Official vs. Applied Multilingualism: Comparative Study of the Language Regimes and Legal Systems of Ethiopia and the European Union

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Abstract

This thesis investigates the practical application of laws governing official multilingualism in the Ethiopian legal system. Using functionalism as a legal research method, it compares the Ethiopian language regime with that of the European Union (EU) to explore how each system manages linguistic diversity. Despite significant differences, the laws governing official multilingualism in both systems serve the shared objective of determining the officially recognized languages, prescribing the languages used in lawmaking procedures, and specifying the authority granted to each language version of a law when interpreted by the courts. The EU language regime is characterized by strong legal multilingualism, where all language versions are considered equally authentic. In contrast, Ethiopia's system is categorized as reflecting weak legal multilingualism, primarily because it grants precedence to the Amharic version over the English version of laws in case of discrepancies. Despite these differences, the research uncovers, in both systems, a tension between ensuring the equality of languages and addressing practical concerns in the laws governing official language use. Legal translation also plays a significant role in drafting multilingual laws in both systems, which is demonstrated by the role of EU-English in the EU legislative process and the two-way translation of laws between English and Amharic in the Ethiopian federal legislative process. Finally, the study shows that linguistic divergences between different language versions of a law, inherent in both systems of strong and weak legal multilingualism, pose a challenge while also offering an opportunity to facilitate the interpretation of multilingual legal texts. The research lays the base for future studies on language and law in Ethiopia. It also informs legal translators and judges about the complexities in resolving translation problems in multilingual legal contexts.

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Note on transliteration

Since Amharic is written in the Ethiopian script, the Amharic terms used in this thesis are transliterated based on the table developed for *Aethiopica*, the international journal of Ethiopian and Eritrean Studies.[1]

[1] See Aethiopica n.d. Transcription/Transliteration Tables. https://journals.sub.uni-hamburg.de/toc-aethiopica/Miscellaneous/Aethiopica_Transliteration.pdf.

Note on how Ethiopian authors are cited

The pattern of given names and surnames widely used in the Western world differs from the patronymic Ethiopian naming system, which often leads to inconsistencies when citing Ethiopian authors. To avoid this problem, I follow the conventions established by Meyer & Treis in their recent article on how to quote Ethiopian authors.[2] Accordingly, I retain the patronymic structure of Ethiopian names when citing the names either as interviewees or referring to their scholarly works. In other words, Ethiopian authors are sorted by their given name followed by their father's name, e.g. Muradu Abdo 2007. If the grandfather's name is mentioned in the source, all names are sorted by the given name, followed by the father's name and the grandfather's name without a comma, e.g. Abdi Jibril Ali 2011. This rule is maintained even if the Ethiopian author has published jointly with another author with a Western naming tradition, e.g. Fassil (given name) & Fisher 1968. If the name must be mentioned in the text itself, the given name is used, e.g. "according to Tameru….". The same rule applies to the names of interviewees maintaining the Ethiopian naming system, e.g. Belachew (given name) Driba (father's name).

[2] Meyer, Ronny & Yvonne Treis. 2021. How to quote Ethiopian authors in linguistic publications. *Afrika und Übersee* 94. 80–90.

Acronyms

AU	African Union
CJEU	Court of Justice of the European Union
EPLF	Eritrean People’s Liberation Front
EFSCCD	Ethiopian Federal Supreme Court Cassation Division
EPRDF	Ethiopian People’s Revolutionary Democratic Front
EPSCO	Permanent Representatives Committee Council
EU	European Union
FDRE	Federal Democratic Republic of Ethiopia
HPR	House of Peoples' Representatives
IGO	Intergovernmental organization
OLF	Oromo Liberation Front
OLP	Ordinary legislative procedure
PDRE	People's Democratic Republic of Ethiopia
SNNP	Southern Nations, Nationalities and Peoples
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
TPLF	Tigray People’s Liberation Front
UN	United Nations
WTO	World Trade Organization

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Chapter 1. Introduction

1.1. Prologue

This work is a comparative study of two parallel legal systems and language regimes: that of the European Union (EU), a supranational legal system with a unique economic and political union of 27 countries with their 24 respective languages having equal status, and that of Ethiopia, a legal system of a developing country in the Horn of East Africa that claims to grant equality to all of the more than 90 languages spoken as mother tongues on its territory.[1] The comparison is not made because Ethiopia can be held up as an example of states that maintain official multilingualism to the extent that the EU currently does. In fact, there is no state that has as many equally recognized official languages as the EU. Unlike in Ethiopia, most languages in the EU are standardized, have an established writing tradition and are used in all areas of cultural, economic, political and daily life. In addition, the EU has far more financial resources to deal with its linguistic diversity. Consequently, the literacy rate is significantly higher, and good-quality basic and secondary education is ensured in many languages. The difference in the level of economic development between Ethiopia and EU member states is obviously far from comparable. According to the 2020 Human Development Report, Ethiopia is placed in the "low human development" category, ranking 173rd out of 189 countries and territories.[2]

Despite these differences, there are thematic areas that can serve as points of comparison between the two systems, as illustrated by the following two court cases; one from each system. In the case Skoma-Lux sro (a wine import company) v. Celní ředitelství Olomouc (the Customs Directorate) of the Czech Republic,[3] the Grand Chamber of the Court of Justice of the European Union (CJEU) ruled over a dispute on whether EU Regulation No. 2454/93 that had not yet been published in the Czech language in the Official Journal of the European Union could be enforced against persons in the Czech Republic. The company was accused of having committed a customs offence between March and May 2004 by failing to comply with Art. 199(1) of the Regulation. The company argued primarily that, despite the Czech Republic's accession to the EU in May 2004, the Regulation had not been translated into Czech and had not been published in the Official Journal of the European Union, and that it was therefore unable to know exactly which law applied. It then claimed that the contested regulation could not be considered enforceable law insofar as it concerned the offences it was alleged to have committed on the dates specified. The Court accepted the argument of the company and ruled

[1] This figure also includes the more than 60 regional or minority languages spoken in the EU with widely varying legal status in the Member States. See Vizi, Balázs. 2012. Minority languages and multilingualism in Europe and in the European Union. In László Marácz & Mireille Rosello (eds.), *Multilingual Europe, multilingual Europeans*. Leiden: Brill, 135.
Ethnologue lists currently 93 languages for Ethiopia; see Eberhard, David M., Gary F. Simons & Charles D. Fennig (eds.). 2022. *Ethnologue: Languages of the world*. 25th ed. Dallas, TX: SIL International, available at http://www.ethnologue.com, last accessed December 20, 2022.

[2] Ethiopia – Human Development Reports – UNDP 2020 http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/ETH.pdf, last accessed June 15, 2021.

[3] CJEU Case C-161/06, Skoma-Lux sro v. Celní ředitelství Olomouc [2007], ECR I-10841, ECLI:EU:C:2007:773.

that "the proper publication of a Community regulation, with regard to a Member State whose language is an official language of the Union, must include the publication of that act, in that language, in the Official Journal of the European Union".[4] Referring to several other judgments,[5] the Court recalls that the principle of legal certainty requires that Community legislation must enable the persons concerned to know the precise extent of the obligations which it imposes on them, which can be ensured only by proper publication of the legislation in the official language of those to whom it applies.[6] Therefore, the enforceability of the obligations imposed by a Community regulation on an individual in a Member State must be delayed until the individual can take cognizance of it in a completely official manner even if the individual could have learned of that legislation by other means.[7]

A similar question was raised in the case[8] Ethiopian Revenues and Customs Authority v. Daniel Mekonnen,[9] in which the Ethiopian Federal Supreme Court Cassation Division (hereinafter: the Federal Cassation) rendered a decision on the enforceability of a Directive that was not written in Amharic, the working language of the Ethiopian Federal Government, nor published in the Federal Negarit Gazeta.[10] The case began in the Federal First Instance Court, which sentenced the respondent to five years imprisonment and a fine of one million ETB (about 57000 Euros) for gold smuggling and confiscated the gold on the basis of the contested Directive.[11] However, the Federal High Court reversed this decision mainly on the grounds that Directive No. CTG/001/97, a law issued by the National Bank of Ethiopia to establish the crime of gold smuggling, should not be considered an enforceable law, because it was only written in English and was also not published in the Federal Negarit Gazeta. This decision was upheld by the Federal Supreme Court Appeals Division. But the Federal Cassation, when reversing the decision of the lower courts that annulled the Directive, put forward the following comment:

> "In Ethiopia, there is no law governing the issue of what language should be used by government agencies that have a delegated power to enact subsidiary laws, and whether and in what form these laws must be drafted and published. As a result, it can be noted that there are already numerous

[4] CJEU Case C-161/06, 2007: para. 34.

[5] The cited cases are: Case C-98/78 Racke [1979], ECR 69, para. 15; Case C-370/96 Covita [1998], ECR I-7711, para. 27; Case C-228/99 Silos [2001], ECR I-8401, para. 15; and Consorzio del Prosciutto di Parma and Salumificio S. Rita SpA v. Asda Stores Ltd and Hygrade Foods Ltd [2003], ECR 2003 I-05121, para. 95.

[6] CJEU Case C-161/06, 2007: paras. 36-39.

[7] CJEU Case C-161/06, 2007: paras. 60 and 74.

[8] The Federal Cassation writes its judgments only in Amharic, and so far there are no official English translations. For the sake of transparency, I cite the name of the cases as they appear in the original cases in Amharic. I then translate each detail in the citation into English in square brackets. The dates given in the Ethiopian calendar in the original citations are converted to the Gregorian calendar in the translations. When the same case is cited for the second time, I only use the English translation of the citation.

[9] ፌዴራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት፤ የኢትዮጵያ ገቢዎችና ጉምሩክ ባለስልጣን v. ዳንኤል መኮንን፤ ሰ.መ.ቁ. 43781፤ ሐምሌ 14/2002፤ ቅጽ 10፤ 341-345 [EFSCCD Case Ethiopian Revenue and Customs Authority v. Daniel Mekonnen, Cass. File No. 43781, July 21, 2010, Vol. 10: 341-345].

[10] Federal Negarit Gazeta is an official compendium in which all federal laws are published before coming into force.

[11] 1 EUR = 17.495 ETB on July 21, 2010, a date this court decision was rendered. See https://www.exchangerates.org.uk/ETB-EUR-21_07_2010-exchange-rate-history.html, last accessed November 1, 2022.

> subsidiary laws enacted by different institutions through different means. In particular, directives have never been published in the Negarit Gazeta in practice. In view of this fact, the decision of the lower courts to annul the enforceability of the directive issued by the National Bank (CTG/001/97) solely on the basis that it was not written in Amharic and was also not published in the Negarit Gazeta is not only a decision made in the absence of a relevant law but is also contrary to the practice applied in the publication of directives. Furthermore, the interpretation adopted by the lower courts is also unacceptable because it would lead to the inapplicability of numerous directives already in force and runs counter to the principle of effectiveness." (translation mine)[12]

The two cases summarized above show that laws governing official language use create legitimate expectations of citizens in each system regarding which laws govern their actions and also regulate the government's reciprocal duty to ensure that citizens know the laws in a language they understand. The underlying assumption behind the judgment of the illustrative CJEU case is that making EU law accessible in 'every citizen's official language through publication in the Official Journal of the EU ensures legal certainty, as it allows EU citizens to know the extent of the obligations imposed on them by the law and foresee the consequences of a particular instrument relying on the version of their own official language. However, the requirement to make EU law accessible in every citizen's own official language implies, in the EU context, that the law is first translated into that official language. Legal translation is inherently imperfect, not to mention the indeterminate nature of language in general.[13] Moreover, the CJEU considers all the equally authentic 24 EU official language versions of the same law when rendering uniform interpretation of the law because of the equal status granted to all the EU official languages. I therefore question the underlying assumption in the CJEU's judgment as follows: Can the CJEU fulfill its promise of ensuring legal certainty by making EU law accessible in 'every citizen's own official language through publication in the Official Journal of the EU? To what extent is this goal of ensuring legal certainty impacted by the EU legislative process, which is mainly carried out through legal translation and by the large number of equally authentic official languages interpreted by the CJEU? How does the CJEU's interpretation of 24 equally authoritative language versions meet the legitimate expectations of citizens created by laws regulating official language use?

On the other hand, the respondent before the Ethiopian Federal Cassation appears to have relied on the provision of the Federal Constitution of Ethiopia (FDRE Constitution)[14] that determines Amharic to be the sole working language of the Federal Government and that makes no reference to the official status of English in Ethiopia. The lower courts that

[12] EFSCCD Case, Ethiopian Revenue and Customs Authority v. Daniel Mekonnen 2010.

[13] Šarčević, Susan. 2014. Legal translation and legal certainty/uncertainty: From the DCFR to the CESL proposal. In Pasa Barbara & Lucia Morra (eds.), *Translating the DCFR and drafting the CESL: A pragmatic perspective*. Berlin: Otto Schmidt/De Gruyter European Law Publishers: 48.

[14] FDRE Constitution = the Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1, Federal Negarit Gazeta, Addis Ababa, 1st Year, No. 1, August 21, 1995. See in particular Art. 5, which regulates the issue of language.

supported the respondent's argument took the position that the government must make the law publicly available and announce its existence in a language that has been constitutionally declared the working language before the law can take effect. However, for the Federal Cassation, the consideration of the practical consequences of the decision, which would be a threat for the stability of the existing practice of drafting and publishing directives, carries more weight than the consideration of the non-official status of English in the Ethiopian legal system. This raises the following questions: Why was the constitutional provision that Amharic is the working language of the Federal Government not compelling enough to annul a law that was not drafted in Amharic? Why does English, which has no official status in any of Ethiopia's overarching laws, such as the Constitution, occupy such an important place in legislative and legal interpretation practices in Ethiopia? How has the development of modern Ethiopian law introduced the interplay of official and unofficial languages in the legislative process and in the practice of legal interpretation in Ethiopia historically and today?

1.2. Research questions

Despite the opposite outcomes, the above cases lead to the following three central questions which this study seeks to address:

(1) What factors shaped the laws on official multilingualism in the EU and in Ethiopia?
(2) How do the laws on official multilingualism in each system guide multilingual lawmaking processes?
(3) How do courts in a multilingual environment meet the legitimate expectations of citizens created by laws regulating official language use?

1.3. Introducing the research topics

It is a difficult task to research a foreign legal system and find issues that can be compared to those of one's own country. Each legal system is distinct primarily due to the legal concepts that constitute that legal system. Moreover, the terms coined over time to describe the concepts are tied to the language spoken within the boundaries of the legal culture in which they are expressed, explained, interpreted, and refined over time.[15] Despite these difficulties, one can start from the assumption that similarities are possible, as shown in section 1.1, and then generalize the function of laws and institutional practices to the point where comparisons can be made.

The central premise on which this study is based is that the function of laws on official multilingual use has a similar objective, namely to regulate linguistic diversity in a given territory. Moreover, despite the differences in the rules governing official language use, these laws have the objective of regulating the conduct of institutions involved in lawmaking and legal interpretation with regard to language use. Accordingly, this study sets out to compare the legal systems and language regimes of Ethiopia and the EU in the following three interrelated aspects: the phenomenon of legal multilingualism, multilingual lawmaking

[15] Galli, Alessandro. 2021. Introduction: Legal translation as cross-cultural communication. In: Kirk W. Junker (ed.), *US law for civil lawyers: a practitioner's guide*. 1st ed. Baden-Baden: Nomos: 1.

practices and legal interpretation of multilingual laws. A brief introduction to each topic is given in the following subsections.

1.3.1. The phenomenon of legal multilingualism

I use the term "legal multilingualism" following the work of Leung, who defines it as "the situation where legal systems function in two or more languages".[16] Legal multilingualism involves the translation of the law into other languages, but it can go further, namely to the simultaneous drafting of the different language versions of a law, to the acquisition by lawyers, government officials and administrators of language skills in all the languages used in the law, to the adaptation of approaches to the interpretation of laws and the way in which the discrepancy between the different language versions is dealt with.[17]

The phenomenon of legal multilingualism usually overlaps with official multilingualism in that legal multilingualism normally occurs as a result of the official recognition of two or more languages as official languages. This covers, for instance, the case of legal multilingualism created in the EU, where officially recognized languages by Member States are used in law, and each language version of the laws is considered as equally authentic. But legal multilingualism sometimes appears as a separate concept from official multilingualism. In some cases, the legal designation of official languages does not guarantee their use in the legislature or judiciary. Though Chinese acquired an official status in 1974 in Hong Kong, its use extended to the legal domain only in the late 1980s.[18] In other cases, a language may play an important role, even if that role is not established by overarching laws, such as the Constitution. The position of English in Ethiopia is a prime example for this. Although English has no official status in the 1995 FDRE Constitution, subsidiary laws recognize its role in education (including legal education) and in the publication of laws. The Ethiopian Higher Education Proclamation provides that the "medium of instruction in any institution, except possibly in language studies other than the English language, shall be English".[19] In addition, Proclamation No. 3/1995 stipulates that the "Federal Negarit Gazeta [the Federal Law Gazette] shall be published in both the Amharic and English languages; in case of discrepancy between the two versions the Amharic shall prevail".[20] The role of English in Ethiopian legal education, the legal drafting process as well as in legal interpretation will be discussed in more detail in chapters 7 and 8.

For comparative purposes, it is also important to introduce a further distinction between strong and weak legal multilingualism. This distinction derives from the two types of multilingualism proposed by Schilling: strong multilingualism and weak multilingualism.[21]

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[16] Leung, Janny H. C. 2019. *Shallow equality and symbolic jurisprudence in multilingual legal orders*. Oxford: Oxford University Press: 18.

[17] Leung, Janny. 2012. Statutory interpretation in multilingual jurisdictions: Typology and trends. *Journal of Multilingual and Multicultural Development* 33.5: 482.

[18] Leung 2019: 48.

[19] Higher Education Proclamation No. 1152/2019, Federal Negarit Gazeta, Addis Ababa, 25th Year, 2019, Art. 19(1).

[20] Federal Negarit Gazeta Establishment Proclamation No. 3/1995, Addis Ababa, 1995, Art. 4.

[21] Schilling, Theodor. 2011. Multilingualism and multijuralism: Assets of EU legislation and adjudication? *German Law Journal* 12.7: 1463.

Accordingly, strong legal multilingualism is understood as a system in which all official language versions of a law are equally authentic. Examples include jurisdictions such as Canada, Switzerland and Hong Kong at the national level and supernational bodies such as the EU or the World Trade Organization (WTO).[22] Weak legal multilingualism, as understood here, differs from the strong variant in that there is only one authentic language version of a law which prevails in case of any discrepancy, while the other version(s) are official translations. In Quebec, the Canadian Constitution Act, 1867, Section 133 requires that legislation be published in both English and French. However, French is the only official language, and in the event of any discrepancy, the French version prevails.[23] In Malaysia, too, the use of English is permitted with reservations, but Malay is given a higher status in court and in the interpretation of laws. Similar practices exist in Malta, where in the event of a conflict between the Maltese and English texts, the Maltese text prevails. In Ireland, the Irish text prevails over the English version of the law.[24]

The distinction between strong and weak legal multilingualism is central to the understanding of this study, as the comparative perspective builds on this distinction. The language regime in the EU legal system is presented in this study as representing strong legal multilingualism and the language regime of the Ethiopian legal system as representing weak legal multilingualism. The EU is chosen for the comparative analysis primarily because it has the most radical official multilingualism in terms of the number of official languages, elaborate institutional efforts, and deep commitment to the cause. In addition, many aspects of EU official multilingualism, such as multilingual legal drafting, translation of legal texts, sustainability of the language regime, and interpretation of multilingual laws, are well researched and can serve as a basis for research into a different language regime. The comparative procedure is aimed at gaining insight into the particularities of each legal system and the commonalities in addressing the problems related to legal multilingualism in general.

1.3.2. The role of translation in multilingual lawmaking

Despite the different status given to the different language versions in the respective legal systems of Ethiopia and the EU, legal translation plays an important role in the multilingual lawmaking process in both systems. EU legislation must be enacted in all the 24 official language versions, and all the language versions are authentic. However, this does not mean that all the official languages are used in the drafting of EU legislation. EU law is accessible to its citizens thanks to legal translation into all the official languages. I therefore provide an overview of the procedures for the adoption of binding legal acts by the EU institutions, examine the role that translation plays in the legislative process and show how a vehicular language, namely Euro-English, has developed into a hybrid language in its own right to facilitate the legal translation process.

[22] Leung 2012: 482.

[23] Bastarache, Michel. 2012. Bilingual interpretation rules as a component of language rights in Canada. In Lawrence M. Solan & Peter M. Tiersma (eds.), *The Oxford handbook of language and law*. Oxford: Oxford University Press: 162.

[24] Leung 2012: 483.

Similarly, legal translation has played a prominent role in the Ethiopian legislative process in the past and continues to do so today. The foundation for the practice of the two-way translation of laws from foreign languages (mainly English) into Amharic and from Amharic into English was laid during the massive Ethiopian codification process in the 1950s. This codification process was a result of a wholesale transplantation of laws from a mixture of common and civil law foreign legal systems, the drafting of the legal texts in French or English and the subsequent translation of the laws into Amharic. The Amharic versions were the only authentic versions adopted by the National Parliament, and the English versions were published in the Negarit Gazeta, while the French versions remained only drafts. Currently, Ethiopian federal laws are drafted in Amharic. However, much of the content of the laws continues to be adopted and translated from foreign, mostly English-language legal sources. These draft laws, written in Amharic, are translated into English even before the draft laws are sent for deliberation. After having been passed as law, both versions are published in the Federal Negarit Gazeta, with the Amharic version being the sole authoritative version in the event of discrepancies between the two versions. I therefore first examine how the Ethiopian massive codification process brought the interplay of three language versions – Amharic, English and French – into the Ethiopian legal system with a view to exploring the birth of multilingual lawmaking process in Ethiopia. I then discuss the continued role of translation in the current legislative process of Ethiopian federal laws. Through a comparative overview of legal translation in the two systems, I analyze how legal translation is carried out to achieve different purposes in the two legal systems.

1.3.3. Multilingual legal interpretation

In the third part of the comparative exercise, I examine the inevitable discrepancies between the different language versions that occur when a legal system functions in two or more languages. To this end, I first present the problems, practices and solutions of the EU official multilingualism by looking into the interpretation of EU multilingual laws as applied by the CJEU, a Court authorized to give a final decision over EU laws. I then discuss the difficulties that Ethiopian courts face due to the language problems arising from both the historical (re-)translation and the current (re-)translation processes within the Ethiopian legal system. In doing so, I focus on the interpretive arguments and techniques, as documented in the written opinions of judges in the decisions of the Federal Cassation of Ethiopia. I use this comparison as a laboratory to investigate issues in resolving language discrepancies between the different language versions of a law and achieving uniform interpretation. More particularly, I investigate the question of how the legal multilingualism in both systems multiplies the indeterminacy of the law, while at the same time providing opportunities that monolingual laws cannot provide in the process of legal interpretation. A brief description of both courts helps explain how relevant concepts from the interpretive arguments of both courts are selected based on their functionality.

(i) The Court of Justice of the European Union (CJEU)

The role of the CJEU in shaping the concrete contents of European law is well known. One of the functions of the CJEU is to ensure the uniform application of EU law within the Member States by giving a preliminary ruling. According to Art. 267 of the Treaty on the Functioning of

the European Union (TFEU), a court or tribunal of a Member State before which a question is raised concerning the interpretation of the European Treaties or the validity and interpretation of acts of the institutions, bodies, offices and agencies of the EU is required to refer the matter to the CJEU if no remedy is available under national law.[25] As McAuliffe notes, "the quasi-federalism of the modern-day European Union has chiefly been brought about not by the express agreement of the states that founded the Community, nor by means of a detailed plan for an integrated legal system, but through the interpretative practice and influence of the ECJ [now the CJEU]".[26] This influence is exerted largely because of the Court's power to have the final say on the concrete meaning of EU legislation that have direct effect on EU citizens.[27]

The judgments of the CJEU provide a wealth of experience on how to assess discrepancies between the different language versions of a law and how to achieve a uniform interpretation of the 24 equally authoritative language versions. I take judicial decisions in which language comparison of the different language versions is made as the objects of the study. I then investigate how the language of the law, or more precisely, how the comparison between several equally authoritative language versions of a law determines the legal effect and application of EU law. This, in turn, aims at characterizing the case of strong legal multilingualism, i.e. to identify the types of problems faced by jurisdictions that practice strong legal multilingualism, the strengths that language comparison offers judges interpreting multilingual laws and the factors that influence the decisions that must be made when addressing multilingual laws.

(ii) The Ethiopian Federal Supreme Court Cassation Division (Federal Cassation)

Ethiopia is a federal state since the adoption of the 1994 FDRE Constitution (see the map of the regions and federally administered cities in Figure 1). The Constitution establishes parallel legislative, executive and judicial organs for both the federal and the state governments (see Ethiopia's administrative structure in Figure 2).[28] This means that both the Federal and the State governments have their own Supreme, High and First Instance Courts with their own independent structure and administrations (see the court structure in Figure 3).[29] The Constitution vests supreme federal judicial authority in the Federal Supreme Court.[30]

[25] Consolidated version of the Treaty on the Functioning of the European Union, Art. 267, OJ C 326, 26.10.2012, available at http://data.europa.eu/eli/treaty/tfeu_2012/oj, last accessed November 19, 2022.

[26] McAuliffe, Karen. 2012. Language and law in the European Union: The multilingual jurisprudence of the ECJ. In Lawrence M. Solan & Peter M. Tiersma (eds.), *The Oxford handbook of language and law*, Oxford: Oxford University Press: 202.

[27] McAuliffe 2012: 203.

[28] The FDRE Constitution, Art. 50(2).

[29] The FDRE Constitution, Art. 78(2) and (3).

[30] The FDRE Constitution, Art. 78(2).

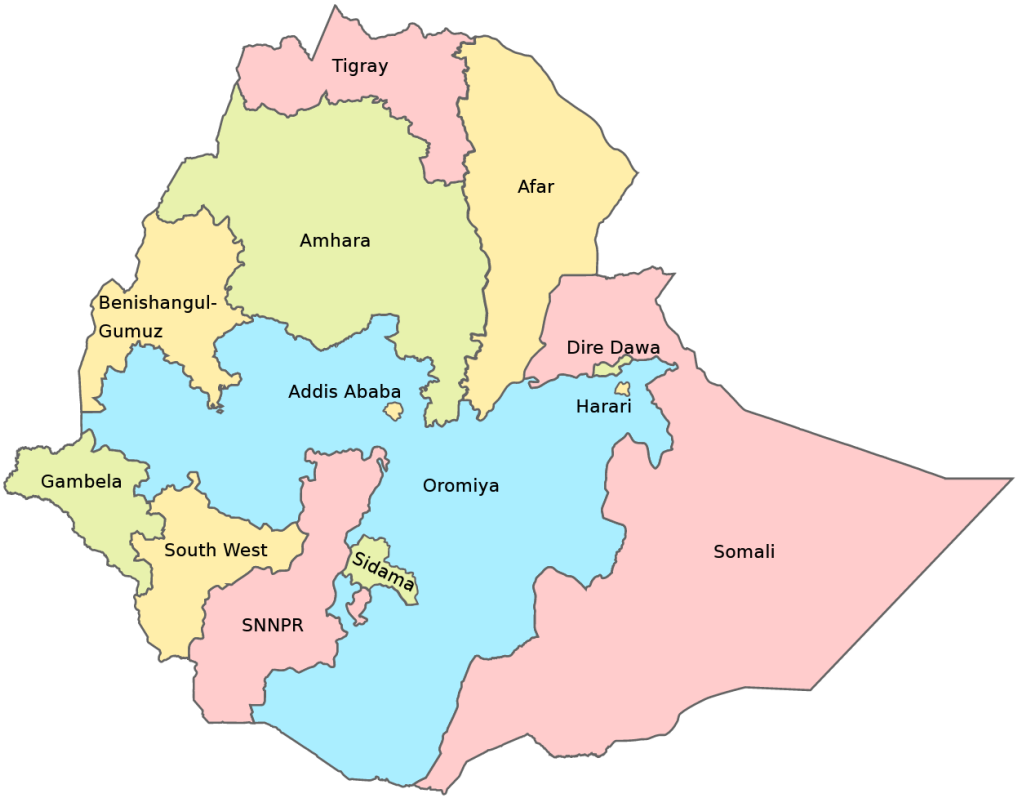

Figure 1. Map of Ethiopia's regional states and federally administered cities.[31]

The FDRE Constitution grants the Federal Supreme Court the power of cassation over any final court decision containing a basic error of law, leaving the details to be regulated by a subsidiary law to be subsequently enacted by the House of Peoples' Representatives, the Federal legislative body.[32] Accordingly, the Federal Cassation Division is established under the Federal Supreme Court in 2005 in order to reduce the language problems in the law by ensuring uniform interpretation of the law.[33]

The final decisions that may be reviewed by the Federal Cassation are either those that have been rendered by courts or other organs vested with judicial powers, or those settled through alternative dispute resolution mechanisms. A recent proclamation setting forth the details of the constitutional provision establishing the power of cassation stipulates that all the following final decisions rendered by courts can be reviewed by the Federal Cassation:

(1) final decisions of the Federal Supreme Court Appellate Division;
(2) final decisions of the Federal High Court rendered in its appellate jurisdiction;
(3) final decisions of Regional Supreme Court Cassation Division decided in violation of the FDRE Constitution or in conflict with binding decision of the Federal Cassation;

[31] Regions of Ethiopia, accessible under https://upload.wikimedia.org/wikipedia/commons/2/21/Regions_of_Ethiopia_EN.svg (License: CC BY-SA 4.0; creator: Jfblanc; contributor: AquaVacation; no changes made).
[32] The FDRE Constitution, Art. 80(3)(a).
[33] See the Federal Courts Proclamation Re-amendment Proclamation No. 454/2005, Federal Negarit Gazeta, Addis Ababa, 11th Year, No. 42, 2005, Art. 2.

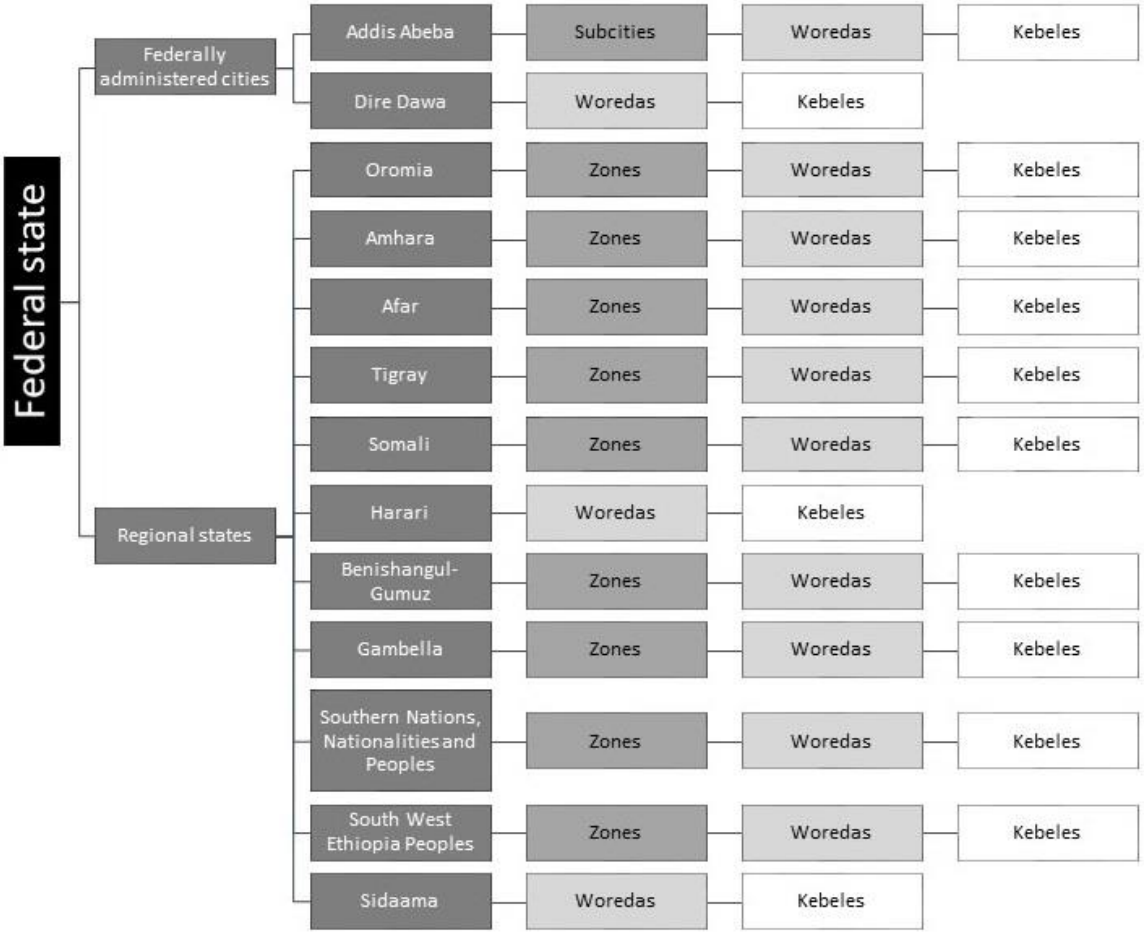

Figure 2. The current administrative structure of Ethiopia (as of 2023) from the Federal level to the smallest division (kebele)

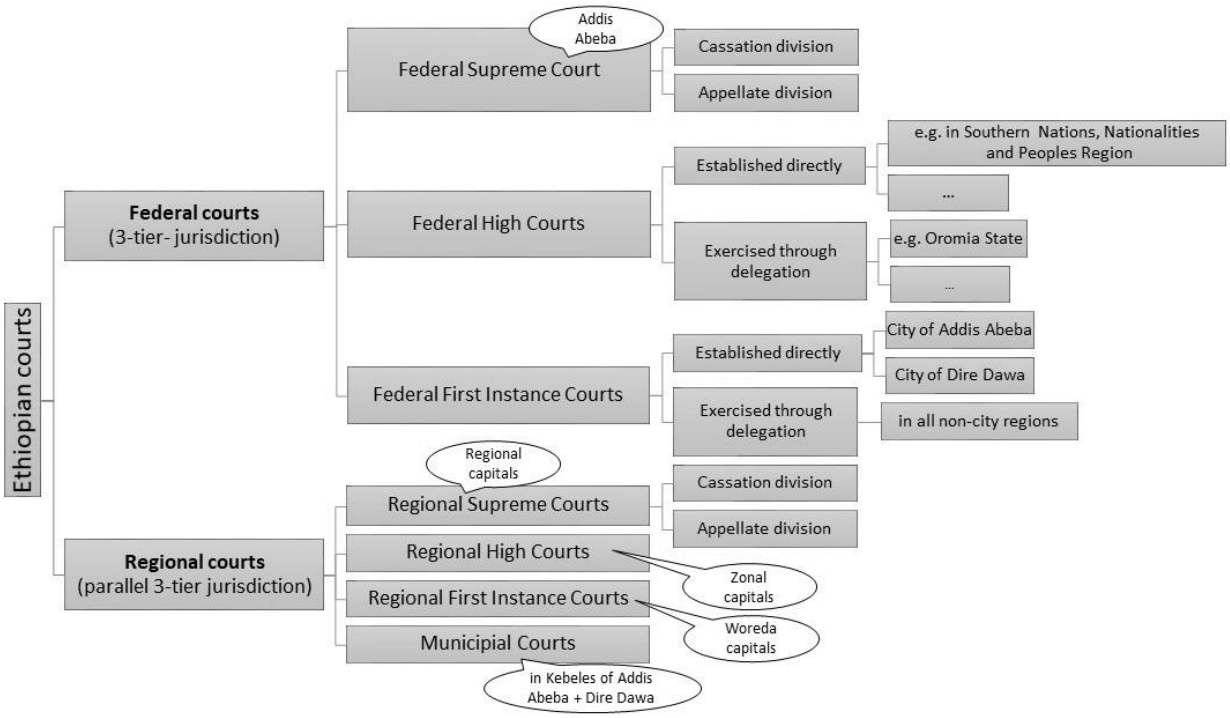

Figure 3. The Ethiopian court structure

(4) final decisions of Regional Supreme Court Cassation Division on regional (state) matters, which are alleged to have been rendered by misinterpreting a legal provision or by applying an irrelevant law to the case, and where the parties can prove, in particular, that these cases are of public interest and national importance; and
(5) final decisions of Regional High court or Supreme Court on federal matters while exercising their constitutionally delegated power of adjudication.[34]

The case law of the Federal Cassation also shows that the power of the Federal Cassation is not limited to reviewing court decisions. Final administrative decisions rendered by quasi-judicial bodies and government agencies have been reviewed by the Federal Cassation at different occasions.[35] The Federal Cassation is thus placed at the peak of the country's judicial and administrative bodies and handles interpretive issues that transcend individual cases.

An interpretation of the law by the Federal Cassation, made by at least five judges, is binding on all lower courts as of the date of the decision.[36] The Federal Cassation is required to publish all binding decisions in print and electronic media, and most of these judgments are currently published in printed form and on its website.[37] Since the establishment of the Cassation Division in 2005, 24 volumes of Federal Supreme Court decisions have been published to date, with each volume containing approximately 100 to 160 cases, varying from volume to volume. For this study, I have searched all the volumes for cases in which a linguistic comparison was carried out and the English version of the laws was used as an interpretive aid. The chosen cases are not presented as a means of testing a specific theory or as a means to make quantitative statements involving either doctrinal claims about cross-country generalizations or causal inferences about how law interacts with language. They are intended only as examples to characterize the system of weak legal multilingualism.

1.4. Research methods

Several questions arise when one sets out to undertake a comparative study on a certain subject: Is there a defined comparative law scholarship? Is there a generally applicable standard method for comparative law research? What is the knowledge gain in comparison? In the next paragraphs, I attempt to answer these questions and establish the method of comparative legal research that is employed to conduct this study.

As far as the methods in comparative law are concerned, reference can be made to two fundamental theses popular in comparative law today: the "convergence thesis" and the

[34] The Federal Courts Proclamation No. 1234/2021, 2021, Art. 10(1).
[35] See for example የፌዴራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት፤ አከለ ምህረቱ v. ማህበራዊ ዋስትና ኤጀንሲ፤ ሰ.መ.ቁ. 61221፤ መስከረም 22 2005፤ ቅጽ 14: 298-302 [EFSCCD Case Akele Mihretu v. Social Security Agency, Cass. File No. 61221, October 2, 2012, Vol. 14: 298-302].
[36] The Federal Courts Proclamation No. 1234/2021, Art. 10(2).
[37] The published decisions of the Federal Cassation are available at https://www.fsc.gov.et/Digital-Law-Library/Publications/Federal-Cassation-Decision-Series/category/cassation-volumes, last accessed November 20, 2022.

"functional equivalence thesis".[38] The defining characteristics of the convergence thesis, also referred by Hendry as "descriptive-positivist approach", is an endeavor to identify similar legal features and operations across legal orders.[39] Based on the observation that socio-economic structures in industrialized countries become more and more similar due to internationalization, Europeanization and globalization movements, the "convergence thesis" advocates that the uniformization of law is equally desirable and possible. Accordingly, only convergent or similar systems or countries that are at a similar stage of development can benefit from each other's experiences, based on the idea that like must be compared with like.[40] If one adopts this viewpoint, a seemingly logical option to conduct a comparative study would be to turn to countries whose legal system, language and legal tradition are similar to Ethiopia's. This method is too formal to be applicable to my study, as it would not allow me to compare institutions that have a different form but perform similar functions, namely the lawmaking institutions as well as the courts interpreting multilingual laws in the compared systems.

The "functional equivalence thesis" on the other hand accepts that legal systems are based on different doctrinal traditions but claims that the structural problems they must solve are the same. The different doctrinal solutions to the same problems are therefore considered functional equivalents.[41] Since the solutions in different legal systems are viewed as responses to common problems, the comparison of different legal systems helps to formulate universal legal principles as a system with its own terminology.[42] Most functional comparativists agree that functional comparative law should not focus on rules but on their effects, not on doctrinal structures and arguments but on events.[43] Judicial decisions are therefore taken as the objects in functional comparative legal studies, and the different legal systems are compared according to the different responses in judicial decisions to similar situations. In addition, function itself serves as *tertium comparationis*. "Institutions, both legal and non-legal, even doctrinally different ones, are comparable if they are functionally equivalent, if they fulfil similar functions in different legal systems."[44]

One can add a third thesis, put forward by legal historian Alan Watson, who counters the functionalist comparativists with the theoretical argument that the convergence of socio-economic structures as well as the functional equivalence of legal institutions do in fact not matter at all.[45] According to Watson, comparative law should no longer simply study foreign

[38] Teubner, Gunther. 1998. Legal irritants: Good faith in British law or how unifying law ends up in new divergencies. *The Modern Law Review* 61.1: 12.

[39] Hendry, Jennifer. 2014. Legal comparison and the (im) possibility of legal translation. In: Glanert, Simone (ed.), *Comparative law-engaging translation*. Oxon, New York: Routledge: 95.

[40] Xanthaki, Helen. 2008. Legal transplants in legal legislation: Defusing the trap. *International and Comparative Law Quarterly* 57.3: 661.

[41] Teubner 1998: 12.

[42] Michaels, Ralf. 2006. The functional method of comparative law. In Mathias Reimann & Reinhard Zimmermann (eds.), The Oxford handbook of comparative law. 1st ed. Oxford: Oxford University Press: 345.

[43] Michaels 2006: 341.

[44] Michaels 2006: 342.

