Republic protects linguistic minorities by means of suitable regulations".

Three quick observations can be made about the provisions in the constitution.

a) Firstly, it should be highlighted that the Italian constitution is one of the few European constitutions envisaging a specific provision for the protection of minorities. Most European constitutions do not envisage any specific rules for protecting minorities and simply forbid discrimination based on language, race and religion. In some constitutions, there are guarantees for the benefit of minorities, but with provisions mostly aiming to regulate the use of minority languages besides the official one.[46]

b) Secondly, it should be noted that the most authoritative Italian doctrine maintains that art. 6 of the constitution is an exception to the principle of equality established by art. 3 of the same document.[47] Indeed, art. 6 aims to preserve the diversity, not the equality, of linguistic minorities, which are granted a special treatment in order to protect their specificities. In particular, the constitutional rule makes it possible to implement special provisions which entitle groups of people

[45] De Mauro 1979: 349.
[46] Palici di Suni Prat 2002: 111.
[47] Barile 1984, 39-40, who underlines that articles 3 and 6 of the Italian constitution contains different precepts.

speaking minority languages to use and develop their mother tongues, for example, by envisaging schools where those languages are taught or envisaging the use of those languages with public authorities. What the implementation of the provisions lying within the framework of art. 6 should aim to achieve is not to make people belonging to minority groups speak Italian, but rather allow them, unlike all others citizens, to preserve and develop their languages and the cultures and traditions related to them.[48]

c) Art. 6 explicitly refers to linguistic minorities exclusively. There are no references to ethnic groups or races, unlike the provisions of the statutes of some Italian regions (Trentino-Alto Adige, Friuli-Venezia Giulia).

3.2 Linguistic Minorities

It is extremely clear that art. 6 of the Italian constitution contains very broad and general information, thus representing a merely programmatic rule. For this reason, the methods to protect linguistic minorities envisaged by the constitution are left to the discretion of (national and regional) legislators.

As a consequence, it is possible to make some brief general observations about the rules designed by Italian legislators.

If we were to define protection of linguistic minorities based on a personal or territorial principle,[49] we would conclude that in Italy, choices are mostly still relative to the territorial principle. According to this criterion, that the particular measures meant to protect a linguistic minority apply to a well-determined territory, outside of which people belonging to that minority may not benefit from them.

If we were to define protection of a linguistic minority within the framework of a linguistic separation system or a bilingual system, we should specify that the Italian legislator did not always follow the same approach with all minorities. As a matter of fact, if bilingualism – that is, the interchangeable use of the official language and the minority one

[48] Palici di Suni Prat 1994: § 2

[49] Palici di Suni Prat 1994: § 3. Application on a basis of territorial and non-personal linguistic rights of minorities has also spoken on several occasions the Italian Constitutional Court. See, *i.e.*, Constitutional Court, June 19, 1998, n. 213 in *Giustizia Costituzionale*, 1998, 1667, and Constitutional Court, October 29, 1999, n. 406, in *Le Regioni*, 2000, 2, 405 ann. by Gennusa.

with public authorities – regulates relations between Italian- and French-speaking people in Valle d'Aosta, a linguistic separation system characterizes the Italian- and German-speaking groups in the province of Bolzano. In the latter case, the linguistic minority is granted the right to use their mother tongue under all circumstances when dealing with public authorities. This approach boosts at best the maintenance of the language and the culture of the minority.

In other words, a bilingual system means the possibility for a citizen to choose between two languages; in the case of Valle d'Aosta, this means a citizen has the possibility to choose between French and Italian when he submits a written application to the administration. Then according to the same principle, the administration can answer in one of the two languages, with no distinction, nor prejudice for the citizen. This is because the use of French or Italian is interchangeable, i.e. it is the same to use Italian rather than French.

In a linguistic separation system, rules are stricter. A citizen can use, for example, German in submitting any application, and the administration will have to answer in German (not in Italian because the citizen has asked something in German, so the administration has to answer in the language of the application). In this last case, the legislator has chosen to make the partnership stronger with the linguistic minority.

Finally, as far as the general or special nature of the protection of linguistic minorities is concerned, it is possible to state that the approach adopted by the legislator is, fundamentally, that of the *lex specialis*. Although there is a general law protecting linguistic minorities (Law no. 482 of 1999 containing "provisions concerning the protection of historical linguistic minorities"), due to its broad formulation, local authorities are required to design procedures to protect each single minority.[50]

Among the broad rules currently in force, art. 109 of the Italian code of criminal procedure is particularly interesting.[51] Having asserted

[50] Each region or province with special autonomy (as Trento and Bolzano) can statue rules about linguistic minorities, not just in procedural topics but in all relationships with public administrations.

