

Legal Bilingualisation¹ and Factual Multilingualisation²: A comparative study of the protection of linguistic minorities in civil proceedings between Finland and Italy

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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 proceedings⁴ 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 politics⁸ 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 collide¹⁰. 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

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 equality¹⁴, 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 communication¹⁵ 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 Union¹⁹, 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 language²³, 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+sukup uolen+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 national²⁷ languages are Finnish and Swedish.

The right of everyone²⁸ 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 language³² 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 bilingualistic 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 exist 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 Act³⁸, 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.

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 préparatoires* 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 exist 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 complaint⁴² 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 other 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 statute 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 or 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

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, 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

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 understand⁷² 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 1998⁷⁹ 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 2010/64⁸² 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 multilingualistic. 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.

References

- Haavisto, Vaula (2001). *Sovinnot – ikkuna tuomioistuinyön muutokseen*. (Friendly Settlements – a view into the change of the work at courts), in *Sovittelu ja muut vaihtoehtoiset konfliktinratkaisujärjestelmät* (Mediation and other alternative forms for dispute resolution), ed. Soile Pohjonen. WSOY, 2001, 83 – 119.
- Haavisto, Vaula (2002). *Court Work in Transition. An Activity-Theoretical Study of Changing Work Practices in a Finnish District Court*. University of Helsinki, 2002.

- Hedman, Henry (2009). *Suomen romanikieli: sen asema yhteisössään, käyttö ja romanien kieliasenteet* (The Romani language in Finland: its position in its own community, use and the attitudes of Romani people to their language). *Kotimaisten kielten tutkimuskeskuksen verkkojulkaisuja* 8. Helsinki 2009. Available on the web: http://scripta.kotus.fi/www/verkkojulkaisut/julk8/Suomen_romanikieli.pdf
- Barile, Paolo (1984). *Diritti dell'uomo e libertà fondamentali* (Human rights and fundamental freedoms). Bologna, 1984, 39-40,
- Bartole, Sergio (1992). *La tutela della minoranza slovena fra giurisprudenza costituzionale e legislazione ordinaria* (The protection of the Slovenian minority between Constitutional jurisprudence and Statute law). *Giurisprudenza costituzionale*, 1992, 342-345.
- Biavati, Paolo (1997). *Giurisdizione civile, territorio ed ordinamento aperto* (Civil jurisdiction, territory and open legal system). Milano, 1997.
- Bonamore, Daniele (1996). *Il pareggiamento tra codice processuale penale e codice processuale civile in ordine alla lingua degli atti* (Equalization between the code of criminal procedure and the code of civil procedure referring to the language of the procedural acts). *Giustizia civile*, 1996, II, 258-261.
- Bonamore, Daniele (1992). *L'art. 109 nuovo c.p.p. e le "minoranze linguistiche riconosciute"* (Art. 109 of the code of criminal procedure and the "acknowledged linguistic minorities. *Cassazione penale*, 1992, II, 1917-1920.
- Brunelli, Brunella (2012). *Sub. art. 122 c.p.c.* (Sub art. 122 of the code of civil procedure), in Carpi Federico–Taruffo Michele (eds.), *Commentario breve al codice di procedura civile*. Padova, 2012, 495-498.
- Curtotti Nappi, Donatella (2002). *Il problema della lingua nel processo penale* (The problem of the language in the criminal proceeding). Milano, 2002.
- De Mauro, Tullio (1979). *Note sulle minoranze linguistiche e nazionali in Italia* (Notes about national linguistic minorities in Italy). Bologna, 1979, 349.
- Ervasti, Kaijus (2002). *Lainkäytön funktiot* (The functions of