[45] Watson, Alan. 1985. *Evolution of law*. Baltimore, MD: Johns Hopkins University Press; cited in Teubner 1998: 15.

laws but should examine the interrelationships between different legal systems.[46] Watson argues that the transfer of legal institutions between societies has had an enormous historical success, despite the fact that these societies have a bewildering diversity of socio-economic structures. This view departs from the historically dominant notion that laws are an expression of the spirit of nations and that they are deeply rooted in and inseparable from their geographical particularities, customs and politics. Watson claims that national laws have become detached from their original entrenchment in a nation's culture and that the process of globalization is creating a worldwide network of legal communication.[47]

A more recent method, developed to complement and give a more contextual approach to the functionalist comparative method, is elaborated by Kirk Junker and is called the comparative method of translationalism.[48] This method "requires the translator and the reader to compare foreign words and concepts in the context of the system from which they originate," by taking into account the linguistic and cultural aspects.[49] The method involves, among other things, identifying and translating the key terms in the comparative study, paying attention to whether the terms are rendered idiomatically or literally, explaining them in the context in which they are written or said, and indexing the terms in all languages involved so that readers can later look them up in their own native language.[50]

Before determining the method of comparative legal research used in this study, it is first necessary to establish what knowledge is gained from comparative law research in general and what I aim to achieve from the comparative exercise. Scholars agree that carrying out legal research in more than one domestic legal practice in relation to solving a particular problem in a comparative perspective provides a richer experience than simply looking at one's own system and possibly results in conclusions that were not anticipated.[51] Comparative law can also help adopt the necessary critical stance in domestic law reform, more than local doctrinal disputes can do. Moreover, it is recognized as one way to "learn both the geographic breadth and historic depth of possibility in the resolution of social disputes before the law".[52] Issues of "legal cultural translation" from one legal culture to another can only be dealt with by understanding the different legal cultures through comparative legal studies which provide critical perspectives and explain alternatives.[53]

The present study adopts a comparative approach primarily because it is a pioneering contribution in the development of knowledge in the field of law and language in Ethiopia.

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[46] Teubner 1998: 15.

[47] Watson 1985; cited in Teubner 1998: 15.

[48] Junker, Kirk W. (ed.) 2021. *US law for civil lawyers: a practitioner's guide*. 1st ed. Baden-Baden: Nomos: xi.

[49] Junker 2021: xi.

[50] Junker 2021: See in particular the sections Translators' notes, Preface and Introduction as well as Chapter 1: United States' law as foreign law.

[51] Junker, Kirk W. 2005. Comparativism and federalism. *Duquesne Law Review* 44: 84; see also Zweigert, Konrad & Hein Kötz 1998. An introduction to comparative law. Transl. Tony Weir. 3rd ed. Oxford: Oxford University Press: 15-16.

[52] Junker 2005: 83. A catalogue of reasons why one might want to compare legal systems is also listed in Junker, Kirk W. 2020. Why compare? The biological, cognitive, and social functions of comparison for the human. In: Kirk W. Junker (ed.), *Environmental law across cultures: Comparisons for legal practice*. 1st ed. London: Routledge: 11.

[53] Junker 2020: 11-12.

Among the very few works that have addressed relevant aspects of this research domain, there is a brief contribution by Briottet on some difficulties related to the interpretation of law codes introduced through the wholesale legal transplantation process of the 1950s in Ethiopia.[54] An article by Fassil & Fischer from 1968 also discusses some specific examples of legal terminology in the procedural codes of Ethiopia.[55] Relevant for a critical look at the extent of power granted to the Federal Cassation is an academic paper in which Hussein examines the binding authority of the decisions rendered by the Federal Cassation on all lower courts at all levels throughout the country and how they resemble and diverge from the doctrine of precedent in common law countries.[56]

Some other scholars have also approached the issue from the perspective of considering language rights as human rights. Mitiku, for example, inquires whether there are international standards concerning language rights and compares the nature of the policies and laws adopted by Ethiopia and Mauritius.[57] Along the same line, Yonatan takes a comparative perspective of the experiences of Ethiopia and South Africa to examine the challenges of implementing inclusive language policies in multilingual states.[58] Other available scholarly works from the disciplines of sociolinguistics and political science focus on language use in education[59] and the politics behind the existing laws and practices regulating the official and unofficial use of languages.[60]

However, none of the above scholarly works systematically examines the relationship between laws regulating the official use of languages in Ethiopia, the procedures and practices in lawmaking and the arguments in court decisions, and assesses the impact of one on the other. This study therefore opens up a new area of research by adopting a comparative approach based on the argument that a better knowledge of foreign legal systems, which takes into account the socio-legal environment, leads to an increased understanding of the

[54] Briottet, Roger. 2009. French, English, Amharic: The law in Ethiopia. *Mizan Law Review* 3.2: 331-340.

[55] Fassil Abebe & Stanley Z. Fisher. 1968. Language and law in Ethiopia. *Journal of Ethiopian Law* 5: 553-572.

[56] Hussein Ahmed Tura. 2014. Uniform application of law in Ethiopia: Effects of cassation decisions of the Federal Supreme Court. *African Journal of Legal Studies* 7.2: 203-231.

[57] Mitiku Mekonnen Chere 2009. *The recognition of language rights under international human rights law: Analysis of its protection in Ethiopia and Mauritius*. Pretoria: University of Pretoria (LLM Thesis), available at http://hdl.handle.net/2263/12644, last accessed September 15, 2022.

[58] Yonatan Tesfaye Fessha 2009. A tale of two federations: Comparing language rights in South Africa and Ethiopia. *African Human Rights Law Journal* 9.2: 501-523.

[59] Meyer, Ronny & Renate Richter. 2003. *Language use in Ethiopia from a network perspective: Results of a sociolinguistic survey conducted among high school students*. Frankfurt: Peter Lang; Cohen, Gideon P. E. 2000. *Identity and opportunity: The implications of using local languages in the primary education system of the Southern Nations, Nationalities and Peoples Region (SNNPR), Ethiopia*. London: University of London, School of Oriental and African Studies (PhD dissertation).

[60] Baye Yimam. 2020. የኢትዮጵያ የቋንቋ ፖሊሲ ታሪካዊ ዳራ ቅኝት [Historical analysis of Ethiopian language policy]. In The Federal Democratic Republic of Ethiopia Ministry of Culture (ed.) በኢትዮጵያ የቋንቋ አጠቃቀም፣ የማኅበራዊ ገጽታው እና ሀገራዊና ዓለም አቀፋዊ የቋንቋ ፖሊሲ ተመክሮዎች [Language use in Ethiopia, its social manifestations and language policy experiences at national and international level]. Unpublished manuscript; Aberra Dagafa. 2008. Language choice in multilingual societies: An appraisal of the Ethiopian case. *The Journal of Oromo Studies* 15.2: 61-95; Getachew Anteneh & Derib Ado. 2006. Language policy in Ethiopia: History and current trends. *Ethiopian Journal of Education and Science* 2.1: 37-61; Smith, Lahra. 2008. The politics of contemporary language policy in Ethiopia. *Journal of Developing Societies* 24.2: 37-62.

functioning of one's own domestic legal features, institutions and procedures.[61] As the EU legal system and language regime is a well-researched area, I draw on a wide range of previous scholarly works and insights on EU multilingualism and its impact on lawmaking as well as legal interpretation processes. But this work is not only aimed at those interested in the Ethiopian legal system as a target audience. As Junker rightly points out in his book U.S. Law for Civil Lawyers: A Practical Reference Guide, "even a U.S. lawyer who is reading U.S. law explained as foreign law, benefits from thinking reflectively about why the practices are explained the way they are to a reader from outside the system."[62] For stronger reasoning, one could argue that a lawyer-linguist reading about the EU official language regime and its application in the lawmaking and legal interpretation processes of the EU, including concepts of comparison with a different legal system and language regime, benefits from reflecting on why the law and practices are explained as they are to a reader from outside the system.[63]

As for the specific research method followed to conduct this study, an amalgam of scholarship deemed effective in achieving the goals of this work is developed by following the basic principles of the functional comparative law method. I begin from the presumption that laws on official multilingual use serve a similar function of regulating linguistic diversity in a given territory and governing the conduct of institutions involved in law-making and legal interpretation with regard to their language use. In this sense, the structural problems faced by the Ethiopian and EU legal systems and language regimes are functionally similar, as both systems use laws on official language use to regulate their linguistic diversity and decide on which languages are to be officially recognised, which languages are to be used in lawmaking and what authority each language version of a law is to be granted when the courts interpret the multilingual laws. Therefore, the laws governing language use in Ethiopia are considered functionally equivalent to those governing official multilingualism in the EU; the legislative process of the Ethiopian federal government is taken to be functionally equivalent to the ordinary legislative procedure of making EU legislation in EU institutions; and the method of comparing the Amharic and English language versions in interpreting the law in the context of the uniform application of Ethiopian laws by the Federal Cassation is compared to a similar function of the CJEU. Nevertheless, I do not rule out a priori the assumption that the two legal systems and language regimes are so different that little common ground can be found in the systems compared.

In addition, the study applies the comparative method of translationalism elaborated by Junker,[64] but for a different purpose. While Junker uses the method of translationalism in comparative law as a key to understanding a foreign legal culture, I use it in this study as a communication tool to bridge the gap created by language and make the results of the study more comprehensible to the addressees of this thesis who are not familiar with Ethiopian legal culture and Amharic legal language. Even though this thesis is written in English, much of the data collected during the study from the Ethiopian perspective was available in Amharic. The

[61] See the details in Hendry 2014: 88.

[62] Junker 2021: xi.

[63] The difference between foreign law and comparative law is presented in Junker 2021: 10.

[64] Junker 2021: See in particular the sections Translators' notes, Preface and Introduction as well as Chapter 1: United States' law as foreign law.

results of the comparison would therefore not be readily understandable without a translation of the data into English. I have hence translated into English data that are found only in Amharic, including relevant cases of the Federal Cassation, a section of the explanatory note of the FDRE Constitution regarding official language regulation and provisions of the Federal Legislative Process and Legal Drafting Manual. Moreover, in order to show mismatches between the Amharic and English versions or translation errors in one of the versions of Ethiopian laws, the relevant Amharic provisions are paraphrased so that readers who neither speak nor read Amharic can see where the mismatches or errors come from. As Solan notes, "it is only by placing a bad translation next to a good one that, through a chain of inferences, the essence of the passage becomes clear".[65] Finally, with a view to considering the cultural differences between the two systems, the historical and political context in which the legal institutions were created is also presented. For easy reading, the Amharic terms used in this thesis are transliterated based on the table developed for *Aethiopica*, the International journal of Ethiopian and Eritrean Studies.[66]

To carry out the study, I rely on the laws that govern language use in Ethiopia and in the EU. Global experiences regarding how official language use is regulated at subnational, national and supranational levels are also discussed to enrich the comparison. Constitutional and legislative documents, news reports, policy documents and academic works are consulted. Interviews are conducted with experts, including those working on Ethiopian language and culture as well as in Ethiopian lawmaking and with an expert from the CJEU. The institutional procedures of lawmaking in both systems are examined to compare how laws regulating official language use impact these procedures. Moreover, selected court cases that have a high degree of legal authority in each of the systems being compared are examined. This enables me to focus only on the hard cases that have reached the upper tier of the courts' jurisdiction and that are probably the most controversial cases in each system.

A focus on hard cases bears the risk of creating the impression that the compared legal systems are full of arbitrary decisions. While this is true to a certain extent, the application of the law does not always result in linguistically controversial circumstances. Sometimes, the language of the law is sufficiently clear for the court to apply the law as it is and does not need further interpretation. Beyond this, hard cases that reach the upper tier of the courts' jurisdiction represent only a small percentage of the disputes decided by the judiciary. This limitation becomes even greater when compared to the number of disputes that are initially brought to court or, worse, the number of disputes that are resolved in other non-judicial dispute resolution mechanisms. Despite these limitations, the investigation of functionally equivalent concepts in the two legal systems and language regimes under comparison enables us to move to broader levels of abstraction and generate new ideas that may be conceivable beyond the jurisdictions under study. Legal translators can learn from the examples in this study of how courts in both systems discover and resolve translation problems in multilingual

[65] Solan, Lawrence M. 2008. The interpretation of multilingual statutes by the European Court of Justice. *Brooklyn Journal of International Law* 34.2: 292.

[66] See Aethiopica n.d. Transcription/Transliteration Tables. https://journals.sub.uni-hamburg.de/toc-aethiopica/Miscellaneous/Aethiopica_Transliteration.pdf.

laws and become more conscious to avoid similar problems in the future. The study is also hoped to inform judges who strive to ensure uniform interpretation and application of the law about the complex environment in which multilingual laws are produced and to enable them to recognize how linguistic differences arise in multilingual laws.

1.5. Outline of the study

Following the structure for comparing the two systems outlined in Section 1.3, I begin with a discussion of the approaches regulating official language use by drawing on the experiences of different countries around the world. Although there are some countries such as the United States, Germany and the Netherlands that have not granted official status to any language in their territory by law, the default assumption since the end of the 20th century is that legislation should regulate what language(s) may or must be used for public purposes. However, when and under what circumstances and conditions a language becomes relevant enough to claim legal recognition and protection, and the extent to which languages spoken in a certain territory are formally reflected in positive law, varies from one state to the other and depends on a number of factors, ranging from the historical development of the nation to current demographics and power relations. Chapter 2 addresses such issues by citing examples which illustrate the development of official multilingualism. Using this as a foundation, Chapter 3 provides an overview of the language regime that governs the EU official multilingualism and then discusses the multilingual lawmaking process resulting in 24 equally authentic language versions. In doing so, it attempts to address the question as to how laws regulating official language use of the EU converge and diverge with EU lawmaking practices, and it investigates how lawmaking through legal translation can become compatible with the principle of equal authenticity.

Chapter 4 presents the approaches that have been used in the past and present to regulate official language use in Ethiopia. I deduce the official position towards the languages spoken in the country from the language use practices of the governments that ruled Ethiopia in the past, from the patterns of language use in unofficial settings and the legal provisions in the current federal and state (subnational) constitutions of Ethiopia. Particular attention is paid to language regulations in the areas of education and public administration, as these are areas over which the state has significant control regarding language use. In Chapter 5, I turn to the early experiences of multilingual lawmaking in Ethiopia's modern legal history and discuss the wholesale transplantation of Western modern laws through a massive codification process in the 1950s and the translation of these transplanted laws into Amharic. The chapter examines how the codification process laid the foundation for the interplay of three language versions – Amharic, English and French – in the Ethiopian legal system and explores the birth of multilingual lawmaking process in Ethiopia.

The next three chapters (Chapters 6-8) focus on the comparison of multilingual legal interpretation procedures in the EU and the Ethiopian legal systems and language regimes, each system representing strong and weak variants of legal multilingualism. Chapter 6 discusses cases in which the CJEU explicitly compares several equally authoritative language versions in order to determine the legal effect and application of EU law. In doing so, I attempt

to address the questions of how the CJEU attributes the same weight to all 24 equally authentic language versions while achieving a uniform interpretation of EU law, and to what extent the legal interpretation practice by the CJEU poses a challenge to the realization of legal certainty or leads to legal uncertainty.

Chapter 7 examines the interpretive rules of the Ethiopian legal interpretation process, which indicate, superficially, that the Ethiopian legal system is a monolingual legal system in which only the Amharic versions of the laws are legally recognized and the English versions are translated for convenience. By discussing the importance of English in Ethiopian legal education, the current practice of the Ethiopian Federal Government's legislative process as well as the position of the Federal Cassation on the place of English versions of Ethiopian laws, I present arguments why the Ethiopian legal system should be characterized a system of weak legal multilingualism rather than being classified as a monolingual legal system. Chapter 8 then delves into the question of how the phenomenon of weak legal multilingualism operates in the context of the legal interpretation practice of the Federal Cassation. To this end, selected decisions of the Federal Cassation in which the Amharic and English versions are explicitly compared are analyzed and discussed. The chapter attempts to address the questions of what problems lead the Federal Cassation judges to compare the two language versions and base their final interpretation on the meaning supported by the English versions, how the process of comparing the two versions reveals the language problems in the laws, and what justificatory power the reasoning based on the version comparison has for the final outcome of the case. Finally, Chapter 9 concludes the study.

Chapter 2. Approaches to regulating language use: Global perspectives

2.1. Introduction

Though estimates vary, it is believed that more than 7,000 languages are spoken in fewer than 200 countries, 193 of which are members of the United Nations.[67] The phenomenon of linguistic diversity within the same political community, alternatively referred as societal multilingualism, can be found in almost every modern state.[68] The Hispanic population in the United States, for example, has grown from 4.4% of the national total population in 1970 to 17.6% in 2016, and a significant number of them continue to preserve their language and customs.[69] Berlin is known to be the home to the largest Turkish community outside of Turkey. There are over 2,000 living languages in Africa, of which over 500 are spoken in Nigeria and about 275 in Cameroon.[70] Ethiopia is also home to more than 90 languages spoken as mother tongues.[71] Many more similar examples could be mentioned here. But when and under what circumstances and conditions a language becomes relevant enough to claim legal recognition and protection, and hence the extent to which societal multilingualism is formally reflected in positive law, differs from one nation to another and is based on a range of factors — from the historical evolution of the nation to current demographics and power relationships.[72]

Law is selective in the recognition — and even more so in the protection — of linguistic diversity. Of the approximately 7,000 languages that exist in the world, less than 4% have official status in any of the existing states today.[73] By taking a comparative approach, this chapter views different polities in their social, historical and political contexts and explains why some states grant official language status to only one language and deny it to others, why other states become officially multilingual; and why differences in the status of languages that receive official status occur within a state.

The remainder of the chapter is divided into five main sections. Section 2.2 gives a general overview of the different approaches taken by states to address linguistic diversity. This is followed by Section 2.3, which goes back into history and investigates the experiences of a few states in order to illustrate how states have historically dealt with the reality of language diversity within their jurisdictions and how this has shaped their current official

[67] Leung 2019: 4.

[68] Clyne, Michael. 2017. Multilingualism. In Florian Coulmas (ed.), *The handbook of sociolinguistics*. Oxford: Blackwell: 302.

[69] Torres, Alicia, Luz Guerra, Selma Caal & Weilin Li. 2016. *Reaching and engaging with Hispanic communities: A research-informed communication guide for nonprofits, policymakers, and funders*. Washington DC: The Crimsonbridge Foundation: 2.

[70] Eberhard et al. 2022.

[71] Ethnologue currently lists 91 languages; see Eberhard et al. 2022.

[72] Sullivan, Ruth. 2003. The challenges of interpreting multilingual, multijural legislation. *Brooklyn Journal of International Law* 29: 986.

[73] Vieytez, Eduardo J. Ruíz. 2004. Official languages and minority languages: Issues about their legal status through comparative law. Paper presented at the II Mercator International Symposium "Europe: A new framework for all languages", Tarragona, February 27-28: 3.

multilingualism. Section 2.4 then examines the most important factor responsible for the spread of official multilingualism in recent decades, namely postcolonialism and its effects. Section 2.5 concludes the chapter.

2.2. Approaches to regulating linguistic diversity

Language use has only recently been subjected to explicit legal regulation in the long history of mankind. At the end of the 20th century, the issue of legislating which language(s) may or must be used for public purposes became one of the standard concerns of statecraft.[74] However, this should not give the impression that polities have historically been language-neutral. The history of nation-building, even in liberal states, has traditionally involved the promotion of the official language and the suppression of other languages.[75]

It is generally accepted today that a state is an entity that has the sole authority to decide how the law should regulate linguistic diversity within its boundaries.[76] Since this decision is one in which the political sovereignty of each independent polity manifests itself, there seems to be a priori no limit to the decision of each state in this regard, nor any single possibility of interference by an international institution.[77] Based on this authority, states decide whether to grant official language status to only one language and deny it to others, whether to become officially multilingual, whether to treat differently the various languages that are granted official language status and what kind of legislation they use to enshrine rules for language use.

Public language use may be enshrined in law, either by including a provision in the prime constitutional document of the state, issuing a derived language legislation whose legal protections are attached to the constitutional provisions or even through the enactment of an ordinary legislation, executive order or a regulation.[78] Some authors, such as Vieytez, question the ability of language legislation to directly influence the economic and social motivations behind a specific language choice.[79] Though the constitutional status of the Irish language is extremely strong, for example, the geographical base of the language is very weak and territorially dispersed.[80]

In addition, it is not easy distinguish in legal terms between dialect and language, as this distinction is based not merely on scientific fact but on political and symbolic factors.[81] Other

[74] Battarbee, Keith. 2010. Shifts in the language of law: Reading the registers of official-language statutes. *Text & Talk* 30(6): 637-655.
[75] Archibugi, Daniele. 2005. The language of democracy: Vernacular or Esperanto? A comparison between the multiculturalist and cosmopolitan perspectives. *Political Studies* 53.3: 539.
[76] Palermo, Francesco. 2008. Linguistic diversity within the integrated constitutional space. In Győző Cholnoky (ed.), Minorities research 10: Changing landscape of the European Liberty and Security, 6th Framework Research Programme of the EU Commission. Budapest: Lucidus Kiadó: 75.
[77] Vieytez 2004: 13.
[78] Battarbee 2010: 639.
[79] Vieytez 2004: 4.
[80] Coakley, John. 2021. Geographical retreat and symbolic advance?: Language policy in Ireland. *Language Problems and Language Planning* 45.2: 239.
[81] Vieytez 2004: 4.

factors, such as language names and the scripts in which languages are written, also give rise to political controversies that the law seeks to address. But instead of resolving the controversies, the law may even create new linguistic realities that lead to further disputes.[82] Furthermore, as Battarbee notes, whatever is said or not said in the law ultimately comes down to public practice. It is, for example, what courts decide when resolving conflicts related to public language use that can shift or reorient the practical implementation of statutory or executive policies.[83] Nevertheless, the symbolic value of a language legislation for the future of a language cannot be underestimated.[84]

There are different approaches to address linguistic diversity in a state, i.e. which languages should be recognized in which areas of public language use. One may categorize these approaches for ease of reference as official monolingualism, disestablishment and official multilingualism, categorizing official bilingualism as a subtype of the latter. Leung defines the term "official monolingualism" broadly as "the adoption of one language for official use – a lingua franca, a diplomatic language, an imperial language, or language of the ruling class, be it in a tribe, kingdom, colony, empire, modern state, or an international legal encounter".[85] A monolingual official language law is typically associated with the strong assertion of a nation-state. When a state opts for a monolingual official language law, this implies the "non-recognition" of all other languages by recognizing only one of the languages present in the socio-cultural environment as valid for the public life of that society.[86] The law may also be supported by justification against bilingualism or multilingualism, related either to the financial cost and other resources or to the implicit threat to the unity of the nation.[87]

"Disestablishment" is an approach that refers to a conscious decision not to declare a particular language "official", as has happened in the United States, Germany, the Netherlands etc.[88] But even in countries that follow this approach, decisions must still be made about the de facto language(s) of public communication. This is more the case today than ever before, because public institutions cannot disengage from questions of language use when providing public services or conducting public business.

"Official multilingualism" is perhaps the opposite of "disestablishment". This approach holds that each language spoken in a polity ought to enjoy the same public recognition when offering public services or transacting public business.[89] Given the large number of languages compared to the number of modern states in the world, an approach that assumes an essentially monocultural and monolingual nature of states does not correspond to the linguistic reality.[90] As the socio-cultural environment evolves, liberal tendencies emerge over time. The desire to maintain political cohesion through monolingual policies and practices

[82] Vieytez 2004: 4.
[83] Battarbee 2010: 640.
[84] Vieytez 2004: 3.
[85] Leung 2019: 35.
[86] Battarbee 2010: 640.
[87] Battarbee 2010: 640.
[88] Patten, Alan. 2001. Political theory and language policy. *Political Theory* 29.5: 693.
[89] Patten 2001: 695.
[90] Vieytez 2004: 2.

gradually becomes replaced by recognition of the right of speakers of non-hegemonic languages (regional or ethnic minorities, indigenous peoples, immigrant communities) not to necessarily conform to the dominant language of society, but to be allowed or even be encouraged to use their own language in the public sphere.[91]

Although the above suggests that official multilingualism or bilingualism may result from the evolution of the socio-cultural environment that leads to liberal tendencies over time, there are examples of states where official multilingualism or bilingualism is linked to the history of the state formation itself. I present a few examples of the latter states in Section 2.3. In addition, important historical events such as postcolonialism have also contributed to the flourishing of official multilingualism in many states (see Section 2.4).

Even in countries that have established official multilingualism, there are differences in the status of languages that are given official status within a state. The status depends on how the officially multilingual jurisdictions approach the issue of linguistic diversity within their territory and the rhetoric supporting the laws regulating language use. In officially multilingual jurisdictions, an official multilingual model based on the rhetoric of equality and diversity may be established. Such a model has inspired countries like Canada and Switzerland, and supranational entities like the EU.[92] English and French are seen as central to Canada's identity, and the language arrangements that emphasize the equality of the two languages are "imagery of two communities that were critical to the formation of the nation now living harmoniously with each other".[93]

Patten identifies two other official multilingual models that different jurisdictions employ to create hierarchy between the officially recognized languages: "language rationalization" and "language maintenance".[94] "Language rationalization" appeals to the benefits of linguistic convergence such as socioeconomic mobility, democratic participation, formation of a common political identity and efficiency of public institutions.[95] This approach clings to a national narrative about "lineage" in order to promote convergence on a privileged public language or group of languages by restricting or denying recognition to other languages.[96] The privilege of language use may be due either to the fact that the language was chosen by those who exercise political, military or economic power in society, or to the fact that the choice of a language is considered more appropriate because of its status as a literary or religious language, and especially as a written language.[97]

"Language maintenance" is another way of selecting a language for special recognition, but for a different reason.[98] This approach is a reaction to the objection that granting equality to all languages within certain jurisdiction is a far too formal approach to language policy, arguing that it results in very unequal outcomes. States may therefore include in their constitutions

[91] Battarbee 2010: 641.
[92] Patten 2001: 695.
[93] Leung 2019: 91.
[94] Patten 2001: 695.
[95] Patten 2001: 698.
[96] Leung 2019: 92.
[97] Battarbee 2010: 638.
[98] Patten 2001: 701.

provisions on the linguistic rights to which certain groups of persons or individuals speaking non-official languages and persons belonging to national or ethnic minorities are entitled. For example, the constitutions of Russia, Latvia, Poland, Hungary, Belarus, Georgia, Croatia, Slovenia and Azerbaijan guarantee the right to freely use one's own language.[99] Likewise, the constitutions of Romania, Moldavia, Northern Macedonia, Albania and Croatia include the right to preserve one's linguistic identity.[100]

Along the same line, Leung summarizes the official rhetoric that accompanies official multilingual laws in three keywords: "universal principles (such as equality and diversity), lineage (such as national identity and cultural heritage), and utility (such as economic value and political stability)".[101] The rhetoric of "utility" emphasizes the economic value and political stability that the choice of an official or working language can bring to a country.[102] This is often a justification given when special legal status is granted to an exogenous language, which has most often been a colonial language, or a regional or international lingua franca. I return to this issue in Section 2.4.

These and other similar justifications, which are either enshrined in the constitutions or in other language legislation, may take into account the number and the extension of the languages traditionally spoken in that territory, the existing legal situation, the linguistic dynamics and their context, and the political organization of the state.[103] A given law on language may use one or a combination of these rhetorical tropes, which may often come in tension with each other.

2.3. Official multilingualism in the historical evolution of states

As discussed in Section 2.2, official multilingualism usually results from the evolution of the socio-cultural environment within a state, which leads to liberal tendencies over time. However, some states seem to have preserved their linguistic diversity since their founding. Looking at the historical evolution of the Swiss Confederation, for example, military alliances across three German-speaking cantons were first established as the Swiss Confederation in 1291.[104] The Confederation later expanded to include French-, Italian- and Romansh-speaking cantons, but their local autonomy and linguistic diversity were maintained. The Swiss Federation currently consists of 26 cantons, of which 17 are German-speaking (71.6% of the total population), 4 cantons are French-speaking and form the largest linguistic minority (23.6%), 1 canton (4.4%) is Italian-speaking and the remaining 4 cantons are bilingual or multilingual.[105] German, French and Italian were declared official languages in the Swiss

[99] See the constitutions of Russia (Art. 26), Latvia (Art. 114), Poland (Art. 35), Hungary (Art. 68), Belarus (Art. 50), Georgia (Art. 38), Croatia (Art. 15), Slovenia (Art. 61) and Azerbaijan (Art. 45); cited in Vieytez 2004: 5.

[100] See the constitutions of Romania (Art. 6), Moldavia (Art. 10), Northern Macedonia (Art. 48), Albania (Art. 20) and Croatia (Art. 15); cited in Vieytez 2004: 5.

[101] Leung 2019: 91.

[102] Leung 2019: 92.

[103] Vieytez 2004: 14.

[104] Leung 2019: 65.

[105] Andrey, Stéphanie, Emilienne Kobelt & Daniel Kübler. 2008. Is there a trade-off between diversity and performance? Efficient communication versus multilingualism in the Swiss federal administration. Paper

Constitution of 1848, and a constitutional amendment of 1938 added Romansh as a fourth national language to protect the linguistic rights of a small minority (0.4% of the overall population).[106] As one might expect, given the evolution of the language regime, none of the official languages has equal utility in cross-community communication, but each language has clear linguistic dominance at the canton level.[107]

The Swiss model is often referred to as "territorial multilingualism". This is a model where "the state recognizes several languages as official, but they enjoy this status in different areas of the territory".[108] Witte explains several variants that states can opt for within the framework of territorial multilingualism:[109]

(1) States can be flexible or very strict in defining the boundaries within which the official language regime is established;
(2) the official language regime may be introduced in part of the territory of a unitary state, or the territorial criteria may lead to a federal state; and
(3) the territoriality may or may not include transitional zones where the minority enjoys linguistic rights.

Belgium also practices territorial multilingualism, a fact which can also be traced to the history of its state formation. When Belgium was founded as an independent modern state in 1830, the Flemish north of the country, home to 50% of the population, was Dutch-speaking with very little French. The Walloon south of the country, with 42% of the population, was French-speaking and there were hardly any Dutch speakers. In contrast, the linguistic composition of Brussels (the capital city) was more complex, being composed of French speakers and bilinguals. The ethnic composition of Belgium is further complicated by the presence of German-speaking cantons as a result of the two world wars.[110]

French, which also gained prestige as a European language towards the end of the 18th century, was used as a means of promoting a unified national consciousness and creating a single nation, and Flanders had to adapt linguistically. A strict language policy was pursued in favor of French and to the detriment of Dutch, which is best illustrated by the fact that all official documents were declared by law to be made up only in French from 1803 onwards (even before Belgium was founded as a modern state).[111] Nevertheless, the freedom of language enshrined in the original Belgian constitution also encouraged the continued use of Dutch in private life, and some laws continued to be translated into Dutch because it was

presented at the European Group on Public Administration's Yearly Conference, Rotterdam, September 3-6, 2008.

[106] Leung 2019: 65.

[107] Edwards, John. 2008. Societal multilingualism: reality, recognition and response. In Peter Auer & Li Wei (eds.), *Handbook of multilingualism and multilingual communication*. Berlin: De Gruyter Mouton: 448.

[108] Vieytez 2004: 12.

[109] Witte, Els. 1993. Language and territoriality. A summary of developments in Belgium. *International Journal on Minority and Group Rights* 1.3: 204.

[110] Witte 1993: 205.

[111] Van der Jeught, Stefaan. 2017. Territoriality and freedom of language: The case of Belgium. *Current Issues in Language Planning* 18.2: 182.

feared that they would otherwise not be understood.[112] It would take until the Act of 18 April 1898 before the principle of the equal authenticity of the Dutch and the French legal texts was established and all statutes began to be drafted in both languages and published opposite each other in the official journal.[113]

In a long process, the principle of individual language rights was replaced by territorial language rights, resulting in the exclusive use of Dutch in public life in the Flemish region. The official recognition of the concentration of a particular ethnic community in a given territory turned Belgium into a country with clear linguistic borders, thus laying the foundation for a federated state.[114] Art. 4 of the Belgian Constitution provides that Belgium comprises four linguistic regions: the Dutch-speaking (Flanders) region, the French-speaking (Wallonia) region, the bilingual region of Brussels-Capital and the German-speaking region. Each municipality of the Belgian Kingdom forms part of one of these linguistic regions.[115] This is the clearest expression of the principle of territoriality underlying the Belgian State.

Likewise, Finnish and Swedish are granted equal official status in Finland, primarily due to a long historical process in the formation of the state.[116] Before Finland became an autonomous Grand Duchy of the Russian Empire in 1809, it belonged to a group of Swedish provinces where Finnish speakers made up about 20% of the total population from the 12th century onwards. During this period, Finnish was used at home, for legal and religious purposes. However, urbanization and schooling contributed to the deterioration of the position of Finnish towards the end of the Swedish period.[117] Finland's autonomy increased when it became part of the Russian Empire, but Swedish retained its position as an administrative, educational and media language until the Language Decree of 1863 gave Finnish speakers the right to use their own language in court and in official matters. After Finland gained independence from Russia in 1917, the Finnish Constitution of 1922 declared that Finnish and Swedish are equal national official languages. This is also confirmed in the Language Act of 2002,[118] despite the large difference in the current proportion of native speakers of the two languages. Finnish is the mother tongue of 93% and Swedish the mother tongue of 5.7% of the country's approximately 5 million inhabitants.[119]

2.4. Official multilingualism as a postcolonial legacy

Postcolonialism appears to be the most important historical factor influencing the language laws of states. In a study conducted by Leung, it is concluded that the language laws of many bilingual and multilingual jurisdictions throughout the world are a result of their postcolonial

[112] Van der Jeught 2017: 183.

[113] Van Calster, Geert. 1997. The EU's tower of Babel: The interpretation by the European Court of Justice of equally authentic texts drafted in more than one official language. *Yearbook of European Law* 17.1: 366.

[114] Witte 1993: 207.

[115] The Belgian Constitution, as updated following the constitutional revision of March 17, 2021, Belgian Official Gazette of March 30, 2021 (English translation): Art. 4.

[116] Taavitsainen, Irma & Päivi Pahta. 2003. English in Finland: Globalization, language awareness and questions of identity. *English Today* 19.4: 3.

[117] Taavitsainen & Pahta 2003: 4.

[118] Taavitsainen & Pahta 2003: 5.

[119] Taavitsainen & Pahta 2003: 4.

legacy. Among 74 bilingual and multilingual states identified in the study, 63 (or 85%) have retained one or more colonial languages as official languages.[120]

The former colonial languages are chosen as official languages in most of these postcolonial countries for their utilitarian value. They are perceived politically neutral and have become a lingua franca, serving as sources of stability in the building of ethnically diverse nations. Singapore is the best example for promoting the utilitarian value of English for its nation-building process. Because of the position of English as a politically neutral language in light of the racial conflicts that immediately preceded the country's independence, English was declared as a working language of Singapore along with other languages.[121]

The choice of former colonial languages for their utilitarian value is also common in many African countries whose former colonial languages are designated as official languages.[122] Cameroon, for example, which has about 275 indigenous languages, has opted for French and English as official languages.[123] After World War I, what is now Northwest and Southwest Cameroon was under British colonial rule, while the remainder of the country was under French rule. It was decided, after independence, that both territories could only form a united country if Cameroon became a bilingual federal republic with French and English as official languages, and if one adopted a bijural system, with francophone Cameroon retaining the civil law system and Anglophone Cameroon retaining the common law system.[124] Currently, all legal documents are written in English and French, and courtroom hearings are conducted in either of the languages, depending on which part of Cameroon the court is found.[125]

In contrast, other African countries have tried to break with their past, albeit unsuccessfully. Madagascar decided in 1959 to make Malagasy the sole official language of the country. Yet the difficulty of managing the rivalry between the various dialects and thus bringing about standardization created a situation where French continues to serve as the de facto official language.[126] Still other countries opted for a middle position by recognizing (a) widely spoken indigenous language(s) as the national or official language(s) of the entire country, alongside the European language inherited from colonial times.[127] In Nigeria, the languages spoken by the three major ethnic groups, the Hausa, Yoruba and Igbo, are the national languages of the country while English remains to be the country's official language. In Senegal, Wolof, the language of the ethnic group of the same name, is an official language that is used as a lingua

[120] Leung 2019: 80.

[121] Leung 2019: 92. More information on the role of English in Singapore can be found in: T.P. 2011. The language holding Malays, Tamils and Chinese together, January 28, 2011, https://www.economist.com/johnson/2011/01/28/the-language-holding-malays-tamils-and-chinese-together, last accessed September 22, 2022. See also Edwards 2008: 448.

[122] Banda, Felix. 2009. Critical perspectives on language planning and policy in Africa: Accounting for the notion of multilingualism. *Stellenbosch Papers in Linguistics PLUS* 38: 5.

[123] Sonaiya, Comfort Oluremi. 2007. *Language matters: Exploring the dimensions of multilingualism*. Ile-Ife: Obafemi Awolowo University Press: 18.

[124] Dissake, Endurence Midinette Koumassol. 2021. *The legal system and language policy of Cameroon: Language and legal proceedings*. Cham: Palgrave Macmillan: 11.

[125] Dissake 2021: 13.

[126] Sonaiya 2007: 18.

[127] Mozaffar, Shaheen & James R. Scarritt. 1999. Why territorial autonomy is not a viable option for managing ethnic conflict in African plural societies. *Nationalism and Ethnic Politics* 5.3-4: 239.

franca along with French. The same applies to the Kingdom of Lesotho, which recognizes Sesotho together with English, the Kingdom of Swaziland, which recognizes siSwati together with English, and the Republic of Rwanda, which recognizes Kinyarwanda together with French and English.[128] There are also countries such as Zambia that grant official status to English used in public offices and education and at the same time give national language status to seven regional languages that are restricted to specific regions and used mainly for cultural purposes and occasionally in local administration.[129]

The 1996 South African Constitution introduces 11 official languages, making the country the most officially multilingual on the African continent. Both the Constitution and the language policies adopted subsequently declare the equal status of all the official languages and aim to raise the majority languages of African origin to the same level as English or Afrikaans, which were the only official languages before the Constitution.[130] However, the Constitution does not require the government to use all 11 languages for all official functions in all areas of public life. The national government and provincial governments may use any official language for governmental purposes based on the notion of functional differentiation enshrined in the Constitution, but they are required to use at least two of the 11 official languages.[131] In actual practice, the use of languages other than English and Afrikaans in official settings has not increased very much.[132] The linguistic influence of the official African languages is mostly limited to the regions to which they were assigned by the former colonial powers for administrative reasons.[133]

As summarized above, colonial languages are accorded the status of official languages, while indigenous languages are (except in South Africa) mostly referred to as national or in some cases regional languages. One difficulty in this context is the question of what the difference is between the two status designations "official" and "national". As noted in the Compendium of Language Management in Canada (CLMC), "[w]ithout a doubt, the most prestigious status for any language is that of official language, because states or countries that grant it automatically commit to using that language in all of their operations".[134] In countries with only one official language, the state does not use any of the other languages spoken within its borders. The scope of the label "official language" extends to almost the entire public sphere and also includes the language of public education, the language of public cultural institutions and public information, and some corporate business activities.[135]

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[128] Brenzinger, Matthias. 2017. Eleven official languages and more: Legislation and language policies in South Africa. *Revista de Llengua i Dret/Journal of Language and Law* 67: 41.

[129] These are Bemba, Nyanja, Lozi, Tonga, Luvale, Lunda and Kaonde. See Banda 2009: 6.

[130] See the Constitution of the Republic of South Africa, Chapter 1, Section 6.

[131] Webb, Vic. 2003. Language policy in post-apartheid South Africa. In: James W. Tollefson & Amy B.M. Tsui (eds.), *Medium of instruction policies: Which agenda? Whose agenda?* 1st ed. New York: Routledge: 229-252.

[132] Brenzinger 2017: 40-54.

[133] Banda 2009: 2.

[134] Official-language status. 2017-2021. In Jezak, Monika (ed.), *Compendium of language management in Canada*. Ottawa: University of Ottawa, available at https://www.uottawa.ca/clmc/official-language-status, last accessed on August 13, 2021.

[135] Korhecz, Tamás. 2008. Official language and rule of law: Official language legislation and policy in Vojvodina Province, Serbia. *International Journal on Minority and Group Rights* 15.4: 459.

With regard to the status label "national language", one can notice that the label appears in addition to the label "official" in the laws of countries proclaiming more than one language. The fact that indigenous languages are granted the "national language" status can also indicate that there is a difference between this label and the "official language" status. Vieytez notes that the status label "national language" appears in the constitutions of Malta, Ireland and Switzerland, in addition to the label "official language" . Looking at the languages that are assigned these labels, he concludes that the "national language" status aims at "symbolic recognition of the special identity link of the political community with one or several of its official languages".[136] Similar conclusions can be drawn for the indigenous African languages that have received this status label, in the sense that the national languages have more of a symbolic value. But a difference in terms of the functions assigned to the national languages in the compared polities has to be noted. As stated above, the national languages in Africa are mostly used for daily communication and occasionally in local administration. But in Malta and Ireland, for example, laws are drafted in Maltese and Irish in addition to English, and in the event of a conflict between the Maltese and English texts, the Maltese text prevails, and in Ireland the Irish text prevails over the English version of the law.[137]

2.5. Conclusion

Compared with the long history of mankind, the regulation of language use by law is a fairly recent phenomenon. Although there are some countries in the world that have not granted official status to any language in their territory by law, the default assumption since the end of the 20th century is that legislation should regulate what language(s) may or must be used for public purposes. The question of addressing linguistic diversity is hence an important concern for both states and intergovernmental organizations. However, the approaches taken by different states to regulate linguistic diversity range from monolingualism at one extreme to multilingualism at the other, and the different variations of each category in between. Most countries in the world are officially monolingual, as evidenced by the fact that only less than 4% of the approximately 7,000 languages have any form of official status.[138] But the evolution of the socio-cultural environment within a state, leading to liberal tendencies over time, forces states to be officially multilingual. Exceptionally, some states such as Switzerland and Belgium, which practice territorial multilingualism, and Finland, which is officially bilingual, seem to have maintained their linguistic diversity since their founding. Postcolonialism has become a very important historical factor for granting special legal status to exogenous languages, mostly of former colonial masters, thereby causing the proliferation of official multilingualism in recent decades. Even in countries that have established official multilingualism, the way the linguistic diversity is approached differs from one state to the other. The official multilingualism of some countries, such as Canada and Switzerland, and supranational institutions, such as the European Union, proclaim the equality of all officially recognized languages based on the rhetoric of equality and diversity. Other states officially create a hierarchy among officially recognized languages by appealing to the benefits of linguistic

[136] Vieytez 2004: 7.
[137] Leung 2012: 483.
[138] Vieytez 2004: 3.

convergence, by adhering to a national narrative of ancestry, by attaching importance to a language because of its status as a literary or religious language, or to protect languages and persons belonging to national or ethnic minorities.

I hope to have shown, with these and other similar examples mentioned throughout the chapter, that any detailed study of a particular language regime requires an examination of the nation's historical development, current demographics, power relations and socioeconomic factors. Finally, it should be stated by way of conclusion that a legislation on language may not always have a direct bearing on the economic and social motivations for a particular choice of language. Whatever is said or not said in the law ultimately comes down to public practice. With these concluding remarks, I move on to the comparison of the way official language use is regulated in the EU and Ethiopia in the following chapters.

