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Alexander Teutsch 

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What was the language of the judgment again?: Traces of bilingualism in monolingual judgments from South Tyrol, Italy

Alexander Teutsch

Universität Wien, Austria

Abstract

Multilingualism is often perceived as a burden for judicial institutions that are used to holding proceedings in a specific language. However, by translating resources and evidence from a different language into the language of a proceeding, courts are enabled to write judgments based on a monolingual set of resources potentially with minimal or no reference to their source language. This article aims at uncovering this myth of judicial monolingualism, showing how multilingual courts act when indispensable resources are only available in a language different from that of the proceedings. By analysing monolingual criminal judgments delivered by Justices of the Peace in the bilingual (German/Italian) Province of South Tyrol, Italy, this article shows how, in citing case-law available only in Italian, traces of Italian are introduced in judgments written in German. Through a quantitative study, three approaches to deal with this issue have been analysed (i) collages between the two languages; (ii) direct quotation from Italian; and (iii) translation. The article critically analyses these three approaches and highlights an alternative approach, consisting in a combination between direct quotation from Italian and a translation into German, in order to guarantee both legal certainty and adequate understanding for all concerned parties.

Keywords: Judgment drafting techniques, bilingual court practises, bilingual resources, language status; ideological monolingualism

1. Introduction

In his book *Burning Chrome*, the American-Canadian writer and novelist William Gibson (1987, 17) states: "It's impossible to move, to live, to operate at any level without leaving traces, bits, seemingly meaningless fragments of personal information." Now, while it may be compelling to agree with this statement, it is equally well known that traces are not only easily left, but likewise covered, also in the realm of the law (Bucholtz 1995). Examples of covering practices include transcription of evidence available in a different language into the language of a proceeding (Bucholtz 1995; 2009) or the omission of sentences directly uttered in the language of the proceeding by a person whose testimony is being translated from another language (Maryns 2005; 2006).

The underlying preference towards monolingualism in court practice, leading to the cover up of traces in different languages, is quite salient at many levels. It can be seen in the presumed mere filter function of a translated testimony or oral statement (Angermeyer 2008), or the predominant citation of same-language foreign case law (Gelter & Siems 2013). While translating into the language of the proceeding or using primarily resources in that language is crucial to guarantee the capability of a court to decide a case, it removes the complexity of resources in different languages and clears the path for a monolingual judgment, which potentially makes little or no reference at all to the source language of the resources it is based on.

A question worthy of investigation that this article aims to address is, then, how judges go about situations where reproducing what is labelled here as the myth of judicial monolingualism is untenable. In other words, what types of approaches do judges, in the absence of an official translation, employ when they have to refer to resources available only in a language different from the one of a proceeding?, and what are the implications for court practices and language rights?

To address this question, this article is structured in the following manner. First, it outlines the essential features of the myth of judicial monolingualism and its critical issues (section 2). Then, it provides a brief literature review on current scholarship on the myth of judicial monolingualism and identifies how

existing scholarship is different from the present study (section 3). After that, it provides an introduction to the historical evolution of language use in court in the bilingual (German- and Italian-speaking) Province of South Tyrol, Italy, focusing on how judicial monolingualism is but a myth in the judicial practices of Justices of the Peace in this territory (section 4). Subsequently, the methodology is described and results of a quantitative study on criminal judgments, featuring the issue of inserting passages of case law in Italian into judgments in German are presented through examples, highlighting different approaches (section 5). In the following section, the findings are critically discussed and an alternative approach to studying those observed in current legal practice is suggested (section 6). Furthermore, in the same section, the limitations of the present work are identified. Finally, in the conclusion, a brief recapitulation is made, outlining the most important aspects of the article and possible follow-ups in further research (section 7).

2. The myth of judicial monolingualism: Issue or necessity?

The variety of narratives involved in a court case can be made up of a variety of languages differing from the language of the proceeding. Usually, what is written or said in these different languages is quickly translated into the language of the proceeding, creating a monolingual narrative, which rarely accounts for the multilingual origin of its sources. Similarly, there is a tendency to consult legal resources such as foreign case law, preferably in the same language of the judgment.¹ All of this amounts to what this article calls the myth of judicial monolingualism, based on the idea that a judgment is the product of a crystalline and logically consistent legal

¹ For the sake of simplicity, *language of the judgment* and *language of the proceeding* will be used interchangeably, even though there certainly are cases of judgments written in a language differing from the official language of the proceeding it stems from. For instance, Powell (2016, 306) mentions the case of Bangladesh, where English is still overwhelmingly used in written documents, even for cases heard in Bangla.

reasoning, carried out and based on resources in a single language, the one of the proceeding.²

While there certainly are many court proceedings where this holds true and the need to translate crucial resources for the final decision into the official language of the proceeding aims at achieving its uniformity and comprehensibility, this myth bears issues. First of all, it reduces a plurality of voices to a single one, preferring uniformity over transparency. Moreover, it carries on a fiction intrinsic to law itself, which is to create an apparent unity consisting of one voice, one language, and one law. The issue at hand can be observed in both officially monolingual and multilingual legal settings. In the former, the myth is perpetuated by asking statements or testimony to be delivered either fully and exclusively in the language of the proceeding or completely in another language with translation in full into the official language (Maryns 2005; 2006; 2012). In the latter case, in turn, there is a tendency to create several parallel instances of monolingualism offering the possibility to be addressed and to function in different languages, but essentially replicating the fundamental preference for monolingualism (Powell 2008).

