

LEGAL COMPARISON IN TERMINOLOGY WORK: DEVELOPING THE SOUTH TYROLEAN GERMAN LEGAL LANGUAGE

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Jogi összehasonlítás a terminológiai munkában: a dél-tiroli német jogi szaknyelv kialakításáról. A nyelvi jogok alapvető szerepet játszanak a kisebbségek védelmében. Ha egy kisebbségi nyelv hivatalos nyelvvé válik egy országban vagy régióban, attól kezdve használható lesz az állami és helyi közigazgatási ügyintézés során. Fontos, hogy a hivatalos szervek képesek legyenek ezen a nyelven válaszolni. Ugyanakkor vajon lehetséges-e egyáltalán a kommunikáció, ha a kisebbségi nyelv nem rendelkezik a szükséges jogi terminológiával? Hogyan lehet elkerülni a kisebbségi nyelvi csoportok diszkriminációját, ha azok nem rendelkeznek egyenértékű nyelvel a törvényhozói, a végrehajtói vagy az igazságszolgáltatási hatalom gyakorlásához? Ebben a tanulmányban az észak-olaszországi Dél-Tirolban alkalmazott, a dél-tiroli német jogi szaknyelv fejlesztését szolgáló egyik módszert mutatjuk be: a jogi összehasonlító módszert és ezen belül a mikroszintű összehasonlítás módszerét, amelyet az Ausztria, Németország és Svájc német nyelvű jogrendszerével való összevetés során alkalmazunk. Valós példákkal mutatjuk be, hogy a mikroszintű összehasonlítás hatékony és eredményes módszer lehet a kisebbségi nyelvekben a kiváló minőségű jogi terminológia kialakításához. Ez a módszer bármely kisebbségi nyelv esetében alkalmazható, amelynek egy másik jogrendszerben, például egy szomszédos országban, már kialakult a teljes értékű jogi terminológiája. Ezért az itt bemutatott módszert más kisebbségi nyelvi közösségek is használhatják Európában és azon kívül is.

Kulcsszavak: jogi összehasonlítás, mikro-összehasonlítás, kisebbségi nyelv, jogi terminológia, többnyelvű terminológiai munka, Dél-Tirol

1. Introduction

Europe is a continent where language borders often do not coincide with national borders. This leads to situations in which languages may have minority status in one country, while being the official language of one or more neighbouring countries. Such is the case for example, with the Hungarian language in Slovenia, the Danish language in Northern Germany, and German in South Tyrol, Northern Italy.

At different moments in time, many of these minority communities have been granted more or less extensive rights, with the aim of removing any discrimination in connection to their minority status. Concerning language, this implies the freedom to use the minority language “in private and in public, freely and without interference or

any form of discrimination” (UN General Assembly Resolution no. 47/135, Art. 2, par. 1). Some minority languages have obtained co-official status in their respective regions (see e.g. Art. 11 of the Slovenian Constitution for Hungarian and Italian in Slovenia, Art. 100 of Presidential Decree no. 670/1972 for German in Italy, etc.), since language rights are an essential factor in the protection of minorities (Palermo and Pfössl 1997: 41; Coluccia 2000: 381). As co-official languages, minority languages can be used for relations with the state and/or local administration. The public bodies must be able to respond in the same language. However, how can any communication take place if the necessary legal terminology in the minority language is not available? How is it possible to avoid discriminating against minority language groups if they lack a fully-fledged language to exercise legislative, executive, and/or judicial powers?

In this paper we illustrate one of the methods applied in South Tyrol to develop the South Tyrolean German legal language, i.e. legal comparison. The local German-speaking minority maintains intense contacts and exchanges with the neighbouring countries (Sandrini 1998: 410; Woelk 2000: 213), which have their own German legal languages. However, the applicable legal system in South Tyrol is the Italian one. South Tyrolean German legal terminology should therefore reflect the concepts of the Italian legal system faithfully and precisely, while at the same time possibly avoiding an excessive number of neologisms, so that cross-border communication is not unnecessarily hampered. As this goal is generally shared by language minorities in comparable situations, the illustrated method could also be useful for other minority language communities, both in Europe and beyond.