Chapter 3. Strong legal multilingualism: The official language regime and legislative process of the European Union

3.1. Introduction

As briefly indicated in chapter 1.3, the distinction between strong and weak legal multilingualism is derived from the two overarching types of multilingualism proposed by Schilling: strong multilingualism and weak multilingualism.[139] Hence, by strong legal multilingualism, I refer to a system in which all official language versions of a law are equally authentic. The choice of languages in which laws are published as well as the equal authenticity granted to the laws in all the language versions stem directly from the laws regulating official language use. In other words, the enactment of EU legislation in all the 24 language versions, all equally authentic, is mandatory under the current EU language regime. However, this does not mean that all the official languages are used in the drafting of EU legislation. EU law is accessible to EU citizens thanks to legal translation into all official EU languages.

The aim of this chapter is to explore the following questions: How do laws regulating official language use of the EU converge and diverge with EU lawmaking practices? How is lawmaking through legal translation compatible with the principle of equal authenticity? To this end, the chapter provides an overview of the language regime that governs the EU official multilingualism and then discusses the multilingual lawmaking process resulting in 24 equally authentic language versions. Section 3.2 first gives an overview of the language regime regulating official multilingualism in the EU and addresses the origin of the official multilingualism, the rhetoric of equal status for all EU official languages, the derogation from the principle of equality of all EU official languages and the status of other languages spoken on EU territory which are not given EU official language status. Section 3.3 then discusses the procedures for the adoption of binding legal acts by the EU institutions, the role of translation in the legislative process and, finally, the emergence of Euro-English as a hybrid language in its own right.

3.2. Overview of the language regime regulating the EU official multilingualism

3.2.1. Origin

The EU is one of the most multilingual bodies of intergovernmental organizations in the world. It is a unique economic and political union of 27 countries and their 24 respective official languages. The consolidated version of Regulation No. 1 (commonly referred to as “Council Regulation No. 1/58") lists in Art. 1 the 24 official languages of the Member States and stipulates that all these languages are official languages and working languages of the European institutions.

[139] Schilling 2011: 1463.

The EU's strong emphasis on linguistic equality makes it an exception, especially when compared to other intergovernmental organizations (IGOs). The Constitutive Act of the African Union (AU) for example provides that "[t]he working languages of the Union and all its institutions shall be, if possible, African languages, Arabic, English, French and Portuguese".[140] This provision is amended by an Amendment Protocol adopted three years later, which replaces the term "working languages" with "official languages" and gives Arabic, English, French, Portuguese, Spanish, Kiswahili and "any other African language" the status of official languages.[141] The phrase "any African language" in the above provision seems to make the AU even more multilingual than the EU, but given that there are more than 2000 African languages, the protocol seems to make reference to an ideal, utopian situation.

Unlike the EU, the United Nations (UN), currently comprising 193 member states, has adopted only 6 official languages: Arabic, Chinese, English, French, Russian and Spanish.[142] The dominance of a few languages, especially English and French, also characterizes other similar organizations such as the WTO, the International Trade Union Confederation (ITUC), the Council of Europe, the North Atlantic Treaty Organization (NATO), the Organization for Economic Co-operation and Development (OECD), and the European Trade Union Confederation (ETUC).[143]

This difference in the choice of official languages between the EU and the other IGOs mentioned above can be attributed to several factors. One relates to the history of the establishment of the institutions. According to Voslamber, the official language regimes established in the other IGOs have largely been set according to the power relations at the time of the establishment of the organizations rather than on the basis of criteria demanding linguistic justice.[144] Practical considerations related to additional costs for providing parallel facilities or services such as translation of documents and interpretation in the various officially recognized languages may also have been taken as determining factors in granting official status to only a few languages. But linguistic equality has been at the core of the EU since its inception, as Leonard Orban, the EU Commissioner responsible for multilingualism in 2008, also underlines in an interview:

> "When the European Communities were created, previous war enemies sat at one table. The core idea was to grant everybody a level playing field. And the question was: how to grant it? Simply, by accepting – among other

[140] Constitutive Act of the African Union, adopted by the 36th Ordinary Session of the Assembly of Heads of State and Government, July 11, 2000, Lomé, Togo, Art. 25.

[141] Protocol on Amendments to the Constitutive Act of the African Union, adopted by the 2nd Ordinary Session of the Assembly of the Union in Maputo, Mozambique, July 11, 2003, Art. 11. However, the Protocol has not yet entered into force because not enough member states have ratified it, as required by Art. 13 of the same Protocol.

[142] See UN General Assembly Resolution 2 (I) February 1, 1946; UN General Assembly Resolution 247 (III), December 7, 1948; UN General Assembly Resolution 2479 (XXIII), December 12, 1968; UN General Assembly Resolution 3190 (XXVIII), December 18, 1973.

[143] Voslamber, Dietrich. 2018. Choosing working languages in a multilingual organization: A statistical analysis with a particular view on the European Union. In Michele Gazzola, Torsten Templin & Bengt-Arne Wickström (eds.), *Language policy and linguistic justice*. Cham: Springer: 337.

[144] Voslamber 2018: 337.

> things – the fact that everyone has the right to use his own language, his own mother tongue."[145]

In line with the 1957 Treaty of Rome, multilingualism and linguistic equality have become the core concepts of the EU since its foundation, treating all four official languages (Dutch, French, German and Italian) of the six founding members (Belgium, France, Germany, Italy, Luxembourg and the Netherlands) equally.[146] The implementation of linguistic equality in the EU has since become a practice through the incorporation of all the primary languages of all new Member States as its official languages.[147] When negotiating accession to the EU, each Member State chooses, in accordance with its own constitution, the official language or one of its official languages.

The difference in democratic accountability of the EU institutions compared to other IGOs is another equally important factor for the different choice of official languages. To quote again what Voslamber states, the other IGOs "need little direct participation by the citizens of the various member countries, and the choice of official languages or working languages does not have much influence on their daily lives".[148] In contrast, the Member States of the EU, out of a desire to achieve a high degree of political and economic unification among themselves, have ceded some sovereign power to the EU institution. Citizens of all Member States of the EU enjoy electoral rights in the Union, and in this sense, the EU can be considered a super-state rather than an intergovernmental organization.[149]

Consequently, the EU "aims to be a democratic supranational polity that balances equality of states (as do IGOs) and equality of citizens (as do sovereign states)".[150] EU legislation must be linguistically accessible to EU citizens, as it is supreme to the national law of the member states and directly binds all the citizens. Therefore, citizens must be informed about a legal proposal so that the broadest possible debate can take place at all levels – European, national and local. Citizens and their national courts should be able to rely on the language version of the law corresponding to their national language once the legislation is adopted. This is only guaranteed when EU law of general application is published in the Official Journal in all the primary languages of the Member States.[151]

The EU can also be distinguished from other IGOs by its judicial body, the CJEU, which recognizes all official EU languages and whose jurisdictional powers far exceed those usually

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[145] Leonard Orban. 2008. Multilingualism 'cost of democracy' in EU, Nov 13, 2008, available at https://www.euractiv.com/section/languages-culture/interview/orban-multilingualism-cost-of-democracy-in-eu/, last accessed September 1, 2021.

[146] Treaty establishing the European Economic Community, available at http://data.europa.eu/eli/treaty/teec/sign, last accessed January 4, 2023.

[147] Primary languages are languages that enjoy official status throughout the territory of the Member State and do not include languages that are official only in some regions of the Member State. For example, Catalan and Basque, which are regional official languages in Spain, are not recognized as official EU languages. See Vizi 2012: 147.

[148] Voslamber 2018: 337.

[149] Leung 2019: 103.

[150] Leung 2019: 103.

[151] European Commission, Directorate-General for Translation. 2009. *Translating for a Multilingual Community*, Publications Office, available at https://data.europa.eu/doi/10.2782/13772, last accessed October 7, 2021.

enjoyed by traditional international tribunals.[152] The judicial bodies of the other IGOs are dominated by a few languages. The Rules of Court adopted by the African Court on Human and Peoples' Rights and entered into force on September 25, 2020, specify Arabic, English, French and Portuguese as the working languages of the Court.[153] Of the six official languages of the UN, English and French dominate the linguistic landscape of the courts established by the UN and its subsidiary organizations. Though the International Criminal Court (ICC) recognizes all six official languages of the UN to publish judgements of the Court as well as other decisions resolving fundamental issues, French and English are explicitly recognized as working languages for purposes of primary communication.[154] English and French are also the languages in which the International Court of Justice, the primary judicial branch of the UN, operates.[155] The official languages of the International Tribunal for the Law of the Sea are English and French as well.[156]

In contrast, equality of all languages has always been the principle governing the CJEU since its inception. Parties can bring cases to the Court in any of the 24 official languages of the European Union, and judgments are translated into all these languages.[157] But parties are required to choose one language for the proceeding in accordance with the rules set under Art. 37 of the Rules of procedure. This language of a case must be used in the written submissions or observations submitted for all oral submissions in the action, and also be used by the Court in any correspondence, report or decision addressed to the parties in the case. Only texts in the language of the case are authentic.

3.2.2. The principle of equal authenticity

In order to maintain equality between Member States while providing citizens with access to EU legislation, the EU aims to provide citizens with access to European Union legislation, procedures and information in their own language.[158] A number of legal provisions to safeguard linguistic rights are enshrined in the European treaties and the regulations derived from them. The Treaty on the Functioning of the European Union stipulates that EU citizens have "a right of access to documents of the Union's institutions, bodies, offices and agencies", which might imply that these documents must be available in all the EU official languages. The European Parliament and the Council are also obliged to ensure the publication of the documents relating to the legislative procedures.[159] Likewise, citizens of the Member States of the EU have "the right to petition the European Parliament, to apply to the European Ombudsman, and to address the institutions and advisory bodies of the Union in any of the

[152] McAuliffe 2012: 202.

[153] Rules of Court, African Court on Human and Peoples' Rights, September 25, 2020, Rule 27(1).

[154] Rome Statute of the International Criminal Court, July 17, 1998, in force on July 1, 2002, United Nations, Treaty Series, Vol. 2187, No. 38544, Depositary: Secretary-General of the United Nations, Art. 50.

[155] Statute of the International Court of Justice, Art. 39.

[156] International Tribunal for the Law of the Sea, Rules of the Tribunal, October 1997, Art. 43.

[157] Cohen, Mathilde. 2016. On the linguistic design of multinational courts: The French capture. *International Journal of Constitutional Law* 14.2: 502; see also Rules of procedure of the Court of Justice, OJ L 265, September, 29, 2012, Art. 36.

[158] Schilling, Theodor. 2010. Beyond multilingualism: On different approaches to the handling of diverging language versions of a community law. *European Law Journal* 16.1: 48.

[159] Consolidated version of the Treaty on the Functioning of the European Union, Art. 15.

Treaty languages and to obtain a reply in the same language".[160] The Treaty on the Functioning of the EU provides the framework within which the language regime of the institutions of the EU is determined, namely by means of regulations adopted by the Council acting unanimously.[161] It is on the basis of the latter provision that Council Regulation No. 1/58 determining the language regime of the EU institutions was adopted.

The principle of equal authenticity is also established by the language regime that regulates primary and secondary legislation of the EU with a view to fulfilling the requirement of accessibility.[162] Concerning primary legislation, the reading of Art. 55 of the Treaty on the European Union (TEU) and Art. 358 of the Treaty on the Functioning of the European Union (TFEU) indicates that all the EU primary legislation are drawn up in a single original in all 24 languages and are equally authentic. These provisions create the illusion that the treaties were simultaneously produced in all 24 official languages thereby emphasizing their equal authority. But it should be noted at this point that, on the basis of the *acquis communautaire* policy, the new Member States accept all EU legislation in force at the time of their accession exactly as they find it and declare the translations of this legislation into the new language version(s) authentic under the same conditions as the original versions.[163]

As far as secondary legislation is concerned, Council Regulation No. 1/58, which provides for the language regime of the EU institutions, does not explicitly provide that all language versions of EU secondary legislation must have equal authenticity. However, Art. 4 of the same stipulates that regulations and other documents of general application must be drafted in all the official EU languages.[164] Moreover, the case law of the CJEU establishes that all language versions of secondary legislation are equally authentic.[165]

The equal authenticity of the EU official languages is founded on the principle that each of the 24 language versions of an EU legislation is considered original. In this sense, the principle enhances legal certainty by enabling individuals to ascertain their rights and duties under EU law in their own language. Legal certainty in its formal sense focuses on the accessibility and publicity of the laws to all the addressees.[166] The CJEU has consistently held, most notably in its landmark Skoma-Lux judgment, that an EU regulation with regard to a Member State whose language is an official language of the Union cannot be enforced against natural and

[160] Consolidated version of the Treaty on the Functioning of the European Union, Art. 20.

[161] Consolidated version of the Treaty on the Functioning of the European Union, Art. 342.

[162] EU legislation is divided into primary and secondary. Primary legislation are treaties that are the basis or ground rules for all EU action. Secondary legislation refers to the body of legislation which lays specific actions to achieve the goals of primary legislation (treaties) and comprises regulations, directives, decisions, recommendations and opinions.

[163] Schilling 2011: 1466.

[164] Council Regulation No. 1/1958 determining the languages to be used by the European Economic Community, OJ English special edition: Series I, Vol. 1952-1958, 59 (lastly amended by Council Regulation (EU) No. 517/2013 of May 13, 2013, OJ L158/1).

[165] CJEU Case 283/81, Srl CILFIT and Lanificio di Gavardo SpA v. Ministry of Health [1982], ECR I-03415, ECLI:EU:C:1982:335: para. 18; CJEU Case C-296/95, The Queen v. Commissioners of Customs and Excise, ex parte EMU Tabac SARL, The Man in Black Ltd [1998], ECR I-01605, ECLI:EU:C:1998:152: paras. 36-37.

[166] CJEU Case C-370/96 Covita [1998], ECR I-7711, para. 27; CJEU Case C-228/99 Silos [2001], ECR I-08401, para. 15.

legal persons in that Member State unless it has been published in that language in the Official Journal of the European Union.[167]

However, the requirement to make EU law accessible in every citizen's official language implies, in the EU context, that the law is first translated into that official language. Legal translation is inherently imperfect, not to mention the indeterminate nature of language in general.[168] But can the EU deliver on its promise that all the language versions be the same and allow citizens to legitimately expect that the legal consequences brought about by their own language version of EU law is as predictable as those brought about by their respective national law? How is the principle of equal authenticity compatible with the EU lawmaking process which involves legal translation? How does the EU control that all the 24 EU official language versions of a law have the same meaning? I return to these questions in Section 3.3.

3.2.3. Derogation from the principle of equality of EU official languages

Although Council Regulation No. 1/58 stipulates in Art. 1 that all the 24 official languages of the Member States are official languages and working languages of the European institutions, the terms "official language" and "working language" have never been defined in the Regulation or in other laws.[169] Art. 6 of the same Regulation provides a general and vague legal basis for the choice of official or working languages. It gives the institutions the authority to determine in their Rules of procedure which of the languages is to be used in specific cases. However, it does not give an indication of the difference between official and working languages, nor does it establish the criteria to be taken into account when regulating the internal use of languages by the institutions.

The Rules of procedure of the EU institutions do not designate any particular working language for their internal functions either. For example, the provision under Art. 18 of the Rules of procedure of the Commission stipulates that "for the purposes of these Rules, 'authentic language or languages' means the official languages of the Communities in the case of instruments of general application and the language or languages of those to whom they are addressed in other cases".[170] Likewise, the Rules of procedure of the Council stipulates that "the Council shall deliberate and take decisions only on the basis of documents and drafts drawn up in the languages specified in the rules in force governing languages".[171] These are obviously all the official languages of the EU institutions that are specified under Art. 1 of the Council Regulation. Therefore, although Art. 6 of Regulation 1/1958 provides that the institutions of the European Union may determine in their Rules of procedure which languages are to be used in specific cases, none of the Rules of procedure of the various EU institutions contains a selection of languages or specific cases in which particular languages are to be

[167] CJEU Case C-161/06, paras. 32 ff.

[168] Šarčević 2014: 48.

[169] Council Regulation No. 1/1958.

[170] Rules of procedure of the Commission [C(2000) 3614] OJ L 308, December 8, 2000, Art. 18, available at http://data.europa.eu/eli/proc_rules/2000/3614/oj, last accessed February 15, 2021.

[171] Rules of procedure of the Council, OJ L 325, December 11, 2009, Art. 14, available at http://data.europa.eu/eli/proc_rules/2009/1211/oj, last accessed February 14, 2021.

used.[172] In summary, the law makes no legal distinction between official and working languages.

In practice, however, a difference is maintained between external (official) and working (procedural) languages. From an external perspective, all the 24 official languages are used for functions such as publishing regulations and other documents of general application. From an internal perspective, not all the official languages of the EU are used all the time in all seven EU institutions for carrying out their internal functions.[173] In fact, some of the institutions are more multilingual than others. The European Parliament is the most multilingual EU institution. According to the Rules of procedure of the European Parliament, as amended in January 2021, all official languages may be used in all formal meetings of the European Parliament, and all the parliamentary documents are drawn up in all official languages.[174] The European Central Bank is the most monolingual and uses English only.[175]

French is used as the working language of the CJEU, and Member States are urged to appoint only judges who have a knowledge of French.[176] Although parties to a case have the right to choose between one of the 24 EU official languages as their language of the case, the judges deliberate exclusively in French. As Sobotta argues, the French version of the Court's judgment is the only language version that is reviewed by all judges and also provides reliable information about the Court's decisions.[177] All the other versions including the one in the language of the case, published in the European Court Reports and available in the Court's database, are translations. If a discrepancy is found between the French version and the version of the language of the case, it is assumed to be a translation error and corrected accordingly. It is also less likely that the CJEU judges, when referring to previous judgments, will take note of the content of versions of the judgment other than the French version, unless, exceptionally, the parties involved or the opinion explicitly refer to divergences.[178]

Historical and institutional reasons explain why the CJEU has been very much influenced by the French language and the French judicial model. French took a leading position in the creation of the CJEU, because three of the six original founding members (France, Belgium and Luxembourg) have French as (one of their) official language(s). French legal culture also strongly influenced the founding policy of the Court, as four of the six founding members (Belgium, Italy, Luxembourg and the Netherlands) have partly imported the French legal

[172] Voslamber 2018: 339.

[173] These seven institutions are the European Parliament, the European Council, the Council of the European Union (often referred simply as "the Council"), the European Commission, the Court of Justice of the European Union, the European Central Bank and the Court of Auditors.

[174] Rules of procedure of the European Parliament, 9th parliamentary term - January 2021, Rule 167, available at https://www.europarl.europa.eu/doceo/document/RULES-9-2021-01-18-TOC_EN.html, last accessed September 5, 2022.

[175] Voslamber 2018: 338.

[176] Schilling 2011: 1469.

[177] Sobotta, Christoph. 2015. Die Mehrsprachigkeit als Herausforderung und Chance bei der Auslegung des Unionsrechts. Praktische Anmerkungen aus der Perspektive des Kabinetts einer Generalanwältin. *Zeitschrift für Europäische Rechtslinguistik* (ZERL) 2015, available at http://www.zerl.uni-koeln.de/christoph-sobotta/201, last accessed November 9, 2022.

[178] Interview with Christoph Sobotta, Legal Secretary (Référendaire), Chambers of Advocate General Juliane Kokott, CJEU, March 23, 2022: file with the author.

system during the Napoleonic campaigns in the nineteenth century. This influence of the French legal system persisted for the first 15 years after the establishment of the CJEU until the UK and Ireland joined the EU and brought the influence of their common law and the English language into the Court's system.[179]

The use of only a few EU official languages for internal functions is also observed in the EU Commission, where mainly English, followed by French and, to a lesser extent, German are being used.[180] With the exception of sources that publish legislation and key policy documents as well as general information, the Commission publishes several EU online sources in only two or three languages, or even in only one language – the choice depends on the target audience.[181] To give an example, in January 2014, the Commission published in English only the guidelines for the EU's Erasmus+ funding program (2014-2020), a program with a budget of nearly €15 billion that would provide grants for a wide range of measures and activities in the fields of education, training, youth and sport. Translations into the other official languages were not made available before April, even though the first deadline for project proposals was in March.[182] Moreover, the Commission translates policy documents into other official languages only in the final phases of elaboration.[183]

The EU institutions select languages for a special higher status based on a justification that goes beyond the principles of equality of Member States and the equality of all official languages. The European Commission, for example, justifies the use of English, French and German for its internal business on the grounds of cost efficiency.[184] As Leung argues, the "supposed currency in the global linguistic market" of the languages, which is determined by linguistic demographics and the geographical reach of the languages, can justify the selection of languages for special, higher status among languages of equal status.[185]

However, the use of only a limited number of languages by the EU institutions as procedural (working) languages is controversial. In a case before the CJEU, Italy v. Commission, the Italian Republic complained, first that notices about an open competition for the recruitment of administrators and assistants by the European Commission had not been published in full in the Official Journal of the European Union in the official languages other than English, French and German and, second, that the choice of the second language for participation in the competition and for taking the tests was arbitrarily limited to these three languages.[186] For its part, the Commission explained at the hearing that the three languages selected are those most commonly used in the institution. The Commission argued that the European institutions must be granted a certain degree of operational autonomy in exercising the powers conferred on them by Art. 6 of Regulation No. 1, in order to ensure their efficient functioning. The fact

[179] Cohen 2016: 503-504.
[180] Voslamber 2018: 338.
[181] Leal, Alice. 2020. Multilingualism and translation in the European Union. In Esperança Bielsa & Dionysios Kapsaskis (eds.), *The Routledge handbook of translation and globalization*. 1st ed. London: Routledge: 489.
[182] Gazzola, Michele. 2016. Multilingual communication for whom? Language policy and fairness in the European Union. *European Union Politics* 17.4: 547.
[183] Leal 2020: 488.
[184] European Commission, Directorate-General for Translation 2009.
[185] Leung 2019: 104.
[186] CJEU Case C-566/10 P Italian Republic v. European Commission [2012], ECLI:EU:C:2012:752, para. 15.

that the Commission had not adopted Rules of procedure within the meaning of Art. 6 of Regulation No. 1 was irrelevant, since that provision was merely the expression of a broader power of operational autonomy.[187] The Commission lost the case. The Court rules that the contested competition notices ought to have been published in full in all the official languages. A potential candidate whose mother tongue is not one of the languages in which the notices are published would be placed at a disadvantage compared with a candidate whose mother tongue is one of the three languages in which the notices are published, both as regards the correct understanding of those notices and as regards the time-limit for preparing and submitting an application to take part in those competitions.[188]

In addition, the Court rules that any limitation on the principle of non-discrimination and the principle of proportionality must be justified on objective and reasonable grounds. The practice of publishing notices in only a few languages cannot be said to have been necessitated by the additional burden resulting from the accession of new Member States to the European Union in 2004 and 2007, and in particular by the sudden increase in the number of official languages, as this does not comply with the principle of proportionality and thus constitutes discrimination on the basis of language. However, it should be established that the rules limiting the choice of the second language may be restricted, provided that clear, objective and predictable criteria are established so that candidates know in good time what the language requirements will be and can prepare for their participation in the competitions under the best possible conditions. The Court comments that the Commission could have objectively justified that the requirement of knowledge of one of the three languages in question was in the interest of the service, and it could have shown that the level of language knowledge required was proportionate to the genuine needs of the service.[189]

One may deduce from the above case and other cases on similar issues that European institutions can be considered to have lawfully chosen their working languages only when they stipulated such a choice in their Rules of procedure or can provide an objective justification for their choice of languages in specific cases.[190] This decision of the Court seems to stem from the pragmatic observation that the simultaneous use of 24 working languages for all situations in all EU institutions would be unrealistic for practical and financial reasons.

Scholars have put forward their alternative views on which languages should be chosen for a special higher status in the EU institutions. Gazzola provides a statistical analysis of "language disenfranchisement" (exclusion due to language) among adult residents in 25 European countries based on 4 different language regimes: (1) a fully multilingual regime corresponding to the current EU official languages would exclude only a small number of adult residents (4%); (2) a hexalingual language regime including English, French, German, Italian, Polish and Spanish, would exclude 9-18%; (3) a trilingual language regime based on English, French and German would exclude 26% to 49%; and (4) a monolingual (or English-only) language regime

[187] CJEU Case C-566/10 P, 2012: paras. 27 and 80.

[188] CJEU Case C-566/10 P, 2012: paras. 71-74.

[189] CJEU Case C-566/10 P, 2012: paras. 81-98.

[190] See also CJEU Case T-275/13, Italian Republic v. European Commission [2015], ECLI:EU:T:2015:1000; CJEU Case T-124/13, Italy and Spain v. Commission [2015], ECLI:EU:T:2015:690; CJEU Case T-148/13 Kingdom of Spain v. Commission [2013], ECLI:EU:T:2013:564.

would exclude a population from 45% to 79%.[191] Gazzola contends that the full multilingual policy of the EU based on translation and interpreting is and will remain for the foreseeable future a truly inclusive regime at a relatively reasonable cost, because economically and socially disadvantaged individuals, who are generally less likely to speak a language other than their mother tongue, are likely to be more disadvantaged if the EU stops using their language.[192]

Voslamber also presents statistical model calculations to show that a language regime that respects the demographic weights of the languages in the EU and the necessity of equal treatment of all staff members of the institutions as regards their linguistic skills is feasible by adopting English, French and German as the working languages of the EU institutions.[193] He argues that these three languages, which are informally designated as procedural languages of the European Commission, should be elevated to a concrete status in which they are practiced as working languages on an equal footing, and other languages such as Italian, Spanish or Polish may also be used on certain occasions depending on the subject matter under consideration. He recommends this to be explicitly stipulated in the Rules of procedure of the Commission in order to build a more equitable and efficient language regime.[194]

At another extreme, Cogo and Jenkins argue that the role of English as a de facto lingua franca should be officially recognized and promoted to serve this role in the EU.[195] Their main concern is the economic unsustainability of the multilingual EU's language regime, especially after the massive enlargement of the EU in 2004, which added 10 new Member States with 9 new languages, and the addition of three more languages with the accession of Bulgaria and Romania in 2005 and Croatia in 2012. They argue that a lingua franca such as English would contribute to the effectiveness and efficiency of EU communication and the cohesion of the EU as a community.

However, empirical evidence does not support the claim that English should be used as a lingua franca. According to an experimental survey (Adult Education Survey) published by the European Commission in 2007, only 13.3% of adults (25-64 years old) in the EU considered themselves "proficient" in English and 15.9% considered themselves "good".[196] Based on this survey, less than a third of Europeans at that time were able to communicate a fairly simple situation in English and write simple texts. Debating politics or reading or writing complex texts in English was therefore something that a large part of the European population could not do, and "only an elite of 7-8% of the population of the continent was able to have access

[191] Gazzola 2016: 546-569.

[192] Gazzola 2016: 548.

[193] Voslamber 2018: 346-348.

[194] Voslamber 2018: 346-348; see also Ginsburgh, Victor & Shlomo Weber. 2005. Language disenfranchisement in the European Union. *JCMS: Journal of Common Market Studies* 43.2: 273-286.

[195] Cogo, Alessia & Jennifer Jenkins. 2010. English as a lingua franca in Europe: A mismatch between policy and practice. *European Journal of Language Policy* 2.2: 272.

[196] According to the survey, "'proficient' means the ability to understand and produce a wide range of demanding texts and use the language flexibly, and 'good' means claiming an ability to describe experiences and events fairly fluently and to produce a simple text"; quoted in Barbier, Jean-Claude. 2018. The myth of English as a common language in the European Union (EU) and some of its political consequences. In Michele Gazzola, Torsten Templin, Bengt-Arne Wickström (eds.), *Language policy and linguistic justice*. Cham: Springer: 211.

to the documents written in English by the European institutions and make full use of them".[197] The situation had not changed in a similar survey conducted in 2011. I return to the practical role of English in the EU legal drafting process in Section 3.3.3.

3.2.4. Hierarchy among the languages spoken in Europe

The linguistic configuration of the EU consists not only of the 24 official languages, but also of regional or minority languages and migrant languages. A regional or minority language is a language with historical significance spoken by groups traditionally living in EU Member States, e.g. Catalan in Spain and Occitan in France. In contrast, migrant languages are languages that are generally considered exogenous both to the Member States and to Europe as a whole because they have historically only been spoken outside of Europe.[198] More than sixty regional or minority languages are spoken within the EU, with widely varying legal status in their countries.[199] This means that the 24 official EU languages account for less than a third of the approximately eighty national, regional and minority languages spoken by European citizens.

The selection procedure for EU official languages ensures formal equality among Member States regardless of size. A prime example of this formal equality is the status granted to Irish, which has 40,000 to 80,000 native speakers, as one of the EU official languages because it is the first national language of Ireland.[200]

The way the EU decides on the status of languages therefore raises the question of their formal and substantive equality. Languages such as Catalan, for example, a language in Spain spoken by more than 10 million people, is not recognized as a primary EU language because it is official only at the regional level.[201] This approach has been criticized by those who would like to see the EU's official multilingualism extended to more languages spoken by a significant number of EU citizens.[202] Examining the division of power between the EU and its Member States concerning the law on languages helps us make sense of the substantive equality of citizens, especially when citizens are considered as language groups. During the negotiation process for accession, a Member State selects its official language or one of its official languages, according to its constitution, as the primary language in the EU.

The EU does not have the mandate to establish a rule according to which a Member State decides which of its official languages should be assigned to it as one of its primary

[197] Barbier 2018: 213.

[198] Johnson, Fern L. 2013. Underlying paradox in the European Union's multilingualism policies. *Critical Inquiry in Language Studies* 10.4: 298.

[199] Vizi 2012: 135.

[200] Irish did not become an official EU language until 2005, even though it had been a treaty language since Ireland's accession in 1973. Now there is a transitional derogation until 2022, and only the regulations adopted jointly by the European Parliament and the Council are translated into Irish; see Council Regulation (EU, Euratom) 2015/2264 of December 3, 2015, extending and phasing out the temporary derogation measures introduced by Regulation (EC) No. 920/2005, OJ L 322/1.

[201] Otero Fernández, Irene. 2020. Multilingualism and the meaning of EU law. Florence: European University Institute (PhD dissertation): 25.

[202] Mamadouh, Virginie. 1999. Beyond nationalism: Three visions of the European Union and their implications for the linguistic regime of its institutions. *GeoJournal* 48.2: 134.

languages.[203] Normally, those languages which are the state-wide official language of the Member State are recognized by the EU. The recognition of Catalan as an official language of the EU, for example, is rejected for two main reasons. First, it would call into question the official multilingualism of the EU and the principle of formal equality among Member States, and, second, speakers of regional and minority languages are assumed to have direct access to EU institutions through the official languages recognized at the state level and as primary languages of the EU.[204] In this sense, one can conclude that the Member States are the sole "masters of determining the official language(s)" in the European Union.

It is up to the Member States to decide on the remaining regional, minority and migrant languages. Some states officially recognize regional or minority languages, others recognize them in a limited sphere of use, and still others do not offer any legal recognition to minority languages.[205] Regional languages, such as Basque in the Basque Country in Spain, for example, have official status in regional constituencies, while others, such as Corsican, do not have this status in France.[206] But to respond to the wishes of regional language speakers, at least as far as Catalan and Basque are concerned, the EU Treaties provide for the possibility of Member States translating the Treaties into other official languages spoken in all or parts of their territory.[207]

To sum up, the language regime that governs official language use in the EU creates a hierarchy among the languages spoken in Europe. The primary languages of the EU Member States enjoy the highest privilege, the so-called "minority" or "regional" languages, which are of European origin, are somewhat less privileged, and the languages originating from outside Europe ("migrant languages") have no official status at all.

3.3. Multilingual lawmaking in the EU

The complex relationship between law and language becomes all the more evident in legal orders where law is produced in more than one language, like in the EU environment. The principle of equal authenticity and the associated element of sovereignty also have significant implications for the drafting of multilingual EU laws. It is practically impossible to use all 24 languages simultaneously in the EU multilingual legal drafting process of a legal instrument. On the other hand, the number of languages in which legal instruments are authenticated cannot be reduced. This leads to what Doczekalska calls the "diversity paradox", which leads to an increasing use of translations and thus to greater linguistic diversity and the emergence

[203] Otero Fernández 2020: 25.
[204] Mamadouh 1999: 134.
[205] Vizi 2012: 135.
[206] Mamadouh 1999: 133.
[207] Art. 55 of the Treaty of the European Union and Art. 358 of the Treaty on the Functioning of the European Union; see also Ferreri, Silvia. 2018. Multilingual interpretation of European Union law. In Jacqueline Visconti & Monika Rathert (eds.), *Handbook of communication in the legal sphere*. Berlin: De Gruyter Mouton: 373, who proposes to raise the status of some regional languages such as Basque, Catalan, Galician, Scottish Gaelic and Welsh to the level of co-official languages of the EU, arguing that EU documents are translated into these languages on the basis of special agreements with the Member States where these languages are used and with economic support from these states.

of Euro-English, which is directly related to the decline in linguistic diversity.[208] This section discusses this paradox in more detail. It first gives an overview of the procedures for the adoption of binding acts by the EU institutions (Section 3.3.1). It then examines the role that translation plays in the legislative process (Section 3.3.2) and how Euro-English has emerged as a hybrid language in its own right (Section 3.3.3).

3.3.1. Procedures for the adoption of binding EU acts

Speaking of the binding acts that can be adopted by EU institutions, I refer to either regulations, directives or decisions that are legal acts. The choice to adopt one or the other act depends on the competence of the EU as a body, the political and social climate influencing the way the EU and the member states are seen by the citizens, the "Euro-enthusiasts" or "Eurosceptics", and the nature of the institutions responsible for drafting legislation in the EU.[209] There are three types of procedures to enact these binding legal acts: i) ordinary legislative procedure (previously known as co-decision); ii) consent procedure and; iii) consultation procedure.[210] An in-depth study of the complex EU legislative process would require examining the work of many institutional and non-institutional actors, each using different methods. Since my goal is not to present a complete description of the EU legislative process, but rather to examine the role of translation in the process, I focus only on the ordinary legislative procedure (OLP), which is the main decision-making procedure used for adopting EU legislation today.[211]

The OLP came into existence with the entry into force of the Lisbon Treaty in December 2009. Its roots, however, go back to the 1993 Maastricht Treaty, which made the European Parliament a co-legislator in fifteen areas of Community actions and gave it the right to amend or veto proposed legislation.[212] The Treaty of Amsterdam, which entered into force in 1999, further changed the procedure by placing the European Parliament on an equal footing with the Council and extended the scope of co-decision from fifteen to thirty-eight areas of Community action including "areas of transport, environment, development cooperation, and employment and social affairs".[213] This co-decision procedure was then renamed OLP in the Lisbon Treaty, and the scope was further extended to eighty-five policy areas. The inter-institutional interactions between the EU Commission, the Parliament and the Council have become increasingly important thereafter.[214] The Lisbon Treaty gives both the Council and the

[208] Doczekalska, Agnieszka. 2009. Drafting and interpretation of EU law: Paradoxes of legal multilingualism. In Günther Grewendorf & Monika Rathert (eds.), *Formal linguistics and law*. Berlin: De Gruyter Mouton: 345-346.

[209] For more information on the differences between these three types of binding acts and the factors that influence their enactment, see Cabral, Tiago Sérgio. 2020. A short guide to the legislative procedure in the European Union. *UNIO-EU Law Journal* 6.1: 161-180.

[210] Cabral 2020: 163.

[211] Kluger Dionigi, Maja & Anne Rasmussen. 2019. The ordinary legislative procedure. In Oxford research encyclopedia of politics. Oxford: Oxford University Press: 4.

[212] Kluger Dionigi & Rasmussen 2019: 1.

[213] Kluger Dionigi & Rasmussen 2019: 1.

[214] According to Art. 289(1) of the Treaty on the Functioning of the EU (TFEU) "[t]he ordinary legislative procedure shall consist in the joint adoption by the European Parliament and the Council of a regulation, directive or decision on a proposal from the Commission".

Parliament the power to legislate as equal partners by requiring that the two institutions must adopt the same legislative act.[215]

The EU lawmaking process under the OLP resembles a bicameral system with formal legislative parity between the EU Parliament and the Council. While the EU Parliament can be considered the lower chamber representing the European citizens who directly elect its members, the Council can be considered the higher chamber representing the interests of the Member States.[216] But the Council is still seen as the strongest body in the interinstitutional balance.[217] Although neither institution has the power to initiate new laws directly, they do have the power to request the EU Commission,[218] which has the power to initiate all but a few new legislation.[219]

For the first time, the Treaty of Lisbon explicitly gives National Parliaments the mandate to participate in the Union's legislative process.[220] The Commission is required to send its legislative proposals to National Parliaments at the same time as they are sent to the European Parliament and the Council. National Parliaments then have eight weeks to express concerns about the legislative proposal in their reasoned opinions. If the Commission receives reasoned opinions from half of the National Parliaments that the proposal should be reviewed, it must do so or, failing that, maintain the original proposal by justifying its position in a reasoned opinion and sending it to the European Parliament and the Council.[221]

The formal sequence under the ordinary legislative procedure is set out under Art. 294 TFEU. After receiving the Commission's proposal, there are procedures for the Parliament and the Council to vote on their respective positions in three readings, with a conciliation committee being set up before the third reading.[222] The first reading of the legislative procedure starts when the Commission submits its proposal for a new legislation to the European Parliament and the Council. The Parliament is the first to give its opinion and can either approve it in full, amend it and forward it to the Council, or reject it. If the proposal is rejected, the procedure ends at this stage and the act cannot be adopted. However, if the Parliament approves the proposal in full or amends it, it sends the proposal to the Council. The latter can then vote by qualified majority to adopt the proposal in the wording corresponding to the position of the Parliament, or it can adopt its own position on the proposed act and then send it back to the

[215] See Art. 14(1) and 16(1) TEU.

[216] Cabral 2020: 163; see also Roederer-Rynning, Christilla. 2019. Passage to bicameralism: Lisbon's ordinary legislative procedure at ten. *Comparative European Politics* 17.6: 957-973.

[217] Kluger Dionigi & Rasmussen 2019: 2.

[218] See Arts. 225 and 241 of the Treaty on the Functioning of the European Union (TFEU), which give the respective institutions the right to request the EU Commission.

[219] The power of legislative initiative is granted to the Commission under Art. 17(2) TEU and Art. 294(2) TFEU. An example of the exceptions in which laws can be initiated by other bodies is Art. 76 of the TFEU, which allows an initiative by a quarter of the Member States for judicial cooperation in criminal matters, police cooperation and the establishment of administrative measures to ensure cooperation in the area of freedom, security and justice.

[220] Bauerschmidt, Jonathan. 2021. The basic principles of the European Union's ordinary legislative procedure. *ERA Forum* 22.2: 219.

[221] Bauerschmidt 2021: 219.

[222] Bauerschmidt 2021: 220.

Parliament. If the co-legislators cannot agree on a position in the first reading, the process moves to the second or eventually the third reading.[223]

But before the process moves to the second reading, political debates are conducted in so-called "informal trilogues", that is, meetings in which representatives of the three institutions negotiate behind closed doors so that the institutions agree on the legislative acts early.[224] Informal trilogues have been criticized for trading open decision making for speed, yet they are the main mechanism for inter-institutional legislative negotiations.[225] Currently, 97% of all the legislative procedure files going through the ordinary legislative procedure are adopted either in first or early second reading, with the percentage of full second readings standing at a mere 3% and third readings practically non-existent.[226]

3.3.2. The role of legal translation in the ordinary legislative procedure

The EU undertakes huge translation and interpretation services in the production of official and important EU matters in all the 24 official languages. As of 2018, a rough estimate of the total number of EU translators and interpreters surpasses 5,500, about 10% of the EU's total staff, and the number of freelancers is probably just as high.[227]

The initial draft versions of EU legislative proposals are often prepared by the Commission in English, less frequently in French or German, by experts who are often not native speakers.[228] This initial base text passes through lawyer-linguists (lawyers with high-level language competence) of the Commission, who examine and revise the text before it is translated into the other languages and then submitted to the Parliament and the Council.[229] Once the proposal is submitted, the "Legal Service's Quality of Legislation Directorate" within the Council appoints the so-called "quality adviser", and the "Directorate of Legislative Acts" within the Parliament appoints the so-called "file coordinator".[230] These are lawyer-linguists who are responsible for the quality control of the texts under discussion from the outset and throughout the procedure, and who can propose drafting improvements.[231]

The Parliament takes a more multilingual approach than the Council in terms of the subsequent path in the legislative process. All members of the parliament receive all

[223] Cabral 2020: 164-165.

[224] Brandsma, Gijs Jan. 2015. Co-decision after Lisbon: The politics of informal trilogues in European Union lawmaking. *European Union Politics* 16.2: 300-319.

[225] Brandsma 2015: 302.

[226] Cabral 2020: 164-167.

[227] Leal 2020: 488.

[228] Graziadei, Michele. 2014. Many languages for a single voice: The heteroglossia of EU private law, and the evolving legal cultures of Europe. In Pasa Barbara & Lucia Morra (eds.), *Translating the DCFR and drafting the CESL: A pragmatic perspective*. Berlin: Otto Schmidt/De Gruyter European Law Publishers: 72.

[229] Šarčević, Susan. 2013. Multilingual lawmaking and legal (un)certainty in the European Union. *International Journal of Law, Language & Discourse* 3.1: 8.

[230] Guggeis, Manuela. 2014. How and when lawyer-linguists of the EU institutions intervene during the legislative procedure for the adoption of the regulation on a Common European Sales Law (CESL). In Pasa Barbara & Lucia Morra (eds.), *Translating the DCFR and drafting the CESL: A pragmatic perspective*. Berlin: Otto Schmidt/De Gruyter European Law Publishers: 220.