This “either/or” approach pointed out by Maryns (2012, 303) is not only a cornerstone of the protraction of the myth of judicial monolingualism, but it is most apparent in the final judgment. Indeed, court judgments absorb all the evidence and legal resources, regardless of their original framing in another language, and craft a monolingual ruling, from which the original language of the sources used rarely transpires.

Having mentioned the term resources extensively so far, it is time to define it and to make a critical distinction. By resources, I quite broadly refer to the tools judges use to reach and back up their decisions, and I distinguish between factual and legal resources. Factual resources encompass every proof-bearing element, admitted into evidence, that is relevant for the decision. Legal resources embrace primarily what is crucial for judicial decisionmaking, such

² While conceptually not identical, the myth of (judicial) monolingualism draws on the concept of “bias towards monolingualism” coined by Eades (2003).

as constitution, legislation, and case law.³ Yet, legal resources go beyond this by including also additional material informing legal reasoning, such as academic articles or case notes. Both types of resources can be featured in monolingual as well as multilingual judicial settings. However, factual resources are, generally speaking, more prevalent, as it is more likely to have a piece of evidence originally drafted in a different language than a piece of case law or legislation. Conversely, legal resources are more likely to be used in a multilingual judicial setting.

3. Literature review

The issues arising from the myth of judicial monolingualism with regard to what I called factual resources have been a topic featured in scholarship from the mid-1990s onwards, since Mary Bucholtz's work on translated transcripts (Bucholtz 1995; 2000; 2007; 2009). Particularly in some of these contributions (1995; 2009), Bucholtz focuses on the judicial system and how numerous ways of translating and transcribing testimony provided in a different language into the language of the proceeding may lead to distortion and injustice.

Moreover, the fictional creation of monolingualism has been a prominent object of inquiry in sociolinguistic research. Eades (2003) has raised the general issue of how institutional bias towards monolingualism affects judicial settings, and puts speakers of second languages or dialects at a disadvantage. Building on this study, Maryns (2005; 2006; 2012) has focused on the clear-cut approach in Belgian asylum proceedings, where applicants are required to either speak their own language, translated and transcribed into the language of the proceeding, or to speak the official language, without permission to switch to the other language for individual

³ Admittedly, this varies greatly depending on the jurisdiction one looks at. For a comparative analysis of sources of law, see Bell (2018).

utterances. Based on analogous data, Maryns and Blommaert (2001) have illustrated how these clear-cut practices fail to acknowledge the complexity of applicants' language repertoire. In a slightly different vein, but departing from the monolingual bias thesis, Angermeyer (2008; 2015) has highlighted how bilingualism is deemed to be a prerogative of the interpreter inside the courtroom, while all other courtroom actors are supposed to be monolingual. In that, only the interpreter would be able to switch between languages, a claim refuted by the author's study on small claim courts in the United States.

On the contrary, the aspect of using legal resources originally drafted in a different language, which is at the heart of the present article, is less studied. Even so, especially in the context of minority or multiple official languages, the issue of management and actual use of bilingual resources has been addressed. Among many, the use of Cantonese in the bilingual judicial system of Hong Kong (with English and Cantonese as official languages) has been analysed, finding that in order to maintain the formal equality of both languages, many formally invisible but functionally indispensable instances of translation are involved (Lee 2020). While this highlights the constructed nature of official bilingualism, the attempt to keep this construction intact triggers a highly nuanced approach by legal practitioners towards translated legal resources (Tam 2020). On one hand translation may create anxiety, described as translato-phobia (Lee 2020, 3), but on the other hand this anxiety can be channelled into a fetishization of translation, completely disregarding the translated nature of texts and treating them as an original (Lee 2020, 5). Powell (2004; 2020) and Powell and Saw (2021) have revealed how judges in the bilingual judicial system of Malaysia (with English and Malay as official languages) have a preference towards reproducing passages taken from judgments in English directly in that language, even if their judgment is in Malay. Moreover, working with the concepts of unbalanced bilingualism and diglossia, Powell (2016) elucidates the terminological, structural, and educational issues that impede a higher diffusion of Malay in Malaysian apex courts, leading to the higher-instance jurisprudence being available for the most part only in English. On a more

theoretical level, an important contribution to the analysis of multilingual legal orders is constituted by Leung's (2019) reflection on the concept of shallow equality. Far from dismissing practices and policies connected to the concept *per se*, Leung points out how shallow equality may be employed to achieve legitimate goals. In fact, both official monolingualism and multilingualism can successfully guarantee the "survival of a polity" without making one, as such, better than the other (Leung 2019, 249). Departing from a pragmatic perspective of what is called strategic pluralism, the tale of shallow equality is, however, one of caution, aiming to show how linguistic equality is not an intrinsically desirable good, as formal recognition can be used to conceal highly derogative practices.

Moving away from the national or regional perspective towards European Union (EU) and comparative law, the two most prominent attempts in this field are Graziadei (2020) and Gelter and Siems (2013). Focusing on EU Law, Graziadei (2020) remarks that the European Court of Justice, in drafting the original version of its judgments during preliminary reference proceedings, tends to accommodate the language choice of the referring court. The fiction behind this choice is pointed out, as it is common knowledge that the actual original version is usually drafted in French, then translated into the language of the proceeding, and eventually translated into all the other official languages. Arguing from a comparative perspective, Gelter and Siems (2013) quantitatively studied the factors affecting the reference practices of various apex courts, claiming that language overlap generally plays a more prominent role when referencing foreign case law than other aspects, such as geographic or cultural similarity between legal systems.