[51] Art. 109 of the Italian code of criminal procedure reads [our translation]: "Language of acts. (1) Acts in a penal procedure are performed in the Italian language. (2) Before a first degree o appeal judiciary authority in a territory where an acknowledged minority lives, an Italian

that acts in a criminal proceeding are written in the Italian language, it says that an Italian citizen belonging to an acknowledged linguistic minority, upon his/her request, can be interrogated in his/her mother tongue in the territories in which that the minority lives.[52]

It is enough to say that in literature this provision has been acknowledged to have the merit of concretely protecting, for the first time during trials, Italian citizens who speak a language different from the majority one, provided it characterizes the ethnic community s/he lives in. Someone even went as far as to hope that this rule may be a significant reference criterion for many other branches of law, first of all civil trials.[53]

But what are the acknowledged linguistic minorities? They are the ones which can be protected according to the constitutional jurisprudence and the Italian legislator.

The Italian Constitutional Court has granted this status to three

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citizen belonging to that minority is, upon his/her request, interrogated or examine in his/her mother tongue and the relevant records are drafted in that language. The acts of the procedure submitted to him/her at a later stage are also translated into that language upon request. All the other rights determined by special laws and international conventions remain applicable. (3) The provisions in this article must be complied on pain of invalidity of the act".

Basically, the use of a language different from Italian is conditioned to a series of requirements: 1) it must be a language which is acknowledged as the Italian language by law; 2) protection is only granted to procedures taking place before a first degree or second degree authority in the territory where a linguistic minority lives (territorial protection criterion); 3) a minority language native speaker must always require the use of the Italian language.

[52] What appears is that a single citizen belonging to a linguistic minority is not protected by Italian legislator as an individual, but as a member of a minority community acknowledged as such by the Italian State: s/he does not enjoy an individual right, but rather a collective one, since his/her procedural position is merely a way to protect the cultural traditions of the whole ethnic group s/he belongs to. In other words, protection of Italian citizens belonging to linguistic minorities stems from unconditioned respect for their cultural traditions rather than being a procedural protection aiming to make up for the disadvantaged position of people who cannot understand the language of the trial. With art. 109 of the Italian code of criminal procedure, the aim to achieve is just to protect the identity of the group a person belongs to, as specified in art. 6 of the Italian constitution, not his/her defensive position (that is the right to defence as per art. 24 of the Italian constitution): in order to benefit from the treatment envisaged by art. 109 it is not important to ascertain whether the person in question is able to speak Italian, but only if s/he belongs to one of the minority communities enjoying this treatment. On the application of art. 109 of the Italian code of criminal procedure and in particular on protection of linguistic minorities, see Sau, 2010: 225; Curtotti Nappi 2002: 123; Bonamore 1992: 1917. In this matter, see the decision of the Italian Supreme Court, Court of Cassation, October 6 1998, in *Mass uff. C.E.D.* n. 213327

[53] Curtotti Nappi 2002: 125-126; Bonamore, 1996: 258.

historical minority groups who have lived on the Alps for a long time: the German-speaking minority of Trentino-Alto Adige, the French-speaking minority of Valle D'Aosta, and the Slovenian-speaking one of Friuli-Venezia Giulia.

Following the entrance into force of Law No. 482 of 1999, this status has also been granted to a total of 12 historical communities: the Albanian, Catalan, Germanic, Greek, Slovenian, Croatian, French, French-Provençal, Friulian, Ladin, Occitan and Sardinian ones (art. 2). These communities enjoy a privileged linguistic treatment (in schools, in relations with public administrations, in criminal proceedings before a justice of the peace [*giudice di pace*]), provided that they account for at least 15% of the population in the territory of the municipality in question and it is requested by at least 15% of the local inhabitants. All these communities, if the requirements are met, automatically enjoy the privileged treatment as per art. 109, par. 2 of the Italian code of criminal procedure. However, it should be specified that to date no local rule envisages specific provisions regulating the use of minority languages in trials, except, with some limits, for the three minority groups living on the Alps identified by the Constitutional Court.

3.3 Use of Italian in Trials

Having defined, and found the scope of the rules that protect, linguistic minorities, we should now deal with the issue of using a language in Italian civil trials.