2. German in South Tyrol

South Tyrol is a multilingual region in Northern Italy with a population of about 525,000 (ASTAT 2017: 14). The majority of the resident population has German as their native language (69.64 %). A smaller percentage are native Italian speakers (25.84 %). Finally, the smallest local language group (4.52 %) is Ladin-speaking¹.

German is a minority language in Italy, but the language of the majority at local level in South Tyrol. The region, formerly part of the Austro-Hungarian Empire, was annexed to the Kingdom of Italy after World War I. In the decades between the two world wars, the fascist regime discriminated against the German-speaking population and strongly repressed the German language. After World War II, some important language rights were granted, such as German language press and schools, but the public administration as well as the legislative and judicial powers remained predominantly Italian-speaking (see Alcock 2001 for a more detailed historical account). The turning

1 Ladin is an ancient romance language spoken only in five valleys of the central Alps located around the Dolomites. In this article we shall not deal with the Ladin minority and their language in detail. For more information consult, for example, Pescosta 2010.

point came in 1972, when the Italian state passed a new Statute of Autonomy for South Tyrol and the neighbouring province of Trento (Presidential Decree no. 670/1972). For the first time in over half a century, South Tyrol was given strong local autonomy with competences in a growing number of domains. The Statute of Autonomy also established the right to use the minority language, i.e. German, when dealing with the judiciary and public administration offices (Presidential Decree no. 670/1972, Art. 100).

1972 was also a turning point in relation to legal language. German had been restricted to the private sphere for many years (Mall and Plagg 1990: 221) and not used to draft laws or administrative texts until well after the end of World War II. Consequently, there had been limited development of the German-language legal terminology needed to express the concepts of the Italian legal system. It is important to remember that legal terminology is system-bound (de Groot 1999: 12), that is, it is intimately linked to the legal system it belongs to and can only be fully understood in relation to that system (cf. Gambaro and Sacco 2009: 8–10). However, the German language had never had any particular connection to the Italian legal system before and thus had – until then – not been developed to express it (Coluccia 2000: 381).

This situation caused a terminological emergency, as the South Tyroleans basically received important language rights while lacking the linguistic and terminological means to fully enjoy them. At the time the Statute of Autonomy was passed, the legal terminology that existed in South Tyrolean German mainly had three different origins: terms designating originally Austrian legal concepts that had been preserved; terms created spontaneously during every-day speech; and terms that were contained in translations of the main Italian legal codes (cf. Zanon 2001: 177–178; Palermo and Pföstl 1997: 51; Chiocchetti and Ralli 2016: 104–105).

Concerning the first group, some old terms of Austro-Hungarian origin had remained in use to designate concepts that were formerly unknown to the Italian legal system but had survived in South Tyrol (Zanon 2001: 177; Chiocchetti and Ralli 2016: 104). This is the case, for example, for the terminology connected to the land registry (*Grundbuch*), which is different from the Italian cadaster system (*Kataster*). In fact, both systems still survive side by side today in Italian areas that were formerly part of Austria-Hungary, such as South Tyrol, some municipalities in the Veneto region, and the provinces of Trieste and Gorizia.

The second group consists of terminology generated spontaneously by the population to express concepts of the Italian legal system that were formerly unknown (Palermo and Pföstl 1997: 51; Chiocchetti and Ralli 2016: 104). Very often these are loan words (e.g. *Quästur* for *questura*, police headquarters; *zivile Motorisierung* for *Motorizzazione civile*, motor vehicle registry) or loan translations (e.g. *Selbstbescheinigung* for *autocertificazione*, self-certification; *Sozialassistent* for *assistente sociale*, social worker). Some terms are so well established by now that it is difficult to propose any alternative (e.g. *Sozialarbeiter* for social worker; *Polizeidirektion* for police headquarters), while others were partly replaced by more precise or more natural sounding terms over time

(e.g. *Eigenbescheinigung* for self-certification; *Kraftfahrzeugamt* for motor vehicle registry).