While these pieces of scholarship offer important insights into specific features of the myth of judicial monolingualism, they differ from the present study in various ways, as will become clear in the next section. Firstly, Graziadei (2020) and Gelter and Siems (2013) focus on how monolingual preferences impact the interaction between different legal orders, be it EU and national, or several national legal orders. Secondly, all articles mentioned seem to assume, and do not problematize the fact, that the reference will be either made exclusively in the original language of the judgment (Gelter

& Siems 2013) or only in the language of the cited passage (Powell 2020). Finally, Gelter and Siems (2013) highlight the crucial difference between courts making their judgments available in different official languages, and those rendering their judgments in the mere language of the proceeding, although only in passing. The resulting implications of monolingualism on referencing practices are crucial to the present work.

This work relates most closely to the discussions on citing practices of judgment passages drafted in another language within a single multilingual jurisdiction found in Powell (2004, 123–124; 2020, 211) and Powell and Saw (2021; 11).

4. Uncovering the myth: Bilingual traces in the judicial practice of South Tyrol

The present section highlights the disparity of legal resources within a single jurisdiction—Italy—which is a monolingual jurisdiction on a national level, but multilingual on a subnational level. The focus will be on South Tyrol (officially Autonomous Province of Bolzano, hereafter the Province),⁴ whose administration of justice works bilingually, rendering judgments in both Italian and German.⁵ The aim is to uncover the myth of judicial monolingualism by showing how judges in criminal matters, in this geographical area, act when citing rulings available in Italian only.⁶

⁴ Names, locations, and designations referring to South Tyrol will be used in English in this article, with the Italian original and, if relevant, the German one in brackets. After their first use, only the English name will be used. Designations referring to other multilingual entities or to institutions of national relevance will be used in English and in the Italian original.

⁵ In this article, I will use *judgments in German* and *German judgments* synonymously, meaning a judgment formally written in German only.

⁶ To be sure, South Tyrol is the only subnational entity where a language different from Italian can replace the national language (Italian) in full. However, it needs to be mentioned that other minority languages may be used by accused persons in their pleadings and statements during a criminal trial. These are—pursuant to Constitutional Act no. 4 of 1949, at art. 38—French in Aosta Valley (*Valle d'Aosta*), which is a co-official language in this Region, and Slovenian in Friuli-Venezia-Giulia

4.1 A brief historical recap

The territory of South Tyrol was ceded from Austria to Italy by virtue of the Treaty of Saint German-en-Laye at article 27, signed on September 10th, 1919. The Treaty was ratified in Italy by Royal Decree no. 1804 of 1919 and converted into law by Act no. 1322, 1920, when approximately 97% of the population were German native speakers (Auckenthaler 2017, 10–11).

Judicial traces of bilingualism in this area date back to the early 1920s, when formerly Austrian judges, from 1922 onwards, had to apply Italian criminal law (Royal Decree no. 887 of 1921), but kept writing many of their judgments in German. Due to increased political pressure deterring the use of German in the public sector, and eventually leading to the dominance of Italian in this sector, the presence of some Italian legal terms became a recurring feature in formally German judgments (Zanon 2001, 166). The use of languages different from Italian was banned by Royal Decree no. 1796 of 1925, while German disappeared from judgments only two years later, in 1927. Yet, the German language certainly remained present in the daily practice of the courts, given the high number of German speakers in the area, who were deprived of the right to use their language, and forced to stand trial in Italian (Zanon 2001, 161).⁷ Nonetheless, a bilingual practice consisting of entire proceedings and judgments formally in either Italian or German, as had been the case after the introduction of Italian criminal law in 1922 and soon before the abandonment of German in 1927, re-emerged only many decades later, in 1993.

(Act no. 38 of 2001, at art. 8). Moreover, in the Region of Trentino-South Tyrol, Ladin may be used before local justices of the Peace (Presidential Decree no. 574 of 1988, at art. 32 para. 4 and Legislative Decree no. 592 of 1993, at art. 5). At local level, other minority languages may be used before local Justices of the Peace, if it is proved that a sufficient number of speakers resides in the particular area in which the proceeding takes place (Act no. 482 of 1993, at arts. 3 and 9).

⁷This was the case not only because many of the former Austrian judges remained in office, but also due to the partial revival of the German language in the period from September 1943 to May 1945, when South Tyrol was administered by Nazi Germany, enhancing the use of German in courts (Zanon 2001, 161).

After a fierce political debate accompanied by acts of violence, the two languages had already been placed on an equal footing in 1972 thanks to the 2nd Autonomy Statute (Presidential Decree no. 670 of 1972, at art. 99), granting citizens also the right to use German with local authorities and courts (art. 100). The precise regulation on how trials in German should be carried out came only many years later, in 1988, with a commencement date set four years after (Presidential Decree no. 574 of 1988, hereafter Decree 574/88).⁸ While German is still clearly dominant at Provincial level, with roughly 70% of the population belonging to this language group (Autonomous Province of South Tyrol 2021, 15), at national level, German is a minority language, the only one capable of substituting Italian fully in court proceedings and judgments (Decree 574/88, at arts. 13 et seq.). This is reflected in the accused person's language rights, who regardless of her mother tongue can require the trial against her in either Italian or German. Judges and prosecutors have to conform to the decision during trial and in drafting the judgment (Decree 574/88, at art. 1, para. 1, lit (b) and (c), art. 13, and 18 para. 2).⁹

4.2 German proceedings: But how many?

In terms of percentages of proceedings in German, there are no updated numbers available. According to a quantitative study based on data from 1998, the use of German at the Court of First Instance (*Tribunale/Landesgericht*) and the Court of Appeal (*Corte d'Appello/Oberlandesgericht*) of Bolzano, did exceed 10% of all criminal cases by a small margin.¹⁰ Numbers were significantly higher

⁸ Hence, the Decree came into effect only in 1993. The current version of this Decree can be found in Italian and German on the website of the Autonomous Province of Bolzano/Bozen (Commissione dei 12. 1988.).