- jurisdiction). Lakimies, 2002, 47-72.
- Ervasti, Kaijus (2004). *Käräjäoikeuksien sovintomenettely. Empiirinen tutkimus sovinnon edistämisestä riitaprosessissa*. (Friendly settlements at district courts. Empirical study on promoting friendly settlements in civil proceedings). Oikeuspoliittinen tutkimuslaitos, 2004.
- Ervo, Laura (1995). The Reform of Civil Procedure in Finland. *Civil Justice Quarterly*, January 1995, 56 - 64.
- Ervo, Laura (2005): *Oikeudenmukainen oikeudenkäynti* (Fair trial). WSOY, 2005.
- Ervo, Laura (2007). Scandinavian Trends in Civil Pre-Trial Proceedings. *Civil Justice Quarterly*, October 2007, 466 – 483.
- Ervo, Laura (2009). *Fair Trials as Discourse: Reforms in Scandinavian Procedural Law Contrasted with Reforms in England and Wales. Together with Leslie Blake and John Pointing*, in *Legal Language in Action: Translation, Terminology, Drafting and Procedural Issues*. Ed. by Susan Šarčević. Nakladni zavod Globus. Zagreb, 2009, 361 – 376.
- Felicetti, Francesco (1996). *Sull'uso della lingua slovena nel processo di esecuzione* (The use of Slovenian language in the enforcement proceeding). *Corriere giuridico*, 1996, 457-458.
- Gattini, Andrea (1999). *La non discriminazione di cittadini comunitari nell'uso della lingua nel processo penale: il caso Bickel* (The non-discrimination of EU citizens in the use of the language in the criminal proceeding: the case Bickel). *Rivista di diritto internazionale*, 1999, 106-110
- Gephart, Werner (2010). *Recht als Kultur. Für eine geisteswissenschaftliche Erforschung von Recht in Globalisierungsprozess*. Vittorio Klostermann, 2010.
- Government bill 309/1993. Hallituksen esitys Eduskunnalle perustuslakien perusoikeussäännösten muuttamisesta (Government bill to the Parliament on amendments of constitutional rights).
- Government bill 92/2002. Hallituksen esitys Eduskunnalle uudeksi kielilainaksi ja siihen liittyväksi lainsäädännöksi (Government bill to the Parliament on new linguistic act and other statutes).
- Kansalliskielten historiallinen, kulttuurinen ja sosiologinen tausta - Nationalspråkens historiska, kulturella och sociologiska bakgrund*

- (The historical, cultural and sociological background of national languages). Työryhmämuistio (working group report), Kielilakikomitea, 2000. Available on the web: <http://www.om.fi/Satellite?blobtable=MungoBlobs&blobcol=urldata&SSURIdatatype=BlobServer&SSURIdcontainer=Default&SSURIdsession=false&blobkey=id&blobheadervalue1=inline;%20filename=zye6d9qeom5.pdf&SSURIdcontext=Satellite%20Server&blobwhere=1243790079537&blobheadername1=Content-Disposition&ssbinary=true&blobheaderapplication/pdf>
- Kielilakikomitean mietintö* (Report of the linguistic act committee) 2001:3.
- Kielilainsäädäntö – kansainvälisoikeudelliset velvoitteet ja kansainvälinen vertailu* (Language Statutes – international obligations and international comparisons). Kielilakikomitea 2000. Available on the web: <http://www.om.fi/Satellite?blobtable=MungoBlobs&blobcol=urldata&SSURIdatatype=BlobServer&SSURIdcontainer=Default&SSURIdsession=false&blobkey=id&blobheadervalue1=inline;%20filename=2wt2m3t1dxz.pdf&SSURIdcontext=Satellite%20Server&blobwhere=1243790047918&blobheadername1=Content-Disposition&ssbinary=true&blobheader=application/pdf>. Visiting date 2012-07-06.
- Kjus, Audun (2005). *Jeg skal ta deg med bak sentret, så får du se hva som skjer & Fortellinger fra vitneboksen* (I'll take you behind the center, so you can see what is happening & Stories from the witness stand). *Muntlighet vid domstol i Norden: en rättsvetenskaplig, rättspsykologisk och rättsetnologisk studie av presentationsformernas betydelse i förfarandet vid domstol i Norden* (Orality at courts in the Nordic countries: a legal, psychological and ethnological study of the importance of presentation form in the proceedings before the court in the Nordic countries) (ed. by Eric Bylander and Per Henrik Lindblom). Iustus, 2005, 291- 316.
- Kjus, Audun (2008). *Sakens fakta fortellingsstrategier i straffesaker* (The facts of the case, strategies to spin stories in criminal cases). Unipub forl., 2008.
- Laukkanen, Sakari (1995). *Tuomarin rooli* (The role of the judge).