[231] Guggeis 2014: 220.

documents in their language, and interpretation services are provided.[232] A team of lawyer-linguists, one for each language, reviews the amendments made by the members of the parliament and passes them on to the translators. The verification of all language versions takes place from the very beginning, i.e. before political negotiations with the Council.[233]

On the other hand, working parties within the Council work on a "base text", which is almost always the English version. This means that all amendments must be proposed and discussed in English. Only core documents, i.e. documents prepared for the most important stages of the procedure, such as the submission to the Council with a view to deciding on a "general approach", are translated into the other official languages.[234] Interpretation services are provided to the experts of the working parties only upon request. The verification of all the language versions does not take place until a political agreement has been reached with the Parliament and the "base text" is stable.[235]

When the trilogues between the three legislative bodies begin, either the translation service of the Parliament or of the Council take up the translation work in order to avoid duplicated work. The file coordinator and the quality advisor also jointly produce the final version of the base text by incorporating all improvements agreed upon in the earlier stages of the process and ensuring a clear and unambiguous legal act that complies with the formal drafting rules for EU legal acts. But both the coordinator and the advisor represent the interests of their respective institutions.[236]

Once the translations are available and the revision of the base text is completed, the base text is sent to a team of lawyer-linguists, composed of one lawyer-linguist per language, working in the institution that provided the translation. Each lawyer-linguist compares their own language version with the base text. All language versions are then sent to the experts of the working party and the team of lawyer-linguists of the other institution who carry out the same checks.[237]

As the above discussion shows, translation in the EU legal system differs from the traditional form of legal translation, in which a source text with central authority is translated into other languages for informational purposes and is designed to provide readers of the target legal culture with access to the source text.[238] In the translation of EU legislation, several language versions may often already be in play at the drafting stage, even if the original text is mainly negotiated in English.[239] Once an EU legal text is adopted in all the official languages, the translated versions turn into original versions and become laws with the same legal force in all Member States. Legally speaking, the original version does not necessarily refer to the

[232] Guggeis 2014: 220.
[233] Guggeis 2014: 221.
[234] Guggeis 2014: 221.
[235] Guggeis 2014: 221.
[236] Guggeis 2014: 221.
[237] Guggeis 2014: 222.
[238] Engberg, Jan. 2014. General and specific perspectives on vagueness in law: Impact upon the feasibility of legal translation. In Pasa Barbara & Lucia Morra (eds.), *Translating the DCFR and drafting the CESL: A pragmatic perspective*. Berlin: Otto Schmidt/De Gruyter European Law Publishers: 149.
[239] Engberg 2014: 148.

version in which the legislation was originally drafted. In fact, the word "authentic" conveys the meaning of "legally valid" rather than of original. Derlén calls the equally authentic versions "translated originals".[240]

Scholars like Engberg refer to translation in the EU context as "translation without source text".[241] This means that the role of the source languages is hidden behind the scenes. The translated originals are not marked as "translations" but as "originals", having a legal force identical to that of all the other language versions. Information is not disclosed in the documents as to which texts are originals and translations, except for the broad statistics disclosed in the booklet regularly published by the European Commission.[242] This, in turn, is related to the principle of equal authenticity, which requires that EU legal texts be produced in the form of multilingual legal texts rather than legal translations made merely for information purposes. This process eliminates the linguistic hierarchy between the source and target languages and leads to the presupposition of equality of meaning among translations of the same document.[243]

But translators involved in the EU legislative process face several problems in the course of their work. They "may not be familiar with the field which is being regulated, or may not be fully familiar with the specific features of the legal system(s) in which the piece of legislation enacted by the EU must be applied".[244] The "unprecedented level of heteroglossia in legal communication" in the EU makes scholars like Graziadei skeptical about whether it is even possible to enact normative propositions that have the same meaning in all Member States in the many languages in which European law is expressed.[245] Cao also points out the challenges of drafting multilingual laws by dividing the sources of linguistic uncertainty into three categories: (1) "lexical uncertainty", (2) "syntactical and grammatical ambiguity" and (3) "uncertainty arising from errors and variations" found in different language versions of laws, including translation errors.[246] Lexical uncertainty occurs when one or a few language versions use a polysemous term or a term with a more restrictive meaning than the other versions. Syntactical and grammatical ambiguity arises from problems during the drafting process of legal texts, lack of attention to grammatical differences, the omission or addition of conjunctions or punctuation.[247] The uncertainty resulting from variations and translation errors results from the mismatch of words and phrases in two or more language versions, e.g.

[240] Derlén, Mattias. 2016. A single text or a single meaning: Multilingual interpretation of EU legislation and CJEU case law in national courts. In Susan Šarčević (ed.), *Language and culture in EU law: multidisciplinary perspectives*. 1st ed. London: Routledge: 55.
[241] Engberg 2014: 148.
[242] Leal 2020: 489.
[243] Stefaniak, Karolina. 2013. Multilingual legal drafting, translators' choices and the principle of lesser evil. *Meta: Journal des traducteurs/Meta: Translators' Journal* 58.1: 60.
[244] Graziadei 2014: 72.
[245] Graziadei 2014: 73.
[246] Cao, Deborah. 2007. Inter-lingual uncertainty in bilingual and multilingual law. *Journal of Pragmatics* 39.1: 73.
[247] van der Jeught, Stefaan. 2018. Current practices with regard to the interpretation of multilingual EU law: How to deal with diverging language versions. *European Journal of Legal Studies* 11.1: 7.

the use of two or more different terms in one or a few language versions for concepts covered by one term in the other language versions.[248]

This being said, one should not assume that all inconsistencies in wording or unusual expressions in EU laws are due to errors on the side of EU translators. It is necessary to examine the motives behind particular translation choices in more detail from the viewpoint of translation in the process of legal drafting. This point can best be illustrated by a conceptual debate on sex vs. gender[249] during the negotiation process for a proposal for an EU Directive on strengthening the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms[250] Poland, in its statement issued at the Permanent Representatives Committee Council (EPSCO) at the occasion of approval of the Council's general approach on the above proposal, states that "Poland will interpret the expression 'gender equality' as equality between women and men ... and the expression 'gender pay gap' as the gap in pay between women and men".[251]

Poland backs up its statement by presenting the Polish legal system, which it claims is in line with international human rights treaties and the fundamental values and principles of the European Union in terms of ensuring equality between women and men. Considering that Arts. 2 and 3 of the Treaty on European Union, as well as Arts. 8 and 157(3) of the Treaty on the Functioning of the European Union, to which Poland refers in its above-mentioned statement, still retain the expression "equality between men and women" and not "gender equality", Poland has a valid argument in this matter. However, it is known that the phrase "equality between men and women" in the EU Treaties dates back to 1957, and that since then social and legal changes as well as research in the medical and biological fields have led to the recognition of diversity beyond female and male in the definition of "sex". How should the Polish translators and lawyer-linguists then deal with the matter when finalizing the text? Should they follow the instruction in Poland's statement because the latter's claim is supported by primary EU legislation or should they accept the interpretation that "gender equality" goes beyond "equality of men and women" and deal with the matter accordingly? How can EU law speak with one voice, despite the differences between the 24 official languages, as well as the ideological differences and the different legal backgrounds within the Member States, which may manifest themselves even during the legislative and negotiation process?

It remains to be seen how the translators and lawyer-linguists will address the above questions when the proposed Directive becomes a binding law after the negotiation process. But the example illustrates the difficult position of translators in the legal structure of the EU. The translators are involved in the production of legal texts in order to achieve the goal of drafting a single legal text in many languages and trying to reconcile many legal ideological

[248] van der Jeught 2018: 7.

[249] I am indebted to the team of 4th Cologne Summer School for European Legal Linguistics, September 8-14, 2022, for bringing to my attention practical examples which show the complexity of the work of EU translators and lawyer linguists in the EU legislative process.

[250] See the draft proposal at COM/2021/93 final. EUR-Lex-52021PC0093-EN, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021PC0093, last accessed at November 15, 2022.

[251] Council of the European Union. Interinstitutional File. 2021/0050(COD) 14317/21 ADD.1.

differences.[252] As Stefaniak points out, "what may be considered an error from an outsider's point of view is actually a conscious choice made by a translator trying to reconcile various divergent interests".[253]

Scholars like Schilling advocate for a more open approach to translation, arguing that there should be a single original and authentic version, as well as an official translation of the same legislation into all official languages of the EU, rather than having equally authoritative language versions.[254] This, he notes, may be criticized for having the disadvantage of causing misunderstanding of the original text in a foreign language and denying EU citizens and member state courts access to EU law in their own language. But he argues that reliable access to the meaning of a law is better served by facilitating access to an official translation in one's own language, coupled with the possibility ultimately to rely on a single authentic version.

3.3.3. Euro-English: A hybrid language in its own right

The increasing use of translations in the drafting of legal texts in the EU Commission has led to the development of English and French as lingua francas.[255] French held the dominant position as a source language in the Commission until 1993, at 43.5%, compared to 36.4% for English.[256] Subsequent publications by the European Commission's Directorate-General for Translation, however, show that the balance has shifted from French to English in recent years.[257] Mamadouh attributes the loss of ground of French to English to the 1995 enlargement of the EU, particularly the accession of Finland and Sweden, and the dominance of English as the major foreign language among the younger generation of civil servants and politicians.[258] In 1997, 45.4% of the texts in the Commission were originally drafted in English and 40.4% in French. In 2008, the use of English as a source language increased to 72.5%, while French declined to 11.8%.[259] Leal, citing a recent publication by the European Commission's Directorate-General for Translation showing that the role of English has even increased to 85% in 2020, argues that the EU's de jure multilingualism is facilitated by the use of English as the EU's lingua franca, resulting in de facto monolingualism.[260]

At this point, it is important to keep in mind that the English used in the EU legal system is significantly different from British English and does not reflect the fundamental institutions, concepts and categories of common law.[261] As Pozzo notes, "EU texts take their meaning from all language versions and are often drafted by non-native speakers, while [they] are negotiated and amended by all participants. Styles, concepts [and] words are taken from other

[252] Stefaniak 2013: 60.
[253] Stefaniak 2013: 59.
[254] Schilling 2011: 1465.
[255] Doczekalska 2009: 346.
[256] Derlén 2016: 55.
[257] European Commission, Directorate-General for Translation 2009.
[258] Mamadouh 1999: 134.
[259] European Commission, Directorate-General for Translation 2009.
[260] Leal 2020: 483.
[261] Pozzo, Barbara. 2014. The myth of equivalence in legal translation. In Pasa Barbara & Lucia Morra (eds.), *Translating the DCFR and drafting the CESL: A pragmatic perspective*. Berlin: Otto Schmidt/De Gruyter European Law Publishers: 41.

EU languages and adapted to English".[262] A survey conducted by the Commission's Directorate-General for Translation in November 2009 found that while 95% of legal drafters working in the Commission wrote mainly in English, only 13% of them were native English speakers.[263] The English used in the drafting of EU legislation is associated more with "classic civil law background" rather than being tied to technical concepts of English law.[264] Felici presents interesting examples that show the semantic changes in Euro-English legal drafting, which could indicate the intent to develop a language that reflects the needs and diversity of the EU. Terms in Euro-English legal language, such as "actual meaning 'current', in case of used to replace the preposition 'for', dispose of with the new meaning of 'to have', transpose with the meaning of 'to implement' are developed as a result of the influence of other languages".[265] Other examples of neologisms introduced to translate civil law terms include "unilateral withdrawal" (to translate the German "Rücktritt") and "collaboration" (to translate the German "Mittäter und Beteiligte").[266]

The role of Euro-English in the EU legislative process has become a point of contention among scholars. On the one hand, there are scholars who argue that the disproportionate use of English makes the equality of status among the EU official languages a mere illusion and creates a situation of de facto monolingualism in the EU.[267] But on the other hand, other scholars such as Felici argue that the use of a lingua franca with relatively "neutral semantics" would ensure a mix of national interests while remaining politically correct.[268] As things stand now, it is very likely that the Euro-English variant continues growing as a vehicular language with continental patterns, detached from English law and culture, and drafted primarily by non-native speakers. The dominance of English is all the more remarkable when one considers that, of the twenty-seven Member States, only the Republic of Ireland and Malta have English as their official language. The widespread use of English in the EU is also indicative of the growing dominance of English on the world stage for exchanges between speakers of different mother tongues.

3.4. Conclusion

Council Regulation No. 1/58 simultaneously promotes and restricts multilingualism in the EU. On the one hand, based on the principles of equality of Member States and equality of all official languages, Art. 1 of the Regulation lists the 24 official languages of the Member States and designates them as the official and working languages of the European institutions. On the other hand, the case law of the CJEU has interpreted Art. 6 of the above Council Regulation to the effect that European institutions can choose their working languages for specific cases by stipulating such a choice in their Rules of procedure or by providing an objective justification for this choice of languages. This paradox enables the EU official multilingualism

[262] Pozzo 2014: 42.
[263] Otero Fernández 2020: 54.
[264] Pozzo 2014: 42.
[265] Felici, Annarita. 2016. Translating EU legislation from a lingua franca: Advantages and disadvantages. In Susan Šarčević (ed.), *Language and culture in EU law: Multidisciplinary perspectives*. 1st ed. London: Routledge: 127.
[266] Pozzo 2014: 42.
[267] Leal 2020: 489.
[268] Felici 2016: 129.

to be flexible enough to allow the assertion of equality among official languages and the simultaneous designation of some official languages as working languages.

The equal authenticity of EU legislation, which is directly related to ensuring the equality of Member States and their official languages, has been present since the very beginning of the EU project, when the parallel drafting of legislation with six Member States and four official languages was still a feasible option. The EU has now grown to 27 member states with 24 official languages, so parallel drafting of EU legislation is no longer possible. The EU therefore currently addresses the challenge posed by multilingual lawmaking by increasing the role of one vehicular language, namely Euro-English to draft the base text and then translating it into the other official languages, which finally become equally authentic versions. In a sense, the EU strives to achieve uniform application of EU law in all Member States through legal translation during the legal drafting process. Nevertheless, translation is never perfect and linguistic divergence between the different language versions is inevitable. Another means by which the EU seeks to achieve uniform application of a multilingual legal text is through the interpretation of the law by the CJEU. I return to this aspect in Chapter 6.

Chapter 4. The linguistic situation in Ethiopia: Past and present

4.1. Introduction

With approximately 91 mutually unintelligible languages that are spoken according to current counts as mother tongues on its territory,[269] Ethiopia is a multilingual country and most of its citizens master more than one language. The languages spoken within the country belong to the Semitic, Cushitic and Omotic families of the Afro-Asiatic phylum and to different branches of the Nilo-Saharan phylum.[270] One can roughly say that the Semitic languages are spoken in northern and some central parts of the country, Cushitic languages are found mainly in the West, East and South, the Omotic languages concentrate especially in the southwestern corner of the country, while the Nilo-Saharan languages are spoken along the Ethio-Sudanese border.[271]

The speaker numbers of the Ethiopian languages differ significantly. The four largest ethnic groups (the Oromo, Amhara, Somali and Tigray) account, according to the last available census, for 73.7% of the total population.[272] Of these languages, Oromo, the working language of the State of Oromia, is the most widely spoken language as a mother tongue, 33.8%, and Amharic, a working language of the Federal Government and a number of other Regional States, is estimated to be spoken as a mother tongue by around 29.3% of the total population.[273] Other languages that contribute to the complex linguistic situation in Ethiopia are the liturgical language Geez, the language of the Orthodox Church and erudition in the past, and English, the language of instruction at the secondary and tertiary levels of education in today's Ethiopia.

National census data are the most commonly cited source for showing which languages are spoken by how many people and at what level the languages are spoken. However, assessing the nature and extent of multilingualism through census data has its limitations. Although the most recent census data from 2007 include figures on the number of mother tongue speakers of Ethiopian languages, it is not possible to say with certainty whether respondents understood the question about their "mother tongue" as used in the census in the same way. The term "mother tongue" could possibly be understood to mean the language first acquired and still spoken (or still understood), one of the languages (two or more) acquired as a child, the language of one's parents or ancestors never acquired, to name just three possibilities.[274] Moreover, while census data are important and perhaps the only systematically collected source of information to assess multilingualism in Ethiopia, one must also point out what they

[269] Eberhard et al. 2022.

[270] Meyer & Richter 2003: 15.

[271] Meyer & Richter 2003: 15.

[272] Federal Democratic Republic of Ethiopia, Population Census Commission. 2007. *Summary and statistical report of the 2007 population and housing census*, 16-17, available at http://ecastats.uneca.org/aicmd/Portals/0/Cen2007_firstdraft.pdf, accessed October 5, 2021.

[273] Central Intelligence Agency. 2017. *The world fact book*, available at https://www.cia.gov/library/publications/the-world-factbook/geos/et.html, last accessed July 30, 2021.

[274] Edwards illustrates the problem of what a "mother tongue" is in reference to the changing nature of questions about mother tongue in the Canadian census; see Edwards 2008: 450.

cannot help us answer. The census does, for example, not provide any data on regional and national lingua francas, especially the role of Amharic as a communicative tool across speech communities. Amharic is indisputably the most widely used language of the country as a second or third language, especially in the cities and towns, and in the media.[275]

As the discussion in Chapter 2 has shown, while multilingualism is a common phenomenon in the world, each case is unique and depends on demographic, historical and economic factors in every country. The purpose of this chapter is to describe the factors that have shaped the Ethiopian multilingualism and the way it is currently regulated by law. To be more specific, the chapter addresses the following three questions:

(i) What was the official position of the Ethiopian governments in the past towards the languages spoken in the country, as reflected in their language use practices and laws?
(ii) What factors led to the current linguistic regime choice?
(iii) What legal arrangements for language regulation do currently exist in Ethiopia?

To this end, Section 4.2 addresses the first question. I begin the discussion with the history and the present role of the liturgical language Geez. I then outline the major historical events that reflect the official position of the Ethiopian governments which promoted Amharic instead of Geez and used it as a means of national unification, giving Amharic its present role.

In an attempt to address the second question, Section 4.3 discusses how the official monolingual policy to promote Amharic was relaxed and what historical events led to the current official multilingual regime in Ethiopia. The last two sections (Section 4.4 and 4.5) focus on the third question. Section 4.4 discusses the current legal arrangement to officially regulate the Ethiopian multilingualism in the FDRE Constitution and other subnational constitutions. It also investigates the consequences of the language arrangement in the Ethiopian courts system. This is followed in Section 4.5 by an analysis of the most recent ambitious language policy issued by the Council of Ministers and adopted by the HPR, the federal lawmaking body, in February 2020. It deserves close scrutiny, as it is the first detailed language policy document to date and intended to be applied nationwide. I investigate how this policy document advances the multilingualism agenda espoused by the FDRE Constitution and other subnational constitutions.

4.2. Geez and Amharic in the past

4.2.1. Geez

Just as Latin was and, to a lesser extent, still is the language of the Catholic Church, Geez is the language of the Ethiopian Christian Orthodox Church to this day. It is an Ethiosemitic language most closely related to Tigrinya and Tigre and a little more distant relative of Amharic.[276] It

[275] See Meyer, Ronny. 2006. Amharic as lingua franca in Ethiopia. *Lissan: Journal of African Languages and Linguistics* 20.1/2: 117-132.
[276] Meyer, Ronny. 2018. On the internal classification of Ethiosemitic. *Zeitschrift der Deutschen Morgenländischen Gesellschaft* 168.1: 93-124.

was also a dominant language in ancient Ethiopian history before Amharic acquired its present importance. It remained the spoken language until the end of the Aksum Empire in the ninth century and later survived as a literary language, much like Latin in medieval Europe.[277] Sources indicate that the Ethiopian royal chronicles were written in Geez since the 13th century, until Emperor Tewodros (1855-1868) changed this practice and had them written in Amharic as part of his campaign to reunify the North and Central part of present day Ethiopia.[278] Cooper describes the relationship between Amharic and Geez during this time as one of diglossia.[279] While Geez was referred to as *lisane sehuf* 'the language of literature' and reserved for literary, ecclesiastical and ceremonial functions, Amharic was used in the ordinary interactions of daily life.[280]

Geez is extinct as a mother tongue but still widely used by the Ethiopian Orthodox Church as the language of worship and sacred literature.[281] In addition, Geez had, and still has, a significant impact on the growth of the Amharic lexicon.[282] As Richter notes, there is a strong conviction on the part of linguists, educators and writers in Ethiopia that Amharic should be expanded and developed as an educational medium for science and technology, and hence extensive terminology lists are being developed in these fields. This process of vocabulary development is characterized primarily by the formation of neologisms borrowed from Geez by adopting Geez word formation models and incorporating them into Amharic. A few examples of words with Geez origin incorporated into Amharic through the above strategy are: "ሰብዐዊ {säbəʾawi} [human]", "አለምዐቀፍ {ʾäläməʾaqäfə} [international]" and "ሞዋለነዋይ {mäwaläänäwayə} [investment]".[283] The role of Geez as donor language for new legal terms during the massive codification of Ethiopian laws in 1950s and 1960s is discussed in Section 5.5. Up until today, Geez words continue to serve as the basis for the invention of terms for modern technological processes and concepts. In addition, the script that is used to write Amharic (and some other modern languages of Ethiopia and Eritrea) has been adopted from the ancient Geez syllabary.[284] The status of Geez is perhaps best described in the words of Bender et al.: Geez is "a dead language which lives on in a special role in present-day Ethiopian life".[285]

[277] Bender, M. Lionel., Hailu Fulass & Roger Cowley. 1976. Two Ethio-Semitic languages. In M. Lionel Bender (ed.), *Languages in Ethiopia*. Oxford: Oxford University Press: 99.
[278] Cohen 2000: 79.
[279] Cooper, Robert. 1978. The spread of Amharic in Ethiopia. In Joshua A. Fishman (ed.), *Advances in the study of societal multilingualism*. Berlin: De Gruyter Mouton: 460. Diglossia can be defined as "a situation where two related or unrelated languages are used side by side throughout a speech community, each with a clearly defined role"; see Timm, Lenora A. 1981. Diglossia old and new: A critique. *Anthropological Linguistics* 23.8: 357.
[280] Bender et al. 1976: 100.
[281] Bender et al. 1976: 101.
[282] Richter, Renate. 1993. Einige Aspekte der modernen Lexikentwicklung im Amharischen. *Wiener Zeitschrift für die Kunde des Morgenlandes* 83: 167-187; see also Niguse Abbebe & M. Lionel Bender. 1984. The Ethiopian Language Academy: 1943-1974. *Northeast African Studies* 1984: 1; Bender et al. 1976: 101.
[283] Numerous other examples are presented with explanations in Richter 1993: 167-187.
[284] Meyer & Richter 2003: 24.
[285] Bender et al. 1976: 101.

4.2.2. Amharic: A tool for national unification

The role of Amharic can be traced back to the historical pattern of language use in Ethiopia over the last 150 years, which represents the country's modern history and which is characterized by the struggle between societal multilingualism and official monolingualism. As mentioned in Section 4.2.1, Amharic was officially recognized by the Ethiopian state since Emperor Tewodros accepted it as the language for the royal chronicle and the imperial court by replacing Geez. Emperor Yohannes, a Tigrayan emperor who succeeded Tewodros in 1872, followed the example of his predecessor, rather than using the language of his own ethnic group (Tigrinya) for governmental purposes. Cohen takes this as a sign that the importance of Amharic to the state was more fundamental than any ethnic connotations it conveyed.[286]

Amharic continued to be the language of the government under the reign of Emperor Menilek II (1889-1913). During this period, Amharic was not standardized in any meaningful way, and only half of Menilek's Council of Ministers could read and write with ease.[287] Menilek II expanded the state from the northern Ethiopian highlands to the southern present-day borders of the country and integrated many ethnic groups that did not speak Amharic into the empire. All local elites in the recently incorporated areas had to conform to Ethiopia's Orthodox Christian religion and adopt Amharic in order to entertain relationships with the central government. The creation of local Amharic-speaking elites through the policy of Amharization, consolidated by intermarriage between local elites and members of the established northern Ethiopian aristocracy, became an important practice afterwards.[288] Amharic spread outside the northern highlands and became the language of the ruling elites, and the name Amhara became synonymous with "ruler" in many parts of the country. "Amharic became a symbol of the Ethiopian state, and, consequently, a symbol of domination".[289]

The government of Emperor Haile Selassie (1930-1974) went one step further in the policy of Amharization, that is, the Amharization of the entire population to pursue the goal of national unification. After the end of the Italian occupation in 1941, modern Western education began to spread, and Amharic was chosen as the medium of instruction in these schools.[290] Amharic and English were mandatory for certification exams and for entry into the country's only university, Haile Selassie I University (now Addis Ababa University) founded in 1950.[291] This shows not only the important position given to Amharic, but also the recognition of English as the dominant foreign language, playing a significant role in education and serving as the language of communication with foreigners.

[286] Cohen 2000: 79.
[287] Smith 2008: 215.
[288] Cohen 2000: 79.
[289] Cohen 2000: 79.
[290] Traditionally, education in Ethiopia was religiously based and provided in church schools and monasteries for the elite few, mostly men. See Trines, Stefan. 2018. Education in Ethiopia. In *WENR – World Education News + Reviews*, November 15, 2018, available at https://wenr.wes.org/2018/11/education-in-ethiopia, last accessed September 5, 2021.
[291] Smith 2008: 216.

Official endorsement of Amharic as the only national language was taken to a higher level when a statement on language use was promulgated for the first time under the Revised Ethiopian Constitution of 1955 (a constitution given by the Emperor to the people). Art. 125 of the Revised Constitution clearly states that "[t]he official language of the Empire is Amharic". Other actions to promote Amharic were taken by the Emperor before and after this official endorsement. By a decree of the emperor in 1944, schools run by European and American Christian missionaries were obliged to use only Amharic as the language of instruction.[292] Other local languages were allowed as a medium of oral instruction only in regions outside the sphere of influence of the Ethiopian Orthodox Church and only until the missionaries and their students had acquired sufficient knowledge of Amharic. Missionaries were usually only allowed to work in areas where the Ethiopian Orthodox Church was not well established, and these were areas largely inhabited by people whose first language was not Amharic. This opened up additional opportunities for the government to spread Amharic among people who would otherwise not have had the opportunity to learn it.[293]

An imperial decree in 1943 ordered the Ministry of Education to draft a document establishing an academy for the promotion of research in languages and fine arts.[294] After a lengthy process and at a time when the imperial regime enjoyed its highest confidence in 1972, the academy was founded under the name "National Academy of the Amharic Language", reflecting the high status of Amharic in the country.[295] The only credit that can be given to the imperial government in promoting languages other than Amharic is the fact that radio broadcasts in Oromo, Tigrinya, Somali and Afar languages were aired for a few hours a week.

The establishment of the Negarit Gazeta as the official journal for the publication of the Ethiopian laws[296] and the codification of the major code laws through transplantation and translation of the laws from French and English into Amharic (see Section 5.5) can be seen as an important step in the development of Amharic as a legal language. Even though there was no law regulating the use of language in the courts, Amharic was almost exclusively used for communication among judges and for communication between the judges, witnesses and other participants in the court case. Other languages were used mainly when a particular person was not familiar with Amharic.[297]

Apart from official policies that favored the spread of Amharic, other social factors such as the establishment of new centers of political and military control, better known as ከተማ (kätäma [garrison towns]) increased the importance of Amharic as an unofficial lingua franca for interethnic communication. Chances of finding employment and conducting trade in the growing towns were facilitated by knowledge of Amharic.[298] In this respect, Amharic came to be associated positively with modernity, prestige and economic opportunities.

[292] Decree No. 3, Negarit Gazeta 1944, Art. 13 and Art. 14.
[293] Cohen 2000: 80.
[294] Negarit Gazeta, Addis Ababa, Year 2, No. 5, January 29, 1943; cited in Niguse & Bender 1984: 1.
[295] Niguse & Bender 1984: 4.
[296] Establishment of Negarit Gazeta Proclamation No. 1 of 1942, 1st Year, No. 1, March 30, 1942.
[297] Cohen 2000: 82.
[298] Cohen 2000: 87.

The Ethiopian case is not unique. Linguistic nationalism was a predominant historical phenomenon in the western world. For example, anyone studying the linguistic history of France and the United States immediately discovers that both states have strived for linguistic homogeneity in their history. [299] As a good and entertaining example of the rejection of multilingualism or any kind of cultural pluralism, an excerpt from the January 3, 1919 letter by President Theodore Roosevelt to the president of the American Defense Society can be cited: "We have room for but one language here, and that is the English language, for we intend to see that the crucible turns our people out as Americans, of American nationality, and not as dwellers in a polyglot boarding-house".[300] But one should also remember the exceptional cases of the Swiss Confederation, Belgium and Finland that were committed to preserve their multilingualism from the very beginning (see Section 2.3).

Comparing the Ethiopian case with that of other African countries, one notices some similarities in the spread of Amharic in Ethiopia and other endogenous lingua francas elsewhere in Africa, such as Hausa and Bambara in West Africa and Swahili in East Africa.[301] Yet, the language policy pursued primarily by Emperor Haile Selassie I which made Amharic an official national language can be considered exceptional. All other multilingual African countries had been colonized by European powers, and they retained one or more languages (English, French, Spanish, or Portuguese) of a former colonizer (Belgium, Britain, France, Spain, or Portugal) as official languages.[302] In Ethiopia, an endogenous language, Amharic, was adopted early on as the only national language of the country irrespective of the fact that Ethiopia was (and is) a multilingual, multiethnic and culturally pluralist country. Smith invokes this hegemony of Amharic to argue that "the Amharic language achieved dominance and became akin to other colonial languages" under the Emperor's rule and further concludes that the Emperor's understanding of the imperatives of the state-building project and the way he used Amharic to achieve this goal were strikingly similar to those of other African leaders of the same period who used colonial languages to bring national unification.[303]

4.3. Relaxation of the monolingual policy

The political need to officially recognize multiple languages was to some extent met by the military government (popularly known as the "Derg") that came after the fall of the imperial regime in 1974. The Derg relaxed the strict "Amharic-only" language policy of the imperial government and followed the example of the socialist states of Eastern Europe, many of which were also linguistically diverse. The Program of the National Democratic Revolution of Ethiopia issued by the Derg in April 1976 clearly states:

> "[E]ach nationality will have regional autonomy to decide on matters concerning its internal affairs. Within its environments, it has the right to determine the contents of its political, economic, and social life, use its own

[299] Leung 2019: 28.
[300] Quoted in Leung 2019: 39.
[301] Cooper 1978: 462.
[302] Leung 2019: 63.
[303] Smith 2008: 214.

language and elect its own leaders and administrators to head its internal organs."[304]

Subsequently, in 1979, the Derg changed the name of the institution "National Academy of the Amharic Language" to "Ethiopian Language Academy" to include the study of other Ethiopian languages.[305] The Constitution adopted by the Derg government in 1987, the Constitution of the People's Democratic Republic of Ethiopia (henceforth PDRE Constitution) introduced a provision regarding its language policy which was fairly liberal if compared to the 1955 Revised Constitution. Art. 2(5) of this Constitution provides that "[t]he People's Democratic Republic of Ethiopia shall ensure the equality, development and respectability of the languages of nationalities". Apart from this, the Derg took actions that positively impacted the use of other languages in the country. In contrast to the policy of the imperial government, the Derg asserted that all people in Ethiopia had the right to be able to read and write in their own language. For the first time in history, Ethiopian languages other than Amharic were used at least for nonformal literacy campaigns. Languages that were the mother-tongues of 93% of the Ethiopian people, including Amharic, Oromo, Tigrinya, Wolaitta, Somali, Sidaama, Hadiyya, Gurage-Silt'e, Kambaata, Afar, Tigre, Gedeo, Kafa, Saho and Kunama were designated for use in these campaigns.[306]

The status label of Amharic was changed from "official language of the Empire" in the 1955 Revised Constitution to "working language of the State" in the 1987 PDRE Constitution.[307] While such a change of the label cannot be considered the only determining factor in setting the legal and political meaning of the provision, it nevertheless provides a textual indication of the Derg government's intention to take a different approach than in the 1955 Revised Constitution to regulating the status of Amharic in the country. Recall the implications of designating a language as official (see Section 2.4). The Derg's choice of the term "working language", one might argue, indicates that the government wanted to avoid ideological conflicts and power struggles that might be associated with designating Amharic as the official language of the state, which could mean that Amharic has the highest status, and instead wanted to appeal only to practical concerns.

Nevertheless, the dominance of Amharic was perpetuated at all levels during the Derg. Amharic was used for all administrative purposes and in the judicial system throughout the country. As Cohen notes, Amharic was seen by educated Ethiopians, including many of those in the government, as "an inherently superior language, and it was also, of course, the language with which those in power were most familiar".[308] The geographical spread of Amharic and the expansion of its uses increased as Amharic was maintained as the sole medium of instruction in primary and secondary education and more schools were opened in

[304] Quoted in Meyer & Richter 2003: 24.
[305] Baye 2020: 22.
[306] Meyer & Richter 2003: 27.
[307] Art. 116 of the 1987 Constitution of the People's Democratic Republic of Ethiopia reads: "Without prejudice to Article 2 sub-article 5 of this Constitution, in the People's Democratic Republic of Ethiopia the working language of the state shall be Amharic."
[308] Cohen 2000: 93.

rural areas compared to the imperial period. The continued strengthening of the position of Amharic therefore served as a tool to bring education to rural areas while achieving the government's goals of establishing more effective forms of central control.[309]

The Derg's attempts to introduce local languages into the nonformal literacy campaigns also failed due to many reasons. Firstly, the nonformal literacy campaigns were more focused on spreading the political agenda than on promoting local languages. Moreover, the imposition of the Ethiopian script (previously used only for Amharic and Tigrinya) on structurally very different Cushitic and Omotic languages selected for national literacy campaigns was particularly problematic.[310] Cohen describes the Geez script as an "unsuitable vehicle" for Cushitic and Omotic languages, arguing that "it failed, for example, to allow for the greater number of vowel sounds that are present in Cushitic and Omotic languages, and to mark gemination, the doubling of consonants common to many Ethiopian languages".[311] Finally, the large number of Amharic teachers in the workforce increased the desire of rural people to learn Amharic as opposed to their local languages, and often the nonformal literacy campaigns moved from promoting literacy in local languages to offering literacy classes in Amharic.[312]

4.4. The Ethiopian official multilingual regime

4.4.1. Origin

The adoption of an official multilingual policy is often a reaction to a political crisis or economic necessity than a change guided by a vision of the society a state wants to create.[313] In this respect, the case of Ethiopia is no exception. Although the strict Amharic-only language policy of the imperial Ethiopian government was relaxed during the Derg's military regime, Ethiopia did not enter the phase of official multilingualism until the political crisis that led to the fall of the Derg. The crisis was followed by the enactment of the 1991 Transitional Charter and subsequent adoption of the FDRE Constitution in 1995, which introduced official multilingualism in the country. Some more discussion of the events that led to the FDRE Constitution, as well as the socio-historical context, can clarify how the country was forced to adopt official multilingualism.

The status label that is given to an official language by the state carries a powerful implicit message about citizenship. It signals who is accepted into the political community and under what conditions.[314] In Ethiopia, too, linguistic assimilation and lack of support to languages other than Amharic proved to be the main source of resentment among non-Amharic-speaking ethnic groups. A statement by Merara, a political scientist and the current leader of a political organization called Oromo Federalist Congress (OFC) reflects this resentment: "[…] adopting Amharic and or Christian names was directly and indirectly encouraged, especially at schools, where students were made to feel inferior because of their original names. Thus

[309] Cohen 2000: 94.
[310] Getachew & Derib 2006: 48.
[311] Cohen 2000: 92.
[312] Cohen 2000: 93.
[313] Leung 2019: 109.
[314] Smith 2008: 212.

changing their names to Amharic or Christian names thus became an unwritten rule for the members of the southern elite, through which they could become members of the club of the northern elite."[315] The resistance against assimilation efforts grew to the point of armed struggle. Beginning in the 1960s and 1970s, Ethiopia saw the rise of various nationalist movements, most notably of the Oromo Liberation Front (OLF) and the Tigray People's Liberation Front (TPLF), both of which were regionally based and ostensibly recruited from a particular ethnic or linguistic group.[316] Their struggle aimed at reversing the historical process that had led to the emergence of the imperial state in the 19th century and its ethnolinguistic and religious inequalities, they demanded independence for the people they claimed to represent or at least autonomy within the state.

In late 1989, the TPLF formed a coalition with three other ethnic-based political groups and named the coalition the Ethiopian People's Revolutionary Democratic Front (EPRDF), which ruled the country from 1991 to 2019. In 1991, the EPRDF, together with the Eritrean People's Liberation Front (EPLF) and the OLF forces held a peace conference, where a provisional Charter of the Transitional Government of Ethiopia was drafted and adopted. The Charter marked the beginning of a shift in the official conceptualization of Ethiopian identity from a culturally unified country, mainly represented by Amharic culture and language, to the legal and ideological recognition of distinct nations within Ethiopia.[317] The Charter recognizes the right to use and develop the languages of all ethnic groups (the so-called "Nations, Nationalities and Peoples"), provides that the Ethiopian script should not be imposed on any language and that languages may use the Latin script if they wish.[318] The recognition of the country's ethno-linguistic diversity was one of EPRDF's strategies to increase its political capital in order to secure political stability and legitimacy. The EPRDF needed to make a clear gesture about the change in political regime and construct a new national identity.

The 1995 FDRE Constitution is based on similar principles as the Transitional Charter and can be considered a constitution designed to ensure the institutional accommodation of ethnolinguistic diversity. But the Constitution regulates linguistic diversity in a paradoxical way. One speaks about a language policy paradox "when a seemingly straightforward statement about either a premise for the policy (often stated as value or moral positions) or the policy itself is contradicted by arguments for, applications of, or other statements related to the policy statement".[319] A paradox is not necessarily negative and serves as a tool for simultaneously regulating language rights and language restrictions. In the following section, I investigate how a law that explicitly promotes multilingualism and advocates the principle of

[315] Merera Gudina. 2003. The elite and the quest for peace, democracy, and development in Ethiopia: Lessons to be learnt. *Northeast African Studies* 10.2: 162.
[316] Merera 2003: 161.
[317] Micheau, Aaron P. 1996. The 1991 transitional charter of Ethiopia: A new application of the self-determination principle. *Case Western Reserve Journal of International Law* 28.2: 382.
[318] See The Transitional Period Charter of Ethiopia, Negarit Gazeta, No. 1, 1991: Art. 2(a). The Transitional Charter and the FDRE Constitution adopted after the Charter both use the term "Nations, Nationalities and Peoples" to refer to ethnic groups.
[319] Johnson 2013: 295.

equality of all languages can simultaneously privilege and restrict multilingualism and create hierarchies between languages.

4.4.2. The Ethiopian official multilingualism paradox

Although comparative constitutional law does not provide a clear guide to how states should use their discretion in granting language status, the three basic conditions Vieytez identifies are relevant here: "the historical or traditional nature of the languages of the country, the degree of territorial concentration of those languages and the population's degree of knowledge or of use of each language."[320] The provisions of the FDRE Constitution on the status of the approximately 91 languages spoken as mother tongues in Ethiopia seem to have taken these conditions into account. On the one hand, Art. 5(1) of the FDRE Constitution stipulates that "[a]ll Ethiopian languages shall enjoy equal state recognition". Art. 39(2) of the Constitution also grants all ethnic groups, the so-called "Nations, Nationalities and Peoples", the right to speak, write and develop their own language; to express, develop and promote their culture; and to preserve their history. The above constitutional provisions are seemingly straightforward. They reflect the model of official multilingualism where all languages ought to enjoy the same public recognition when offering public services or transacting public business. But on the other hand, when reading Sub-art. (2) of Art. 5 of the Constitution, it immediately becomes clear that the declaration of equality of all languages is merely symbolic, because in Art. 5(2) only Amharic is recognized as a working language of the Federal Government.[321] In addition, the Constitution grants the Regional States the power to decide on their own working languages, apparently taking into account the degree of territorial concentration of these languages. The following two subsections examine how the FDRE constitution deals with the (non-)equality paradox and why this paradox is inevitable, or even necessary, to manage linguistic diversity.

4.4.3. Justifications for making Amharic the working language of the Federal Government

The explanatory note on Art. 5 of the FDRE Constitution contains the following excerpt:

> "Amharic is chosen as the working language of the Federal Government because it is a language spoken by many people and is well developed compared to other Ethiopian languages. Although Amharic is chosen as a working language because it is currently in a better position compared to other languages as a means of communication, all languages, including Amharic, are equally recognized by the state. The statement that all Ethiopian languages receive equal state recognition means that all languages, without being classified as high or low in any respect, are

[320] Vieytez 2004: 14.

[321] The FDRE Constitution, Art. 5(1) and (2).

> accepted as languages of daily communication, public offices, education and the courts." (translation mine)[322]

The above explanatory note does not only state the reasons for the choice of Amharic but also reflects that the drafters are torn between considerations of equality and practicality. In fact, equality of all languages hardly works in practice, as it requires infinite resources and personnel and slows down administrative processes. Alternatively, a higher official status is granted to a language among the equal languages for administrative reasons. This means that the Federal Government, including federal judicial bodies, communicates with all regional governments and conducts all government affairs only in Amharic.

Such a decision requires consideration of factors other than the principle of equality of languages. To borrow Leung's words, it is "linguistic demographics and patterns of current use" that were used as basis to override the principle of equality of languages and reward the label status of a working language to Amharic.[323]

The approach of giving Amharic the status of a working language instead of a "national language" or an "official language" seems to be guided by similar motives as the 1987 PDRE Constitution (see Section 4.3). It was meant to signal the pure practical value of the decision. If the Federal Government was to function effectively through a language known to the majority of the population, Amharic was the best candidate. Nevertheless, granting official status to Amharic can still signal different meanings for different groups. As the drafters of the Constitution must have imagined, this legal status leads to greater social mobility and economic opportunities for people who master Amharic and can even be considered politically neutral to some groups. But at the same time, though Amharic is chosen as the working language of the Federal Government because of its instrumental value, this choice is indicative of past and present political power. Granting this status to Amharic also means denying the same status to other languages, and one could argue that symbolic violence is being done to the speakers of these languages, who feel that they are being denied the recognition they deserve. As Smith argues, because of the dominance of one language, Amharic, for most of the last century and up to the present time, coupled with factors such as the enormous resources required to implement any significant change in language policy, "the historical distribution of the political goods of communication, recognition and autonomy has been highly skewed, benefiting native Amharic-speakers disproportionately".[324] This forces members of other language groups to assume that an Ethiopian identity at the national level is synonymous with the ability to speak Amharic and that any reinterpretation of Ethiopian citizenship at the local level is seen as a radical political stance and a threat to the privileges of these dominant groups.[325]

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[322] Explanatory note to the FDRE Constitution (written only in Amharic), available at https://abyssinialaw.com/laws/constitutions/the-1995-ethiopian-constitution-explanatory-note-amharic-version/download, last accessed December 2, 2020.