The third group consists of terms contained in the translations into German of the main Italian legal codes (Chiocchetti and Ralli 2016: 104–105), such as the Civil Code, Criminal Code, Civil Procedure Code, etc. and in other material that had been made available in German, for example, standard replies and application forms used in the public administration and judiciary system (cf. Zanon 2001: 170). The positive aspect of such translation projects is that the Codes were translated by (teams of) legal experts in the respective domain. However, these efforts were scattered over many years and generally uncoordinated, so it was not rare to find different translation proposals for the same Italian concept across texts or even within the same text (Mayer 1997: 128; Sandrini 1998: 411; Chiocchetti and Ralli 2016: 105). In addition, the many translation efforts made independently by several public and private organisations created even more inconsistencies, especially because these texts were not necessarily drafted by legal experts and often under time pressure. For example, for the above-mentioned self-declaration, several alternatives could be documented: *eigenverantwortete Bescheinigung*, *eigenverantwortliche Bescheinigung*, *Selbstbescheinigung*, and *Eigenbescheinigung*.

Such terminological variation is evidently an obstacle for communication. In the legal domain, clarity of meaning and consistency of language and terminology are essential for legal certainty. For a minority language community, they are also a prerequisite for the full enjoyment of equal rights (Palermo and Pfössl 1997: 69; Woelk 2000: 210). An evident sign of failure in language development is when the members of a minority language community find texts in the majority language easier to understand than in their language. Finally, everyday practical work within the legislature and judiciary requires that all co-official languages have the same level of development and can be properly used to express legal content: *Zweisprachiges juristisches Arbeiten bedingt [...], dass für alle in einer Sprache in Gebrauch stehenden juristischen und anderen fachlichen Termini in der zweiten Sprache adäquate Entsprechungen verfügbar sind und auch konsequent verwendet werden*² (Zanon 2001: 176).

Against this background, it became necessary to consider how legal terminology in South Tyrolean German could be developed more systematically. The available material lacked coherence, was largely incomplete, was often very much based on the Italian terminology (loan words and loan translations), was not always correct from a legal and linguistic point of view, but sometimes was already consolidated in daily use. This was considered less than ideal. The objective was to find a way of producing correct, possibly short, and transparent terms that would faithfully reflect and convey the meaning of the Italian legal concepts while avoiding excessive regionalisation of the South Tyrolean German terminology and fostering cross-border communication

2 “Legal work in two languages requires [...] that for all legal and other technical terms used in one language there are adequate equivalents in the second language and that they are also used consistently” [own translation].

(Sandrini 1998: 407–408; Chiocchetti and Ralli 2016: 105–106). Therefore, the terminology used in the neighbouring German-language legal systems (Austria, Germany, Switzerland) had to be taken into account.

For over two decades a Terminology Commission was entrusted with the task of officially standardising South Tyrolean German equivalents for Italian legal, administrative, and other specialised terminology to make sure that the terminology in the minority language fully reflected the Italian legal system (Presidential Decree no. 574/1988, Art. 6). The Terminology Commission consisted of only six members (judges, lawyers, and translators) and therefore needed support with the preliminary terminology work. This preliminary work was performed by an interdisciplinary team of terminologists and legal experts at the Institute for Applied linguistics of Eurac Research (cf. Mayer 1997; Chiocchetti and Ralli 2016). Today, after the Terminology Commission's standardisation activity was discontinued in 2012, staff at Eurac Research cooperates with the local public administration, especially with the Office for Language Issues, to elaborate terminology entries and make them available through the online Information System for Legal Terminology *bistro* (<http://bistro.eurac.edu/>) (cf. Ralli and Andreatta 2018). This terminology work is done starting with the Italian legal system and applying the method of legal comparison, in particular micro-comparison, which will be illustrated in the next sections.

3. Legal Comparison

The term “legal comparison” is used to refer to a contrastive comparison of different legal systems (Zweigert and Kötz 1996: 2). This means identifying the principles, rules, and concepts of a legal system and – most importantly – understanding how they operate and are applied within that system, with the aim of comparing them with those of one or more other legal systems to detect similarities and differences (cf. Gambaro and Sacco 2009: 2; Schweizer 2011: 13; Pegoraro and Rinella 2013: 4). The method can be applied to entire legal families or systems and to their general ways of reasoning and proceeding when dealing with specific legal issues (e.g. different legislative techniques, law interpretation methods, or styles in jurisdiction), in which case it can be termed macro-comparison (Zweigert and Kötz 1996: 4, Pommer 2006: 84–85). Micro-comparison, in contrast deals with specific legal concepts and problems, for example, the rights of an illegitimate child excluded from a parent's will or the rules for the settlement of claims in road traffic accidents (Zweigert and Kötz 1996: 4–5; Pommer 2006: 84–85).