⁹ Technically, it is also possible to conduct a bilingual trial, in case of a single trial against several accused persons choosing different languages or in case of a civil party (*parte civile*) claiming damages during the criminal proceeding (Decree 574/88, at art. 18 para. 1). Due to its complex and time-consuming nature, it is mostly avoided in practice, being used in about 1% of all proceedings (Zanon 2001, 172).

¹⁰ 11.1% and 13.3%, respectively (Zanon 2001, 172).

in proceedings before some Justices of the Peace, coming close to 50% (Zanon 2001, 172).¹¹ In the last decade, the number of criminal proceedings held in German are estimated to have risen, given the fact that in 2015 the right to request a trial in German was extended to all persons standing trial, with no particular requirements (Decree 574/88, at art. 1-bis).¹² The existing estimates differ largely, from below 25% only in criminal matters (Rosani 2018, 173) to 40% overall (Alber & Palermo 2012, 295).

4.2.1 German as official language: Opportunity or burden?

While the reintroduction of German as an official language in court in 1993 can be considered a political success, judges and other legal practitioners have openly raised their issues with the use of German in the courtroom. Two aspects were primarily voiced: firstly, the lack of consistent terminology and, secondly, the lack of an official translation of crucial legal resources into German (Colluccia 2000, 381–388; Zanon 2001, 176–185).

As to the first aspect, a so-called terminology commission (*Commissione Paritetica di Terminologia/Paritätische Terminologiekommision*) was established pursuant to Decree 574/88 at article 6, whose work has consisted in working out terminology lists based on a comparative method between legal languages and legal systems featuring the German language.¹³ The lack of an effective sanctioning power in case of deviation from their normed terminology (Palermo & Pföstl 1997, 211) and the insufficient knowledge of existing terminology among a group of legal practitioners has led to a partially inconsistent use of

¹¹ The Justice of the Peace of Merano/Meran conducted 46% of its oral proceedings in German, while the one of Brunico/Bruneck reached 56% (Zanon 2001, 172).

¹² The previous obstacles posed by national legislation to non-residents who requested a proceeding in German and the resulting language rights and EU-Law issues are illustrated in Deutsch (2020).

¹³ On the functioning of and the obstacles faced by the terminological commission, see among many: Zanon (2008), Chiocchetti, Ralli and Stanizzi (2013), and Chiocchetti (2019).

the prescribed terminological equivalents in German, regularly favouring terms developed within legal practice itself (Zanon 2008, 58).¹⁴

The second aspect relates to the fact that most codifications of Italian law have, over the years, been translated into German, while case law has been regarded only marginally.¹⁵ This is particularly problematic in light of the circumstance that apex courts, such as the Italian Constitutional Court (*Corte Costituzionale*) and the Italian Supreme Court (*Corte di Cassazione*), render their decisions in Italian only, with a subsequent English translation available for some judgments of the former.

This brings us back to the question mentioned in the introduction: Since judges from lower courts constantly refer to the case law of these two courts in their judgments, how do they and how should they cite them in their German judgments? The underlying hypothesis in approaching this question is that being virtually forced to consult and cite resources available only in another language impairs the preservation of the myth of judicial monolingualism and, conversely, invites judges to leave traces of bilingualism in their judgments.

4.2.2 Case in point: Justices of the Peace

In order to make an attempt at answering the question mentioned above, I examined judgments delivered by a specific type of first instance judges, being the so-called Justices of the Peace (*Giudici di Pace/Friedensrichter*).¹⁶ Currently,

¹⁴ Since 2013, the work on German legal terminology is continued by the Institute of Applied Linguistics of the European Academy (Eurac) in Bolzano (Chiocchetti 2019, 15–17) which is focusing on the development of online resources, such as the database bistro: <http://bistrosearch.eurac.edu/>.

¹⁵ Pan (2020, 220–221) offers a detailed overview of how these translation projects were carried out. However, while by 1995 the most important civil and criminal codes of substantial and procedural law had been translated, the translation of the criminal code (*codice penale*) has not been revised since then (Riz & Bosch 1995). The code of criminal procedure (*codice di procedura penale*) even dates back as far as 1991 (Bauer et al. 1991).

¹⁶ Since the so-called Riforma Orlando (Legislative Decree no. 116 from 2017) modifying many aspects of criminal procedure, the official name of these judges has been changed to “Honorary Justice of the Peace” (*Giudice onorario di pace/Ehrenamtlicher Friedensrichter*). As this expression is rarely used and could be misleading, the previous name of this institution is used.

there are seven Offices of the Justice of the Peace within the Province, amounting to a total number of ten active judges (Regione Trentino-Alto Adige n.d.). Their formal institution by law is enshrined in Act no. 374 of 1991. These judges deal, next to civil cases and some cases relating to opposition against administrative sanctions, with minor crimes, such as intimidation (*minaccia*), defamation (*diffamazione*), and some instances of bodily harm (*percosse*) (Legislative Decree no. 274 of 2000, at art. 4). Given the minor weight of the crimes within their jurisdiction, these judges inflict only mild penalties, such as fines, community service, or house arrest (Legislative Decree no. 274 of 2000, at art. 52 et seq.).