The Italian procedural system is characterized by strict monolingualism. The use of the Italian language is envisaged in civil trials for the whole trial (art. 122, paragraph 1 of the Italian code of civil procedure) and refers to any procedural acts, either oral or written, which are used for the entire duration of the trial.[54] These are acts which the Court of Cassation usually defines as "strictly procedural" (for instance, statements of claim and sentences), in order to distinguish them from those preliminary to the trial (for instance, proxies *ad lites*)

[54] Art. 122 of the Italian code of civil procedure reads [our translation]: "Use of the Italian language. Appointing an interpreter. (1) The use of the Italian language is compulsory throughout a trial. (2) When a person who does not know the Italian language is heard, the judge may appoint an interpreter. (3) Before performing his/her duty, the interpreter swears to faithfully perform his/her tasks before the judge".

and documents.[55] For the latter, there is no need to resort to the Italian language, since they can be translated (art. 123 of the Italian code of civil procedure). Procedural acts not written in Italian are declared null and void.[56]

In civil trials there is not a rule protecting citizens belonging to minorities. On the contrary, the corresponding art. 109 of the Italian code of criminal procedure allows citizens belonging to an acknowledged linguistic minority to speak their mother tongue, receive procedural acts translated into that language and draft records in their language. But this is not all. Regional regulations issued for the benefit of the three most important historical minorities living in autonomous regions (German-speaking community in Trentino-Alto Adige, French-speaking community in Valle d'Aosta and Slovenian-speaking community of Friuli-Venezia Giulia) cannot deal a deadly blow to the principle of the exclusive use of the Italian language.

A different situation concerns Trentino-Alto Adige exclusively, where the local regulations are the only ones really capable of providing citizens with a broader and more efficient procedural protection than what is envisaged in the code of civil procedure. This article deals mostly with these regulations.

3.4 Special Laws: the case of Trentino-Alto Adige

The main regulation is Presidential Decree no. 574 of 1988 (implementing the Special Statute of the region Trentino-Alto Adige concerning the use of the German language in relations between citizens and the public administration and in judiciary procedures), which, although applicable to the whole territory of the region Trentino-Alto Adige, practically only affects the province of Bolzano (also called Südtirol), as the vast majority of the German-speaking population lives there.

Art. 100 of the Statute of the region states that "German-speaking citizens of the province of Bolzano are entitled to use their language in

[55] Court of Cassation, December 28, 2006 n. 27593, in *Giustizia civile Mass*., 2006, 12.

[56] Satta 1966: 480. In jurisprudence, see Court of cassation, November 22, 1984, n. 6014, in *Giustizia civile Mass*., 1984, 11. The Italian courts ruled that a statement of claim (*atto di citazione*) against a foreign person who lives in Italy is not null and void for failure to translation into the language known to the recipient (see, Tribunal of Lanciano, February 2, 2005, in *CD rom, Juris Data*).

relations with judiciary offices (...)". This rule concretely implements what was defined above as "linguistic separation", a system characterizing all the special provisions of Trentino-Alto Adige and which, by equalizing the German language with the Italian one, results in monolingual (either Italian or German) trials before the judiciary authorities in the province of Bolzano.

From a historic point of view, it should be mentioned that the text of the President Decree No. 574 of 1988 introduced two important modifications: the first with Legislative Decree No. 283/2001, whose main effects have been limiting the possibility of the parties to modify the language in civil trial and making acts void when the rules concerning the use of the language in civil proceedings are violated (in criminal proceedings, all invalidities were already irremediable); the second one with Legislative Decree No. 124/2005, which walks down a different path, by fostering agreements on the use of a single language and introducing a generalized power of the parties to waive translations. This need is due to the high number of bilingual proceedings following the modifications of 2001, which had resulted in paralyzed trials, also because of the low number of interpreters hired (about 1/10 of the ones envisaged and necessary).[57]

The rules which precisely regulate monolingual or bilingual trials are articles 20, 20-*bis*, 20-*ter* and 21.[58]

In particular, reformed art. 20, as an exception to the general provision of art. 122 of the Italian code of civil procedure, grants each party in a civil trial the right to choose the language of its own procedural acts, only envisaging a monolingual trial (using Italian or German only) when the statement of claim and the statement of defence are written in the same language; otherwise, the trial will be bilingual (use of both Italian and German).

In a bilingual trial, both parties use the chosen language: this implies that acts written in one language must be translated, at the expense of the office, into the other language, unless one of the parties waives this right; moreover, each party may require the filed documents to be translated, unless the judge decides to exclude, either partially or totally, the translation of the documents filed by the parties if they are

[57] This is evidenced by the Bar Council of Bolzano's website *www.ordineavvocati.bz.it.*
[58] See Brunelli 2012: 495.

deemed to be patently irrelevant. In any case, in a bilingual trial, the records are always drafted in both languages.[59]

A logical consequence of this principle is that, in case of default of the defendant, since they can not know which language to use (i.e. which language the default part speaks or want to choose), the trial will be bilingual (so records will be drafted both in Italian and German). So we can easily understand how the assumption of the common use of the same language, due to a need of equal treatment of the different ethnic groups, it is tightly connected to the possibility of a monolingual trial.[60]

The same art. 20 also allows a trial which started as a bilingual one to be continued in just one language, if all the parties choose the same language. The request (this is one of the most important introductions of Legislative Decree No. 124/05) can be raised at any moment of the proceeding (however the Court of Cassation always uses the Italian language) and is irrevocable.