[323] Leung, Janny H. C. 2016. Negotiating language status in multilingual jurisdictions: Rhetoric and reality. *Semiotica* 2016.209: 378.

[324] Smith 2008: 207.

[325] Smith 2008: 209.

4.4.4. The legal status of other languages

During the drafting of the FDRE Constitution, it was necessary, in order to reduce the tensions fomented by other national groups, to end the inherited situation in which Amharic was imposed on the entire state to unite the country's diverse population. This concern is reflected in the preamble of the Constitution, which states that the common destiny of nations, nationalities and peoples "can best be served by rectifying historically unjust relationships and by further promoting shared interests".[326] Therefore, unlike previous constitutions, which declared Amharic the official or working language of the entire state, the FDRE constitution limits Amharic's official status to making it the working language of the Federal Government. In addition, the FDRE Constitution regulates the legal status of other languages through two mechanisms: granting territorial autonomy to ethnic groups and promoting territorial multilingualism. I briefly discuss these mechanisms in the following subsections.

(i) Granting territorial autonomy to linguistic groups

The FDRE Constitution makes language a prime factor in the definition of group identity and establishes separate sub-national territories for ethnolinguistic groups. Art. 39(5) of the FDRE Constitution defines the term "Nation, Nationality or People" as "a group of people who have or share a large measure of a common culture or similar customs, mutual intelligibility of language, belief in a common or related identities, a common psychological make-up, and who inhabit an identifiable predominantly contiguous territory". This provision shows us the extent to which the drafters of the Constitution prioritized the criterion of ethnolinguistic identity and tied it to a defined territory. The names of the five Regional States established by the FDRE Constitution, i.e. the State of Tigray, the State of Afar, the State of Amhara, the State of Oromia and the State of Somali all refer to the ethnic group that is numerically dominant in the respective state.[327] The State of Sidaama, formerly an administrative zone in the Southern Nations, Nationalities and Peoples (SNNP) Region, established through a referendum in 2019, is also dominated by the Sidaama ethnic group.[328] The remaining Regional States have no dominant ethnic groups and are therefore composed of diverse ethnic groups. All Regional States also regulate ethno-linguistic diversity within their territories in their regional (subnational) constitutions.[329]

Scholars like Borisova and Sulimov argue that granting territorial autonomy to ethnic groups is considered one way to prevent, manage and resolve ethnic conflicts.[330] However, other scholars argue the opposite view, that granting territorial autonomy exacerbates rather than

[326] See the preamble of the FDRE Constitution.

[327] The FDRE Constitution, Art. 47.

[328] Sidama [Sidaama] became Ethiopia's tenth Regional State through a long-awaited referendum on November 20, 2019, the first of its kind in Ethiopia since the adoption of the 1995 FDRE Constitution. See Addis Standard, November 23, 2019, available at https://addisstandard.com/breaking-sidama-becomes-ethiopias-10th-regional-state/, last accessed June 28, 2021.

[329] For a detailed study of how the Regional States regulate ethnic diversity within their territories, see Van der Beken, Christophe. 2014. Sub-national constitutional autonomy in Ethiopia: On the road to distinctive regional constitutions. In *The IXth World Congress of Constitutional Law "Constitutional Challenges: Global and Local"*, *Proceedings*. Oslo.

[330] Borisova, Nadezhda & Konstantin Sulimov. 2018. Language territorial regimes in multilingual ethnic territorial autonomies. *Nationalities Papers* 46.3: 359.

mitigates conflicts due to the difficulty of demarcating boundaries between autonomous federating units due to the intermingling of peoples, due to conflicts in heterogeneous regions and due to conflicts that may arise between differently developed regions. According to the latter view, ethnicity becomes active on the political stage, especially in African countries, not because it defuses conflict, but because ethnicity is a cost-effective strategic resource for political organization, which in turn results from the absence or weakness of alternative bases for political organization, such as class.[331] While one may acknowledge the problems associated with granting territorial autonomy to ethnic groups, it cannot be denied that such autonomy creates a favorable ground for the exercise of language rights, as the following Ethiopian case depicts.

(ii) Territorial multilingualism in Ethiopia

The FDRE Constitution applies the territorial model to regulate linguistic diversity within Ethiopia in a much similar way to Belgium and Switzerland (see Section 2.3). According to the arrangement by the FDRE Constitution, the Regional States are granted the authority to determine their own working languages.[332] This constitutional provision has given room to language status politics at the subnational level. Using this constitutional space, the States have included language provisions into their constitutions based on their specific circumstances.

One can roughly divide the language regimes at the subnational level into three categories: the first group consists of Regional States that have granted working language status to the languages predominant within their strictly defined borders. The second group comprises those Regional States which have opted to use Amharic as their working language because of the absence of any dominant group whose language can be designated as the working language of the Region. The third trend followed in subnational language regimes is the selective recognition of languages to promote the preservation of endangered languages in the community and the protection of minority rights. Each of these language arrangements is discussed in the next paragraphs.

(a) Languages of the dominant ethnic groups as regional working languages

Five Regional States (see Figures 1 and 2 in Section 1.3.3) have designated the languages of the dominant ethnic groups as working languages in their respective territories, i.e. Tigrinya is the working language of the State of Tigray,[333] Afar the working language of the State of Afar,[334] Oromo the working language of the State of Oromia,[335] Somali the working language of the State of Somali,[336] and, finally, Sidaama, the working language of the State of Sidama

[331] Mozaffar & Scarritt 1999: 242-46.
[332] The FDRE Constitution, Art. 5(3).
[333] Constitution of the Tigray National Regional State (Proclamation No. 1/1995). Mekele: Tigray Regional State, Art. 5.
[334] Revised Constitution of Afar Regional State. Semera: Afar Regional State, July 2002, Art. 5.
[335] The Revised Constitution of Oromia Regional State. Megeleta Oromia, Finfine: Oromia Regional State, October 2001, Art. 5.
[336] The Revised Constitution of Somali Regional State. Jigjiga: Ethiopian Somali Regional State, May 2002, Art. 6.

[Sidaama].[337] The State of the Harari People designates two languages as working languages, i.e. Harari and Oromo.[338] The inclusion of Oromo as the working language of the State has the aim to protect the linguistic rights of the Oromo community, which represents 56.41% of the total population of the State of Harari.

At this point, the question arises as to the extent to which state governments, to whom the authority to determine their own working languages is devolved by the Federal Constitution, may exercise this authority. In particular, one may ask whether the large number of speakers of languages other than the officially designated working language should be a justification for the Federal Government to interfere with the state's authority to regulate public language use for the benefit of this large number of speakers. The Swiss case after the constitutional reform in 2000 could offer an alternative approach in this respect. The power of the cantons to determine their official languages, enshrined in Art. 70(2) of the Swiss Federal Constitution, may be limited by a number of factors. First, this power of the cantons must respect the traditional distribution of languages in the territory and, second, it must take into account the rights of linguistic minorities.[339] In the Ethiopian case too, since respect for the rights of linguistic minorities and speakers of languages other than the working language of the Regional State is an issue in almost all Regional States, one could propose a constitutional amendment to Art. 5(3) of the FDRE Constitution to introduce a qualifying provision in favor of the protection of groups whose rights may be affected by the power of states to determine their own working languages.

In this context, it is worth noting an interesting development in some Regional States which designate a language other than Amharic as their working language and yet publish laws in Amharic along with the regional working language and English versions. In the State of Oromia, for example, most regional laws issued in the form of proclamations are published in Amharic in addition to the Oromo and English versions in the Megeleta Oromia, an official gazette to publish Oromia regional laws. A draft legislation can be submitted to the "Caffee", the highest legislative body of the Oromia Regional State, for consideration only if either the Caffee secretariat or the body that submitted the draft law prepares it in Oromo, English and Amharic versions.[340] This is also reiterated in a recent proclamation to determine Oromia Regional State legal drafting procedure, which states that the Caffee Secretariat "must ensure that a draft regional legislation is prepared in Oromo, Amharic and English versions before the draft is submitted to the "Caffee" for deliberation."[341] As I learned from an interview that I conducted with a legal expert working in the State of Oromia, the region has not amended its regional constitution, which specifies Oromo as the region's only working language.[342] My

[337] As far as I know, Sidama [Sidaama] Regional State has not adopted the Regional Constitution yet. But the Sidaama language is the de-facto working language in the Region.

[338] The Revised Constitution of Harari National Regional State. Harar, September 2004, Art. 6.

[339] Vieytez 2004: 14.

[340] Proclamation Enacted to Redefine Organizations, Duties, Conduct of the Members and Meeting Procedures of the "Caffee", No. 201/2017. Megeleta Oromia, 27th Year, Finfine, March 2, 2017, Art. 15(3) and (5).

[341] Proclamation to Determine Oromia Regional State Legal Drafting Procedure, No. 222/2020, Megeleta Oromia, 29th Year, Finfine, February 19, 2020, Art. 16(2).

[342] Interview with Gidisa Fayera, Public Prosecutor, West Shewa Zone Justice Department, Oromia Region, conducted by Deginet Wotango Doyiso through telephone, September 20, 2022: file with the author.

interviewee believes that the decision to draft and publish laws also in Amharic made for practical reasons, namely to make the laws accessible to non-Oromo speakers who might come into contact with the laws. Possibly for similar reasons, official Amharic translations of Tigray regional laws are published in the Tigray Negarit Gazeta, an official gazette to publish Tigray regional laws.[343]

(b) Amharic as a working language in Regional States

In four Regional States, namely the State of Benishangul-Gumuz, the State of the Southern Nations, Nationalities and Peoples, the State of the Gambella Peoples and the South West Ethiopia Peoples Region, no single linguistic group is dominant. In order to avoid contentious debates about which languages should be selected as regional working languages, these four Regional States have pragmatically opted for the continued use of Amharic.[344] Amharic is, as one would expect, designated as the working language of the State of Amhara,[345] and the federally administered cities of Addis Ababa[346] and Dire Dawa have also designated Amharic as their official language,[347] though both cities are home to numerous ethnic groups. It can therefore be concluded that none of the country's languages is equal to Amharic even when it comes to having an official status at regional level.

(c) Selective language recognition

Contrary to the practice of designating the languages of the dominant ethnic groups as working languages in the majority of the Regional States, some subnational Constitutions have also introduced selective language recognition to promote the maintenance of vulnerable languages in the community or protecting the rights of minorities. These Regional States have gone so far as to establish special administrative structures for ethnolinguistic groups ("Nationalities"), which are empowered, among other things, to determine their own working languages. This can best be illustrated by the administrative structural arrangements made by the State Constitutions of the SNNP Region and the State of Amhara.

Under the SNNP State Constitution, the Zonal and Special Woreda Councils have several competences, including the power to determine the working language of the respective Zone/Special Woreda.[348] A study by Van der Beken, citing an interview with the Speaker of the Southern Council of State, shows that five of the Zones in the Region, namely Sidaama, Wolaitta, Hadiyya, Kambaata[349] and Gedeo Zones have adopted their own local languages as

[343] See, for example, Tigray Land Administration and Use Proclamation published in Amharic and Tigrinya at https://landwise-production.s3.amazonaws.com/2022/03/Ethopia_Tigray-Land-Proclamation_2006.pdf, last accessed October 1, 2022.

[344] See the Revised Constitution of Gambella Regional State, Proclamation No. 27/2002, Art. 6; The Revised Constitution of the Southern Nations, Nationalities and Peoples (SNNP) Region, Proclamation No. 35/2001, Art. 5(1); The Revised Constitution of Benishangul-Gumuz Regional State, 2002, Art. 5; The Constitution of the South West Ethiopia Peoples Region, November 2021, Art. 5.

[345] The Revised Amhara National Regional Constitution Approval, Proclamation No. 59/2001, Art. 5.

[346] The Addis Ababa City Government Revised Charter, Proclamation No. 361/2003, Art. 6.

[347] The Dire Dawa City Administration Charter, Proclamation No. 416/2004, Art. 5.

[348] The Revised Constitution of the SNNP Region, Art. 81(3).

[349] One may find official documents with different spellings such as Sidama, Wolayita/Wolaita, Hadiya and Kembata.

working languages instead of Amharic by August 2003.[350] However, as a legal expert who has worked in the Region, I know that none of the above Zones, with the exception of the Sidama [Sidaama] Zone, have actually used local languages in workplaces up to my departure in 2019.

The Constitution of the State of Amhara has established a similar structure as in the SNNP State Constitution but with a different name, namely "Nationalities Administration (yäbəheräsäbə ʾasətädadärə)"[351] for the Hemra, Awi and Oromo peoples in the areas where these nationalities live.[352] The Awi represent 3.46%, the Oromo 2.62% and the Hemra 1.39% of the Region's total population. Important powers such as determining the working language of the nationality, ensuring the protection of the nationality's rights to speak and write in its own language, developing and promoting its own culture as well as maintaining and preserving its own history are entrusted to the Nationality Council (yäbəheräsäbə məkərəbetə) of the Nationality Administration. In addition, another nationality group, the Argoba, who constitute only 0.41% of the total population of the Amhara Region, have also established their own nationality structure at the Woreda level, with a Nationality Council having the same powers as the three special administrative zones mentioned above.[353]

This can be contrasted with the Constitution of the State of Oromia, which contains no provisions for the recognition and protection of other ethnic groups living in the Region. Though Art. 2(1) of the Constitution of the State of Oromia recognizes that Oromia is populated by "people of the Oromo nation and other peoples", Art. 8 stipulates that "[s]overeign power in the region resides in the people of the Oromo nation". The phrase "the people of the Oromo nation" is defined under Art. 39(6) as "those people who speak the Oromo language, who believe in their common Oromo identity, who share a large measure of a common culture as Oromo's and who predominantly inhabit in a contiguous territory of the Regional State".[354] Thus, unlike the Hemra, Awi and Oromo people in the State of Amhara, non-Oromo ethnic groups living in the State of Oromia do not have their own territorial unit and therefore do not exercise the right to determine their working language.

Overall, the Ethiopian case can be cited as an example of territorial multilingualism intended to provide a greater sense of security for ethnic groups living in the country. It recognizes and strengthens the identity of sub-state national groups and leads, ideally, to a tolerant attitude on the part of the state, which in turn weakens the legitimacy of separatist claims by the sub-state national groups.[355]

Although territorial multilingualism served Ethiopia at the beginning of its federalism as a possible solution to reduce the threat to the country's territorial integrity by eliminating linguistic disenfranchisement as a cause of secessionism, there are many challenges arising

[350] Van der Beken, Christophe. 2007. Ethiopia: Constitutional protection of Ethnic minorities at the regional level. *Afrika Focus* 20.1-2: 141.

[351] The Nationality Administration is an administrative structure below the regional level in the State of Amhara.

[352] The Revised Amhara National Regional Constitution, Art. 73(1).

[353] Proclamation No. 130/2006, a proclamation establishing the Argoba Nationality Woreda. A "woreda" is the lowest government administrative structure that may be equated with a district.

[354] Direct quote from the official English translation of The Revised Constitution of Oromia Regional State, 2001, Art. 39(6).

[355] Leung 2019: 81.

from the territorial multilingualism regime introduced by the constitution. Practically speaking, territorial multilingualism can be criticized for causing unnecessary competition between different languages that previously coexisted and complemented each other in multilingual symbiosis.[356] It can even lead to Regional States being misrepresented as monolingual enclaves, when in fact they are home to diverse language groups. It may also have the danger of negatively impacting individuals' need to be able to communicate across ethnic boundaries and language communities. In addition, given the regional and local conflicts in Ethiopia in recent years, which are ethnically charged, it could be said that the concept of ethno-linguistic federalism has failed in Ethiopia and has itself become a threat to the unity of the country.

Finally, territorial multilingualism encourages ethnic groups whose languages are recognized only at the regional level to demand greater recognition at the federal level. The territoriality principle can no longer maintain the status quo of privileging Amharic as a federal working language and denying the same official status to other languages, especially those having particular importance because of their number of speakers and political influence. This also means that Ethiopia faces the challenge of not having a specific language that is considered politically neutral and that serves as a source of stability in building an ethnically diverse nation. I return to the discussion of this problem in some detail by addressing the recent language policy that proposes to increase the number of federal working languages from one to five (Section 4.5).

4.4.5. Territorial multilingualism and the Ethiopian court system

Following what Art. 5 of the FDRE Constitution provides, the Federal Courts Proclamation No. 1234/2021, which was recently issued to replace earlier proclamations for the administration of the federal courts, stipulates that "Amharic shall be the working language of the Federal Courts".[357] But the application of this provision is complicated by the current structure of the state and that of courts in Ethiopia and therefore the corresponding horizontal distribution of power between the federal and state governments. The FDRE Constitution establishes parallel legislative, executive and judicial organs for both the federal and the state governments.[358] This also means that a dual judicial structure, namely, the federal courts and the state courts with their own independent structure and administrations, are established (see Figure 3 in Section 1.3.3).[359]

However, the Ethiopian Federal State has organized a modified form of dual court structure, different from systems where there is a strict binary division between one set of courts applying and interpreting the law of the Federal Government and another group applying and interpreting the law of the individual states.[360] In other words, the Constitution, after having

[356] Banda 2009: 2.

[357] The Federal Courts Proclamation No. 1234/2021, Art. 31(1); Federal Courts here refer to the Federal Supreme Court, the Federal High Court and the Federal First Instance Court.

[358] See the FDRE Constitution, Art. 50(2).

[359] The FDRE Constitution, Art. 79(1).

[360] For more discussions related to this, see Muradu Abdo. 2007. Review of decisions of state courts over state matters by the Federal Supreme Court. *Mizan Law Review* 1.1: 60-74.

established parallel Federal and State courts, delegates the jurisdictions of the Federal High Court and of the First-Instance Courts to the State Supreme Courts and State High Courts, respectively.[361] This raises interesting issues related to the language of adjudication in State Courts that exercise constitutionally delegated federal judicial authority.

No problem arises in States whose working language is also Amharic.[362] But due to the principle of territoriality that the FDRE constitution provides for the administration of other languages, most of the States that make up the Ethiopian Federation have their own working languages rather than Amharic (Section 4.4.4). In practice, State High Courts and Supreme Courts acting as Federal Courts exercising a delegated power, particularly those in the States which have a working language different from Amharic, use the working language of their own States for adjudication. The language used by the parties when appearing before the courts, all written and oral submissions, all reports or correspondence used by the courts and the judgment rendered in the case is in the working language of the respective State. However, these courts must still apply federal laws written in Amharic, for which there are no official translations in the working languages of the respective States.[363]

Another relevant issue worth discussing in relation to the assignment of Amharic as a language of federal courts is the power of cassation vested in the Federal Supreme Court to review final judgments containing fundamental error of law. Controversies do not arise in cases whose final decisions are rendered by federal courts, because these courts use Amharic for adjudication and apply laws written in Amharic. But the power of cassation of the Federal Supreme Court is not limited to federal matters or to decisions of federal courts.[364] The Federal Supreme Court has the power of cassation to review final decisions of the Regional Supreme Court Cassation Division decided in violation of the FDRE Constitution or in conflict with binding decisions of the Federal Supreme Court Cassation Division. In addition, final decisions of the Regional Supreme Court Cassation Division on regional (state) matters, which are alleged to have been rendered by misinterpreting a legal provision or by applying an irrelevant law to the case, and where the parties can prove, in particular, that these cases are of public interest and national importance, are reviewed by the Federal Supreme Court Cassation Division.[365] Therefore, problems related to the language of adjudication arise in both situations, namely in reviewing final decisions by State Supreme Court Cassation Divisions on exclusive state matters and in cases brought for cassation review from State Supreme Courts acting as federal courts exercising a delegated power.

Reading case reports by the Federal Cassation, one realizes that there are many cases in which the Federal Cassation has reviewed final decisions of State Supreme Court Cassation over

[361] The FDRE Constitution, Art. 78(2) and (3).

[362] These are the State of Amhara, the State of Benishangul-Gumuz, the State of the Southern Nations, Nationalities and Peoples, and the State of the Gambella Peoples.

[363] The only exception, according to information obtained in an interview, is the official translation of the 2004 Revised Ethiopian Criminal Code, which is officially translated into Oromo by the "Caffee", the legislative body of the Regional State; see Interview with Gidisa Fayera, conducted by Deginet Wotango Doyiso through telephone, September 20, 2022: file with the author.

[364] Concerning what constitute federal matters, see The Federal Courts Proclamation No. 1234/2021, Art. 3-6.

[365] The Federal Courts Proclamation No. 1234/2021, Art. 10(2).

exclusive state matters such as family laws, laws on succession, rural land administration etc. In a case concerning an exclusive state matter, namely rural land administration, for example, the Federal Cassation interpreted a provision in Proclamation No. 239/06 concerning Tigray National Regional State's Rural Land Usage and ruled that farmers are deemed to have lawfully exchanged a piece of their rural land only if the exchange contract has been approved by the notary's office and if the district land administration authority has registered the details of the exchange.[366] In another case concerning an exclusive state matter brought from the State of Oromia, the Federal Cassation, citing the Family Code of Oromia State (Proclamation No. 69/2002), rules that spouses may retain their individual property as private property after marriage only if a court approves that the property remains private for one of the spouses.[367] In these and other similar cases, the Federal Cassation interprets laws enacted by the states in the working language of each state and passes the judgments in Amharic. Whether the Federal Cassation refers to the Amharic translation of the regional laws to reach a uniform interpretation of State matters is not clear from the case reports, and there is no law governing this issue. But one may assume that some of the Federal Cassation judges are proficient in the working languages of the state whose laws are being interpreted, or they refer to the Amharic or English version of the state laws. Recall the discussion in Section 4.4.4., where it is noted that some Regional States which designate a language other than Amharic as their working language still publish laws in Amharic along with the regional working language and English versions.

The problem in cases brought for cassation review from State Supreme Courts acting as federal courts exercising a delegated power is different from the above. First, state court judges may find it difficult to read and interpret statutes that are not written in their state's working language while at the same time using the state's working language as the language of the proceedings. But the matter is further complicated because most of these cases end up before the Federal Supreme Court for cassation review where Amharic is the working language. In these situations, parties are required by law to submit a copy of the decision against which a cassation is lodged and of the decisions of lower courts together with the cassation application. In some cases, the Federal Cassation may order the parties to bring the full copy of files from the lower courts.[368] All of these files have to be presumably translated into Amharic from the working languages of the States. A look at Switzerland's experience may be helpful in this regard. In Switzerland, just as in Ethiopia, there are monolingual courts at the cantonal level, but appeal cases are heard in the language in which they were initiated.[369] Applying the same method and introducing additional benches that hear appeal cases in the different working languages in the Ethiopian Federal Supreme Court could help remove barriers to access to justice caused by the language problem.

[366] ፌዴራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት. ተክሌ ተስፋይ እና ንግስቲ ገ/መድህን. ሰ/መ/ቁ. 106436. ሚያዚያ 25 2008. ቅጽ 20: 145; [EFSCCD Case Tekle Tesfay v. Negesti Ge/medhen, Cass. File No. 106436, May 3, 2016, Vol. 20: 145].

[367] ፌደራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት፤ የሺ ተሾመ v. መስፍን ኃይሉ፤ ሰ.መ.ቁ. 95680. መስከረም 26 2007. ቅጽ 17: 281 [EFSCCD Case Yeshi Teshome v. Mesfin Hailu, Cass. File No. 95680, October 6, 2014, Vol. 17: 281].

[368] The Federal Courts Proclamation No. 1234/2021, Art. 27(2).

[369] Leung 2019: 65.

One final point worth mentioning in addition to the two problems discussed above is that the decisions rendered by the Federal Cassation are not translated into the other working languages, and yet the interpretation of a law by the Federal Cassation with a panel of five or more judges sets a binding precedent both for federal and state courts at all levels until it is reversed or amended by another decision of the same Cassation.[370] This means that States whose working languages are not Amharic also have to rely on the binding decisions written in Amharic. As the purpose and necessity of a cassation system within the Ethiopian Federal Supreme Court is to achieve the goal of uniform interpretation of the law – whether at the federal or state level – throughout the country, it would be an improvement if the Federal Cassation considered translating its binding judgments into the other working languages of the federal states.

4.5. The recent language policy of the Federal Democratic Republic of Ethiopia: Towards five federal working languages?

Due to the territorial multilingualism arrangement that Ethiopia follows, politicians facing political unrest, separatist movements, conflicts over ethnolinguistic boundaries and simmering resentments have to find answers to many questions including: How can limiting the status of a federal working language to Amharic bring stability in the face of competition from other languages such as Oromo with a large number of speakers? Considering the number of Ethiopian languages, how realistic and economically feasible is it to accommodate every demand for federal language status? What objective criteria should then be used to elevate selected regional languages to federal working languages? What are the implications of promoting selected regional languages and designating them as the federal working languages? These are issues which highlight the difficulty of striking a fair balance between the competing demands of different linguistic and ethnic groups and the need for Ethiopia to continually adapt to societal changes.

On February 29, 2020, the Federal Council of Ministers announced the approval of the Language Policy of the Federal Democratic Republic of Ethiopia (hereinafter referred to as the Policy). The ambitious Policy is an attempt to resolve some of the questions raised above. To the best of my knowledge, a critical evaluation of this policy has not yet appeared, which justifies that it is analyzed in detail in this section. In the following paragraphs, I investigate how the Policy advances the multilingualism agenda espoused by the FDRE Constitution and other subnational constitutions, how the Policy addresses the questions raised above and what the consequences of the new approach are. I base my account largely on the Policy itself, a preparatory document produced under the supervision of the Ministry of Culture and Tourism of Ethiopia,[371] and interviews I conducted with experts in the Ministry in August 2021.

The preamble of the Policy reiterates that the FDRE Constitution is far better in recognizing the multilingual and multiethnic character of the country than the previous constitutions,

[370] The Federal Courts Proclamation No. 1234/2021, Art. 10(2).

[371] The Federal Democratic Republic of Ethiopia Ministry of Culture. 2020. በኢትዮጵያ የቋንቋ አጠቃቀም፣ የማኅበራዊ ገጽታው እና ሀገራዊና ዓለም አቀፋዊ የቋንቋ ፖሊሲ ተሞክሮዎች [Language use in Ethiopia, its social manifestations and language policy experiences at national and international level]. Unpublished manuscript.

openly proclaiming the equality of all languages, allowing states to choose their own working languages and granting all ethnic groups (the so-called "Nations, Nationalities and Peoples") the right to develop their languages and cultures. On the other hand, the preamble criticizes the constitution itself for limiting the federal working language status to Amharic. Instead, the Policy adopts Oromo, Tigrinya, Afar and Somali as additional federal working languages of Ethiopia.[372]

It should first be noted that the adoption of the Policy would require an amendment to Art. 5(2) of the FDRE Constitution, which grants federal working language status only to Amharic. This stems from the principle of the supremacy of the Constitution.[373] According to the interview conducted by the author with the head of the Legal Department of the Ministry of Culture, the outcomes of the Policy remain uncertain.[374] The Policy is only a declaration of intent that has been approved at a higher ministerial level, and it remains to be seen whether the Policy will be issued in a form of law and become implemented.

Nevertheless, since questioning the justifications behind granting this status to some languages and denying it to others has important lessons to teach us in revealing language ideology, I continue the discussion under the assumption that the required constitutional amendment has been made and that the Policy is put into practice. "Language ideology" is understood here, following Johnson, as a concept including all beliefs about language articulated by users as rationalizations or justifications of perceived language structure or use.[375] Language ideology also includes the cultural system of ideas about social and linguistic relationships, together with moral and political interests loaded into these relationships.[376]

The preparatory document which was produced under the supervision of the Ministry of Culture and led to the formulation of the Policy helps us grasp the underlying language ideology towards the additional federal working languages. It states that some languages that are spoken by a large number of people inside and outside Ethiopia, that could bring greater economic and political benefits to the country and would promote diplomatic integration with neighboring countries are not recognized as federal working languages by the FDRE Constitution.[377] Hence, the numerical size of the languages' speakers, the advantage of granting the status of a working language in terms of political stability, and the promotion of diplomatic integration by granting the status of a federal working language are the officially stated reasons behind the designation of the working language status at federal level. It can be deduced from this that the level of development of the Oromo, Tigrinya, Afar and Somali languages as means of communication in the public service due to the fact that they are

[372] The Language Policy of the Federal Democratic Republic of Ethiopia, February 2020, (unpublished) Art. 6.
[373] Art. 9(1) of the FDRE Constitution provides that "The Constitution is the supreme law of the land. Any law, customary practice or a decision of an organ of state or a public official which contravenes this Constitution shall be of no effect".
[374] Interview with Belachew Driba, head of Legal Department, Ethiopian Federal Ministry of Culture & Tourism, conducted by Deginet Wotango Doyiso, August 5, 2021: file with the author.
[375] Johnson 2013: 288-310.
[376] Johnson 2013: 291.
[377] The Federal Democratic Republic of Ethiopia Ministry of Culture 2020: 2-3.

already designated as working languages in the constitutions of the respective Regional States (see Section 4.4.4.) appears to be another criterion.

Many advocates who lobby for the promotion of Oromo to a federal working language have put forward arguments related to the number of its speakers and the political stability the move may bring.[378] In Ethiopia, Oromo is the most widely spoken language as a mother tongue, 33.8%.[379] Aberra argues that "[t]he number of the speakers of a certain language in proportion to the general population of a country (proportionality rule) should be one of the indispensable factors that have to be taken into account in selecting a national working language" and suggests that this criterion should suffice to give Oromo the federal working language status.[380] Awlachew, when stating the reasons behind the choice of federal working languages in the Policy, explains that granting Oromo the status of federal working language would promote plurilingualism at the individual level and contribute to building Ethiopia as one economic and political community. In addition, Oromo is granted the federal working language status because it is spoken in other East African countries such as Kenya.[381]

The inclusion of Oromo among the federal working languages would possibly also expand the employment opportunities for Oromo speakers in Federal Government institutions. A study on the choice of the working language of undergraduate students in selected public universities in Ethiopia indicates that the students are "poor in grasping, defining, conceptualizing, stating, organizing and analyzing information in Amharic, especially, in reading and writing skills".[382] The study finds that only 7% of the study participants (all Oromo speakers) preferred or felt confident to have sufficient language skills to work in institutions where Amharic is the working language, and the rest preferred to work in the Oromia Region where Oromo is the working language.[383]

Awlachew also explains the justifications behind granting the same status to Tigrinya, Somali and Afar. Speakers of Tigrinya and Somali each make up about 6% of the total Ethiopian population. In addition, Tigrinya is one of the official languages in Eritrea, and Somali is the biggest language in the neighboring Republic of Somalia. Although the number of Afar speakers is only about 1.7% of the total Ethiopian population, Afar is also spoken in the neighboring Republic of Djibouti and by a significant number of people in Eritrea. Speakers of these four languages together with Amharic make up roughly 80% of the Ethiopian population, and it is believed that recognizing these languages as federal working languages would address the concerns of a large majority of the Ethiopian population. The new working languages also

[378] See e.g. Aberra 2008: 61-95; Chimdi Wakuma Olbasa. 2018. Choice for a working language in Ethiopia: A case study among graduating classes of Oromo speakers in selected public universities. *Macrolinguistics* 6.9: 98-115; Mekuria Bulcha 1997. The politics of linguistic homogenization in Ethiopia and the conflict over the status of Afaan Oromoo. *African Affairs* 96.384: 325-352; Milkessa Midega 2014. Official language choice in Ethiopia: Means of inclusion or exclusion? *Open Access Library Journal* 1.7: 1-13.

[379] Central Intelligence Agency 2017.

[380] Aberra 2008: 68.

[381] Interview with Awlachew Shumneka, Director of Language & Cultural Values Directorate, Ethiopian Federal Ministry of Culture & Tourism, conducted by Deginet Wotango Doyiso, August 6, 2021: file with the author.

[382] Chimdi 2018: 98.

[383] Chimdi 2018: 112.

cross political boundaries and serve as bridges between the peoples of the Horn of Africa by strengthening cultural, economic and diplomatic ties.[384]

The criteria stated in the Policy to justify the increase from one to five federal working languages differ from those used in the FDRE Constitution, and some of the criteria also appear arbitrary. As shown in Section 4.4.3, Amharic was chosen in the FDRE Constitution as a federal working language due to its practical value as well as its importance as a second language and as a widespread lingua franca, resulting from its privileged status in Ethiopian history. In the Policy, the number of first language speakers appears to be the primary criterion, at least as far as Oromo is concerned. This criterion does not, however, apply to Tigrinya, Somali and Afar. Interestingly, languages such as Sidaama and Wolaitta have many more speakers than Afar but they are not considered as federal working languages. So, can the presence of speakers of one language in a neighboring country be a sufficient reason to override the principle of equality of all languages and grant the status of federal working language to cross-border languages that have far fewer speakers than others that are not considered? This leads to the suspicion that the languages excluded from recognition as working languages are those whose speakers have less political power and do not pose a separatist threat. As Leung notes, "minority languages gain official recognition only if the state can reap political or economic benefits from the move".[385]

Language ideology is not readily apparent, even when there are articulated language policies. The actual regulation of language may be based on unstated, tacitly assumed norms and values about language use.[386] Although normative values such as respect for traditions and cultures or the principles of equality and diversity dominate the rhetorical tropes that states use in promulgating their laws on official multilingualism, these values do not best explain the actual intentions behind state language law decisions. As Bilchitz et al. note, the recognition of 11 languages as equal official languages of South Africa, considered part of the compromises to bring everyone closer together, resulted in English becoming the lingua franca of South Africa and being used in most official documents and public ceremonies.[387] "Practicalities, such as the absence of language skills, the requirement of cost efficiency and the lack of funding", are some of the prevalent notions guiding the implementation of the South African language policies.[388] One must therefore also wait until the Ethiopian language policy is enacted into law and implemented after the necessary constitutional changes have been made to see what values and norms guide the establishment of the added four federal working languages. But one can already hypothesize that only Oromo has a chance to keep pace with Amharic in the future, due to its large number of speakers.

[384] Interview with Awlachew Shumneka.
[385] Leung 2019: 108.
[386] Johnson 2013: 292.
[387] Bilchitz et al. 2016: 78, cited in Brenzinger 2017: 50.
[388] Brenzinger 2017: 49.

4.6. Conclusion

Although Ethiopia has approximately 91 mutually unintelligible languages that are spoken according to current counts as mother tongues within its boundaries, Amharic is the most widely used language particularly as a second and third language. The language gained its current importance because from the mid-19th century until the end of the imperial regime in 1974, it was officially recognized by Ethiopian rulers, who used it to unify the various ethnic groups living in the country. The socialist government, popularly known as the Derg, that replaced the imperial regime also promoted Amharic and declared it the working language of the state.

The country introduced official multilingualism to contain potential threats to its territorial integrity and to legitimize the new political regime that was then taking power from the Derg military regime by adopting the 1995 FDRE Constitution. The inventory of current language laws in Ethiopia has shown that these laws explicitly promote multilingualism and endorse the principle of equality of all languages, but at the same time create hierarchies between the languages. The FDRE constitution, which is still in force, promulgates that all Ethiopian languages are equal, but also recognizes Amharic as the only working language of the Federal Government due to concerns of practicality. Five of the eleven Regional States as well as two city administrations that make up the Ethiopian federation have also designated Amharic as the working language of their respective regions in their regional (subnational) constitutions and city administration proclamations. Even in the Regional States that have adopted languages other than Amharic, laws are published in Amharic, along with the English version and the Regional State's working language version.

Despite the important role Amharic plays at both the federal and subnational levels, Amharic cannot legally be considered a national language or an official language that is applicable nationwide. Any attempt to make Amharic the official language of Ethiopia could jeopardize stability and faces serious opposition from those who seek official language status for their mother tongue and from those who still resent the historical events that spread Amharic throughout the country. The Ethiopian language regime has therefore tried to balance these interests. A group of languages which are designated as the working languages of the regional governments, Oromo, Tigrinya, Somali, Afar, Harari and Sidaama, follow Amharic in the status hierarchy of languages. These are, among others, languages used in drafting and publishing laws at different levels in Ethiopia and also used as languages of proceedings in courts. At the third level are languages that are sufficiently developed to serve as languages of instruction, especially in elementary school, but which do not have any defined status in public administration. According to an interview conducted with the head of the Language and Cultural Values Development Directorate in the Ministry of Culture in Ethiopia, a total of 58 languages are used as languages of instruction nationwide (as of 2021).[389] Finally, there are a number of languages that are not yet developed enough to serve as languages of instruction at the primary level education.

[389] Interview with Awlachew Shumneka.

Besides this, there are two languages, namely Geez and English, that have no clear official status and are therefore difficult to categorize. As discussed, Geez plays a special role due to its historical and religious importance and influence on the development of Amharic. The position of English is more controversial. English is used as the language of education in secondary schools and higher educational institutions, including in legal education, as well as the language into which federal and state laws are translated and published. Nevertheless, its status is not designated by higher laws such as the Constitution. Scholars like Aberra suggest that the use of English either as the sole federal working language or along with other endogenous languages would help avoid the "domination of Amharic and its speakers as a group over the non-Amharic speaking linguistic groups", "prevent linguistic conflict and rivalries" and put all groups on the same footing to learn a language that is neutral for all.[390] I return to the role of English in more detail in Chapters 7 and 8.

[390] Aberra 2008: 87.

Chapter 5. Early experiences of multilingual lawmaking in Ethiopia's modern legal history: Amharic, English and French

5.1. Introduction

The political landscape in Ethiopia has been reorganized and reshaped several times over the past 150 years, with major changes in both constitutional and subordinate legislation. Until the 1950s, Ethiopia had only very few statutes, no court reports, and no legal treatises or authoritative doctrinal works. By far the most important de facto source of rules governing social relations were the customary laws of the various ethnic and religious groupings.[391] As Ethiopia was never colonized, there was no foreign legal system imposed upon it, nor was there any special attachment to a particular foreign country so strong that the adoption of that country's law seemed natural. Therefore, in a way that is partly comparable to the situation in Napoleonic Europe, Emperor Haile Selassie I decided that Ethiopia should introduce uniform modern codes.[392] He aimed at satisfying Ethiopia's quest for modernization, bringing legal unification and strengthening the top-down nation-state building process. To fulfill this task, the Emperor established a Codification Commission in 1954 and recruited foreign legal experts from France, Switzerland and the United Kingdom, who had very little, if any, knowledge of then-existing Ethiopian laws and customs, to prepare the draft of all the codes to be submitted to the Commission. The Commission translated the draft laws from the original French or English master copy versions into Amharic, the only national language at the time. The National Parliament authenticated only the Amharic version of the codes as official and authoritative, and the English versions were published in the Negarit Gazeta as official translations along with the Amharic versions. The French original versions, however, remained just drafts. Within a span of ten years, the Ethiopian government produced a comprehensive set of six systematized code books: Civil Code, Commercial Code, Penal Code, Maritime Code, Criminal Procedure Code and Civil Procedure Code.

These historical events are significant for the birth of multilingual lawmaking in Ethiopia and also lay the foundation for the difficulties that judges currently face in interpreting Ethiopian laws (see Chapter 8). Except for a few amendments to some codes and the complete revision of the Penal Code and the Commercial Code in 2004 and in 2021, respectively, the six codes that Ethiopia transplanted have survived the regime changes in 1974 and 1991,[393] and still serve as the primary source of regulation in their respective areas. This is partly due to a proclamation passed by the Derg after the deposition of the Emperor in 1974 and a proclamation passed after the enactment of the current Federal Constitution in 1995. Both

[391] David, René. 1967. Sources of the Ethiopian Civil Code. *Journal of Ethiopian Law* 4.2: 342.

[392] The term "code" here refers to a bundle of related statutes organized in one book.

[393] The 1974 Ethiopian revolution brought the imperial regime to an end and a military communist government (popularly known as the Derg) to power. The Derg reigned until 1991 when it was defeated by armed ethno-national political groups, the most prominent of which was the Tigray Peoples' Liberation Front (TPLF) that fought a long civil war against the military government. The TPLF together with its allies formed an ethnically organized political party called the Ethiopian Peoples' Revolutionary Democratic Front (EPRDF), which drafted the current FDRE Constitution.

proclamations state explicitly that the existing laws that do not conflict with the proclamations and that the constitution shall continue in force.[394] This essentially means that Ethiopian courts still apply laws from the codes issued in 1960s and struggle with translation problems from that period.

It was during the codification period that the foundation was laid for the practice of the two-way translation of laws from foreign languages (mainly English) into Amharic and from Amharic into English. Since that time, Ethiopian governments have adopted many concepts from globally more influential legal systems through transplantation and translation into the Ethiopian legal system, and this practice continues to this day. Currently, when drafting legislation in Amharic, much is translated from foreign, mostly English-language legal sources from which legal concepts are adopted. These drafts prepared in Amharic are re-translated into English, and both versions are published in the Negarit Gazeta.

To the best of my knowledge, the Ethiopian legal transplantation process in 1950s has not yet been analyzed in the light of the significant role that language played and still plays in the development of the laws. Only few studies have addressed issues related to the historical development of modern laws in Ethiopia and systematically investigated the sources of the laws, the place of traditional laws in the development of the modern laws and related aspects.[395] Given this gap in the literature, this chapter aims to shed light on the legal transplantation as well as the translation process. It examines how the process brought the interplay of three language versions – Amharic, English and French – into the Ethiopian legal system and explores the birth of multilingual lawmaking process in Ethiopia.

To this end, Section 5.2 begins with a brief overview of the debates for and against legal transplantation, explaining why it is necessary to define and identify the individual features of each legal development and the need to better understand the specific contexts in which the laws are transplanted. Section 5.3 then highlights the historical milestones that have shaped the development of the modern Ethiopian legal system. In Section 5.4, I continue on defining and identifying the characteristic features of the Ethiopian legal transplantation process against the widely held assumptions in legal transplantation discourse – here I draw on general guidance by Twining, as made in his contributions on Diffusion of Law Theory.[396] In order to explore the early experiences of multilingual lawmaking in Ethiopia's modern legal history, more particularly the causes of the difficulties that judges currently face in interpreting Ethiopian laws as well as the precautionary measures that the legal drafters took to facilitate the translation process, Section 5.5 examines the historical trajectories in the legal translation process during the codification. Section 5.6 attempts to address the question concerning what kind of translation problems exist in the transplanted codes and what the implications would have been if the original French versions had been authorized to help clarify the authenticated Amharic versions in any way. A trilingual legal regime of these three languages is sketched to examine the questions. Finally, Section 5.7 concludes the chapter.

[394] See Proclamation No. 1/1974, Negarit Gazeta 34/1, and Proclamation No. 2/1995.