While formally considered honorary judges in accordance with article 106 of the Italian constitution, as it is not required to have passed the bar exam to become Justice of the Peace, these judges are still required to have, among other criteria, a law degree (Legislative Decree no. 116 of 2017, at art. 4, para. 1). Besides, additional qualifications, such as experience in legal practice or in teaching law-related subjects, are criteria of preference (Legislative Decree no. 116 of 2017, at art. 4, para. 3). Moreover, regardless of their qualification as honorary judges, Justices of the Peace aiming to work in South Tyrol have to conform to the requirement of bilingualism (Legislative Decree no. 116 of 2017, at art. 4, para. 1, lit. g), as do all the other judges in the Province (Presidential Decree no. 752 of 1976 at art. 39). Hence, they need to have a C1 level in both Italian and German according to the Common European Framework of Reference for Languages. Whereas this language requirement should guarantee a sufficient proficiency in both languages, it does not equally guarantee proficiency in both legal languages, leading to imprecise judgments in German in need of formal revision, a persisting problem within the judiciary in South Tyrol (Zanon 2001, 181–182).

5. In search of traces: A quantitative study

5.1 Methodology

Unlike those of higher courts within the Province, many judgments delivered by the Justices of the Peace from 2006 onwards are available online, which makes

working with this type of judgments particularly accessible.¹⁷ These judgments have been chosen because I expected a higher variety of approaches, given the numerous Offices of the Justice of the Peace widespread around the Province, compared to the other Courts within the Province, being a single Court of first instance and a single Court of Appeal, both located in the capital of Bolzano/Bozen. Moreover, Justices of the Peace draft relatively brief judgments, rarely exceeding three pages, which makes spotting bilingual traces more straightforward.

First, I selected all monolingual German judgments in criminal matters handed down in the time period 2006–2022 ($n=120$), which is roughly 20% of the total number of criminal judgments in this time period ($n=615$), and analysed them in terms of references to case law available only in Italian.¹⁸ Roughly half of this set of judgments ($n=55$) featured references to courts located outside the bilingual territory, mostly the Italian Constitutional Court or the Italian Supreme Court ($n=53$). Then, I looked specifically at how these references were made, observing a common pattern of three distinct approaches, namely: (i) collage; (ii) direct quotation, and (iii) translation.¹⁹

(i) By collage I mean an insertion of a judgment's fragment, usually taken from its *ratio decidendi*²⁰ drafted in the Italian language, which is summarized or explained in its essence in the language of the judgment before or after the insertion.

Example 1: Justice of the Peace of Egna/Neumarkt, judgment no. 9 of 09.11.2020

(German underlined, Italian in italics, English translation in square brackets)

¹⁷ The judgments delivered by the Offices of the Justice of the Peace in the Region of Trentino/South Tyrol are available on the Region's website (Regione Trentino-Alto Adige n.d.).

¹⁸ The listed numbers were last accessed on June 7th, 2022.

¹⁹ The examples provided are connected passages from judgments that have been subdivided into parts to highlight the approach under examination more easily. In case of longer passages, selected sentences have been omitted for the sake of clarity, without thereby changing the order or purpose of the language(s) used. Quotation marks are reproduced as they appear in the judgments.

²⁰ By *ratio decidendi* I mean the passage of a judgment where the core of a court's reasoning in a concrete case is laid bare, which can serve as a guiding principle for subsequent analogous cases.

Der Artikel 35 GvD Nr. 274/2000 gesteht dem Richter die Entscheidung über eine angemessene Entschädigung zu.

[Article 35 GvD No. 274/2000 grants the judge discretion to decide on appropriate compensation.]

"... giustificato dalla necessità per il giudice di pace, ai sensi dell'espresso disposto di cui del D. Lgs. n. 274/2000, art. 35, comma 2, di valutare l'idoneità delle attività risarcitorie e riparatorie a soddisfare le esigenze di riprovazione del reato e quelle di prevenzione". Cass. Pen., sez. IV, 30.01.2015, n. 4610.

["... justified by the necessity for the justice of the peace, in accordance with the explicit provision of Legislative Decree No. 274/2000, Article 35, Paragraph 2, to assess how suitable compensatory and restorative activities are to meet the requirements of reprobation of the crime and those of prevention." Supreme Court, Criminal section IV, 30.01.2015, no. 4610.]

In diesem Fall hält die Friedensrichterin, dass (sic!) die Entschädigung, aber nur für eine Erklärung der Unzulässigkeit des Verfahrens laut Art. 35 G.v.D. vom 28. August 2000, Nr. 274

[In this case, the justice of the peace considers the compensation, limited to the matter concerning the declaration of inadmissibility of the proceedings pursuant to Art. 35 G.v.D. of August 28, 2000, No. 274]

("...solo se ritiene le attività risarcitorie e riparatorie idonee a soddisfare le esigenze di riprovazione del reato e quelle di prevenzione.")

[("...only if she deems the compensatory and restorative activities suitable to meet the requirements of reprobation of the crime and those of prevention.")]

ohne die Schadensersatzforderungen der geschädigten Parteien im zivil Wege zu beeinträchtigen, durchaus als geeignet zu betrachten ist.