Finally, art. 20 requires the acts and documents served, upon request by the parties, to be translated into Italian or German, as required by the addressee, who must require translations through an official process server (*ufficiale giudiziario*) within 15 days of receiving the service.

Theoretically, in a monolingual trial everything should be conducted in only one language; however, there are some exceptions. Witnesses are heard in the language of their choice and records are drafted in that language. The party (personally) or his/her special proxy may require a translation, but not after the end of the hearing. This means that once the hearing has finished without a request for translation being submitted, any translation must be done under the party's responsibility and with his/her own expenses. However, judicial practice has shown that translation is not simultaneous and that a few weeks are necessary to receive it from the court; this also implies the risk of not knowing what a witness said until the translation is delivered.[61]The provisions of art. 20 of the same President Decree No. 574 of 1988 also applies, as explicitly envisaged by the law, to proceedings different from ordinary ones (for instance, enforcement

[59] The State pays the costs of translation.
[60] Così Court of cassation, September 6, 1993, n. 9360, in *Giustizia civile Mass.*,1993, 1369.
[61] This is underlined by the Bar Council of Bolzano's website *www.ordineavvocati.bz.it.*

proceedings) and non-contentious jurisdiction procedures (articles 20-*bis* and 20-*ter*). Finally, the requirement for the prosecuting or defending public administration to always use the same language as the other party is also regulated (art. 21).

The only issue to clarify is the penalty in case of breach of these legal provisions. The President Decree No. 574 of 1988 (with a new rule introduced in 2001) states, in art. 23-bis, that a breach of the provisions concerning the use of a language in a civil trial may result in invalidity *ex officio* (in any moment of the trial) of all the acts written in a different language. This is a very serious provision, totally absent in civil trials, in which almost all invalidities can be corrected. It is even stated that invalidity can also be raised by those who played a role in it, and therefore it is possible for one party to agree to use the other party's language in a case or in a form not provided for in the above-mentioned rules and, later on, to appeal against the sentence on the basis of the invalidity of the acts.

In conclusion, as regards protection of the German-speaking linguistic minority in Trentino-Alto Adige, it is evident that the Italian legislator clearly chose a separation system, in which the language used in trials can only be German, which is therefore considered equivalent to Italian, the official language of the State. This does not simply emerge from a procedural point of view, but also from a structural one, since judiciary offices and staff members are organized, in compliance with the law, in such a way as to make it possible to use both languages (art. 3 of President Decree No. 574/88).[62]

An opinion on the importance of the use of German as a procedural language in trials taking place in the region Trentino-Alto Adige was also put forward by the Court of Justice of the European Union, although within the framework of a criminal trial. With the *Bickel* sentence in 1998, the Court stated that the use of German as a procedural language cannot be limited to Italian citizens living in Trentino-Alto Adige only, but must be extended to all European citizens who can speak German (in other words, Austrians or Germans) and find themselves in the territory of Alto Adige.[63] In this way, the

[62] See Biavati 1997: 244.

[63] E.u. Court of justice, November 28, 1998, c. 274/96, *Bickel* , in *Guida al diritto*, 1999, 98, ann. by Riccio. See also Gattini 1999: 106-110; Porcelli 1999: 1485-1495.

Court confirmed the so-called "territory-based" linguistic protection criterion, a concept already firmly expressed by the President Decree (protection of citizens belonging to linguistic minorities only before courts in Trentino-Alto Adige), which states that in order to benefit from the linguistic *favor*, non-Italian citizens must be in the territory in which the protected minority lives and before an Alto Adige court.[64]

3.5 Other special Rules

It should be stated that the languages of other historical minorities have not received the same legislative protection as the German one in Alto Adige. We will now discuss protection of the French-speaking minority in Valle d'Aosta and the Slovenian-speaking one in Friuli-Venezia Giulia, based on the legislative and constitutional acknowledgement they have been granted.

As already mentioned, protection of the French-speaking minority in Valle d'Aosta is characterized by a totally bilingual system. On the basis of art. 38 of the Statute of Valle d'Aosta, French is equal to Italian and public acts can be drafted in either language, except for judiciary judgement (for instance, sentences), which must always be drafted in Italian. It has been stated that sentences are the only exception since, as regards all the other proceeding acts (either civil or criminal), the rule of complete linguistic equality applies. In other words, they can also be performed in French.[65]

As regards Friuli-Venezia Giulia, art. 3 of the Statute of the region that guarantees the liberty to use one's language regardless of its linguistic group, in particular art. 8 of law No. 38 dated 23rd February 2001 (Regulations protecting the Slovenian-speaking minority in the region Friuli-Venezia Giulia) allows the use of the Slovenian language in relation with the local administrative and judiciary authorities, in the territories where that minority is present.