[395] But see, for example, David 1967; Sedler, Robert Allen. 1967. The development of legal systems: The Ethiopian experience. *Iowa Law Review* 53.

[396] Twining, William. 2005. Social science and diffusion of law. *Journal of Law and Society* 32.2: 203-240.

5.2. Legal transplantation: Its meaning and rationale

Legal transplantation is a term used to refer to the adoption in one country of ready-made laws and legal institutions developed in another social situation and sometimes in an already distant era.[397] The subject has been of scholarly interest to many comparative lawyers especially since the 1970s, and one notices a strong bipolarity of a "yes" or "no" answer to the question of whether legal transplantation is possible. Citing the reception of Roman law and the spread of English common law, Alan Watson, a legal comparativist, argues that transplantation has been the dominant impetus of legal change over the past thousand years – at least in the western world.[398] He asserts that laws function entirely in isolation from their socio-cultural context, and therefore laws can easily be transplanted from the society in which they operated into a different society.[399] This view essentially stems from his understanding of 'rule': "[L]aw is rules and only that, and rules are bare prepositional statements and only that. It is these rules which travel across jurisdictions, which are displaced, which are transplanted. Because rules are not socially connected in any meaningful way, differences in 'historical factors and habits of thought' do not limit or qualify their transplantability. A given rule is potentially equally at home anywhere (in the western world)."[400]

This view was criticized by those who Twining calls "contextualists"[401] for being too simplistic to appreciate the complex relationships between law, society and culture. Pierre Legrand, a "contextualist", criticizes scholars like Watson as having a crude understanding of what law is and of what a rule is. The meaning of a rule is usually "a function of the application of the rule by its interpreter, the concretization or instantiation in the events that the rule is intended to govern".[402] Most importantly, according to Legrand, who and where the interpreter is found largely dictates how the interpreter understands the context in which the rule occurs and then formulates the issues that the rule governs. The meaning of the rule is therefore a function of the interpreter's epistemological assumptions, which are themselves historically and culturally conditioned.[403] Legrand concludes that law is holistically bound to the local culture and hence legal transplantation impossible.[404]

Both sides of the debate are simultaneously right and wrong as general accounts of legal development. While one cannot deny the prevalence of successful legal transplants in Western societies, Watson's strong assertion that "the idea of a close relationship between law and society is a fallacy" seems to lose sight of the pressure that culture and society exert

[397] Schauer, Frederick. 2000. *The politics and incentives of legal transplantation*. CID Working Paper 44, April 2000. Cambridge, MA: Center for International Development at Harvard University: iii.
[398] Watson, Alan. 1978. Comparative law and legal change. *The Cambridge Law Journal* 37.2: 314.
[399] Watson, Alan. 1974. *Legal transplants: An approach to comparative law. Edinburgh: Scottish Academic Press*; quoted in van der Burg, Martijn. 2015. Cultural and legal transfer in Napoleonic Europe: Codification of Dutch civil law as a cross-national process. *Comparative Legal History* 3.1: 89.
[400] Legrand, Pierre. 1997. The impossibility of 'legal transplants'. *Maastricht Journal of European and Comparative Law* 4.2: 112.
[401] Twining 2005: 211.
[402] Legrand 1997: 115.
[403] Legrand 1997: 115.
[404] Legrand 1997: 113.

on transplanted laws.[405] Law is neither completely isolated from society nor completely determined by it. In this sense, Legrand's view may also be considered too extreme. Instead, one should conceive that not all transplantations are the same. Transplanting from Europe to an African country cannot be the same as transplanting from Europe to the USA. Complexities increase when a transplanted law is substantially different from the one existing in the importing country, when the legal institutions are foreign to the legal system of the recipient, or when the importing country has a cultural background and tradition different from that in which the laws or institutions have developed.[406] It is therefore necessary to define and identify the individual characteristics of each legal development in order to clarify the specific context in which the laws were transplanted.

Legal transplantation has benefits and drawbacks, and the success of legal transplantation depends heavily on the process followed during and after transplanting the laws. The transplantation of laws and institutions brings with it the cultural values of the society that created them. If legal transplants are carefully selected and appropriately customized, they enable countries to import laws that have served as time-tested solutions to similar problems, learning from the positive and negative lessons in the source countries.[407] But "hastily transplanted laws can be both ineffective and insensitive to local conditions. They can also stifle local development while upsetting the existing local tradition. In addition, they may bring problems from abroad, thus exacerbating the problems the transplanted laws seek to address".[408]

Against this backdrop, the next subsections assess the peculiarities of the Ethiopian legal transplantation process. The discussion helps us gain a better understanding of the historical context in which the decision to modernize Ethiopian laws was made and how the need for massive codification through a legal transplantation process was felt. They also enable us to describe the measures taken by the Ethiopian government to build a unique Ethiopian legal system which also involved the translation of the transplanted laws into Amharic (the national language at the time).

5.3. The wholesale implantation of western modern laws

The 1950s and 1960s were critical moments in the modern legal history of Ethiopia, because the modern code books were formally enacted in this period. In a manner that can be compared to the situation during Napoleonic Europe, Emperor Haile Selassie I, with the aim of fulfilling Ethiopia's quest for modernization, bringing about legal unification, and strengthening the top-down process of nation-state building, decided that Ethiopia should have uniform modern codes. To fulfill this task, the Emperor established a Codification Commission in 1954, comprising 28 members out of whom 12 were from different foreign

[405] Legrand 1997: 112.
[406] Rotman, Edgardo. 1995. The inherent problems of legal translation: Theoretical aspects. *Indiana International and Comparative Law Review* 6.1: 189.
[407] Yu, Peter K. 2014. Can the Canadian UGC exception be transplanted abroad? *Intellectual Property Journal* 26: 180.
[408] Yu 2014: 180.

countries. Half of the members of the commission had received formal training in the legal profession.

In addition, another body of foreign experts, called the Royal Consultative Committee for Legislations, comprised of Europeans for the most part, was established to help carry out the massive codification process.[409] The Consultative Committee included professor Jean Graven from Switzerland, who drafted the 1957 Penal Code, professor René David from France, who drafted the 1960 Civil Code, professor Jean Escarra, also from France, who drafted the 1960 Maritime Code, Sir Charles Mathew from the United Kingdom, who drafted the 1961 Criminal Procedure Code, and professor Alfred Jauffret of France, who completed the drafting work on the 1960 Commercial Code by Jean Escarra after the latter had died. These foreign experts had very little or no knowledge about the then-existing Ethiopian laws, partly due to the lack of any compilation of the existing state laws and the traditional/customary laws. They completed the initial drafting of all the codes and submitted them to the Codification Commission. The Commission translated the laws into Amharic, made revisions and sent the drafts to the National Parliament, which adopted the codes after further changes.[410]

At this point, it is important to highlight the historical milestones that shaped the development of the Ethiopian legal system. The question whether to codify or not to codify hardly seems to have been raised. In countries where a rich legal literature has developed and where there are known sources of law such as case law to guide people's actions, the absence of law codes does not necessarily lead to legal insecurity and arbitrariness. But Ethiopia did not have that choice in 1950s. As indicated above, there was no substitute for the nonexistent codes that serve as the basis on which courts decide cases. Codification in itself was therefore thought as progress, a desirable and even necessary goal for the country to avoid arbitrariness and legal insecurity.[411]

The next decision was whether the codes should be written in "abstract" terms so that they are applicable to many circumstances, including those that are not foreseen, as is common in the Romano-Germanic legal tradition, or whether they should be written in more specific terms meant to cover more particular circumstances, as in common law jurisdictions. Another related decision that had to be made was whether the courts should assume the function of lawmaking or whether their role should be limited to that of interpretation. The Ethiopian government could have decided to introduce a common law code which would have required the existence of precedents and broad judicial discretion in lawmaking. As a consequence, judges would have been forced to refer to cases written in foreign languages, as recorded case precedents did not exist in Ethiopia. Since very few judges could read and understand foreign languages, the Ethiopian government opted for the alternative, the adoption of a

[409] Keller, Edmond J. 1981. The revolutionary transformation of Ethiopia's 20th-century bureaucratic empire. *The Journal of Modern African Studies* 19.2: 310-315.

[410] Beckstrom, John H. 1973. Transplantation of legal systems: An early report on the reception of western laws in Ethiopia. *American Journal of Comparative Law* 1: 561.

[411] David, René. 1962. Civil Code for Ethiopia: Considerations on the codification of the civil law in African countries. *Tulane Law Review* 37: 188.

"continental-based comprehensive code that would constitute an exposé of law sufficient in itself, and would serve as a point of departure for a new development of juridical rules".[412]

The choice of continental codes similar to those of the Romano-Germanic legal tradition was made out of what Van Meerbeeck calls a "political logic of legal certainty".[413] This refers to an ambition by the highest political authorities, such as the emperors, to bring legal certainty through codification. Van Meerbeeck quotes the ordinance of Villers-Cotterêts (1539), where King François I ordered that "judgments were to be written so clearly that there would be no ambiguity, uncertainty or need for interpretation".[414] Similarly, the codification in Ethiopia was assumed to limit the discretionary power of judges and reduce the dangers of arbitrariness, as it would contain detailed and sufficiently clear rules. The preface of the 1960 Ethiopian Civil Code aptly captures this sentiment: "[I]t is essential that the law be clear and intelligible to each and every citizen of our Empire so that he may without difficulty ascertain what his rights and duties in the ordinary course of life are, and this has been accomplished in the Civil Code."[415]

Emperor Haile Selassie's desire to ensure historical continuity in the development of Ethiopia was also another motivation to opt for the continental law model. In other words, the Emperor had the goal to live faithfully in the Ethiopian tradition represented by the Fetha Nagast, which in turn had its origins in Roman law.[416] I return to the discussion of the Fetha Nagast and its historical importance in Section 5.4.1.

5.4. Assessing the Ethiopian legal transplantation process: Characteristic features

To shed light on the characteristic features of the Ethiopian legal transplantation process, I rely on general guidance by Twining, as made in his contributions on Diffusion of Law Theory, in which he discusses the widely held assumptions in legal transplantation discourse. "Diffusion of law refers to the processes by which legal orders and traditions are influenced by other legal orders and traditions."[417] In his work "Diffusion of law: a global perspective", Twining begins with a simple model of legal transplantation, in which a country imports "a statute, a code, or body of legal doctrine" from another country at a specific period, and that law remains in force without change.[418] He then identifies several questionable assumptions in this simple legal transplant model. The assumptions that are particularly relevant to the present discussions are the following:

[412] Sedler 1967: 577.
[413] Van Meerbeeck, Jérémie. 2016. The principle of legal certainty in the case law of the European court of justice: From certainty to trust. *European Law Review* 41: 277.
[414] Van Meerbeeck 2016: 277.
[415] Tsegaye Beru. 2013. Brief history of the Ethiopian legal systems: Past and present. *International Journal of Legal Information* 41: 350.
[416] David 1962: 192.
[417] Twining 2005: 235.
[418] Twining, William. 2004. Diffusion of law: A global perspective. *The Journal of Legal Pluralism and Unofficial Law* 36.49: 5.

(1) the assumption that “the received law either fills a legal vacuum or replaces prior (typically outdated or traditional) law”;
(2) that “an identifiable importer and exporter of the transplanted law exist”;
(3) that “the standard case of a reception is export-import between countries";
(4) that “the typical process of reception involves a direct one-way transfer from country A to country B”; and
(5) that “the standard case of legal transplantation is export by a civil law or common law (parent legal system) to a less developed or transitional legal system”.[419]

Though the above five assumptions are widespread in the discourse underlying the transplantation of law, Twining argues, generalizations based on these assumptions might lead to superficial conclusions. According to him, the above model is too simple to grasp all the characteristic features of legal transplants, because there is always room for deviation based on distinctions such as whether the legal transplant is large-scale or small-scale, whether the transplant takes place voluntarily or through imposition and whether there exists a “socio-cultural affinity or diversity between exporter and importer”.[420]

The following discussion of the Ethiopian legal transplantation case aims at drawing a picture that is more fine-grained than the simple model based on the assumptions widespread in legal transplantation discourse. However, the subject is too complex to undertake an exhaustive study of the issues and to develop an alternative model here. This would require the analysis of many more mechanisms involved in legal transplantation. The aim here is to identify some noteworthy features of the Ethiopian transplantation process by investigating how far the Ethiopian case fits in or deviates from the above model. In examining the first assumption, I analyze the events that led to the critical moments of the codification process, the historical context in which the decision to modernize Ethiopia’s laws was made and how the need for massive codification was felt. For ease of discussion, the assumptions (2)–(5) are treated together, as they all relate to the sources of importation.

5.4.1. The Pre-codification period

Any discussion of legal transplantation must address the question of whether the transplanted laws were imposed on, imported to, or adapted by the importing country, and whether other normative and legal orders co-existed in the same temporal and spatial context. Such a discussion requires consideration not only of the critical moments of the legal transplantation process but also, and as importantly, of the historical events that precede it. One of the common assumptions that can be raised in this context is that a received law either fills a legal vacuum or replaces prior (typically outdated or traditional) law. This assumption presupposes that the introduction of a new law is necessary because there is no law governing a particular aspect of social or economic interaction in the importing country; or the previously existing law or custom is obsolete and must be replaced by a new law. When the drafters of the new law act in ignorance of, indifference to, or hostility toward the domestic or other pre-existing

[419] Twining 2004: 5.
[420] Twining 2004: 16.

law, they often treat it as invisible or insignificant.[421] It is therefore worth discussing the relationship of pre-existing laws and customs to transplanted laws and how the pre-existing laws were treated in the Ethiopian case during the codification process.

Since the Middle Ages, Ethiopia considered what was called the Fetha Nagast (Law of the kings) as the supreme law of the state. The Fetha Nagast was perhaps the first written law in sub-Saharan Africa. Derived from Roman Law and church canons of the Eastern Rite, it was translated in the 16th century from Arabic into Geez, the Ethiopian ecclesiastical language equivalent to Latin (see Section 4.2).[422] The Fetha Nagast was a collection of religious and secular laws that could be considered as the "traditional source of law for Ethiopia's Coptic Christian community and, thus, for its imperial courts as well".[423] But the Fetha Nagast was a document which "only the elect were privileged to know of and consult",[424] and it is difficult to tell whether it was used to regulate the common everyday life, i.e. employed to deal with crimes and resolve other disputes, as no case law of the period has been kept. There is no evidence that the law became promulgated officially by any Ethiopian king before Emperor Menelik II formally incorporated it into the Ethiopian law in 1908.[425] The law was written only in Geez and never translated to Amharic until 1966.[426] Moreover, foreign travelers considered the book as "a mystical Geez book", and its contents were unknown to them until it was translated into English in 1968.[427] Yet, one may say that the Fetha Nagast represents a source that reflected concepts of justice of the Ethiopian society of the time. The prestige of the book was also enhanced by the widespread belief among Ethiopian local scholars and judges that it was written by the 318 fathers of the Council of Nicaea.[428]

If we consider Ethiopia in its present political boundaries, by far the major de facto source of rules governing social relations was found in the customary laws of the various ethnic and religious groups. The period until the 1950s can be characterized as a time when the concept of legal rules as binding norms did not exist and when the place of formal laws and legal institutions in the society was not clear at all. There were very few statutes, no court reports, and no legal treatises or authoritative doctrinal works.[429] This was particularly true in civil matters. "There was no civil code, and most of the written laws governing civil matters were concerned with commercial activities (like the laws on loans, banking, bankruptcy and business registration)."[430] Though the issue of land ownership was a frequent source of

[421] Twining 2004: 25.
[422] *The Fetha Nagast*. 2009. Ed. by Peter L. Strauss. Transl. by Abba Paulos Tzadua. Durham: Carolina Academic Press.
[423] The Fetha Nagast 2009: XXXIII.
[424] Vanderlinden, Jacques. 1966. Civil law and common law influences on the developing law of Ethiopia. *Buffalo Law Review* 16.1: 253.
[425] The Fetha Nagast 2009: XXXIV.
[426] Tsegaye 2013: 347.
[427] The Fetha Nagast 2009: XXXIX.
[428] Paulos Tzadua 2005. The Fetha Nagast. In Siegbert Uhlig (ed.), *Encyclopaedia Aethiopica*, Vol. 2. Wiesbaden: Harrassowitz: 534.
[429] David 1967: 342.
[430] Sedler 1967: 570.

dispute, for example, a formal law regulating these disputes did not exist. Hence, civil adjudication was based primarily on "equity" and customs that prevailed in the area.[431]

The few laws in the form of statutes and decrees were primarily in the public law sphere. A Penal Code that had been promulgated in 1930 can be mentioned as one example. This Code represented the first consistent endeavor to combine customary with comparatively modern notions, being inspired by the then in force and more advanced European penal codes. The Penal Code can also be considered as the manifestation of an attempt to unify and systematize Ethiopian traditions in criminal matters.[432] Norman J. Singer, who was involved in the development of legal education in Ethiopia and a professor of the first law faculty in the country, considers the Code as a "redrafting of the Fetha Nagast which was elevated above its tie on the Christian Amharas and made applicable on an Empire-wide basis".[433] The Code can be cited as the first binding law in penal cases in the modern Ethiopian legal history, because it provided for specific crimes and fixed the punishments for the first time. Before the Penal Code came into force, a judge or a governor could arbitrarily decide the fate of the accused by determining whether the conduct was wrongful and would then pass the punishment at his will.[434]

Yet again, the application of the modern laws was limited to certain regions of the country. One of the most important institutions that dealt with legal disputes through customary laws was the institution of elders, usually persons who were accorded superior status in a community because of their age or their knowledge of customary law. In addition, persons who were believed to be possessed by spirits capable of serving a legal function existed in many parts of the country.[435] These institutions played a major role in the ascertainment of the truth and maintenance of harmony and peace, because the disputants believed that the elders or the person possessed by spirits could determine, by examination of the parties or through supernatural power, if any untruth was being told. Witnesses were not brought before these institutions unless the matter was so serious that the testimony of a third person was deemed necessary. Once the facts had been ascertained, a decision would be rendered without any hesitation, and both parties would accept it as a true statement of their legal relationship.[436] These rules were based on morality and depended for their effectiveness on the approval and consent of the people, being handed down to succeeding generations.[437]

There is another historical aspect that makes Ethiopia unique regarding customary laws. In the rest of Africa where a colonial power imposed foreign values through a European legal system, the institutions through which disputes were settled according to pre-existing customary laws were modified and made to appear like the courts applying the European law.

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[431] Sedler 1967: 570.

[432] Graven, Philippe. 1965. *An introduction to Ethiopian Penal Law (Arts. 1-84 Penal Code)*. Addis Ababa: Faculty of Law, Haile Sellassie I University: VII.

[433] Singer, Norman J. 1971. The Ethiopian civil code and the recognition of customary law. *Houston Law Review* 9.3: 468.

[434] Tsegaye 2013: 350.

[435] Singer 1971: 474.

[436] Singer 1971: 475.

[437] Sedler 1967: 586.

They were recognized as a separate system of local "native" courts. As a result, most African countries kept two distinct and separate sources of law (the formal law and the customary law) in post-colonial times, each being applicable in certain circumstances.[438]

In Ethiopia, which had never been colonized, the traditional systems of law and practices remained intact and there were no such "native courts".[439] The customary legal institutions of Ethiopia are still divided on an ethnic basis, which are in turn associated with distinct geographical areas. In each ethnic group, and sometimes in subdivisions thereof, one can find not only distinct legal institutions but separate and distinct substantive laws as well.[440] No effort was made to systematically document the customary rules nor was there any effort to group and unify them on a territorial basis.

The underlying motivation for the massive codification process was therefore to keep pace with the changing circumstances of the modern world and to achieve the goal of progressive unification of legal practices within the country.[441] For the drafters of the Ethiopian modern codes, the choice was, according to Tameru, the former vice president of the Supreme Court of Ethiopia (1988-1991), "either to opt for scattered, fluid and oral indigenous norms that are static and mostly local or to replace them by precise, objective and progressive norms that are likely to promote modernity".[442] The customary laws that were thought hostile to the modernization process were therefore completely repealed by the codes. In this sense, the legal transplantation process in Ethiopia resembles the "Napoleonic reform" in Europe (1789-1815), which also focused on the construction of a centralized state and was characterized by the creation of uniform state structures.[443]

The assertion of René David, the principal draftsman of the 1960 Ethiopian Civil Code, reflects very well how much a need was felt to replace the old customary laws and institutions with a well-defined body of law and to establish legal institutions adequate and suitable for the "modern society" that the country was intending to build:

> "Ethiopia cannot wait 500 years to construct in an empirical fashion a system of law which is unique, as was done in two different historical eras by the Romans and the English. The development and modernization of Ethiopia necessitate the adoption of a 'ready-made' system ... in such a manner as to assure as quickly as possible a minimal security in legal relations."[444]

[438] Singer 1971: 462.
[439] Singer 1971: 462.
[440] Singer 1971: 472.
[441] Krzeczunowicz, George. 1963. The Ethiopian Civil Code: Its usefulness, relation to custom and applicability. *Journal of African Law* 7.3: 172.
[442] Tameru Wondm Agegnehu. 2013. The future of law and legal institutions in Ethiopia. In Elias N. Stebek & Muradu Abdo (eds.), *Law and development and legal pluralism in Ethiopia*. Addis Ababa: JLSRI Publications Justice and Legal Systems Research Institute: 94.
[443] van der Burg 2015: 108.
[444] Krzeczunowicz 1963: 172.

The drafter's dismissive attitude toward customary law can best be understood by looking at Art. 3347(1) of the Ethiopian Civil Code, which clearly states that: "Unless otherwise expressly provided all rules whether written or customary previously in force concerning matters provided for in this Code shall be replaced by this Code and hereby repealed." This provision indicates that the drafter of the Civil Code decided to incorporate a selection of customary rules into the Code without the need to create a parallel legal system to administer the customary laws. This attitude goes hand in hand with one of the main goals of the codification process, namely the unification of the Ethiopian legal system, which was to lead to political unification, assimilation and integration of the ethnic groups in Ethiopia. To deny customary law rules any legal force in the settlement of disputes also meant taking away the power of traditional authorities over their own ethnic groups.[445]

In addition to repealing allegedly outdated customary rules, the codification process also aimed at introducing a whole new set of foreign rules that were far ahead of people's thinking in areas where it was thought that no local regulation had previously existed, as in the law of obligations and commercial law. Escarra, the drafter of the Ethiopian Commercial Code, contends: "[U]ntil now there have not been local commercial customs in Ethiopia. The business practices which came to my attention were generally not very significant. In fact, Ethiopian trade – especially foreign trade – is based legally on fairly poorly-defined Anglo-American practices to which have been granted the business customs of each trading group".[446] The accounts of David, the drafter of the Civil Code, also show a similar approach to the pre-existing local laws in the area of obligations. He states: "Civil Code obligations rules will encounter no opposition since the Ethiopian society of yesterday did not know the concept of contract".[447]

From the previous discussion, it is clear that consideration of the preceding historical events is as important in analyzing the legal transplantation process as the critical moments of the transplantation itself. It is interesting to observe that there were two competing needs to be addressed during the legal transplantation process, both of which were directly related to historical situations that exerted influence on the critical moments of the 1950s and 1960s. On the one hand, it can be argued that Ethiopia, at least the Christian part, had developed a tradition of using a transplanted written law, the Fetha Nagast, which through long use acquired a distinctly Ethiopian character and represented a legal ethic that guided Ethiopian Christian society. This could explain the need to preserve the Ethiopian character of the transplanted code laws. The need manifested itself in the desire to preserve the country's sovereignty and to build a unique Ethiopian legal system, which in turn is evident from the intention not to depend on a single foreign legal corpus but to favor the importation of laws from different countries and legal backgrounds and the translation of the transplanted laws into Amharic. These issues will be addressed in Section 5.5.

But on the other hand, it has been shown that the Fetha Nagast was not applied at all levels of society and not in all geographical areas of the empire. The main de facto source of the

[445] Sedler 1967: 588.

[446] Brietzke, Paul. 1974. Private law in Ethiopia. *Journal of African Law* 18: 152.

[447] David 1962: 195.

rules governing social relations were the customary and religious laws, which were viewed by the drafters as outdated, scattered, fluid and hostile to the desired process of modernization in Ethiopia. The replacement of these customary laws with modern legal codes, which were to serve as exclusive sources in their respective affairs, was considered necessary to achieve the modernization process. The drafters also believed that there was a legal vacuum in some areas of local law that required the introduction of new laws. In this sense, the assumption that "transplantation takes place to fill a vacuum or to replace pre-existing laws" holds partly true in the Ethiopian case.

5.4.2. Sources of importation

As can be seen from the list of questionable assumptions derived from the simple model of legal transplantation at the beginning of Section 5.4 above, it is often assumed that there is a single identifiable exporter that directly imposes the laws and institutions on an importing country. This may be true for the standard colonial and neo-colonial situation, but it does not capture the case in which an importer chooses the laws of several countries as sources of importation. Even the postcolonial legal systems that most African countries have built have gone through more complex processes than a single importer-exporter relationship.[448] It can neither be simply assumed that "the standard case of a reception is export-import between countries", because legal transplantation can take place not only on the national (one country borrowing laws from another country's laws) but also across levels of ordering through the adoption of international norms in the domestic laws of a recipient country.[449] In addition, adopting the assumption that "the typical process of reception involves a direct one-way transfer from country A to country B" has its limitations, because the origin of the imported law might have been some other country different from the exporter.[450] Finally, the assumption that "the standard case of legal transplantation is export by a civil law or common law (parent legal system) to a less developed or transitional legal system" should be examined. Countries with less developed and transitional economies import laws from common law, civil law, or mixed legal systems of developed countries, but there are also cases of legal import between countries of a similar level (with no parental ties), which interact with each other and therefore do not fit the above transplantation model.[451]

Ethiopia had no foreign body of law imposed on it, nor was any tie to a foreign country strong enough that the adoption of that country's law seemed natural.[452] Ethiopia invited drafters from different countries and legal backgrounds with the explicit intention not to depend on a single body of foreign law. The emperor ordered the drafters to ensure that no single foreign power would take a monopoly over Ethiopian law, as he thought such a monopoly would compromise Ethiopia's independence and sovereignty. The codifiers were instead instructed

[448] Sedler 1967: 576.
[449] Twining 2004: 19.
[450] Twining 2004: 18.
[451] Twining 2004: 24.
[452] Sedler 1967: 576.

to come up with a body of law distinctively Ethiopian in character, based on a variety of comparative sources.[453]

There is a clear division between the sources of substantive and of procedural laws. The main inspiration of the substantive codes (Civil Code, Maritime Code, Penal Code and Commercial Code) can be traced to the Romano-Germanic tradition, and more specifically, to French legal principles and judicial practice, whereas the procedural laws (Criminal Procedure Code and Civil Procedure Code) are closer to the common law tradition.[454] But one should not attribute too much importance to the civil law/common law divide, because the differences between legal systems within the common law and the continental law should also be kept in mind. Often too little attention has been paid to hybrid systems, and it is usually assumed that countries belong either to the common or civil law family, largely based on the exporters of the law.[455]

The drafters of all the Ethiopian codes claim to have referred to a variety of sources, including common law digests, judicial precedents and international instruments, during the process, thereby making the resulting laws a mix of common law and civil law traditions, which can arguably be categorized as a distinctively Ethiopian law.[456] The 1957 Ethiopian Penal Code, for example, was said to have been influenced by both national and foreign sources of law. Regarding the national sources, several fundamental precepts which, owing to their permanent value in the Ethiopian society, had to be borne in mind in the drafting of a Penal Code for Ethiopia. Some provisions of the code, in particular those concerning punishment, were influenced by the Ethiopian tradition as reflected in the previous 1930 Penal Code of Ethiopia.[457] Sedler argues that it is this influence which forced the drafters of the 1957 Penal Code to focus more on the imposition of the threat of penal punishment on offenders than the rehabilitation of those who have engaged in antisocial conduct.[458] The concepts of fault, deterrence and grave punishment were so deeply ingrained in the Ethiopian tradition that they could not be abandoned.

Even though the drafter, Professor Jean Graven, and the Codification Commission opposed the integration of the penalty of corporal punishment in the 1957 Penal Code, the National Parliament introduced this punishment against offences such as theft and robbery. Moreover, there was practically no opposition to the death penalty among Ethiopians, and so this was included as one type of punishment.[459] In addition, the Codification Commission proposed to incorporate all subsidiary legislation containing penal provisions enacted since 1942 and to derive from them the punitive clauses introduced in the 1957 Penal Code.[460]

Besides the national sources, many European Penal Codes including the 1930 Italian Penal Code, the 1937 Swiss Penal Code, the 1950 Greek Penal Code and the 1951 Yugoslav Penal

[453] Sedler 1967: 576.
[454] Vanderlinden 1966: 258.
[455] Twining 2004: 3.
[456] Sedler 1967: 576.
[457] Vanderlinden 1966: 259.
[458] Sedler 1967: 581.
[459] Sedler 1967: 581.
[460] Graven 1965: IX.

Code were carefully consulted.[461] The drafter relied especially on the Swiss Penal Code, the views expressed by Swiss courts and legal writers. He took many provisions directly from Swiss legal sources, mainly because he saw parallels between Switzerland and Ethiopia with respect to the diversity of language and legal traditions.[462] In addition, the deep and lasting influence the Swiss Code had had in and outside Europe and the very recent partial revision that the Code had undergone in 1950 were additional reasons for the special attention paid to it. It is also important to mention that even if the influence of Anglo-Saxon law on the 1957 Ethiopian Penal Code was minimal, it inspired the solutions adopted, for example, concerning juveniles, suspended sentences and probation.[463] A continental type of code finally came out of the drafter's work, the Codification Commission's discussions and the parliamentary debates.

The Criminal Procedure Code, on the other hand, was drafted by the British lawyer Sir Charles Mathew, who was occupying a high judicial office in Ethiopia at the time.[464] The absence of commentaries written by the drafter makes it particularly difficult to ascertain the origin of the Code provisions. But one can easily tell that the provisions of the Code are predominantly influenced by the common law system as opposed to the substantive Penal Code that primarily follows the Romano-Germanic system. Fisher believes that a mixture of common law sources, continental law sources and some traditional practices were brought together in the Criminal Procedure Code.[465] The provisions reflecting predominantly common law traditions are taken from multiple sources, including the Criminal Procedure Codes of Malaysia, Sudan, India and Singapore. Some of the provisions are verbatim copies of those codes. For example, Art. 35 of the Ethiopian Criminal Procedure Code, which deals with "recording of statements and confession", is copied from Section 115 of the Malaysian Code (as it stood in 1956) and is also very close to the drafting of Section 164 of the Indian Code of Criminal Procedure (as it stood in 1898).[466] The Code also separates, as in common law systems, (adversarial) investigation and prosecution of crimes and puts investigation under the responsibility of the police and prosecution under the responsibility of the prosecutor, allowing the latter to review the decisions of the former (the investigation).[467]

But the Criminal Procedure Code also contains fragments of other principles from continental law countries. Close examination of the definitions of flagrant offences are defined and the procedures set regarding these offences under Arts. 19, 20, 21 and 50 of the Ethiopian Criminal Procedure Code indicate that these laws have their origin in the French system and have very close links to Arts. 53, 67 and 73 of the French Criminal Procedure Code.[468]

The same dichotomy in the pattern of borrowing as in the Penal Law was followed regarding the private law. While the drafting of the Civil Procedure Code is highly influenced by the 1908

[461] Graven 1965: IX.
[462] Graven 1965: IX.
[463] Graven 1965: IX.
[464] Vanderlinden 1966: 258.
[465] Fisher, Stanley Z. 1966. Some aspects of Ethiopian arrest law: The eclectic approach to codification. *Journal of Ethiopian Law* 3.2: 471.
[466] Fisher, Stanley Z. 1966. Involuntary confessions and Article 35, Criminal Procedure Code. *Journal of Ethiopian Law* 3.1: 333.
[467] Fisher 1966: 464.
[468] Fisher 1966: 485.

Indian Code of Civil Procedure based on the common law system, the Civil Code was highly influenced by the French laws and judicial practice.[469] Still, René David, the drafter of the Ethiopian Civil Code, argues that the drafting process was a "synthesis", in the sense that he referred to the laws of various countries, including those of France, Switzerland, Greece, Italy and Egypt, to determine what matters the code should cover. He argues that there were ideas or models that did not originate in a single legal order.[470]

There are, however, writers who argue against such claims by the drafter and point out that the other codes that he consulted were themselves heavily influenced by the French model and that all of the rules examined were the products of a single (Western) legal culture, thereby making the approach he followed less eclectic.[471] However, the references made to the laws of different countries and to international instruments show us again the indirect and complex paths of legal transplants.[472] In the same manner, the Maritime and Commercial Codes were drafted by other French professors, who could also be considered as representatives of the most recent developments in French commercial thought at the time.[473] Reference was also made to the Geneva Conventions of 1930-31 concerning negotiable instruments when drafting provisions related to this area of the law in the Commercial Code.[474]

To end this subsection, a succinct summary of the sources of importation during the Ethiopian codification process is given and arguments against certain widespread assumptions in the legal transplantation discourse are formulated.

(1) There is no single parent country with either a civil law or a common law tradition that Ethiopia had ties to and which directly served as the single source of law. The Ethiopian code laws have been inspired by the laws and judicial practices of both civil law and common law origin as well as traditional legal concepts and practices. Hence, the assumption that "there is an identifiable exporter and importer" does not hold true in the case of Ethiopia's legal transplants. The eclectic approach followed during the codification process enabled the country to have a mixed legal system that one can arguably categorize as a distinctively Ethiopian legal system.
(2) Even though much of the transplantation took place from other countries' laws (transplantation between countries), one can also notice transplantation across levels of ordering, as in the drafting of the Commercial Code, for which rules concerning negotiable instruments were borrowed from the Geneva Conventions of 1930-31. The Ethiopian case therefore provides an exception to the assumption that "the standard case of a reception is export-import between countries".[475]

[469] Vanderlinden 1966: 257.
[470] Sedler 1967: 579.
[471] Brietzke 1974: 150.
[472] Twining 2004: 21.
[473] Vanderlinden 1966: 257.
[474] Sedler 1967: 579.
[475] Twining 2004: 19.

(3) The Ethiopian legal transplantation process cannot simply be assumed to have come through direct one-way transfer. The origins of many provisions of the Ethiopian codes are either difficult to trace, or it is difficult to tell exactly which country's law inspired the Ethiopian codes. As the same provisions are found in the laws of different countries, the transplantation process can be said to be characterized by complex paths.
(4) Though most of the laws were borrowed from sophisticated legal systems of developed countries, it is difficult to establish a parental relationship between the exporters of the law and Ethiopia, as the latter did the importation voluntarily. In addition, legal borrowing from the laws of other developing countries is attested, a prime example is the Criminal Procedure Code of Ethiopia. Therefore, the assumption that "the standard case of legal transplantation is export by a civil law or common law (parent legal system) to a less developed or transitional legal system" does not fully hold true in the Ethiopian case.

5.5. The legal translation process: The birth of multilingual lawmaking in Ethiopia

Although the Ethiopian government recruited foreign experts to draft the modern codes, it simultaneously pursued the goal of building a unique Ethiopian legal system, which included translating the transplanted laws into Amharic (the only official language of the country at the time as per Art. 125 of the 1955 Revised Constitution of Ethiopia) (see Section 4.2). The original language of the four substantive codes, i.e. the 1957 Penal Code and the 1960 Civil, Commercial and Maritime Codes, was French, and the codes were later translated into Amharic and English. On the other hand, the two procedural codes, i.e. the 1961 Criminal Procedure Code and the 1965 Civil Procedure Code, were first drafted in English and then translated into Amharic.[476] Even though all these six codes were originally drafted in foreign languages, only the Amharic version of the codes was then authenticated by the National Parliament to be the official and authoritative version. In addition, the Amharic and English (but not the French) versions of all the six Codes were published in the Negarit Gazeta. The legal transplantation process thus introduced three mutually dependent language versions into the Ethiopian legal system: Amharic, English and French versions. I assess in Section 5.6 the extent to which it would be better or worse for the Ethiopian legal system to give some authority to the original French texts. But before proceeding to this discussion, I review in the following paragraphs the translation process during the codification and attempt to highlight some factors that complicate the understanding of Ethiopian laws from 1950s for both the citizens and those who interpret the laws today.

It has been claimed that the content of laws is unlike other formalized sciences such as mathematics and chemistry, where the international standardization of the concepts (definitions) constituting the knowledge base of the disciplines is easily achievable. In formalized sciences, terminological congruence is taken for granted and exact translation is

[476] Fassil & Fisher 1968: 553.

never a problem, because there exist largely uniform objects of reference throughout the world.[477] In contrast, the way the existing legal systems treat the legal concepts shows visible differences depending on the cultural and political background. Whether some concepts that are deep-rooted within one culture and legal tradition can find exact equivalents in the language of other legal traditions and cultures is a very controversial issue, which has been heatedly debated among scholars and translation practitioners.[478]

The question of whether the legal translators of the transplanted laws in Ethiopia familiarized themselves with the legal systems from which the source texts originated and whether they adequately translated the original text into Amharic is of great importance, because legal translators are "linguistic and intercultural mediators working on a rich variety of legal texts" in order to build and communicate specialized knowledge. They are also important decision-makers who are involved in redefining power relations, shaping legal cultures and negotiating cultural identities.[479] Any legal translation presupposes the ability of retrieving information from the source text and the ability to process this information in order to produce a precise and technical text in the target language.[480] The process of legal transplantation can hence become effective only through successful mediation, which is achieved through translation.[481]

Legal translators have more responsibilities than the translators of nonlegal texts, because legal translation demands greater precision and certainty. Legal translators are not only expected to be intimately familiar with the source and target languages but also with the source and target legal systems to be able to find equivalent legal terms.[482] The success of legal transplantation depends to a large extent on how the foreign concepts and terms are rendered in the legal and linguistic environment of Ethiopian society, and it is the translators' task to successfully transfer the information from the original French or English versions into the authentic Amharic versions. In this context, translation serves as a "cultural pollinizer" by permitting different cultures to interact, connect and enrich one another.[483]

In a country like Ethiopia, where no modern law had been developed yet, one can assume that it was difficult for the translators to find terminological equivalents in the target language Amharic for the source languages French and English. Unfortunately, it is impossible to reconstruct the legal translation process, as, to the best of my knowledge, there are no records of the Codification Commission that undertook the translation. David, the drafter of the Civil Code, has published an article on the entire process of codification of the Civil Code, in which

[477] Sin, King-Kui & Derek Roebuck. 1996. Language engineering for legal transplantation: Conceptual problems in creating common law Chinese. *Language & Communication* 16.3: 248.

[478] Hargitt, Samantha. 2013. What could be gained in translation: Legal language and lawyer-linguists in a globalized world. *Indiana Journal of Global Legal Studies* 20.1: 431; see also Sin & Roebuck 1996: 241; Stolze, Radegundis. 2013. The legal translator's approach to texts. *Humanities* 2.1: 58.

[479] Biel, Łucja, Jan Engberg, Rosario Martín Ruano & Vilelmini Sosoni (eds.). 2019. *Research methods in legal translation and interpreting: Crossing methodological boundaries*. London: Routledge: 18.

[480] Wagner, Anne. 2003. Translation of the language of the common law into legal French: Myth or reality. *International Journal for the Semiotics of Law* 16.2: 177.

[481] Chromá, Marta. 2011. Synonymy and polysemy in legal terminology and their applications to bilingual and bijural translation. *Research in Language* 9.1: 35.

[482] Rotman 1995: 188.

[483] Rotman 1995: 190.

he also reports how the translation of the text was carried out.[484] Though this report is certainly useful, it represents an outsider's view on the issue of translation, and the drafter may not have been well aware of the difficulties faced by the Codification Commission. As David himself admits: "It is not within the province of a foreigner to judge the extent to which the nuances of the French text have been faithfully rendered in the Amharic text of the Code."[485] But David's report allows us to detect some of the challenges that the translators faced and their implications for the interpretation of these laws by judges and legal scholars today.

David submitted the first French draft of the entire Civil Code provisions to the Codification Commission, indicating with great precision the origin of these provisions.[486] In addition, he submitted commentaries on the various titles of the Code, accompanying each provision that set forth the rationale of the preliminary draft.[487] Moreover, an alphabetical list of technical terms used in the Code and an *exposé des motifs* (an explanatory memorandum) were prepared. These were aimed at facilitating the translation of the French text into Amharic and at homogenizing the terminology used in the Code as to avoid discussions regarding the use of synonyms.[488]

To facilitate the Commission's translation work, David had also taken precautionary measures when drafting the Code. He wrote the law articles in numbered paragraphs and limited each paragraph to one sentence. Obscurity would otherwise have been unavoidable, as David explains, due to the tendency in Amharic to combine all the elements of an argument into a single sentence, usually devoid of punctuation.[489] Even though the Codification Commission was composed mainly of judges and senior Ethiopian officials as well as some foreigners living in Ethiopia, the participation of foreigners was restricted because it was felt that their presence would risk slowing down or hindering the work of the Commission.[490] This was due to the nature of the work that the Commission was mainly engaged in. Very often the Commission had to discuss problems of Amharic terminology. Foreigners were considered unsuitable for this task, and they also had little to contribute as they had insufficient knowledge of Amharic. Only few Ethiopian members of the Commission carried out the task of translating the French texts into Amharic. During this process, the role of the drafter was limited to hearing objections to certain texts he had submitted and revising the French draft.[491]

Since there are no available sources on who exactly the members of the Commission were and what qualifications they had, it is difficult to assess whether they had the necessary background knowledge to adequately interpret the legal and linguistic content of the French texts. But David testifies that the translation could not have been satisfactorily completed

[484] David 1962.
[485] David 1962: 197-199.
[486] David 1962: 197-198.
[487] David 1962: 198.
[488] David 1962: 198.
[489] David 1962: 200.
[490] David 1962: 198.
[491] David 1962: 198.

without the presence of persons versed in Amharic philology.[492] It is impossible to tell whether these people also had a good knowledge of the source languages and understood the legal traditions from which the provisions of the Code originated.

When a French word used in the draft had no equivalent in Amharic or when its equivalent was suspected to lead to a misunderstanding, the Commission tended to coin new words or to borrow words from Geez, the language in which the Fetha Nagast was written. As a matter of principle, the Commission refrained from using French borrowings or words from another language, citing reasons of intelligibility for this choice.[493] However, it is doubtful whether the use of Geez rather than French or English actually rendered the codes more intelligible, since only a minority of people in circles of the Orthodox Church speak Geez. Instead, the introduction of Geez loanwords was mainly aimed at maintaining the national character of the code and tying it to ancient tradition, mainly represented by the Fetha Nagast.