The main function of legal comparison is gaining knowledge about how other legal systems approach and solve common issues (cf. Zweigert and Kötz 1996: 14; Pommer 2006: 87; Pegoraro and Rinella 2013: 21). Other functions may be fostering better international communication, supporting reforms in less developed countries,

but also developing one's own legal system (cf. Zweigert and Kötz 1996: 14). Legal comparison is gaining growing importance in Europe, among other reasons due to the stronger transnational cooperation within Europe and at a global level (Schweizer 2011: 13–14). From the point of view of legal practice, legal comparison is relevant for the legislature, for legal interpretation, for teaching, for the consolidation of laws and legal systems as well as for the development of a common European legal framework (cf. Zweigert and Kötz 1996: 14; Pommer 2006: 87–92; Pegoraro and Rinella 2013: 21). From the point of view of intercultural communication, it is relevant for legal translation and legal terminology work (Pommer 2006: 119–120; Gambaro and Sacco 2009: 8–11; Arntz *et al.* 2014: 162–170).

4. Applying Micro-Comparison to Terminology Work

Legal language is system-bound, that is, every country has a unique set of rules and principles as well as specific legal terminology to express them (Šarčević 1997: 230; de Groot 1999: 11–12; Pommer 2006: 17; Gambaro and Sacco 2009: 8). Micro-comparison can support the process of finding equivalent concepts across legal systems, i.e. concepts that have the same definition. From a terminological point of view, these are concepts with the same conceptual characteristics (Arntz *et al.* 2014: 145). Given the system-bound nature of legal terminology, full equivalence is quite rare, more often micro-comparison helps to spot narrower, broader, or overlapping concepts (Arntz *et al.* 2014: 145–148). Sometimes there are functional equivalents, i.e. concepts that have the same function in different legal systems (Šarčević 1997: 235–241; Chiocchetti and Ralli 2016: 106–107). It is also possible that a concept is unknown to a specific legal system (Gambaro and Sacco 2009: 7–8; Arntz *et al.* 2014: 167).

When applied to terminology work, micro-comparison can highlight important conceptual differences between terms. The first step is to analyse the concept in the source legal system, determine its essential characteristics and study how it is embedded within that system. The second step is to perform the same analysis on the target legal system. Finally, the two concepts are contrastively compared based on their essential characteristics and application within the specific legal subdomain to highlight similarities and differences (Chiocchetti and Ralli 2016: 107). For example, a comparison between the Italian concept *matrimonio* (marriage) and the German concept *Ehe* will soon uncover that both refer to a legally recognised, voluntary relationship between two persons, which gives rise to reciprocal rights and duties. However, in Italy a *matrimonio* is possible only between a man and a woman, while in Germany also same-sex couples can contract an *Ehe*.

In the practice of terminology work, studying the source concept includes also collecting possible synonyms and variants that are used to designate the given concept within the specific domain and subdomain (e.g. family law). For example, in Italy the

terms *vincolo matrimoniale*, *vincolo coniugale* and *vincolo di coniugo* all refer to the same concept (wedlock, marriage bond). These terms are documented in relevant sources (e.g. laws, handbooks of family law, administrative texts, judgements, official websites, etc.). The same procedure is repeated for the term(s) of the target legal system (Chiocchetti and Ralli 2016: 107). At the end of this research, terminological entries therefore normally contain both conceptual information (e.g. definitions in the source and target legal systems stating conceptual characteristics) and linguistic information (e.g. contexts of use, grammatical information, useful collocations, etc.).

In South Tyrol, micro-comparison has been systematically applied to terminology work, both to support the choice of adequate South Tyrolean German terms needed to express the concepts of the Italian legal system and to foster cross-border communication (Mayer 1997: 126–131; Chiocchetti and Ralli 2016: 107–111). The process always starts with the Italian legal system (Chiocchetti and Ralli 2016: 108). To begin with, every Italian legal concept is defined or analysed to identify its essential characteristics. Then all Italian language terms used to designate the concept are collected and documented in terminological entries. The same happens with the existing South Tyrolean German terms. As explained in Section 2, it is quite common to encounter more than one translation, each of which must be evaluated for their legal and linguistic correctness, transparency, and degree of consolidation.