- Suomalainen Lakimiesyhdistys, 1995.
- Leppänen, Tatu (1998). *Riita-asiain valmistelu todistusaineiston osalta* (The preparation of evidence in civil cases). Suomalainen Lakimiesyhdistys, 1998.
- Lindblom, Per Henrik (2000). *Processens funktioner – en resa i gränslandet* (The functions of procedure – a trip to borderland). *Progressiv process. Spridda uppsatser om domstolsprocessen och samhällsutvecklingen* (Scattered papers on the court process and development in the society). Iustus, 2000, 41 – 85.
- Lindell, Bengt (2003). *Civilprocessen* (Civil proceedings), Andra upplagan, Iustus, 2003.
- Palici di Suni Prat, Elisabetta (2002). *Intorno alle minoranze* (About the Minorities). Torino, 2002.
- Palici di Suni Prat, Elisabetta (1994). *Minoranze* (Minorities). *Digesto delle discipline pubblicistiche*. Torino, 1994
- Porcelli, Giovanni (1999). *Lingua, processo e tutela dello straniero* (Language, trial and protection of the foreign). *Rivista trimestrale di diritto e procedura civile*, 1999, 1485-1495.
- Satta, Salvatore (1966). *Commentario al codice di procedura civile* (Commentary on the Code of Civil Procedure) (vol I). Milano, 1966.
- Sau, Silvio (2010). *Le garanzie linguistiche nel processo penale* (Linguistic protections in the criminal proceeding), Padova, 2010.
- SOU 2006. *Statens offentliga utredningar* (Swedish working group report). *Är rättvisan rättvis? Tio perspektiv på diskriminering av etniska och religiösa minoriteter inom rättssystemet*. (Is fairness fair? Ten perspectives to ethnical and religion based discrimination in legal order).
- Takala, Jukka-Pekka (1998). *Moraalitunteet rikosten sovittelussa* (Moral emotions at the mediation of criminal cases). Oikeuspoliittinen tutkimuslaitos, 1998.
- Tala, Jyrki (2002). *Luottamus tuomioistuimiin – mitä se on ja tarvitaanko sitä lisää?* (The confidence on courts – what it is and do we need it more?). *Lakimies* 2002, 3 – 33.
- Tallroth, Paulina (2004 a). *Kielelliset oikeudet osana perusoikeusjärjestelmää – uusi kielilaki perustuslain näkökulmasta* (Linguistic rights as fundamental rights – the new Linguistic Act

- from the constitutional perspective). *Oikeustiede – Jurisprudentia*, 2004, 511 – 545.
- Tallroth, Paulina (2004). *Språket och internationell rättspraxis* (Language and international case law). *Nordisk Tidsskrift for Kriminalvidenskab*, 5/2004, 368 -383.
- Tallroth, Paulina (2008). Den kanadensiska och den finska språklagstiftningen – en jämförelse (Canadian and Finnish linguistic laws – a comparative study). In *Språkråd* 4/2008: 8 - 12.
- Tyler, T. R. (1990): *Why people obey the law?*. Yale University Press, 1990.
- Valtioneuvoston kertomus kielilainsäädännön soveltamisesta 2009 (The Government report on the application of linguistic laws 2009). Vammalan kirjapaino 2009. Available on the web:http://www.om.fi/Satellite?blobtable=MungoBlobs&blobcol=urldata&SSURIapptype=BlobServer&SSURIcontainer=Default&SSURISession=false&blobkey=id&blobheadervalue1=inline;%20filename=KielikertomusFIN_netti240309.pdf&SSURIsscontext=SateIite%20Server&blobwhere=1243790105953&blobheadername1=ContentDisposition &ssbinary=true&blobheader=application/pdf
- Violainen, Jyrki (1995). *Lainkäyttö* (Jurisprudence). Helsinki, 1995.
- Violainen, Jyrki – Martikainen, Petri (2003). *Pro et contra: tuomion perustelemisen keskeisiä kysymyksiä* (Pro and contra: the most important questions on reasoning judgments). Talentum, 2003.
- Wilhelmsson Thomas (2002). *(Media)julkinen oikeudenkäynti moraalikeskustelun tilana* (Media)public trial as moral discussion). *Oikeus* 2002/3: 252–264.
- Åman, Anette (2008). *Språket och straffprocessen – Individens rättigheter och myndighetens motsvarande skyldigheter* (Language and criminal procedure – the rights of an individual and the obligations of the authorities). Available on the web: <http://www.edilex.fi/lakikirjasto/5228>, visiting date 2012-07-08.

Web pages:

- http://www.coe.int/t/dg4/education/minlang/aboutcharter/default_en.asp. Visiting date 2012-07-05.
- <http://www.kl-deaf.fi/fi-FI/Viittomakieliset/>. Visiting date 2012-07-05.
- <http://www.kotus.fi/index.phtml?s=207>. Visiting date 2012-07-05.

<http://pxweb2.stat.fi/Dialog/Saveshow.asp>. Visiting date 2012-07-05

http://pxweb2.stat.fi/Dialog/varval.asp?ma=030_vaerak_tau_102_fi&ti=Kieli+i%E4n+ja+sukupuolen+mukaan+maakunnittain+1990+%2D+2011&path=../Database/StatFin/vrm/vaerak/&lang=3&multilang=fi. Visiting date 2012-07-05.

<http://www.ordineavvocati.bz.it>. Visiting date 2012-07-05.

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