[without affecting civil damages claims by injured parties, to be regarded as quite appropriate].

In this example, we can observe how the decisions the judge takes and the legal foundation they are based on are laid down in German, while the fragments

taken from the case law of the Supreme Court are reported in the Italian original. The explicatory parts in German, briefly summarizing the essence of this case law and what it implies for the case at hand, precede the insertion of the fragments in Italian.

(ii) Direct quotation, on the other hand, refers to cases where this very same insertion of a fragment goes unannounced and unexplained, so the Italian text is essentially thrown into the German judgment without proper explanation.

Example 2: Justice of the Peace of Egna/Neumarkt, judgment no. 3 of 24.02.2020

“... Il giudice di pace si limita a verificare la congruità del risarcimento con valutazione sommaria ed incidentale, senza efficacia ulteriore rispetto a quella prevista dal D. Lgs. n. 274/200, art. 35, sicché nell’eventuale giudizio civile di danno la parte civile non risente alcun pregiudizio dalla sentenza di proscioglimento predetta (cfr. Sez. 5, n. 27392 del 06/06/2008, Di Rienzo, Rv. 241173)”

[“The justice of the peace limits herself to verifying the adequacy of the compensation with summary and incidental assessment, without any further effectiveness than the one provided by Legislative Decree No. 274/200, Art. 35, so that in the potential civil judgment on damages the civil party is not affected by the aforementioned acquittal judgment (cf. section. 5, no. 27392 of 06/06/2008, Di Rienzo, Rv. 241173)]

Peraltro, nel giudizio civile di responsabilità, è solo la sentenza di assoluzione – pronunciata in giudizio per insussistenza del fatto, mancata commissione dello stesso da parte dell’imputato o ricorrenza di un’esimente – che ha efficacia preclusiva di giudicato; le sentenze di proscioglimento per estinzione del reato non statuiscono sulla responsabilità dell’imputato e pertanto non possono avere alcun effetto negativo per la parte civile ...” Cass. Pen., sez. IV, 30.01.2015, n. 4610.

[Moreover, in the judgment on civil liability, only the judgment of acquittal—rendered at trial because the act did not occur, the defendant did not commit it, or due to the occurrence of an exemption—has a preclusive effect as res judicata; judgments of acquittal due to extinguishment of the crime do not rule on the responsibility of the defendant and therefore cannot have any adverse effect for the civil party (...)]
Supreme Court, Criminal section IV, 30.01.2015, no. 4610.]

Die Richterin erachtet somit die Voraussetzung, um zu einem Urteilsspruch gemäß Art. 35 GvD 274/2000 zu gelangen, als gegeben.

[The judge thus considers the condition for reaching a verdict according to art. 35 GvD 274/2000 to be fulfilled.]

This example is different from the previous one, as it does not provide any explanation whatsoever on what the Supreme Court states, but limits itself to provide what follows from it, hence the fulfilment of the condition for reaching a verdict in the present case.

(iii) Finally, in the case of translation, judges translate the cited paragraph of the Italian judgment into German, with no insertion of the original text.

Example 3: Justice of the Peace of Merano/Meran, judgment no. 14 of 22.03.2022

In diesem Fall ist die Aussage der verletzten Person durch das ärztliche Zeugnis vollinhaltlich bestätigt worden, insbesondere was die Verletzung am Gesicht anbelangt. Von besonderer Bedeutung ist der folgende Leitsatz der Kassation:

[In In this case, the testimony of the injured person has been fully confirmed by the medical report, especially with regard to the facial injury. Of particular importance is the following *ratio decidendi* of the Supreme Court:]

„Was die Würdigung des Zeugenbeweises betrifft, so können die von der verletzten Person abgegebenen Erklärungen, nachdem sie auf ihre Glaubwürdigkeit streng geprüft worden sind, - auch alleine - als Beweis für die Verantwortung des Angeklagten dienen, ohne dass es unabdingbar ist, die Beweisregeln nach Art. 192 Abs. 3 und 4 StPO anzuwenden, welche externe Beweise verlangen. Dennoch, falls die verletzte Partei (sic!) sich auch als Zivilpartei eingelassen hat und daher auch Träger von wirtschaftlichen Forderungen ist, hat die Überprüfung der Glaubwürdigkeit strenger zu sein, indem auch in Erwägung gezogen werden soll, ob diese Erklärungen zusammen mit allen sonstigen Beweisumständen zu würdigen sind“ (vgl. Kass., 3.6.2004, Nr. 33162, rv. 229755).

["As far as the assessment of witness testimony is concerned, the statements provided by the injured person, after a rigorous examination as to their credibility, may—even in isolation—serve as evidence of the responsibility of the accused, without it being indispensable to apply the rules of evidence under Art. 192 paras. 3 and 4 of the Code of Criminal Procedure, requiring additional evidence. Nevertheless, if the injured party has also joined as a civil party, and therefore is also a bearer of economic claims, the examination of credibility shall be stricter, in that it shall also take into consideration whether these statements should be considered together with all other circumstances of evidence" (cf. Supreme Court, 3.6.2004, no. 33162, rv. 229755).]

Im konkreten Fall scheint dies gegeben.

[In the case at hand, this appears to be the case.]

After locating these three approaches, I conducted a quantitative study on the frequency of their appearance, also taking into consideration cases where more than one approach was employed. This led to a total number of instances to be analysed that exceeded the number of judgments, since I added traces featuring multiple instances within the same judgment to the total number, making up a data set featuring 85 cases of bilingual traces.