In addition to highlighting conceptual discrepancies and similarities, micro-comparison makes it possible to determine whether the Italian source concept has any equivalents in one or more German-speaking target legal systems. The respective Austrian, German, and Swiss terms (if existing) are also collected in the terminological entries. For example, the equivalent concepts for *atto di matrimonio* (marriage certificate) are *Eheschein* in Switzerland and *Heiratsurkunde* in Austria and Germany. This information serves to evaluate the South Tyrolean terminology: does it correspond to the terminology pertaining to one or more foreign legal systems? If not, can the foreign terminology be adopted for use in South Tyrol, provided that there is a high degree of equivalence with the Italian legal concept? Terms that are used beyond South Tyrol to designate equivalent concepts are obviously preferable, since they support cross-border communication (Chiocchetti and Ralli 2016: 109). In our example, the term *Heiratsurkunde* is used in South Tyrol and corresponds well to the terms known and understood in two other legal systems.

Sometimes micro-comparison might highlight that the correspondence is at a superficial and/or linguistic level only. In that case it is normally better to adopt other terms or create neologisms for South Tyrol so as to avoid problems or misunderstandings, especially in international contacts (Chiocchetti and Ralli 2016: 109).

Finally, micro-comparison can be an important support when new concepts are introduced at national level in Italy and there is the need to establish a South Tyrolean German-language term. For example, in 2016 Italy passed a new law on same-sex relationships (Law no. 76/2016), which gave homosexual couples the right to enter a

unione civile (civil partnership), i.e. a relationship very similar to a marriage relationship but limited to same-sex couples. At the time, none of the available South Tyrolean legal and administrative texts dealt with the concept, so it was necessary to find a South Tyrolean German term to designate the new concept. The process of micro-comparison revealed the existence of equivalent concepts in all three foreign German-speaking legal systems, i.e. a marriage-like relationship reserved for homosexual couples. These were termed *eingetragene Lebenspartnerschaft* in Germany and *eingetragene Partnerschaft* in Austria and Switzerland (cf. Chiocchetti *et al.*, forthcoming).

This first result showed that literal translations for use in South Tyrol, for example, *bürgerliche Verbindung* or *zivile Union*, had to be discarded. Given the relatively good conceptual equivalence between the Italian concept and the concepts of all three target legal systems, it would have been unnecessary, even unwise to create a neologism for South Tyrol. Its meaning would have been opaque beyond the national borders. When further selecting which of the two foreign terms to adopt, the decisive element was the fact that the Italian concept was inspired by the German one (Deputati PD 2016: 1). The Italian and German concepts diverged basically only in some non-essential characteristics, for example, in relation to the right to adopt, which homosexual couples do not have in Italy. For this reason, *eingetragene Lebenspartnerschaft* seemed the best solution also for South Tyrolean German (Chiocchetti *et al.*, forthcoming).

Within a few months, the newly adopted South Tyrolean German term became widely accepted. For this reason, it remained in use even when Germany enacted new legislation making marriage accessible to same-sex couples in 2017 (EheRÄndG, § 1). Today, in Germany, it is not possible to contract new same-sex partnerships. Existing ones remain legally valid and continue to exist, unless they are converted into marriages. In South Tyrol, however, *eingetragene Lebenspartnerschaft* is now a well-established translation for the Italian concept *unione civile*. Its meaning is transparent both at local and international level within the German-speaking area.

5. Conclusions

The availability of correct, clear, and consistent legal terminology is an important factor for the protection and development of language minorities, as it ensures all citizens equal possibility of expression and access to legal information. As we have shown based on the example of German in South Tyrol, micro-comparison is an extremely useful method to find and establish adequate and acceptable legal terminology when the minority language in question is also used as an official language in one or more other countries. For this reason, the illustrated method could also be applied by other minority language communities, both in Europe and beyond. Micro-comparison fosters international communication and helps avoid excessive regionalisation of the minority

language community. It is a scientifically sound method to obtain well-documented and high-quality results in legal terminology work.

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