Unfortunately, there are no similarly detailed accounts of the drafting process of the other codes. Brief reference can here only be made to Krzeczunowicz, a scholar of Ethiopian law, who notes that the translation of the Commercial Code of Ethiopia suffers from poor translation and that common French terms such as *créance* or *faute* have been translated from the French version in several contradictory ways in the English and Amharic versions.[494]

Legally speaking, the Amharic versions are now the only authenticated versions. The adoption of the Amharic versions by the National Parliament has erased the memory that these versions were the result of a translation process. The French versions that once served as originals or master texts, i.e. the versions that could explain the original intent of the drafters and bridge the differences between languages, legal systems and cultures, remained only drafts and were neither authenticated nor given any status as subsidiary documents to which reference could be made.[495] As Vanderlinden contends, this was to prevent judges from considering interpretations that might be warranted by versions of the Codes other than the Amharic version.[496] It was assumed that the law can only take an Ethiopian form if the judicial interpretation is based on the Amharic version of the codes adopted by the National Parliament.

The fact that only the Amharic version of the codes was authenticated and the French version was denied any legal force meant that the Amharic legal language was left to develop without any guidance. This approach has deprived the Amharic legal language of the necessary linguistic and conceptual framework and disconnected it from its roots. Legal practitioners and legal scholars have also been denied access to an essential source of current positive Ethiopian law. Hence, what to do when the authoritative Amharic version does not make sense to the interpreter has remained a challenge for legal practitioners and scholars.

[492] David 1962: 200.
[493] David 1962: 199.
[494] Krzeczunowicz, George. 1963. Ethiopian legal education: Retrospection and prospects. *Journal of Ethiopian Studies* 1.1: 69.
[495] Fassil & Fisher 1968: 553.
[496] Vanderlinden 1966: 259.

Ironically, in many former colonies that have adopted the legal system imposed on them by the colonizers, members of the legal profession can easily refer to that system in a language they understand and use.[497] Some Commonwealth countries have retained appeals to the Privy Council in London to maintain a degree of coherence and consistency in their legal systems. Lawyers and judges in French-speaking countries sometimes refer to French precedents because the common language and understanding of a common legal heritage make this possible. In Haiti, for example, important domestic cases are still commented on in light of the decisions of the Cour de Cassation in Paris, even though Haiti gained its independence as early as 1804 and there is no judicial link between the Haitian and French judicial systems.[498]

But in the Ethiopian legal system, there were no rules of interpretation, nor were there any doctrinal or judicial customs regarding the applicable rules of interpretation to guide judges.[499] The situation is exacerbated by the lack of background documents that could help when interpreting the law. Commentaries written by the drafter of the Ethiopian Civil Code during the preliminary drafting process to explain the rationale behind the draft and to indicate the sources used in drafting the articles of the Civil Code were neither published in the Negarit Gazeta nor translated into Amharic.[500] The purpose of these commentaries was to accompany each provision of the Code by identifying in more detail the origin of the provisions and the amendments made to them.[501] To compound matters, the alphabetical list of technical terms used in the Code and the *exposé des motifs* prepared by the drafter have not been included in the English and Amharic versions of the Civil Code. The Codification Commission was more interested in the proposed texts than in their origin or the way they were written.[502] It seems obvious from today's perspective that historical materials such as the preparatory drafts, the accompanying explanatory notes by the drafters and the commentaries on the sources they consulted in the drafting process could better explain the purpose or the expected function of the code provisions and would help judges during legal interpretation.

Against the above background, the question arises as to what kind of translation problems exist in the transplanted codes and what the implications would have been if the original French versions had been authorized to help clarify the authenticated Amharic versions in any way. In an attempt to address this question, the following section sketches a trilingual legal regime by contrasting the three competing language versions, namely the Amharic, English and French versions. Due to the inaccessibility of the French master texts, I base myself on secondary sources to conduct an investigation of mistranslations found in the 1960 Ethiopian Civil Code (which is still an effective law). I then look for differences that help me investigate how ambiguities resulting from flawed translations in the Amharic and English versions could have been revealed and a fuller understanding of the law would have been achieved if the French master version had been kept.

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[497] Briottet 2009: 336.

[498] Briottet 2009: 337.

[499] Krzeczunowicz, George. 1964. Statutory interpretation in Ethiopia. *Journal of Ethiopian Law* 1.2: 315.

[500] Krzeczunowicz 1964: 316.

[501] David 1967: 348.

[502] David 1967: 348.

5.6. Investigating mistranslations from the 1960 Ethiopian Civil Code: Sketch of a trilingual legal regime

It is argued that "translations are statistically bound to contain mistakes and the translation of a document into another language may cause the fact that a different meaning will be given to the translation (or its part) than to the original document".[503] This section is hence by no means an exhaustive analysis of translation errors in the Ethiopian Civil Code, as the title of this section might suggest. Rather, my aim here is to review comparisons between the English version and the authenticated Amharic version with the original French texts of some provisions of the Civil Code in the early legal literature, and to present my own analysis of the extent to which the original French versions would have helped clarify the authenticated Amharic versions had they been given some authority. For ease of discussion, I have divided the translation problems that would have required reference to the French master text into five categories:

(1) mismatch between the terms used in the Amharic and English versions affecting the scope of application of the provision;
(2) vague meaning in the Amharic version, with the English version suggesting an interpretation that could lead to absurd results and contradicts the drafter's intention;
(3) failure of the Amharic version to import the legal technical meaning, the English version using a legal term that is only partially equivalent to that in the French master text;
(4) the Amharic and English versions each suggesting a different meaning from that of the French master text; and
(5) a correct Amharic meaning but which could be distorted by reading conjunctively with the English version that is misleading.

Each problem is addressed in the following subsections in the order listed above.

5.6.1. Determining the scope of the Amharic and English provisions

In a brief explanatory note W. L. Church wrote in 1966 on the articles on representation in the Ethiopian Civil Code, he raises an interesting case related to a mismatch between the terms used in the Amharic and English versions of Art. 2190(1) that goes so far as to affect the scope of the provision itself.[504] Compare the following Amharic and English versions of the provision concerning the scope of activities that an agent may perform on behalf of the principal:

> (1) እንደራሴው የሥልጣኑን ወሰን በሞተላለፍ በሌላ ሰው ስም የሠራ እንደሆነ፤ በስሙ የተሠራለት ሰው ራሱ እንደ ፈቀደ እንደራሴው የፈጸመውን ተግባር ለማጽደቅ ወይም ለማፍረስ ይችላል። {ʾənədärasewə yäsələṭanunə wäsänə bämätälaläfə bälela säwə səmə yäsära ʾəndähonä bäsəmu yätäsäralätə säwə rasu ʾənədä

[503] Paunio, Elina. 2016. *Legal certainty in multilingual EU law: Language, discourse and reasoning at the European Court of Justice*. 1st ed. London: Routledge: 16.
[504] Church, William L. 1966. A commentary on the law of agency-representation in Ethiopia. *Journal of Ethiopian Law* 3.1: 315.

> fäqädä ʾənədärasewə yäfäṣämäwənə tägəbarə lämaṣədäqə wäyəmə lämafəräsə yəčəlalə} [If an agent has acted outside the scope of his power on behalf of another person, the person on whose behalf the agent has acted may ratify or repudiate the act at his will]. (translation mine).
>
> (2) Contracts made by an agent in the name of another outside the scope of his power may be ratified or repudiated at his option by the person in whose name the agent acted.

In the Amharic version (1), the general term "ተግባር {tägəbarə} 'act'" is used, while in the English version (2), a specific term "contracts" is used. This mismatch causes significant differences in terms of the scope of activities that an agent may perform on behalf of the principal. While the Amharic version indicates that an agent can perform all types of juridical acts, including contracts, on behalf of the principal, the reading of the English version suggests that the agent's acts should be limited only to concluding contracts with third parties on behalf of the principal. The exposition of the literal meaning of these words in the two versions can hardly help the judge resolve a hypothetical question as to the scope of activities that an agent may perform on behalf of the principal.

A judge who then decides to use a systematic (contextual) method of interpretation to resolve the question also gets inconclusive results.[505] Whereas some provisions of the same section of the Code show similar mismatches between the two versions, other provisions show that the Amharic version conforms to the English version in limiting the scope of the duties that an agent performs on behalf of the principal to concluding contracts. Consider first the English version of Art. 2192 of the Civil Code, which uses the phrase "Where the contract is ratified ...," while the Amharic version states: "ሿሚው እንደራሴው የፈጸመውን ተግባር ያጸደቀ እንደሆነ {šəwamiwə ʾənədärasewə yäfäṣämäwənə tägəbarə yaṣädäqä ʾənədähonä} [Where the principal has ratified the act performed by the agent]" (translation mine).[506] The two versions of this provision parallel that of Art. 2190(1) above. If one looks further into other provisions in the same section of the Civil Code, one can also find contexts in which both the Amharic and the English version limit the acts performed by the agent to concluding a contract with a third party on behalf of the principal and seem to exclude other juridical acts. See, for example, the English and Amharic versions of Arts. 2180, 2183, 2189, 2191, 2196 and 2197 of the Civil Code.

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[505] A systematic interpretation method focuses on the inner connection of the legal provision in question with all other legal norms and attempts to clarify the meaning of a legal provision by reading it in conjunction with other, related provisions of the same section or title of the legal text or even other texts. See Brugger, Winfried. 1994. Legal interpretation, schools of jurisprudence, and anthropology: Some remarks from a German point of view. *The American Journal of Comparative Law* 42.2: 396-97.

[506] The English version of Art. 2192 of the Ethiopian Civil Code reads: "Where the contract is ratified, the agent shall be deemed to have acted within the scope of his power." The Amharic version of the same reads: "ሿሚው እንደራሴው የፈጸመውን ተግባር ያጸደቀ እንደሆነ፤ እንደራሴው የፈጸመውን ተግባር ከውክልናው ሥልጣን ሳያልፍ እንደፈጸመው ይቈጠራል። {šəwamiwə ʾənədärasewə yäfäṣämäwənə tägəbarə yaṣädäqä ʾənədähonä, ʾənədärasewə yäfäṣämäwənə tägəbarə käwəkələnawə sayaləfə ʾənədäfäṣämäwə yəqoṭäralə} [Where the principal has ratified the act performed by the agent, the agent shall be deemed to have acted within the scope of his power.]" (translation mine). See also Art. 2193 of the Civil Code.

Consequently, when a judge considers both the Amharic and the English version, neither the literal application nor the systematic reading suggest a clear answer as to whether the acts of agents should be limited to concluding contracts with third parties or whether agents can also perform other juridical acts. There is no clear answer in the Amharic version, as some provisions indicate that agents can perform all types of juridical acts, and other provisions seem to limit this power to concluding contracts. There is consistency in the English version in the sense that it only applies to contracts in all its provisions in the same section, but one cannot find a logical reason why an agent cannot perform other juridical acts except concluding contracts with third parties.

W. L. Church notes that the French master version is consistent in all the provisions when it comes to stating the duties that an agent performs on behalf of the principal. According to him, "the French clearly includes all juridical acts which the agent performs on behalf of the principal"; and it "either uses the word 'act' (acte) or speaks of the third party 'dealing with' the agent".[507] It is true that a contract is a juridical act, but it is not the only one. There is no stated reason in the related sections of the Civil Code to suggest that the agent should not be able to perform other juridical acts apart from concluding contracts with third parties. It can therefore be reasonably argued, following Church's suggestions, that the English and Amharic versions should be read to govern all juridical acts, including contracts.

5.6.2. Solving the vague meaning in the Amharic version and clear but absurd meaning in the English version

W. L. Church comments on another article of the Civil Code, namely Art. 2181(2), concerning how the scope of the authority of an agent with respect to a third party be fixed.[508] His comments reveal an interesting role of the French master text in resolving cases where comparison between the Amharic and the English versions cannot lead to a conclusive result. See the Amharic and English versions of the provision below:

> (3) እንደራሴው የተሰጠውን ሥልጣን ሦስተኛ ወገን ለሆነ ሰው አስታውቆ እንደሆነ፤ በሦስተኛው ሰው ላይ ሥልጣኑ የሚጸናው፤ ባስታወቀው ማስታወቂያ መሠረት ነው፡ ፡ {ʾənədärasewə yätäsäṭäwənə səläṭanunə sosətäña wägänə lähonä säwə ʾasətawəqo ʾənədähonä bäsosətäña säwə layə səläṭanu yämiṣänawə basətawäqäwə masətawäqiya mäsärätə näwə} [Where the agent announces to a third party the authority given to him, the scope of his authority shall, as regards such third party, be fixed in accordance with the information that he announces]. (translation mine)
>
> (4) Where the agent informs a third party of his power of attorney, the scope of his authority shall, as regards such third party, be fixed in accordance with the information given to him by the agent.

The Amharic version in (3) is vague because it is not clear to whom the 3rd person masculine ending ('he' expressed on the verb) refers to in the following phrase: "ባስታወቀው ማስታወቂያ

[507] Church 1966: 315.
[508] Church 1966: 314.

መሠረት ነው {basətawäqäwə masətawäqiya mäsärätə näwə} [in accordance with the information that he announces]" (translation mine). It is equally possible that "he" refers to the agent, to the principal or even to the third party. Considering the context, one can argue that since it is the agent who discloses the scope of his authority to the third party, it should be the agent who determines that scope of authority. This seems the most sensible (literal) interpretation.

The English version in (4) disambiguates the vague Amharic version and gives a clear indication of the referent of "he". Accordingly, the scope of the authority of the agent as regards a third party shall be fixed based on what the agent communicates to the third party.

Based on the Amharic and English versions, one can construe the meaning that it is the agent who fixes the scope of his own authority. But the meaning warranted by the French master version is substantially different. Instead of "agent", the French version says *représenté* [the person represented], i.e. the principal.[509] In other words, according to the French version, it is what the principal communicates to the third party that establishes the authority of the agent with respect to the third party.

The English and Amharic versions give the agent considerable freedom at the expense of the principal and expect little diligence from third parties. But if proper representation is to occur, the principal should have reasonable authority to determine the scope of the agent's authority in dealing with third parties, and third parties should also be diligent to verify how broad the scope of the agent's authority is when entering any type of legal commitment with the agent. Logically, the determination of the scope of the agent's authority cannot be left to the agent himself. As has just been learnt from the comparison of the translations with the original French text, the interpretation warranted by both the Amharic and the English version is misleading because of the incorrect wording in the translations of both versions. The French version is indispensable, firstly, because it reflects the original intention of the drafter and, secondly because it gives the principal a reasonable power to determine the scope of the agent's authority in dealing with third parties. Of course, the outcome of a real case is not predictable, but the preceding discussion of a hypothetical situation in which the interpretation of Art. 2181(2) is questioned has illustrated that the French master text would be a useful tool – especially in a case where the authenticated Amharic version is vague and in which the English version proposes an interpretation that might lead to absurd results and contradicts the drafter's intention.

5.6.3. Clarifying ambiguities arising from the non-equivalence and partial equivalence of legal terms with legal-technical meaning

One source of inter-linguistic uncertainty that may arise in the translation of legal texts is lexical uncertainty, which results from the partial equivalence and non-equivalence of words in different languages.[510] Partial equivalence or non-equivalence may occur not only in words with ordinary, non-technical meaning but also in legal terms and other legal concepts. "For ordinary words, uncertainty mainly derives from the basic linguistic differences found in

[509] Church 1966: 315.
[510] Cao 2007: 73.

different languages. For legal concepts and legal terms, the major cause of the inter-linguistic uncertainty comes from the systemic differences found in different legal systems and legal cultures."[511]

The following example best illustrates the uncertainty arising from the partial equivalence of the legal concepts of joint liability and joint and several liability in the English and French versions, and how poorly they are translated in the Amharic version. The Amharic and English versions of Art. 2195 of the Ethiopian Civil Code, which governs circumstances in which the principal can be liable together with the agent, reads as follows:

> (5) በሌላው በኩል በሚደርሰው ጉዳት ሁሉ ሿሚው ከእንደራሴው ጋራ በሙሉ አላፊ የሚሆነው፤ … {bälelawə bäkulə bämidärəsäwə gudatə hulu šəwamiwə käʾənədärasewə gara bämulu ʾalafi yämihonäwə} [The principal shall be fully liable with the agent for all the damage caused upon the other party where: …] (translation mine)
>
> (6) The principal shall be jointly liable with the agent where: ….

The Amharic version in (5) suggests that both the principal and the agent are fully liable, but the type of liability, namely whether it is joint liability or joint and several liability, is not mentioned. The English version in (6) clarifies that the type of liability that the principal bares is joint liability. A judge who had the opportunity to look at the French text would find the term *solidairement* in the text; this word also means 'jointly', but its interpretation in French law falls closer to what is called "joint and several liability" in the common law.[512]

Explaining the difference between the technical terms "joint liability" and "joint and several liability" helps to unravel how both the Amharic and the English version have failed to import the intended technical meaning of the term from the French master version. In joint liability, two parties (in this case, the agent and the principal) may be sued, but they must be sued together in the same action. In contrast, in joint and several liability, the agent and the principal may be sued together, or they may be sued separately for the full extent of the obligation, at the plaintiff's discretion. This distinction becomes particularly important when an issue of jurisdiction arises in the case. Plaintiffs may exercise their discretion to sue only one of the parties if they believe that it would be difficult for the court to obtain jurisdiction over one of the parties, and this would not be possible in the case of joint liability.

The translators of the Amharic version do not seem to have grasped the difference between the two technical terms. Additional support is found in other provisions of the Amharic version of the Civil Code, which use different terms in different provisions where the English version speaks of "joint and several liability" and "joint liability". See, for example, Art. 1897 of the Code in the English version, the title of which is "Principle of Joint and Several Liability". The same title of the Amharic counterpart reads: "ስለማይከፋፈል አላፊነት {səlämayək'fafälə

[511] Cao 2007: 73.
[512] Church 1966: 314.

ʾalafinätə} [about indivisible liability]" (translation mine). The following provision shows even more clearly how the Amharic translators have failed to translate these terms.

> (7) … joint creditors shall not be jointly and severally entitled to claim payment.[513]
>
> (8) … በባለገንዘቦቹ መካከል አንድነት የለም {bäbalägänəzäboču mäkakälə ʾanədənätə yälämə} [… there is no unity between the creditors]. (translation mine)[514]

As Solan notes, "it is only by placing a bad translation next to a good one that, through a chain of inferences, the essence of the passage becomes clear".[515] Looking at (8), one may conclude that the Amharic translators did not establish a specific technical term for either joint liability or joint and several liability. The term joint creditors in (7) is translated as "ባለገንዘቦቹ {balägänəzäboču} [the creditors]" in (8), and the term "joint and several liability" seems to match "አንድነት {ʾanədənätə} [unity]". The statement "joint creditors shall not be jointly and severally entitled to claim payment" can hardly be considered equivalent to "there is no unity between the creditors". The essence of the Amharic translation in (8) can only become clear if placed next to its English counterpart in (7).

Coming back to the language comparison regarding (5) and (6), referring to the original French text would help clarify as to which exact technical legal term was intended by the drafter. Accordingly, one can conclude that the English translation of the provision should be treated as a mistranslation (the words "and severally" having been omitted in (6)), and the Amharic term በሙሉ {bämulu} [fully] should be replaced with "በአንድነትና ነጠላ አላፊነት {bäʾanədənätəna näṭäla ʾalafinätə} [joint and several liability]".[516] When approaching the provision from a logical standpoint, the meaning in the French version also allows for greater flexibility. Since the purpose of Art. 2195 is to hold both the agent and the principal liable for their actions and fault, no unnecessary restrictions should be imposed on third parties who are entitled to sue them under the law.

5.6.4. Providing the intended meaning of the provision when the Amharic and English versions suggest different meanings

George Krzeczunowich, who wrote a commentary on the Ethiopian law of obligations in the Civil Code, states that one of the many obstacles for those studying the Civil Code is the fact that the English version of the Code is distorted due to a poor translation from the master French version. He argues that these translation problems forced him to undertake a complete

[513] The Ethiopian Civil Code, Art. 1710 (English version).

[514] The Ethiopian Civil Code, Art. 1710 (Amharic version).

[515] Solan 2008: 292.

[516] The established term in current legal Amharic is "የአንድነት አላፊነት {yäʾanədənätə ʾalafinätə} [unified liability]" as an equivalent of "joint liability" and "የአንድነትና ነጠላ አላፊነት {yäʾanədənätəna näṭäla ʾalafinätə} [unified and single liability]" as an equivalent of "joint and several liability".

retranslation of the entire section in the Civil Code concerned with nonperformance of contracts (Art. 1771-1805) before he could write a commentary on it.[517]

In order to illustrate how the French master text could have provided the intended meaning in cases where the Amharic and English versions suggest different meanings, I present below a provision from the Law of Obligations of the Civil Code, which Krzeczunowich retranslated from the French master text and also wrote a commentary on. In (9), we find the official English version that Krzeczunowich considers "distorted", followed by the version that Krzeczunowich himself retranslated from the French master text in (10) and, finally, the authenticated Amharic version with my own English translation in (11):

> (9) Reserves or restrictions intended by one party shall not affect his agreement as expressed where the other party was not informed of such reserves or restrictions.[518]
>
> (10) RESERVES OR RESTRICTIONS INTENDED BY ONE PARTY SHALL NOT AFFECT HIS AGREEMENT AS EXPRESSED WHERE SUCH RESERVES OR RESTRICTIONS WERE NOT COMMUNICATED TO THE OTHER PARTY.[519]
>
> (11) ከተዋዋዮቹ አንደኛው ወገን ሳያውቀው ከውሉ ውስጥ የማስቀረትና የማገድ ቃላት ተጨምረውበት ቢገኙ፤ በአጻጻፉ በግልጽ ተነግሮ የሚገኘው የመፍቀድን ዋናውን ሁኔታ ሊያቃውሱትና ሊቀንሱት አይችሉም። {kätäwawayoču ʾanədäñawə wägänə sayawəqäwə käwəlu wəsəṭə yämasəqärätəna yämagädə qalatə täčəməräwəbätə bigäñu bäʾaṣaṣafu bägələṣə tänägəro yämigäñäwə yämäfəqädənə wanawənə huneta liyaqawəsutəna liqänəsutə ʾayəčəlumə} If words indicating reservations or restrictions are inserted into the contract without the knowledge of one of the parties, they cannot diminish or destruct the main agreement as clearly told in the manner in which it is written]. (translation mine)[520]

The distinction between the three versions is important. All versions seem to convey that contracts are not agreements of interior wills. But the retranslation from the French master version in (10) strictly conveys that the express declaration of will should be communicated by the party himself who intends to put restrictions or reservations on the expressed agreement. On the other hand, a party to a contract may cite the English version in (9) and argue that the restriction or reservation should be part of the express agreement even if it was not directly communicated to the other party by saying that the reservation or restriction was stated in the presence of other persons close to the other party. If one looks at the Amharic version, the phrase "ከተዋዋዮቹ አንደኛው ወገን ሳያውቀው {kätäwawayoču ʾanədäñawə wägänə sayawəqäwə} [without the knowledge of one of the parties]" does not indicate that the restrictions or reservations must be communicated by the party intending to make the

[517] Krzeczunowicz, George. 1983. *Formation and effects of contracts in Ethiopian law*. Addis Ababa: Faculty of Law, Addis Ababa University: 4.
[518] The Ethiopian Civil Code, Art. 1680(2) (English version).
[519] A retranslation of Art. 1680(2) from the French master version by Krzeczunowicz 1983: 13.
[520] The Amharic version of Art. 1680(2) of the Civil Code.

restrictions or reservations. The meaning in the Amharic version does therefore not conform to the retranslation from the French master version. In addition, the way the Amharic translation in (11) is worded, "በአጻጻፉ በግልጽ ተነግሮ የሚገኘው {bäʾaṣaṣafu bägələṣə tänägəro yämigäñäwə} [as clearly told in the manner in which it is written]", suggests that the translators have only a written contract in mind, which might, strictly speaking, make the provision irrelevant to regulate agreements made orally.

5.6.5. Determining which language version contains the translation error

The preceding discussion has shown that both the authenticated Amharic version and the official English translation contain different types of flawed translations – a situation which would ideally be solved by reference to the French master text. But is it actually a problem if the English version is misleading as long as the Amharic version is clear and consistent with the French master text? The answer to this question lies in the special role of English in Ethiopian legal education, in the legislative process and in its clarifying role in the courts' interpretation of Amharic versions. I return to this question in the next chapters. I limit myself in this subsection to presenting an example that shows that the Amharic version is more in line with the meaning intended in the original French version, but could be misinterpreted if viewed from the meaning that the English version warrants.

The French master version under Art. 2197 of the Ethiopian Civil Code uses the phrase *en son nom propre* [in his own name].[521] Accordingly, the Amharic version uses the phrase "በራሱ ስም {bärasu səmə} [in his own name]".[522] The English version, however, contains the phrase "on his own behalf".[523] It is not sufficient to point out the similarity in wording between the French and Amharic version to assert that the English version is incorrect. In particular, the importance of the distinction between the two phrases "on his own behalf" and "in his own name" must be explained.

The different ways in which an agent acts need to be identified. The way an agent can act in a proper agency-principal relationship, the whole essence of representation, as embodied in Art. 2189 of the Ethiopian Civil Code, is on behalf of the principal and in the name of the principal. In other words, representation cannot exist if someone acts in his own name and on his own behalf, and there would be no reason that the law refers to such a person as an "agent". On the other hand, an agent may act in the name of another, but on his own behalf, and these acts of the agent performed with respect to third parties or contracts concluded by the agent with himself are more likely to create a conflict of interest between the agent and

[521] Church 1966: 315.

[522] The Amharic version of Art. 2197 reads: "እንደራሴው በራሱ ስም የተዋዋለ እንደሆነ፤ ሌሎች ሦስተኛ ወገኖች ከእንደራሴው ጋራ መዋዋላቸውን ቢያውቁትም እንኪ፤ ከነዚህ ጋራ የፈጸማቸው ተግባሮች ለሚያስከትሉዋቸው ግዴታዎችና መብቶች እሱ ራሱ ባለቤት ይሆናል። {ʾənədärasewə bärasu səmə yätäwawalä ʾənədähonä leločə sosətäña wägänočə käʾənədärasewə gara mäwawalacäwənə biyawəqutəmə ʾənəkəwa känäzihə gara yöfäṣämačäwə tägəbaročə lämiyasəkätləwačäwə mäbətočəna gədetawočə ʾərəsu rasu baläbetə yəhonalə} [An agent who acts in his own name shall personally enjoy the rights or incur the liabilities deriving from the contracts he makes with third parties, notwithstanding that such third parties know that he is an agent.]" (translation mine)

[523] The English version of Art. 2197 of the Civil Code reads: "An agent who acts on his own behalf shall personally enjoy the rights or incur the liabilities deriving from the contracts he makes with third parties, notwithstanding that such third parties know that he is an agent."

the principal and may be cancelled at the principal's request. However, the contested Art. 2197 certainly does not deal with such a scenario since these issues are already regulated under Arts. 2187 and 2188 of the Civil Code. There is only one way left for the agent to act, and Art. 2197 can be assumed to deal with that circumstance, i.e. a circumstance where an agent still acts in his own name but on behalf of another.[524] It is therefore safe to conclude that the translators of the English version wrongly inserted the phrase "on his own behalf" instead of using the phrase "in his own name" under Art. 2197. For this reason, only the Amharic and French versions are acceptable, and the English version should be read accordingly.

5.7. Conclusion

Early experiences with multilingual lawmaking in Ethiopia, which began with the codification of the first six main codes in 1950s, was complex and consisted of several successive steps: a wholesale transplantation of the rules from a mixture of common and civil law legal systems, the drafting of the texts in French or English, the translation of the draft texts into Amharic and English, a series of discussions and deliberations on the proposed content of the codes, and the final adoption by the National Parliament of the translated Amharic version as the only authentic version. Thus arose a mixed Ethiopian legal system in which three languages meet: Amharic, English and French. Those who must interpret the law with authority, i.e. judges and other law practitioners, must rely on the authentic Amharic version, as this is the only one adopted by the National Parliament; researchers, teachers and students mostly rely on the English version in their academic discourse because English is the medium of instruction at universities – recall that the English versions of the codes are also published in the Negarit Gazeta. Those who have doubts about the original meaning of a provision may even want to resort to the French version of the law, as the master texts of most of the codes is drafted in French. But the French master texts were never published and are therefore not accessible.

In the absence of sources on who exactly the members of the Codification Commission were and what qualifications they had, it is difficult to assess whether the members of the Commission had the necessary background knowledge to adequately translate the legal and linguistic content of the French texts into Amharic. However, at least in the case of the Civil Code, it could be seen that the drafter took precautions by writing the law articles in numbered paragraphs and limiting each paragraph to one sentence in order to facilitate the Commission's translation work. It was also testified that the codification commission consisted of people well versed in Amharic philology. But on the other side, an analysis of the translation problems based on a sketch of trilingual legal regime by contrasting the three competing language versions, namely the Amharic, English and French versions, reveals that the French master texts could be useful if they had been given some form of authority to interpret the

[524] See also Art. 2234(1) of the Civil Code, which defines this type of relationship. It provides: "The commission to buy or to sell is a contract of agency whereby the agent, called the commission agent, undertakes to buy or to sell in his own name but on behalf of another person, called the principal, goods, securities or other fungible things."

authenticated Amharic versions. More particularly, the French version could help determine the drafter's actual intention in cases where:

(1) the literal application and systematic reading of the Amharic and English versions of the legal provisions in question do not resolve the mismatch between the terms used in both versions; or
(2) the meaning in the Amharic version is vague and the one in the English version leads to an absurd interpretation; or
(3) when non-equivalence of legal terms with legal-technical meaning occurs between the master text and the translations; or
(4) when the Amharic and English versions each suggest a meaning that is different from that of the French master text; or
(5) when the meaning in the Amharic version is correct but could be distorted by reading it simultaneously with the misleading English version.

Although this discussion represents only two areas of the Civil Code, namely the law of obligations and the law of representation, I hope to have shown that similar translation problems might also exist in the rest of the Code as well as the other five codes. Unfortunately, since the French versions currently have no place in the interpretation of Ethiopian laws, such a discussion is purely theoretical. Finally, it can be concluded that neither the authoritative Amharic version nor the official English translation can be considered superior in terms of translation quality. But when two translations are juxtaposed, a chain of inferences emerges from which a meaning can be derived that is consistent with the purpose of the law. In some cases, the meaning in the Amharic version would not make sense if it was not read together with its English counterpart and vice versa.

By taking concrete court cases, the next three chapters address the question of how the comparison of different language versions is applied in practice. I compare the approaches taken in comparing equally authentic language versions using the example of the EU legal system, which stands for strong legal multilingualism, and the comparison between the authoritative Amharic versions and the official English translations in Ethiopian courts, which stand for a system with weak legal multilingualism.

Chapter 6. Legal interpretation in the context of strong legal multilingualism: The case of the European Union

"The act of interpretation assumes that for any given dispute, there is some law, and it only remains for the judge to pronounce that law."[525]

6.1. Introduction

Language is an imperfect instrument for communication, and it always has to be supported by a context that facilitates its interpretation. Language in legal rules is also no exception.[526] The main task of judges is to interpret words in legal rules. Yet, judges are not supposed to possess much power to create the rules. Simultaneously, legal norms are not written by a single person who makes their intent clear to the reader and dictates the outcome. Rather, they are the result of a collective process with many desires pulling in opposite directions and leaving traces of this struggle in the texts. As Solan correctly points out, it is impossible to draft a law whose words are not subject to debate at the margins of their meaning. Defining the terms in the law is not a perfect solution either, since the words of the definitions themselves are subject to the same problems.[527] Besides this, the lawmaker cannot practically address all the problems it has intended to solve, and it is inevitable that new cases arise that were not foreseen by the lawmaker. The language in which the law is written is therefore one of the major causes of legal indeterminacy. The interpretation of words and phrases that cause linguistic indeterminacy only tends to stabilize over time as recurring issues are litigated and case outcomes become precedents for future disputes.[528]

While the above is true for laws enacted in only one language, working on multilingual laws presents even greater challenges for the interpreter. As Cao points out, the interpretation of bilingual and multilingual laws is unique due to established laws, statutory interpretive rules, policy and other considerations.[529] When a law is issued in multiple language versions, it is inevitable that certain terms have different meanings in different languages, and even if they have similar meanings, those meanings may be narrower or broader, be more or less polysemous, carve up a semantic field in different ways, have a different word and usage history depending on the particularities of different languages and cultures.[530] To resolve disputes involving these difficulties, judges use their discretionary powers and resort to

[525] Easterbrook, Frank H. 1984. Legal interpretation and the power of the judiciary. *Harvard Journal of Law and Public Policy* 7.1: 92.
[526] Solan, Lawrence M. 2014. Multilingualism and morality in statutory interpretation. *Language & Law/Linguagem e Direito* 1.1: 6.
[527] Solan, Lawrence M. 2010. *The language of statutes*. Chicago: University of Chicago Press: 48.
[528] Solan 2010: 48.
[529] Cao 2007: 69.
[530] Llorens, Albertina Albors. 1999. The European Court of Justice, more than a teleological Court. *Cambridge Yearbook of European Legal Studies* 2: 376.

various methods of statutory interpretation, including searching for linguistic clues in the legal provisions and analyzing what the legislature intended in enacting the law.

The judgments of the Court of Justice of the European Union (CJEU), which plays a role as the guardian of uniform interpretation and application of EU law, provide a wealth of experience on how to assess discrepancies between the different language versions of a law and how to achieve a uniform interpretation of the 24 equally authoritative language versions. The purpose of this chapter is to examine the judgments of the CJEU in light of the following two questions:

- How can the CJEU attribute the same weight to all 24 equally authentic language versions while achieving a uniform interpretation of EU law?
- To what extent does the legal interpretation practice by the CJEU pose a challenge to the realization of legal certainty or lead to legal uncertainty?

I focus in particular on cases in which the CJEU openly compares several equally authoritative language versions in order to determine the legal effect and application of EU law. In doing so, I attempt to identify the types of problems faced by jurisdictions that practice strong legal multilingualism, the advantages that language comparison offers judges interpreting multilingual laws and the factors that influence the decisions that must be made when working on multilingual laws. These issues are presented as a *tertium comparationis* for the practice of legal interpretation within the Ethiopian Federal Supreme Court Cassation Division, which is presented in the next two chapters to characterize the phenomenon of weak legal multilingualism. To this end, the next section (Section 6.2) proceeds with some issues related to the indeterminacy of law and the concept of legal interpretation as well as the catalogue of the traditional canons of legal interpretation used by continental and common law courts alike. In Section 6.3, I discuss the application of the traditional canons of legal interpretation and their prevalence in the judgments rendered by the CJEU, and elaborate on the process by which the CJEU identifies a common core of meaning of EU multilingual laws. In doing so, I focus on what emerges from the comparison of the different language versions, a method that Solan, a scholar in the field of language and law, calls the "Augustinian method of interpretation".[531] Section 6.4 then closely looks into the CJEU cases to address the question of how the Court protects the right to legitimately rely on one's own language version and how it reconciles the protection of this right with the need for uniform interpretation and application of EU law when there are differences in meaning between the different language versions. This is then followed by the conclusion in Section 6.5.

[531] Because this approach to interpreting laws is similar to the method that St. Augustine developed in the 4th century for interpreting the scriptures; see Solan 2008: 281-301.

6.2. Legal indeterminacy, legal certainty and methods of legal interpretation

6.2.1. Legal indeterminacy and the conception of legal certainty by the CJEU

Legal indeterminacy is a topic that is widely discussed in legal philosophy.[532] The claim that law is indeterminate implies that legitimate sources of law, such as statutes, methods of interpreting statutes or past cases, and rational operations that can be performed with facts and rules, are insufficient to justify only one outcome.[533] Legal realists like Llewellyn invoke familiar methods of legal and judicial reasoning that conflict with each other, resulting in a strict and a loose interpretation of the same precedent or conflicting readings of the same statutory provision, to argue that the law is indeterminate.[534] A more radical approach to the indeterminacy of law is also advocated by the writers in Critical Legal Studies, who have developed a range of arguments suggesting that law is radically indeterminate, incoherent and contradictory, and conclude that there is no single right answer to legal questions.[535] They invoke the common experience among lawyers that the arguments of both sides sound equally convincing, and therefore think they can argue either way. They claim that judges covertly rely on moral and political considerations in deciding which of the incompatible legal norms to base their decisions on. This means that judges holding different philosophical beliefs could decide cases differently.[536]

Other scholars, such as Kress, defend the claim that the indeterminacy of law is only moderate and reject the arguments of critical legal scholars for radical indeterminacy. They base their defense on the pervasiveness of easy cases whose outcome is clearly predictable, but whose existence is obscured only because of the preoccupation of legal scholars with controversial appellate and Supreme Court cases, often referred as hard cases. They also contend that critical legal scholars incorrectly limit the inferential techniques that judges may deploy and therefore mistakenly exaggerate the indeterminacy in adjudication.[537]

In contrast to the views expressed above, the Court of Justice of the European Union (CJEU) does not accept legal indeterminacy as a working assumption, but is rather guided by the principle of legal certainty.[538] Some scholars trace the CJEU's adoption of the principle of legal certainty to the German *Rechtsstaat* and the French *État de droit*, both of which share the idea of a political power that guarantees individual rights and is subjected to legal principles such as legal certainty.[539] Today, legal certainty is one of a handful of "general principles" of

[532] Kress, Ken. 1989. Legal indeterminacy. *California Law Review* 77: 283; Somek, Alexander. 1993. From Kennedy to Balkin: Introduction critical legal studies from a continental perspective. *University of Kansas Law Review* 42.4: 759.

[533] Leiter, Brian. 1995. Legal indeterminacy. *Legal Theory* 1.4: 481-492.

[534] Leiter, Brian. 2015. Legal realism and legal doctrine. *University of Pennsylvania Law Review* 163.7: 1983.

[535] A review of the writings of Critical Legal Studies (CLS) is presented in Kellogg, Frederic R. 1990. Legal theory at the edge: A review of Andrew Altman's Critical Legal Studies: A liberal critique. *George Mason Law Review* 13.1: 189-198.

[536] Somek 1993: 768; see also Kellogg 1990.

[537] Leiter 1995: 481-492; Kress 1989: 283-336; Somek 1993: 759-783.

[538] Maxeiner, James R. 2006. Legal certainty: A European alternative to American legal indeterminacy. *Tulane Journal of International and Comparative Law* 15.2: 545.

[539] Van Meerbeeck 2016; Maxeiner 2006.

the CJEU and "is referred in several hundreds of its judgments".[540] The Court states in its judgments that the corollary of the principle of legal certainty is the principle of protection of legitimate expectations, which requires, on the one hand, that rules of law must be clear and precise and, on the other, that their application and their effects must be foreseeable by those subject to them.[541]

Paluszek defines the principle of the protection of legitimate expectation as "a principle according to which a reasonable person is able to predict the legal consequences of his or her behavior and expect the authorities to act fairly and reasonably, according to the law".[542] A reasonable person is presumed to be able to foresee the legal consequences of his conduct and to expect the authorities to comply with the law if the law is written in an understandable language, clearly formulated and published officially. The principle of legal certainty as defined by the CJEU thus corresponds to the formal meaning of legal certainty which requires that "(1) laws and decisions must be made public; (2) laws and decisions must be definite and clear; (3) decisions of courts must be binding; (4) limitations on retroactivity of laws and decisions must be imposed; and (5) legitimate expectations must be protected".[543]

The difficulty of the above requirements lies in the fact that the principle of legal certainty is one of the most uncertain, ambiguous and unpredictable of all European norms.[544] The CJEU itself seems to have acknowledged in some of its decisions that absolute legal certainty as conveyed in the above requirements is unrealistic. In the case of Belgium v. Commission, for example, the Court uses a more relative wording of legal certainty, as can be noted from the following quotation:

> "[W]here a degree of uncertainty regarding the meaning and scope of a rule of law is inherent in that rule, it is necessary, … for the examination of it to be confined to the question whether the legal measure at issue displays such ambiguity as to make it difficult for that Member State to resolve with sufficient certainty any doubts as to the scope or meaning of the contested regulation."[545]

Besides this, Tridimas discusses several reasons contributing to the uncertainty of EU law including "constitutional fluidity, authority uncertainty, and uncertainty as to the effects of

[540] "General principles, unlike specific rules, do not usually require one specific answer, but instead provide a direction and a justification for answers"; see Maxeiner 2006: 547.

[541] See, for example, CJEU Case C-201/08, Plantanol GmbH & Co. KG v. Hauptzollamt Darmstadt [2009], ECR 2009 I-08343, ECLI:EU:C:2009:539: para. 46; CJEU Joined Cases C-356/11 and C-357/11, O and S v. Maahanmuuttovirasto and Maahanmuuttovirasto v. L [2012], ECLI:EU:C:2012:776, para. 74 and 78.

[542] Paluszek, Karolina. 2013. Multilingualism and certainty of law in European Union. In Rui Sousa-Silva, Rita Faria, Núria Gavaldà & Belinda Maia (eds.), *Bridging the gap(s) between language and the law: Proceedings of the 3rd European Conference of the International Association of Forensic Linguists*. Porto: Faculdade de Letras da Universidade do Porto: 102.

[543] Maxeiner 2006: 549.

[544] Van Meerbeeck 2016: 275.

[545] CJEU Case C-110/03, Kingdom of Belgium v. Commission of the European Communities [2005], ECR 2005 I-02801, ECLI:EU:C:2005:223, para. 31.

rules".[546] Legal uncertainty also arises due to the multilingual nature of the EU, which is discussed in more detail in Section 6.4 below. On the one hand, one finds the Court stating that "the elimination of linguistic discrepancies by way of interpretation may, in certain circumstances, run counter to the concern for legal certainty, inasmuch as one or more of the texts involved may have to be interpreted in a manner at variance with natural and usual meaning of the words".[547] On the other hand, one learns from the cases discussed in the following sections that the CJEU compares different language versions of the same law and tries to reach a uniform interpretation of the law in order to ensure legal certainty. But how can the CJEU attribute the same weight to all 24 equally authentic language versions while achieving a uniform interpretation of EU law? How can the right to legitimately rely on one's own language version be reconciled with the need for uniform application of EU law when there are differences in meaning between the different versions? These and similar questions suggest the need to shift to "relative conception of the requirements of legal certainty ('some' clarity, a reasonable 'predictability')"[548] instead of legal certainty in absolute terms.