While I consider all three approaches as providing bilingual traces, I make a distinction between collage and direct quotation, where the Italian text is inserted into a judgment, and translation, where this is not the case. Hence, I call the outcome of collage and direct quotation direct bilingual traces, whereas those resulting from translation are indirect bilingual traces. This is because, unlike the direct bilingual traces, indirect bilingual traces indicate engagement by the judge with the Italian text, that is, through a translation into German made by the judge herself which is inserted into the judgment. As such, it is not a direct trace, because not a single Italian word is transposed into the German judgment. However, there still is an indirect trace, as these translations are made in an ad hoc fashion by the judge and have a tendency to reproduce the phrasing and syntax of the source language, Italian, quite devotedly.

In addition, I looked at two additional aspects: first, whether there has been an increase of a specific approach in the last seven years (2015–2022), compared

to the first eight years (2006–2014); second, whether combinations between approaches were featured among all three approaches or one approach was used exclusively in an isolated manner. Analysing the latter, I moved away from my general approach of counting traces individually. In that, I calculated the joint appearance of different approaches within the same judgment as $n=1$, even in cases of several combinations appearing in the same judgment. This is because the analysis of the fact that combinations take place as such, and what kind of approaches are combined, could offer, I suggest, more significant insights than how many of these combinations can be observed within a single judgment.

5.2 Results

From this sample of 85 traces of bilingualism, 59% led to insertions of Italian text into German judgments, 30% of them being collages ($n=26$), and 29% direct quotations ($n=24$). The remaining 41% consists of translations ($n=35$). In other words, 59% of all traces are direct bilingual traces, while the remaining 41% consists of indirect bilingual traces. Whereas, looking at them separately, translations are the approach most frequently used, the other two approaches have increased over the last seven years, with 18 collages and 17 direct quotations (2015–2022) against 8 and 7 (2006–2014), respectively. Furthermore, combinations turned out to be common between collage and direct quotation, with 20% of the judgments examined ($n=11$) featuring it, while translation is exclusively used in an isolated manner.

6. Discussion

The findings illustrated above suggest that indirect bilingual traces are more common, but direct traces are clearly on the rise. One implication of this is that the need to refer to sources in a language different from the judgment seems to loosen up the urge to perpetuate the myth of judicial monolingualism. To be sure, while translations, and thus indirect bilingual traces, are still more frequent, leading to judgments that essentially incorporate the myth of judicial

monolingualism, alternative approaches have been recently challenging its dominant position.

Moreover, the fact that direct traces are, on numerous occasions, used jointly in the same judgment shows how, once a judge has committed to the idea of leaving bilingual traces in her judgment, there is no need for her to hide anything and she will use the different approaches as she sees fit. Conversely, once a reference is translated, the judgment will be strictly monolingual, and hence deemed incompatible with the insertion of fragments in the other language.

While all three approaches are quite prominently featured in the data under scrutiny, their use, individually or jointly, is not devoid of issues, especially with reference to language rights and legal certainty. The first approach, collage, presupposes that the addressee of the judgment has sufficient passive knowledge of the other language to understand the cited passage and that a brief summary or explanation of it will suffice to guarantee adequate understanding. This aspect is even more problematic when the explanation or summary is missing and the Italian paragraph is inserted with no clarification whatsoever, as is the case with the approach of direct quotation. While the assumption of sufficient passive knowledge of Italian, being the official language on national scale, among the inhabitants of South Tyrol could be justified in many cases, it is hazardous in at least two respects. Firstly, it contravenes the right to choose the language of the proceeding and the resulting judgment, which is independent from considerations as to somebody's (presumed) fluency in the other language. Secondly, and more importantly, it ignores the changed living reality of a globalized world, where people move around regions and states constantly, learning and speaking perhaps only one out of several official languages of a multilingual territory.

Limited to collage, an additional point needs to be raised. Even if one was to ignore the potential language issue, providing only a summary or brief explanation of the passage cited in another language is problematic in terms of legal certainty, as a potentially very nuanced and complex passage of legal reasoning is rendered in a shortened and simplified form, potentially altering or distorting its precise original meaning.

These issues are avoided, at least on the surface, when employing the third approach, translation. In fact, this guarantees the consistent use of only one language, chosen and therefore presumably known by the accused, as well as the truthful respect towards the formal denomination of the judgment's language as German. However, also in this case, two crucial concerns need to be raised. First, as mentioned above, this approach perseveres in the myth of judicial monolingualism. While leaving indirect traces of bilingualism, it reproduces references to resources clearly unavailable in the language of the judgment, pretending a linguistic coherence that does not exist. Secondly, it does not rely on an official translation, but is the result of a translation process carried out by the judge herself. This could not only lead to partially inaccurate and terminologically unsound translations, but also to inconsistent translations.²¹ While judges tend to stick to their own translation, they might disregard or not conform to the translation made by others, creating a phraseological and terminological incoherence that harms legal certainty. To be sure, there is an apparent consensus on certain passages repeatedly cited; the problem is clearly more tangible when it comes to new case law, where a new consensus needs to be found, potentially after a period of discrepancy.²²

Furthermore, even if a consensus is reached, this does not per se imply that the translation agreed upon is flawless or chosen for its merits. In fact, blindly following a consolidated translation impairs the capacity of adapting the translation to a more accurate terminology.