The Italian Constitutional Court has pronounced its opinion about the special rules on the protection of the Slovenian-speaking minority and its compatibility with art. 122 of the Italian code of civil procedure. In particular, with sentence No. 15 dated 29th January 1996,[66] the Court

[64] See, Sau 2010: 300.
[65] Sau 2010: 271.
[66] In *Foro amministrativo*, 1997, 388, ann. by Dapas.

deemed the special rules protecting the Slovenian-speaking minority to be compatible with art. 122 of the code of civil procedure: as a matter of fact, the language of trials keeps on being just one, namely Italian, but a person may require to use his/her own mother tongue; as a consequence acts in Slovenian will be translated into Italian, and vice-versa whereas the other party's acts in Italian will be translated into Slovenian.[67] The teaching of the Court is therefore the following: according to art. 122 of the Italian code of civil procedure, all the acts in a trial are in one language, namely Italian, whereas the other language, Slovenian, is added, in such a way as to protect the linguistic identity of the minority community. An act drafted in a foreign language should be declared invalid according to art. 122 of the Italian code of civil procedure, but if that language is the one of the Slovenian-speaking community, it will be translated in order to be included in the trial. Conversely, if it is drafted in Italian, it will be valid *ab origine* but in order to let the interested party (who asks specifically) understand, it will have to be translated into Slovenian.

On the basis of these provisions, the Court of Cassation in its turn drew the following conclusions: 1) sentences issued by the region Friuli-Venezia Giulia not translated into Slovenian cannot be invalidated, since a lack of translation does not bring a breach of the right to defence;[68] 2) Italian remains the official language in trials, but members of the linguistic minority are entitled to require acts to be translated; 3) a refusal on the part of the judge to have acts translated does not entail their invalidity due to a lack of compliance with art. 6 of the constitution (protection of minorities), but only when the person involved argues and demonstrates that the lack of translation has injured his right to defence.[69]

In conclusion, what appears in the Friulian system is not a modification, but just a slight mitigation of the monolingual regime

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[67] Constitutional Court, January 29, 1996, n. 15, in *Corriere giuridico*, 1996, 516 ann. by Bartole, *L'uso della lingua slovena nel processo civile a Trieste.* See also Felicetti 1996: 457-458.

[68] Court of Cassation, October 16, 2001, n. 12591, in *Giustizia civile Mass.* 2001, 1749.

[69] Court of Cassation, December 28, 2006, n. 27593 in *Giustizia civile Mass*. 2006, 12; Court of Cassation, October 11, 2005 n. 19756, in *Giustizia civile Mass*. 2005, 10, Court of Cassation, January 28, 2005, n. 1820, *ibidem*, 1; Court of Cassation, June 10, 2004, n. 11028, in *Giustizia. civ. Mass.*, 2004, 6.

established by art. 122 of the Italian code of civil procedure, without expressing a preference between a separation model and a bilingualism model. This is perhaps a case of "mitigated monolingualism",[70] in which, although there is only one procedural language, relevant defensive actions may be performed in another language, and the judge has to ensure translations for certain acts are carried out in order to protect citizens belonging to the linguistic minority.

3.6 Summary

It is transparently clear of the utmost clarity that the possibility to use one's first language in a civil proceeding (or even a criminal one) is connected to the possibility to defend oneself, and the wider the range of acts which a party can perform in their mother tongue or, alternatively, in a language they know better, the more the right of defence is guaranteed. This is because understanding the language and procedural acts directly, not through translation, makes it possible to take part in the trial more deeply and immediately. Establishing a connection between the right to use one's language and the right to defence is a guarantee also confirmed by the European convention for the protection of human rights and fundamental freedoms (art. 6, par. 3).

On the contrary, protection of linguistic minorities, in the way it has been conceived in Italy, does not seem to focus on the right of defence in the least. As stated above, protection of linguistic minorities is interpreted as protection of their right to political autonomy and not their need to exercise the right to defence. Using one's mother tongue within an Italian region mostly means declaring one's linguistic difference or belonging to a minority community, rather than admitting not to understand a procedural act or a judge's decision. It is no coincidence that the same jurisprudence of the Court of Cassation has determined that a lack of translation into the minority language does not invalidate the proceeding, unless this entails material damage to the right of defence (art. 24 of the Italian constitution). Acts will only be invalidated if the party demonstrates that the lack of a translation prevented it from knowing the content of an act or a judge's decision.

In other words, in Italy the issue of juridical multilingualism is

[70] Biavati 1997: 237.

mostly related to the idea of political autonomy of the various ethnic and cultural groups present in the country, since acknowledging the historical-cultural identity of an individual means allowing him/her to use his/her mother tongue instead of the majority one in the social context where s/he lives. This is the aim of art. 6 of the Italian constitution. A secondary issue is the protection of the fundamental guarantees of defence and the linguistic disadvantage in which people would be if they did not know the majority language perfectly.

Having said this, it should be no surprise that the Constitutional Court specifies that between protection of linguistic minorities and the fundamental guarantee of the right to defend, there may be some interference, but not a match or an overlap.[71]

Anyway, we should like to add a further point, namely that protection of linguistic minorities also meets the personal requirements of citizens, not just those of a minority community. This should not be underestimated and it is a milestone in the protection of individuals in the trial.

4 International regulation in Finland and Italy

There exist plenty of International Conventions on linguistic rights. In addition there are recommendations and other kinds of declaration in the field, which are not legally binding. In this article, we will pick up only a legally binding international regulation which includes linguistic rights in civil litigation.

According to the art. 14 (3f) of the International Covenant on Civil and Political Rights (CCPR) by United Nations all persons, in the determination of any criminal charge against him or of his rights and obligations in a suit at law, shall be entitled to a fair and public hearing. In addition, according to art. 14(3f), which covers only the accused in criminal cases, everyone shall be entitled to the free assistance of an interpreter if he cannot understand or speak the language used in court. So, the linguistic rights in proceedings, according to the wording of the convention, are guaranteed only in criminal proceedings. However, the interpretation of the basic right to a "fair hearing" can include different

[71] Constitutional Court, February 24, 1992, n. 62, in *Giustizia civile,* 1992, I, 1147, ann. by Bonamore. See Bartole 1992: 342.

elements to make this right concrete. Due to poor case law and ineffective control mechanisms, the contents of the concept of "fair" are not established. Therefore, it is possible to only speculate how far linguistic rights in civil proceedings could be included into the rights of convention. Still, the access to court can in some cases require that linguistic assistance is organized by the court or a contracting state.

A similar rule is included in the European Convention on Human Rights (ECHR). According to art. 6, everyone is entitled into a fair trial which includes the following right: Everyone charged with a criminal offence has to have the free assistance of an interpreter if he cannot understand[72] or speak the language used in court.[73] The main concept of a fair trial includes the right of access to court, which has to be realized with practical tools. Such tools can include the necessary linguistic assistance. However, the interpretation and its breadth have not been tested by case-law at the European Court for Human Rights.[74] The problem is the same compared with the earlier mentioned CCPR. The open and general convention norms should be interpreted and applied by the case law which does not exist in the field of linguistic rights very much. Anyway, this kind of interpretation is the only possible way to include linguistic rights into a demand for a fair trial in civil cases. Art. 6(3e) covers criminal cases and the accused only.

The European Charter for Regional or Minority Languages (1992) [75] covers only minority and territorial languages based on historical reasons and its main purpose is to protect and strengthen those languages which could otherwise disappear or become too weak to exist. This Charter is therefore mainly based on the idea of the

[72] Notice that this does not guarantee the right to use own language. It is enough if the person understands the language. The aim is therefore to realize the understandable trial. Tallroth 2004 a : 527. Language has clearly been seen only as an instrument here.
[73] ECHR art. 6(3e).
[74] Ervo 2005: Chapter X:3.
[75] The Charter was adopted as a convention on 25 June 1992 by the Committee of Ministers of the Council of Europe, and was opened for signature in Strasbourg on 5 November 1992. It entered into force on 1 March 1998. At present, the Charter has been ratified by twenty-five states (Armenia, Austria, Bosnia and Herzegovina, Croatia, Cyprus, Czech Republic, Denmark, Finland, Germany, Hungary, Liechtenstein, Luxembourg, Montenegro, Netherlands, Norway, Poland, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Ukraine and the United Kingdom). Another eight states have signed it. http://www.coe.int/t/dg4/education/minlang/aboutcharter/default_en.asp, visiting date 2012-07-04.

protection of linguistic rights as cultural and territorial rights.[76] It does not cover the linguistic rights of immigrants and it is not the response to the current multicultural and multilinguistic situation, on the one hand, in Europe and, on the other hand, in the whole world. It depends on ratification and on the member state which languages the charter will be applied to. In Finland, it covers Swedish and Sámi,[77] but Italy has not ratified the charter.[78]

According to art. 9: "the Parties undertake, in respect of those judicial districts in which the number of residents using the regional or minority languages justifies the measures specified below, according to the situation of each of these languages and on condition that the use of the facilities afforded by the present paragraph is not considered by the judge to hamper the proper administration of justice:

b) in civil proceedings:

i. to provide that the courts, at the request of one of the parties, shall conduct the proceedings in the regional or minority languages; and/or

ii. to allow, whenever a litigant has to appear in person before a court, that he or she may use his or her regional or minority language without thereby incurring additional expense; and/or

iii. to allow documents and evidence to be produced in the regional or minority languages, if necessary by the use of interpreters and translations".