²¹ To mention just one example, a quite often-referenced judgment by the Italian Supreme Court is no. 33162 of 03.06.2004 on the evidentiary value of statements by the injured person not supported by additional evidence. There is a consensus on how to translate the ratio decidendi in this judgment into German, featured in three judgments of the Justice of the Peace of Bolzano. These judgments, being no. 4 of 10.01.2013, no. 32 of 20.02.2014, and 175 of 13.11.2017, feature slight inaccuracies. Firstly, *responsabilità dell'imputato* ('liability of the accused') is translated as *Verantwortung des Angeklagten* instead of the more appropriate *Verantwortlichkeit des Angeklagten*. Secondly, *persona offesa* ('injured person') is translated as *verletzte Partei* instead of *verletzte Person*.

²² Based on the judgments analysed for this research, this observation could seem hypothetical, as there is a consensus on the most commonly referenced passages. However, the issue is not irrelevant, as less common and new jurisprudence might alter the current consensus.

6.1 *Not all good things come by threes: Visualizing an alternative*

The three approaches employed thus far could, as I want to claim in this article, be used in a way that might both uphold language rights and guarantee terminological transparency; without falling neither prey to the myth of judicial monolingualism nor to the assumption that Italian is generally understood. This would entail translating the cited paragraph while adding the original passage in full as well. To nuance this point, the idea presented here could be conceptualised either as a combination of direct quotation and translation, or as an amplified and more transparent collage. On the one hand, this might avoid the issues resulting from paraphrasing the Italian judgment in German, as it is the case with collage. On the other hand, it would allow the reader to directly compare the original and the translation, unlike direct quotation, where no translation is provided at all, and unlike translation, where the original is not included in the judgment.

6.2 *Limitations*

The limitations of this article need to be acknowledged, which are at least threefold. Firstly, the undertaken analysis was limited to criminal cases, leaving out other branches of law Justices of the Peace have jurisdiction over, such as civil cases and opposition to administrative sanctions. While it is possible to assume that the approaches envisaged for criminal cases are employed in these other branches as well, it remains unclear whether the frequency and partial combination of the use of these approaches is similar to criminal cases or not. Since criminal cases make up only about 11% of the jurisprudence by Justices of the Peace in the timeframe under investigation—120 out of a total of 1084 cases—, a major piece of case law is not included in this study.²³

Secondly, the results and discussion presented here cannot necessarily be extended to the handling of the issues at hand by courts in South Tyrol as a

²³ Again, the total number of cases is based on the data available on June 7th, 2022.

whole. While it is very likely that higher courts, being the Tribunal of first instance and the Court of Appeal of Bolzano, have found similar approaches to those examined for this study, the percentages featured in the court practice of Justices of the Peace could vary considerably the higher one gets on the appeal stages. Lastly, the present analysis has not accounted for the reasons behind choosing one or several approaches over others in a specific judgment. In other words, while it has become clear that the same Office of the Justice of the Peace is not devoted to a single approach in all its judgments and, to the contrary, might even use different approaches within a single judgment, the particular reasons or circumstances leading to this choice, also in reference to specific courts, remain in need of further investigation. For instance, the analysis does not cover the aspect of how a specific audience, such as judges from higher courts, might influence the approaches employed in a specific judgment. Judges might use different approaches when they find it likely that their judgment will be appealed as compared to when this option appears unlikely.

7. Conclusion

What are the traces this article aims to leave, then? Firstly, it shows in how far what has been referred to as the myth of judicial monolingualism, being the idea of a monolingual legal reasoning based on resources solely in the language of the proceeding, is problematic. The reason for this is that it creates a fictional idea of unity and cohesion, in both monolingual and multilingual jurisdictions. This myth is unsettled in multilingual jurisdictions when there is a disparity of resources among different languages. To highlight this, three approaches employed in judicial practice when referring to apex court judgments available only in a specific language in judgments in a second language are discussed.

While translation is the most popular approach, holding on to the myth of judicial monolingualism, the use of the other two approaches, collage

and direct quotation, is increasing in recent years, which shows willingness to overcome the myth. Yet, none of these approaches is free from issues in terms of language rights and legal certainty. Collage and direct quotation are problematic concerning language rights, as these approaches assume that an only partial translation (collage) or no translation at all (direct quotation) is required for the person at trial to understand.

Moreover, while the mere insertion of the Italian passage with no explanation at all seems inadequate as such, a summary or explanation of a highly specific passage bears the risk of distorting its meaning. Translation, on the other hand, could lead to inconsistencies between translations, as the translation is generally not an official and standardized one, but rather made by individual judges. Besides, even where a particular translation is used consistently, there is no guarantee, as has been mentioned, that this translation is free from inaccuracies.

Therefore, an alternative approach consisting of a translation accompanied by the original passage cited should be considered. This approach might increase both transparency and comprehensibility of judgments encompassing bilingual traces. This alternative aims to highlight two potential improvements in drafting judgments. Firstly, the judgment would be immediately understandable to all parties concerned. Secondly, the translation would be under more severe scrutiny, as the original text would be right next to the translation, instead of a simple case docket number.

Further research should not only expand on studies covering the limitations of the present research, but also observe whether, and to what extent, the three-approach model elaborated here is useful when analysing analogous cases in different jurisdictions. These cases encompass languages that are co-official at federal, national, or subnational level, featuring a significant imbalance in terms of availability of legal resources among each other. Interesting jurisdictions that might be compared are Puerto Rico (judgments in Spanish citing case law available only in English) or Hong Kong (judgments in Cantonese citing case law available only in English), among many other potentially trace-bearing judicial settings.

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