In addition, there are rules for criminal and administrative proceedings in the art. 9.

The Framework Convention for the Protection of National Minorities belongs to the Council of Europe (1995) and it has been in force in Finland since the 1st of February 1998[79] and in Italy since the 1st of March 1998.[80] Because it is only a framework convention and the rules included in it are of declaration nature, this convention is not

[76] http://www.coe.int/t/dg4/education/minlang/aboutcharter/default_en.asp, visiting date 2012-07-04.

[77] Finland signed the Charter on the 5/11/1992 , ratified it on the 9/11/1994 and it entered into force on the 1/3/1998.

[78] Italy signed the charter on the 27/6/2000. The council of ministers has just approved a bill of law of ratification on the 9th of March of 2012, but the Parliament did not deliver its opinion yet. Moreover, we have to say that, according to the Charter, Italian is recognized as a minority language in Switzerland, Slovenia, Croatia, Bosnia and Herzegovina and Romania.

[79] It was signed by Finland on 1995/02/01 and ratified on the 1997/10/03.

[80] It was signed by Italy on 1/2/1995 and ratified on the 3/11/1997.

discussed in detail in this connection.[81]

Concerning the European Union Law, the same problem of interpretation of the contents of the concept "fair trial" exists. According to art. 47 of the Charter of Fundamental Rights of the European Union - which nowadays has the same legal force as the Treaties and is fully binding for European Institutions and Member States, everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

The weaknesses of this Charter are still the same as those concerning similar articles in the CCRP and ECHR. There is no detailed case law on the contents of the concept of "fair". The access to justice is mentioned in the wording of this article and it can be interpreted so that the minimum linguistic understanding should be somehow guaranteed in the fair hearing. Still, article 47 covers only

[81] According to the Article 5: (1) The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage. (2) Without prejudice to measures taken in pursuance of their general integration policy, the Parties shall refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will and shall protect these persons from any action aimed at such assimilation.

According to the Article 10: (1) The Parties undertake to recognize that every person belonging to a national minority has the right to use freely and without interference his or her minority language, in private and in public, orally and in writing. (2) In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavor to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities. (3) The Parties undertake to guarantee the right of every person belonging to a national minority to be informed promptly, in a language which he or she understands, of the reasons for his or her arrest, and of the nature and cause of any accusation against him or her, and to defend himself or herself in this language, if necessary with the free assistance of an interpreter.

European Union law, which makes its scope quite narrow.

Even the EU Directive 2010/64[82] on the right to interpretation and translation in criminal proceedings also covers only criminal cases. Therefore there is no European wide legal protection of linguistic rights in civil litigation.

In Finland, there exists still one specific convention covering the use of the Nordic Languages. This Nordic Convention on languages, which entered into force on the 3rd of Jan. in 1987, and applies in all Nordic countries, except the Faroe Islands, aims to facilitate the Nordic citizens of the possible language problems of Nordic citizens during their visits or residency in another Nordic country. The agreement covers Danish, Finnish, Icelandic, Norwegian and Swedish citizens and Finnish, Swedish, Icelandic, Norwegian and Danish and the oral interpretation of written translation of documents.

Under the agreement, Nordic citizens must be able to use their own language in dealing with a public authority or public institution in other Nordic countries. This includes medical and health services, social welfare, labor, tax, police and school authorities and the courts. That authority should, if possible, take care of the necessary translation and interpretation. In criminal cases, the necessary interpretation has to be always organized.

The weakness of this convention is that it covers only Nordic citizens and in civil cases the courts must organize the linguistic consultation only if possible and necessary. Otherwise this convention is a very modern tool in the field of linguistic rights because it covers territorially all five countries, and it is therefore based on individual and national protection and not on the territorial rights of linguistic minority groups. The convention is also a good example of how linguistic rights have - in the Nordic countries - been seen as instruments to maximize the communication and to realize the other rights like participation in procedures. However, the Nordic convention does not cover the rights of immigrants and is not a response to the

[82] This directive has been given on the 20th of Oct. in 2010. It must enter into force at national level latest on the 27th of Oct. in 2013. The working group at the Finnish Ministry of Justice is just now preparing the enforcement. The working group should be ready with its report on the 31st of Oct. 2012. In Italy this directive it is going to be acknowledged thanks to the bill of law (A.S. n. 3129) already approved by the Chamber of Deputies and under the examination of the Senate in July 2012.

current linguistic situation which can be seen to be more or less problematic and unequal. Still, it might not be realistic to cover all possible world with identical rights and practical tools. There is no paradise on the earth.

5 Conclusions

In most countries, the factual basis is more and more multicultural and multilinguistic. However, international legislation covers mainly criminal cases even if in the current civil procedural court culture, communication plays a very important role. The legislative basis seems to be mostly national and based on historical and cultural roots. Therefore it does not confront current factual needs. The linguistic rights in the field of civil litigation seem to be a more or less uncharted area and the so-called *laissez faire*–thinking obtains. In other words, it is the parties who are responsible for interpretation when it is needed and they sometimes have to even cover the costs themselves.

The legal linguistic rights in civil litigation do not meet the requirements of current post-modern court culture and its need to maximise and guarantee communication during the proceedings. Also the factual linguistic rights are based on the strongest status like the best knowledge in languages or the capability to get linguistic consultation when needed and the possibility to cover the costs of interpretation and translation. Concerning the linguistic rights, the factual legal and practical situation is based on the liberal procedural conception even if it has otherwise been seen as feudal and avoidable. Multilingualisation is a current fact which has to be taken into consideration. Like criminal cases, also the disputes have transnational nature and the movement of people means that even local cases often have more and more multilingual faces. These are the facts which we cannot pass by burying our heads in the sand.[83]

Therefore even the legal basis for multilingualisation in civil litigation should be put on an adequate level both in national and

[83] Also other scholars have paid attention to the same issue. For example Tallroth wrote already in 2004 "it seems likely that the increase in international exchange and cooperation in our global world will require that more attention be paid to language in the future – not least in the areas of legislation and jurisprudence. Tallroth 2004: 368.

international regulations. Interpretation and translation can be used as practical tools to fix this problem and to make it possible to communicate in multilinguistic situations at the courts; however, the demands of a fair trial and the significance of authentic communication mean big challenges for linguistic professionals. All of these should be taken into consideration in their (further) education and in the inculcation of enlightened attitudes through education. Still, trial communication cannot be focused on outsiders mostly - the final aim must be that even in a multicultural society, the real actors, that is the parties and the judges, can communicate directly with each other. 1) To make this possible, the legal basis for multilingualisation should cover all main linguistic groups in the society and there should be enough civil servants who can serve clients in their mother tongue according to this demand. Because of globalization and immigration, it is not, however, possible to provide all linguistic groups with identical linguistic rights. 2) Therefore it is also very important that immigrants learn local languages sufficiently fluently. By these two means the trial communication could in the future meet the demands of quality. Interpretation and translation can be used as (emergency) aids in situations, where it is a question of an occasional civil dispute with a transnational character or when the multilingualisation is based on the temporary need and situation at the national level. In the long run, translation and interpretation cannot, however, replace authentic communication in civil litigation that remains the irreplaceable heart of a fair trial.

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Multicultural Association of Law and Language – MALL

Internationally, there is a growing interest from the academia and the legal professionals in the study of the interface between language and law. Locally, Language and Law is one of the core postgraduate programmes, which can be traced back to the early 1990s at City University of Hong Kong.

In recent years, exchanges and collaborations in language and law between City University of Hong Kong and other universities, including Aston University, China University of Political Science and Law, Columbia Law School, Georgetown University and Peking University, have been frequent and productive. With Hong Kong, as an international city, playing an important role of the meeting point of different cultures and with China being the convergence of various jurisdictions, a new association – the Multicultural Association of Law and Language (hereafter as MALL) was founded in 2009 with Secretariat located in Hong Kong. The MALL aims to provide a platform for scholars from different jurisdictions and cultures to exchange views on the interface between law and language, with a specific focus on the interdisciplinary and multicultural nature of law, language and discourse. Affiliated with the MALL, there are two international journals: *International Journal of Law, Language & Discourse* (www.ijlld.com) and *International Journal of Legal Translation and Court Interpreting* (legal-translation-interpreting.com), and two international conferences: *International Conference on Law, Language and Discourse*, and *International Conference on Law, Translation and Culture*. The Founding President is King Kui Sin (City University of Hong Kong), who has served on the Bilingual Laws Advisory Committee of Hong Kong and has been appointed MBE (Member of the Most Excellent Order of the British Empire) by the British Government for his contribution to the translation of Hong Kong laws into Chinese.

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If you are interested in hosting the two conferences or guest-editing a special issue with the two journals, please kindly contact Le Cheng (chengle163@hotmail.com).

CONFERENCE INFORMATION

The 14th International Roundtable for the Semiotics of Law

25-29 May, Hangzhou, China

http://www.zjjcxy.cn/meeting

Third International Conference on Law, Translation and Culture

31 May-2 June 2013, Hangzhou, China

http://waiyu.zstu.edu.cn/3rdLTC/

Third International Conference on Law, Language and Discourse

3-6 June 2013, Shanghai, China

http://sfl.sjtu.edu.cn/lld2013/