Anyone who has ever interpreted a legal norm and applied it to a concrete case knows that absolute legal certainty is impossible in practice. It is impossible primarily for the following three reasons: (1) the legislators cannot anticipate and judge all possible cases; (2) they cannot classify all cases in the abstract so that none are overlooked; and (3) they cannot use language so precise that it does not allow for deviation from the cases they anticipate when they enact the law.[549] To resolve disputes involving these difficulties, judges use their discretionary powers to make choices about the applicable law, the relevant facts and other contexts that must be considered in reaching the final decision. In this process, judges resort to various methods of statutory interpretation, including searching for linguistic clues in the legal provisions and analyzing what the legislature intended in enacting the law. But still, one can examine each system to see if it offers workable certainty consistent with sufficient flexibility. Before examining the EU legal system, I first look into some of the methods of legal interpretation in more detail in the next subsection.

6.2.2. Methods of legal interpretation

Legal interpretation is understood here as a legally authoritative resolution of questions by legally authoritative actors about what the content of the law is in its application to particular cases.[550] There are writers who distinguish between ascertaining the linguistic meaning of a legal provision, on the one hand, and ascertaining the contribution of that provision to the content of the law, on the other, considering only the latter as the actual activity of legal

[546] Tridimas, P. Takis. 2019. Indeterminacy and legal uncertainty in EU law. In Joana Mendes (ed.), *EU executive discretion and the limits of the law*. (Penn State Law Research Paper No. 07-2019) Pennsylvania: The Pennsylvania State University: 1-24.

[547] CJEU Case 80/76, North Kerry Milk Products Ltd v. Minister for Agriculture and Fisheries [1977], ECR 1977-00425, ECLI:EU:C:1977:39, para. 11.

[548] Van Meerbeeck 2016: 287.

[549] Maxeiner 2006: 555.

[550] Soames, Scott. 2011. Toward a theory of legal interpretation. *New York University Journal of Law and Liberty* 6.2: 231.

interpretation and the former merely as a means.[551] Yet, not much importance is attributed to this distinction here, because the content of the law is largely determined by the linguistic content of the authoritative legal texts. Figuring out the linguistic meaning of a legal provision by judges, lawyers and other legal interpreters is just as important as determining the meaning of the relevant texts to ascertain what the law is. This is not to underestimate the importance of non-linguistic considerations in adjudicating between different types of linguistic contents, which are of great importance in applying the law to a particular case.[552] But it means that, for the purposes of our discussion and also in practice, interpretation serves to ascertain both the linguistic meaning of a legal provision and the effect of the normative propositions contained in the law. My understanding of legal interpretation therefore swings back and forth between figuring out the linguistic meaning of legal texts and ascertaining the content of the law.

The best first step for judges in achieving the goal of loyalty to the legislature is to pay close attention to the language of the law.[553] Judges normally enforce the law's plain meaning when the language is unequivocal. But the law may have more than one interpretation; one of the interpretations may be more usual than the others; or there may be other overarching values guiding the enforcement of the law, such as the purpose of the law. The judge may also have evidence of what the enacting legislature had in mind or as to its coherence with other laws, consistency with earlier decisions of other courts, or the need to make the law responsive to evolving situations.[554] The weight a judge assigns to each of these factors necessarily depends on the values associated with the case and their relative importance in the legal analysis. Nor can one rule out the possibility that the personal values of the individual judge may influence the final decision.[555]

Legal scholars argue that the interpretation of a law should be guided by rules that tell the interpreter what legal materials to read and how to read them.[556] These rules, also often referred as canons of legal interpretation, can help fix the meaning of a legal instrument or limit the normative choices available to judges when choosing among reasonable alternatives. The founder of the Historical School of Jurisprudence, Friedrich Carl von Savigny, distinguishes between three classical canons of legal interpretation in an 1840 treatise on Roman law: "textual, verbal or grammatical interpretation, systematic, structural or contextual

[551] Greenberg, Mark. 2017. What makes a method of legal interpretation correct: Legal standard vs. fundamental determinants. *Harvard Law Review Forum* 130.3: 112. The author takes "linguistic meaning" to mean "an instance of linguistic meaning generally, not something specially legal, [and] the information that language enables us reliably and systematically to convey". On the other hand, "a provision's contribution to the content of the law is, roughly, that part of the content of the law that obtains in virtue of the enactment of the provision".
[552] These include considerations that courts take to decide how to resolve a case when there is no governing legal standard or to depart from what the law requires in extraordinary circumstances; see Greenberg 2017: 113.
[553] Solan 2010: 14.
[554] Solan 2010: 11.
[555] Solan 2010: 13.
[556] Baude, William & Stephen E. Sachs. The law of interpretation. *Harvard Law Review* 130.4: 1082.

interpretation, and historical interpretation".[557] Later, a fourth approach was added to this catalog: the teleological or purposive method of interpretation.[558]

Textual interpretation, more commonly referred to as the literal method of interpretation, has as its object the words and phrases used by the legislator and is therefore concerned with the exposition of the literal meaning of these words and phrases as well as examining the logical relationship in which the various parts of the text stand to each other.[559] In systematic interpretation, the interpreter focuses on the inner connection of the legal provision in question with all other legal norms and attempts to clarify the meaning of a legal provision by reading it in conjunction with other, related provisions of the same section or title of the legal text or even other texts. Under the historical approach, the interpreter seeks to ascertain the intent of the legislature at the time the law in question was enacted and considers how that state of affairs applies to the present legal relationship. In teleological or purposive interpretation, the interpreter seeks to determine the function or value of the statute in question according to the contemporaneous purpose of the legal provision or document, which is derived from the declared intent of the statute rather than the historical will of the framers.[560]

There is disagreement among scholars and judges as to which method should be given precedence. Brugger suggests that "more importance must be placed on the 'objective' textual, systematic, and teleological methods than on the 'subjective' historical method, and that the latter should serve only as a secondary, supplemental means of clarifying the meaning of a provision".[561] Solan argues that "the literal method of interpretation is universally acknowledged to be the first step in any interpretive process", as it is often assumed that a judge's task is to read the text and do what it says and that the judge must adhere to the literary meaning of a legal text.[562] The late United States Supreme Court Justice Antonin Scalia goes so far as to suggest that special attention should be paid to the legal text at the expense of considering the purpose of the statute or certain extra-textual indications of legislative intent.[563]

More canons of interpretation are constantly being added, and a recent book on interpretation by the late Justice Scalia and Professor Bryan Garner contains no less than 57 canons.[564] But there are skeptical views on how these canons help judges, how many of these canons judges can consider and whether there are limits to the extent to which legal interpretation can be guided by these canons. Even if it is claimed that the literal method of interpretation is universally acknowledged to be the first step in any interpretive process, absurd results can sometimes occur when the literal meaning of the legal text is applied,

[557] Savigny, Friedrich Carl von 1840. *Das System des heutigen Römischen Rechts*. Vol. I: § 33, 213-14; quoted in Brugger 1994: 396.
[558] Brugger 1994: 396.
[559] Llorens 1999: 375.
[560] Brugger 1994: 396-97.
[561] Brugger 1994: 401.
[562] Llorens 1999: 375.
[563] Solan, Lawrence M. 2012. Linguistic issues in statutory interpretation. In Lawrence M. Solan & Peter M. Tiersma (eds.), The Oxford handbook of language and law. Oxford: Oxford University Press: 2.
[564] Scalia & Garner, quoted in Baude & Sachs 2017: 1088.

leading to decisions that are contrary to the objective of the legislation in question. "The plain and unambiguous meaning of words by which courts often believe themselves to be governed is really a delusion, since no words are so plain and unambiguous that they do not need interpretation in relation to a context of language and circumstances."[565]

Consequently, the methods of interpretation are not mutually exclusive but complementary. The historical method, for example, may help the interpreter to see the motives for enacting the law in its historical context and discover the will of the legislator. This will of the legislator objectified in the law may be sought by considering the wording of the law, the systematic interpretation of the legal provision, the declared purpose of the law, as well as the materials accompanying the law and the history of its origin. Therefore, all or some of the methods of interpretation may be combined to understand the objective intention of the legislator and be used to resolve the case at hand.

6.3. Language comparison as a tool for the application of the traditional methods of legal interpretation in the judgments of the CJEU

A complex legal system such as that of the EU, which operates in 24 equally authentic languages, provides an ideal situation to study how conflicting language versions of the same law can be interpreted and to examine the linguistic, legal, or both linguistic and legal aspects involved. In all cases in which there is reason to question the accuracy of a language version, the CJEU has the duty to consult other versions of the law.[566] In other words, the equal authenticity of all the language versions and the requirement to interpret EU law in the light of all versions prohibit the rejection of any version in case of divergence. A study conducted by Pacho on CJEU judgments between 2007 and 2013 demonstrates that linguistic comparison is widely used (in 31% of the cases assessed) as a method to support interpretation by the CJEU even when no divergences are apparent.[567]

Solan, a scholar in the language of the law, investigates the decision-making process in the judgments of the CJEU and refers to the process by which the Court compares the different language versions as the "Augustinian method of interpretation", because of its approach being similar to the method that Augustine developed in the 4th century for interpreting the scripture.[568] The basic idea of the Augustinian approach is that different versions of a multilingual text can be compared and then triangulated so that nuances are revealed that help the investigator gain additional insight into the original author's thoughts. Any imperfections in a monolingual text, however, become permanent.[569] For Augustine, the essence of the Scripture can only be uncovered through the study of several versions of the same text. For the CJEU, too, the general purpose of the EU legislation can only be inferred

[565] Llorens 1999: 375.

[566] van der Jeught 2018: 13.

[567] Pacho Aljanati, Lucía. 2015. *The Court of Justice of the European Union's case law on linguistic divergences (2007-2013): Interpretation criteria and implications for the translation of EU legislation*. Barcelona: Autonomous University of Barcelona/Geneva: University of Geneva (PhD dissertation): 227-234, available at http://hdl.handle.net/10803/314190, last accessed March 5, 2021.

[568] Solan 2008: 289.

[569] Solan 2008: 293.

from the multiple language versions of the same legislation.[570] Although both use language as a powerful cue for discovering the essence of a text, there is a significant difference between the two.

While Augustine had the advantage of relying on the original version, either directly or with the help of others who knew those languages, there is no such original and authoritative version on which the CJEU relies. All the language versions are equally authoritative. But Solan argues that a comparison with the Augustinian project is appropriate even in the absence of a single original text, because the EU official languages are close enough to each other to permit only a small set of possible interpretations, and therefore comparing different equally authoritative language versions by the CJEU is helpful.[571] While Solan has a point, it must also be noted that legal interpreters involved in interpreting laws written in languages with closer heritage links may be more susceptible to false friends – words that look deceptively similar but have different meanings. For example, "despite the shared Latin origin, *jurisprudence* in French is confined to meaning judicial decisions, but in English it refers to the discipline of legal theory".[572] The French term *contrat* does not include the concept of consideration, while the English term *contract* does not cover certain agreements (such as bailments, trusts and conveyances) that fall within the definition of the French term.[573] EU judges therefore have a duty to ensure that the terms used in EU legislation do not become false friends of the terms used in the national legislation of the Member States.

The method of language comparison can be seen as an important tool for the court to construct a uniform interpretation of EU law using the traditional canons of legal interpretation. As is shown in Section 6.4, the CJEU applies a literal interpretation method in many of its judgments, i.e. it compares and reconciles the wording of the different language versions in order to arrive at a uniform interpretation of all versions. The literal interpretation method is in fact the most frequently used method, as a study by Baaij shows, especially when there are linguistic discrepancies between the different versions due to translation errors.[574] According to this study, the CJEU made explicit comparison of language versions in the argumentation of 246 of its judgments from 1960-2010, representing around 3% of the total judgments. Discrepancies between the language versions are observed in 170 of these judgments.[575] The Court has consistently been relying on this method throughout the years, and of the 170 CJEU cases between 1960 and 2010 in which a linguistic discrepancy was found, the CJEU applied the literal interpretation method in 95 judgments (around 56%).[576]

Although there are no similar data on the prevalence of the teleological and systematic methods of interpretation, the discussion of cases in Section 6.4 shows that these methods of

[570] Solan 2008: 293.
[571] Solan 2008: 294.
[572] Leung 2019: 162.
[573] Leung 2019: 162.
[574] Baaij, Cornelis J. W. 2012. Fifty years of multilingual interpretation in the European Union. In Lawrence M. Solan & Peter M. Tiersma (eds.), *The Oxford handbook of language and law*. Oxford: Oxford University Press: 221.
[575] Baaij 2012: 219.
[576] Baaij 2012: 221.

legal interpretation are also widely used by the Court. As Van der Jeught rightly points out, discrepancies between language versions of EU law would go unnoticed if version comparison together with teleological and systematic interpretation of the law were not given as much attention in the application of EU law.[577]

In contrast to the three methods mentioned above, i.e. the literal, the teleological and the systematic method, the historical method of interpretation has long been the least widely used method of interpretation to assess divergences between different versions of EU law.[578] Both practical and political reasons can be cited for this. In the beginning, little was published about the origins of EU legislation. Few libraries had access to the Official Journal of the EU Commission, and even if they did, not all Commission documents were published in the Official Journal. Parties to the proceedings thus had little opportunity to examine the legislative history of a piece of legislation in any detail and to provide the Court with appropriate arguments concerning the origin of the legislation. But in recent years, the EU has increased the transparency of its lawmaking process, and, facilitated by the internet, this has improved access to a wide range of materials about the institutions' legislative processes.[579]

Anyone embarking on a search for the origins of the legislation encounters a variety of sources at each stage of the legislative process that can shed light on the origins of the linguistic inconsistencies in the different language versions of the law. These sources on the genesis of a piece of legislation may relate to the initiation of the legislative proposal, the deliberative process, or the final adoption stage.[580] However, these historical sources, which may reveal the origins of the linguistic inconsistencies in the different language versions of the law, do not often provide the necessary solution to the problem at hand. The historical sources sometimes contradict each other, and the question of what weight to give to one or more of the sources raises other problems in addition to the linguistic discrepancies.[581] EU legislation is usually adopted jointly by the EU Commission, the Parliament and the Council, and the question of whether a proposal made by a Member State in the Council working group or one made by the Parliament or the Commission should be given more weight when deciding on a linguistic inconsistency is difficult to resolve.[582]

Yet, a comparative look at the domestic legislation underlying the adoption of the EU regulation may give the interpreter of EU law a clue as to the intended meaning of the disputed provision. Caution is still needed, as parallel provisions in a Member State's national legal system and the EU Regulation may be "false friends", i.e. they may look deceptively similar but have different meanings.[583]

Apart from this, the historical method of interpretation has proved useful in some cases. Some amendments are proposed by the Member States themselves, with the participation of National Parliaments and using the official languages of those Member States. Should a case

[577] van der Jeught 2018: 5.
[578] Sobotta 2015.
[579] Sobotta 2015.
[580] Sobotta 2015.
[581] Interview with Christoph Sobotta, March 23, 2022.
[582] Interview with Christoph Sobotta, March 23, 2022.
[583] Interview with Christoph Sobotta, March 23, 2022.

involving an amended provision come before the Court, the examination of historical sources may help explain a linguistic inconsistency between the different language versions for certain terms in the provisions introduced by these amendments. In the case of the S.P.C.M. proceedings on the REACH Regulation, for example, the Court was confronted with a situation where a dispute arose over the use of the term "monomeric units" in Art. 6(3) of the French and English versions of the REACH Regulation, whereas Art. 3(5) of the same versions uses the term "monomer units". The Court needed to determine whether these terms had different meanings and resorted to the historical method. The Court thus finds out from a document of the Council of the European Union of 5 November 2004 (No. 13788/04, p. 5) that those words were added at the request of the Kingdom of Sweden and that the Swedish language version of the REACH Regulation uses the same term "monomer units" in Arts. 3(5) and 6(3) of the regulation.[584] The Court then concludes that "monomeric units" and "monomer units" mean the same thing, and that the problem arose only because the English and French translators did not take note of the fact that the Swedish language version uses the same term in both Art. 3(5) and Art. 6(3) of the Regulation.

In the following section, I continue with a discussion of some selected cases decided by the CJEU in which a language comparison is made. I examine what purposes the language comparison serves and how the Court addresses the legal uncertainty arising out of EU multilingualism. In particular, I address the question of how the CJEU protects the right to legitimately rely on one's own language version and how it reconciles the protection of this right with the need for uniform interpretation and application of EU law when there are differences in meaning between the different language versions.

6.4. The principle of protection of legitimate expectation and its application in CJEU cases

As mentioned in Section 6.2, the CJEU states that the corollary of the principle of legal certainty is the principle of protection of legitimate expectations.[585] This is related to the basic elements of the formal rule of law, which essentially guide and limit the making and application of substantive law and require that laws "be validly made and publicly promulgated, be of general application, stable, clear in meaning, consistent, and prospective".[586] These principles are intended to ensure that predictable and consistent decisions in individual cases are delivered, that those subject to the law rely on the law and anticipate the application of state power, and that they are protected from the arbitrary exercise of the power to make and apply law.[587]

[584] CJEU Case C-558/07, The Queen v. Secretary of State for the Environment, Food and Rural Affairs [2009], ECR I-05783, ECLI:EU:C:2009:430, para. 26; see also Opinion of Advocate General Kokott on Case C-558/07, The Queen v. Secretary of State for the Environment, Food and Rural Affairs [2009], ECR I-05783, ECLI:EU:C:2009:142, para. 37.

[585] CJEU Case C-201/08, 2009: para. 46.

[586] Maxeiner 2006: 546.

[587] Maxeiner 2006: 546.

This means in the EU context that legislation must be accessible to citizens in their own language and that the effects of legislation must be foreseeable.[588] If an EU law is not published in the official language of a Member State in the Official Journal of the European Union, the consequence is that it is not enforceable in that Member State.[589] The requirement of foreseeability implies that citizens should be able to anticipate what they must or must not do, or what they can expect from the public authorities, and these legitimate expectations of EU citizens need to be protected by courts.[590] However, since the CJEU must also ensure a uniform interpretation of the 24 equally authentic language versions, it is unrealistic to expect that all language versions will lead to the same results.

The question thus arises as to how the addressees of legal norms can trust an EU law written in their own language in a situation where there are other language versions which are also objects of interpretation. The following subsections attempt to address this question from the perspective of the cases decided by the CJEU.

6.4.1. The right of parties to rely on their own language versions

The examination of the cases rendered by the CJEU does not give a definite answer to the question of whether the Court strictly respects the right to rely on the official language version of one's choice. In HX v. Council (an appeal from the ruling of the General Court), for example, the Appeal Court passed a decision that aims to protect the appellant from being harmed because he relied on the official language version of his choice[591] In the proceedings before the General Court leading to the judgment under appeal, the General Court rejected as inadmissible the appellant's request made at the hearing to modify his initial application to the General Court on the ground that it was not contained in a separate document. The Appeal Court had to deal with the question whether Art. 86(2) of the Bulgarian language version of the Rules of procedure of the General Court was clear as to the requirement of a separate document. The Bulgarian language version was particularly relevant in the case, because the appellant's choice in the proceedings before the General Court was the Bulgarian language, of which his lawyer had command.

After having compared the Bulgarian language version of the contested provision with other language versions, the Appeal Court reversed the decision of the General Court. The Appeal Court notes that the Bulgarian language version of Art. 86(2) of the Rules of procedure of the General Court is ambiguous on the ground that "contrary to the English language version ('separate document') and the French version ('acte séparé') of that provision, the Bulgarian language version thereof does not use the word 'document', but the term 'molba' ('request')".[592] The Court reiterates that this word does not necessarily imply the requirement of writing, since it is usually the expression of a wish, which can just as well be oral as written. Moreover, the fact that the General Court included the request in the minutes of the hearing and did not draw the appellant's attention to any further requirements gave the appellant the

[588] CJEU Case C-161/06, 2007.
[589] CJEU case C-161/06, 2007: para. 32 ff.
[590] Šarčević 2014: 51.
[591] CJEU Case C-423/16 P, HX v. Council of the European Union [2017], ECLI:EU:C:2017:848.
[592] CJEU Case C-423/16 P, 2017: para. 20.

impression that his request had been properly registered, adding more ambiguity to the one already created by the linguistic ambiguity in the Bulgarian version.

The ruling by the General Court is also criticized in the opinion of Advocate General Kokott for adopting an excessively formalistic approach, which is not only contrary to the spirit and purpose of that provision, but also infringes the principle of a fair trial.[593] The appellant has the right to address the Courts of the European Union in one of the official languages of his choice, and this right is also guaranteed under EU law.[594] Along this line, the Appeal Court comments that the ruling by the General Court, which declares the appellant's request inadmissible because of a diverging meaning in the language version which is the language of the case, would amount to expecting the appellant to refer to all the language versions of the Rules of procedure in question, and this would be contrary to the right of the appellant to address the General Court in the official language of his choice.[595] The Appeal Court then concludes that it was wrong in law for the General Court to reject as inadmissible the appellant's request "to modify the application on the sole ground that it had not been submitted in a separate written document, without having invited the latter, beforehand, to regularize the request".[596] With this judgment, the Court achieves two goals: First, it recognises the same value that should be given to all language versions by ruling that ambiguity cannot be taken lightly, even if it arises only from the Bulgarian language version of the Rules of Procedure of the General Court. Secondly, the Appeal Court aims to protect the party from being harmed because he relied on the official language version of his choice.

6.4.2. The right to one's own language vs. the presumption of the same meaning of all official language versions

The Conclusion reached in the above HX case seems to suggest that persons residing in a particular Member State should be able to rely on an EU law written in the official language of that Member State, regardless of whether that meaning is supported by other language versions. However, consideration of other cases rendered by the CJEU does not support this conclusion. In the case Matisa-Maschinen GmbH v. Hauptzollamt Berlin-Packhof (hereinafter referred as Matisa case), for example, the CJEU was requested to answer the question as to whether a piece of equipment "for tamping, levelling and adjusting railway-tracks" is to be classified under subheading 86.04 B of the Common Customs Tariff (as a mechanically propelled railway coach) or under subheading 84.23 A II(b) of the same Common Customs Tariff (as earthmoving machinery).[597] The plaintiff imported a machine from Switzerland to Germany that is used in the maintenance of railway lines and can tamp and level up to 600 m of railway track per hour. When not in use, it can travel from place to place on the rail network at a speed of up to 80 km/h. The defendant initially classified the machine under subheading 84.23 A II(b) of the Common Customs Tariff and thus subjected it to customs duty at the rate

[593] CJEU Case C-423/16 P, 2017: para. 22; see also Opinion of Advocate General Kokott on Case C-423/16 P, HX v. Council of the European Union, June 22, 2017, para. 36 ff.
[594] The Rules of procedure of the General Court Art. 45; see also Art. 20(2)(d) TFEU and Art. 24(4) TFEU.
[595] CJEU Case C-423/16 P, 2017: para. 26.
[596] CJEU Case C-423/16 P, 2017: para. 27.
[597] CJEU Case 35-75, Matisa-Maschinen GmbH v. Hauptzollamt Berlin-Packhof [1975], ECR 1975-01205, ECLI:EU:C:1975:135.

of 6% and to German import turnover tax. However, the defendant subsequently concluded that the machine should have been classified under subheading 86.04 B of the Common Customs Tariff on the ground that the heading covers self-propelled vehicles for track maintenance. As the duty rate according to the new classification is 7-8%, the defendant assessed the plaintiff with an additional duty accordingly.

The plaintiff contends that the term "Triebwagen" under Heading 86.04 means in German a self-propelled vehicle for the conveyance of passengers and goods but not mobile machines and argues that the German text of the Heading should prevail, as this case arose in Germany. The Court compares all the other versions and notes how the term "Triebwagen" is translated in the other versions. The Court finds that only the English version is consistent with the German meaning, while the wording in the majority of the versions, namely in French, Danish, Dutch and Italian, covers all types of self-propelled railway coaches, including those for track maintenance. The Court rejects the submission by the plaintiff in favor of the meaning warranted by the German version on the ground that accepting this meaning could lead to the Common Customs Tariff being interpreted and applied differently in different Member States.

Consider also the case Skatteministeriet v. Aktieselskabet Forsikringsselskabet Codan (henceforth the Skatteministeriet case) concerning a dispute relating to the payment of a tax on the transfer of shares.[598] The Danish and German versions of Art. 12(1)(a) of Directive 69/335/EEC concerning indirect taxes on the raising of capital refer to "stock exchange turnover taxes", whereas most of the other language versions, namely the Greek, Spanish, French, Italian, Dutch, Portuguese and English versions, have the expression "taxes on the transfer of securities". Consequently, the Danish and German versions permit the imposition of duties on share transfers only in the case of stock exchange transactions and are worded in such a way as to exclude the imposition of duties on the transfer of shares through other types of transactions. In contrast, the meaning supported by the other versions authorizes the tax to be levied on the transfer of shares, regardless of whether the company that issued these shares is admitted to trading on a stock exchange and whether the transfer of shares takes place through the stock exchange or directly between the transferor and the transferee.

The defendant, a Danish company, invokes the wording of the Danish version and argues that the meaning in the Danish version should be applicable owing to the fact that individuals residing in a particular Member State should be able to rely on the version written in the official language of that Member State, even if the majority of the language versions do not support the meaning in that particular language version.[599] The Court, however, rejects the plaintiff's arguments and applies the interpretation attributed to the majority of the versions. Yet, the Court reconciled the difference between the words "stock exchange" and "transfer of securities" by drawing upon the assigned purpose of the directive. "Disregarding the clear wording of the great majority of the language versions of Art. 12(1)(a) of the Directive leads to a distinction between those companies which are listed on the Stock Exchange and those which are not. This is not only contrary to the requirement of a uniform interpretation of the

[598] CJEU Case C-236/97 Skatteministeriet v. Aktieselskabet Forsikrinsselskabet Codan [1998], ECR I-8679, ECLI:EU:C:1998:617.

[599] CJEU Case C-236/97, 1998: para. 19.

Directive but may also lead to distortions of competition and deter certain companies from being listed on the Stock Exchange."[600] The method of language comparison has therefore helped the Court find a consensus of meaning among the majority of the language versions. But the Court has wisely applied this consensus of meaning as a mere confirmation of the already assigned purpose of the law, thereby conveying the message that it reaches a solution that does not favor any of the language versions.

The way the consensus of meaning among the majority of the language versions confirms the already assigned purpose of the law has two variants: The first variant is reflected in the Skatteministeriet case, in which the Court first compares the languages and then supports it with the already assigned purpose of the law.[601] The other is the reverse application of the same approach, where the Court first establishes the assigned purpose of the law based on other grounds and then supports it with the consensus in meaning among the majority of the language versions.[602] Nonetheless, it is not often possible to deduce which interpretation approach prevails in which cases. What can safely be concluded, however, is that language comparison is a very important tool that aids the Court to discover which meaning of the several meanings is shared by the majority of the language versions before it addresses the question of what to make of that discovery. Previous research also shows that in the vast majority of judgments in which the CJEU has found that there is a single or a small number of language versions that differ from the majority of language versions, its ultimate interpretation of the provision at issue is consistent with its interpretation of the majority of language versions.[603]

Another interesting observation, particularly from what was put forward as an argument by the plaintiff in the Matisa case and the defendant in the Skatteministeriet case, is that parties invoke the basic requirements of the principle of legal certainty, namely accessing legislation in their own language and predicting its effects. They employed these requirements to claim their rights to use their own language and argue that the interpretation supported by the German and the Danish language versions of the respective laws should prevail. The term "Triebwagen" is semantically narrower when compared to what is provided in the same subheading 86.04 B of the majority of the other language versions, and the plaintiff, relying on their own language version, can be assumed to have a legitimate expectation that the Court would accept that narrow meaning and save them from the economic loss by classifying the machine under subheading 84.23 A II(b). Similarly, the application of the meaning in the Danish version could have saved the defendant from additional taxes levied on them. However, such a decision would run counter to the effectiveness of EU law.

The Court therefore had to compromise the requirement of the protection of legitimate expectation in order to ensure the effectiveness of EU law. In the Matisa case, the Court applied the literal meaning supported by the majority of the language versions, rather than

[600] CJEU Case C-236/97, 1998: paras. 26-29.

[601] See, for example, CJEU Case C-63/06, UAB Profisa v. Muitinės departamentas prie Lietuvos Respublikos finansų ministerijos [2007], ECR I-03239, ECLI:EU:C:2007:233: paras. 15-17.

[602] An example is CJEU Case C-298/94, Annette Henke v. Gemeinde Schierke and Verwaltungsgemeinschaft Brocken [1996], ECR I-04989, ECLI:EU:C:1996:382: paras. 13-15.

[603] Baaij 2012: 227.

taking into account the legitimate expectations of the plaintiff. In the Skatteministeriet case too, the Court concluded that disregarding the meaning supported by the majority of the language versions in the name of fulfilling the defendant's legitimate expectations would defeat the purpose assigned to the law.

The problems illustrated by both cases also highlight a somewhat ironic result of the principle of equal authenticity: The equality granted to the speakers of all the 24 official EU languages is one of equal obligation to read legislation in a language other than their own. Even though each language version is original and has equal weight, one language version of a text of a provision is not considered in isolation when it is interpreted. A uniform interpretation of all 24 language versions of EU primary and secondary legislation actually goes against the right of citizens to their own language, and requires that each language version be interpreted and applied in light of the versions in the other official languages, especially in cases where the reading of one language version raises doubts.[604] This means that if all the language versions of a legislation are equally authentic, then an individual relying on the law cannot reasonably rely on only one language version, as the interpretation may result in the dismissal of the meaning of one or more versions of the law. In this sense, one could come to the conclusion that cases in which judges are confronted with different language versions of a law when resolving disputes affect legal certainty, since no single language version can be fully trusted.[605] As Doczekalska notes, "the guarantee of the right to a citizen's own language is not the objective of the presumption of the same meaning of all official language versions".[606] Citizens have the right to access the law in their own language, but at the same time EU Community law must bind all citizens in the same way, and this can only happen if the law is applied uniformly in all Member States.

6.4.3. Identifying the clearest versions vs. equal weight to all language versions

In contrast to the cases discussed in Section 6.4.2, where a consensus of meaning was reached among the majority of the language versions, the CJEU also encounters cases in which the language comparison shows that only one or a few language versions have meanings that contribute to the interpretation of the provisions in the language of the proceedings that raised the linguistic issue in the first place. A notable example to illustrate this point is the 1998 EMU Tabac case, in which the CJEU prefers the meaning in the Danish and Greek versions of Art. 8 of Directive 92/12/EEC.[607] The disputed provision provides that excise duty on products acquired by private individuals for their own use and transported by them shall be charged only in the Member State in which they are acquired.[608] In other words, private individuals shall not be charged excise duty by Member States other than those in which the products are acquired, as long as these products are deemed to be for their own use and are

[604] See also CJEU Case 9/79, Marianne Wörsdorfer, née Koschniske v. Raad van Arbeid [1979], ECR 1979-02717, ECLI:EU:C:1979:201.
[605] van der Jeught 2018: 6.
[606] Doczekalska 2009: 361.
[607] CJEU Case C-296/95, 1998: paras. 36-37.
[608] Council Directive 92/12/EEC of February, 25 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (OJ 1992 L 76, p. 1), as amended by Council Directive 92/108/EEC of December 14, 1992 (OJ 1992 L 390, p. 124), Art. 8.

transported by them. The dispute in the EMU Tabac case arose because cigarettes were purchased in Luxembourg for the personal use of private individuals in the United Kingdom through an agent company incorporated in the United Kingdom, and the cigarettes were transported in accordance with the arrangements made by the agent. None of the language versions of Art. 8, including the English version, which is the language of the case, explicitly states whether the Directive should apply in cases where a third party is involved in the transactions, except the Danish and Greek versions, which indicate clearly that, "for excise duty to be payable in the country of purchase, transportation must be effected personally by the purchaser of the products subject to duty".[609] In a sense, the Danish and Greek versions, unlike all other versions, provide a clearly formulated response to the questions referred to the CJEU by the UK Court of Appeal.[610]

The applicants in the main proceedings argued that the Danish and Greek versions of Art. 8 of Directive 92/12/EEC should be disregarded because: (1) those versions were not consistent with the other versions, (2) those two Member States together accounted for only 5% of the population of the twelve Member States at the time the Directive was adopted, and (3) their languages were not easily understood by nationals of the other Member States.[611] But the Court rejects the applicants' arguments on the ground that "all the language versions must, in principle, be recognized as having the same weight and this cannot vary according to the size of the population of the Member States using the language in question".[612] The Court then rules that "Article 8 of the Directive is not applicable where the purchase and/or transportation of goods subject to duty is effected through an agent", and therefore excise tax is payable on the cigarettes.[613] A similar case was later heard by the CJEU, and the Court followed again the same approach and chose the clear wording in the Danish and Greek versions.[614]

The fact that the parties ask the Court to ignore the inconsistency created by language versions that represented only a small part of the EU population in the EMU Tabac case raises the issue of balance between equal authenticity and uniform interpretation of the law. The Court's decision shows that equal weight should be given irrespective of the number of speakers as long as it provides an answer to the question before the Court. The principle of equal authenticity entails that none of the language versions can be rejected for interpretation purposes, just as none of them can prevail.

Even if the meaning asserted in only two language versions is ultimately applied, the process that led to the application of that meaning demonstrates the Court's effort not to resort to manipulable extrinsic evidence but to adhere to other official language versions of the same authoritative law. In a way, the Court can be said to have achieved relative consensus among the different language versions by considering the meaning attributed in each language

[609] CJEU Case C-296/95, 1998: para. 33.
[610] See the questions referred to the CJEU in Case C-296/95, 1998: para. 20.
[611] CJEU Case C-296/95, 1998: para. 34.
[612] CJEU Case C-296/95, 1998: para. 36.
[613] CJEU Case C-296/95, 1998: para. 37.
[614] CJEU Case C-5/05, Staatssecretaris van Financiën v. B. F. Joustra [2006], ECR I-11075, ECLI:EU:C:2006:733, para. 40.

version equally. The meaning ultimately used to resolve the case is thus the result of the Augustinian approach, which allows judges to draw more clues from the clearer versions of the same provision to interpret the more ambiguous ones, and thus construct one common purpose of the law.

An interesting observation on the ruling in the EMU Tabac case is that the Court does not provide any supporting purposive (teleological) reasoning when it replaces the ambiguous meaning in the other versions with the clear meaning in the Danish and Greek versions. The clear language in these two versions is taken to be sufficient to explain the general purpose of the law and interpret it accordingly. Yet, this latter approach should be seen rather as an exception to the rule. Usually, the Court attaches the outcome of the language comparison to the already assigned purpose of the law based on other considerations when disregarding the ambiguous meaning in the majority of the language versions. Consider, for example, the case between Auditeur du travail v. Bernard Dufour, SA Creyf's Interim and SA Creyf's Industrial (henceforth the Auditeur du travail case), in which the CJEU gives preference to the meaning in the Italian version only.[615] The Court was requested by the Belgian National Court to interpret the word "undertaking" in Art. 14(7) and (8) of Regulation EEC No. 543/69 on the harmonization of certain social legislation relating to road transport.[616] Art. 14(7) and (8) require that "all undertakings shall keep a register of the individual books" and that "all completed individual books shall be kept by the undertaking for at least one year".[617]

The Court compares all the language versions and finds that none except the Italian version qualifies the word "undertaking" and indicates which entities are required to keep a register of the individual books. "Only the Italian version of the Regulation described the undertaking which is required to keep a register of the individual books and confined this duty to 'transport undertaking'."[618] The Court then justifies why the meaning of the Italian version is preferable and links this argument to the objective behind issuing the regulation; it provides here a teleological argument. The Court concludes that the term "undertaking" refers to those who are required to keep individual accounts and that these undertakings must be limited to transport undertakings, since the objective of the Regulation is to ensure social protection of drivers, road safety and equality of competition between transport undertakings.[619] In a similar manner, in the case Firma G. Schwarze v. Einfuhr- und Vorratsstelle für Getreide und Futtermittel (henceforth the Schwarze case), the CJEU interprets Arts. 2 and 3 of Regulation No. 19 of the Council on the Progressive Establishment of a Common Organization of the Market in Cereals by giving preference to the German version over the other three authentic versions, on the ground that it does not seem to be ambiguous. The other three versions are

[615] CJEU Case 76-77, Auditeur du travail v. Bernard Dufour, SA Creyf's Interim and SA Creyf's Industrial [1977], ECR 1977-02485, ECLI:EU:C:1977:215.
[616] See the specific questions in CJEU Case 76-77, 1977: para. 4.
[617] CJEU Case 76-77, 1977: para. 8.
[618] CJEU Case 76-77, 1977: para. 9.
[619] CJEU Case 76-77, 1977: paras. 9-12.

said not to correspond with the purpose of the Regulation, as they do not distinguish between products harvested in the exporting Member State and those in free circulation within it.[620]

As is evident from the approach taken both in the Auditeur du travail and in the Schwarze case, the clear meaning in one of the language versions is cited as evidence to confirm the already assigned purposes of the laws at issue. Focusing on the general purpose of the law and tying the final conclusion to that purpose has a symbolic advantage in that it gives the impression that none of the languages is disregarded in constructing a meaning.

6.4.4. Discarding translation errors restricted to a single language version vs. the right to rely on one's own language

One of the roles that language comparison has for the CJEU is in the unravelling of mistranslations or variations in a language version. When the comparison of different versions leads to such a discovery in a single language version, the CJEU seems to discard the meaning in that version with clear and straightforward justifications. The following five cases illustrate the various interpretive methods used by the Court to eliminate the meaning in a single language version that is either considered a mistranslation, does not correspond to the objective that the law seeks to achieve, or does not fit within the general part of the law to which the provision belongs. For ease of understanding, I have divided the discussion of the cases into the following four subsections based on the method of interpretation primarily used by the Court.

(a) Literal interpretation

In a criminal proceeding against Dirk Endendijk, the CJEU was requested to give a preliminary ruling on the interpretation of the word "tether" within the meaning of the first sentence of point 8 of the Annex to Amended Directive 91/629.[621] In this decision in which the Court discarded the Dutch version of the provision, the Court notes that the Dutch version uses the word "kettingen [chains]" referring to a tether which is metallic in nature,[622] and compares it with the other language versions. The other versions refer to a general term: the German version uses the word "Anbindevorrichtung [tethering device]", the English version uses the word "tether" and the French version uses the word "attache [tether]".[623] The Court then provides arguments as to why the specific term "chains" used in the Dutch version runs counter to the objectives pursued by the Directive and why the use of general terms as in the other versions is perfectly logical from the same point of view. The Court therefore compares "the usual and everyday accepted meaning of that word",[624] applying the literal interpretation method, and further supports its interpretation with arguments related to the objective of the Directive to eliminate the semantically narrowest word in the Dutch language version.

[620] CJEU Case 16-65, Firma G. Schwarze v. Einfuhr- und Vorratsstelle für Getreide und Futtermittel [1965], ECLI:EU:C:1965:117.
[621] CJEU Case C-187/07, Criminal proceedings against Dirk Endendijk [2008], ECR I-02115, ECLI:EU:C:2008:197.
[622] CJEU Case C-187/07, 2008: para. 21.
[623] CJEU Case C-187/07, 2008: para. 25.
[624] CJEU Case C-187/07, 2008: para. 15.

(b) The contextual method

Consider the Marselisborg case in which the term "vehicle" under Art. 13B(b) of Sixth Council Directive 77/388/EEC on the harmonization of the laws of the Member States relating to the common system of value added tax was disputed as to whether it should be construed to include boats.[625] The plaintiff relies on the Danish version of the Directive and cites various provisions to assert that the Community legislature draws a clear distinction between the term "means of transport", which includes "aircraft, motor vehicles, boats, etc.", and "vehicles", which refers strictly to "land-based means of transport on wheels". After having compared the different language versions, the Court concludes that "the words used in the various language versions of Art. 13B(b)(2) to designate 'vehicles' are not consistent".[626]

Of all the language versions, the Danish version uses the semantically most narrow word "kjoretojer", which clearly refers to land-based transport on wheels. Other versions, such as the Swedish, Dutch and Greek versions, have also chosen a narrower meaning, which principally designates "land-based means of transport". However, the remaining versions, including the French, English, Italian, Spanish, Portuguese, German and Finnish versions, make use of a more general term that encompasses means of transport including aircraft and boats.

The court notes that the term "vehicles" is found in a provision which excludes the letting of premises and sites for parking vehicles from VAT exemption. It then concludes that the provision in question must be interpreted as applying generally to the rental of premises and sites for the parking of all means of transport, including boats.[627] Said differently, the Court applies the contextual method of interpretation by viewing the term "vehicles" in the context of the general scheme of the rules of which it forms a part and interprets the term "vehicles" as including boats.

(c) The teleological criterion

In a case Ludwig-Maximilians-Universität München v. Hauptzollamt München-West, the language comparison resulted in the discovery of variation caused by the addition of an extra word that appears only in the German version of Art. 3(1) of Regulation (EEC) No. 1798/75.[628] In this case, the definition of the term "scientific instruments and apparatus" for the purpose of common customs tariff exemption was contested, and the Court was requested by the Finanzgericht München on "whether glass flasks imported by the plaintiff intended for the preservation and cultivation in a sterile medium of tissue cultures of human cancer cells are scientific instruments or apparatus" within the meaning of the above provision.[629] The provision allows the importation of scientific instruments and apparatus duty-free, provided they are intended solely for educational purposes or for pure scientific research. The plaintiff claimed that the imported glass flasks should be regarded as "scientific instruments,

[625] CJEU Case C-428/02, Fonden Marselisborg Lystbådehavn v. Skatteministeriet and Skatteministeriet v. Fonden Marselisborg Lystbådehavn [2005], ECR I-01527, ECLI:EU:C:2005:126.
[626] CJEU Case C-428/02, 2005: para. 41.
[627] CJEU Case C-428/02, 2005: paras. 42-43.
[628] CJEU Case 45/83, Ludwig-Maximilians-Universität München v. Hauptzollamt München-West [1984], ECR 1984-00267, ECLI:EU:C:1984:31.
[629] CJEU Case 45/83, 1984: para. 2.

apparatus or utensils [Geräte]" within the meaning of the German version of Regulation No. 1798/75, arguing that the word "Geräte" is "understood to refer to tools, items of equipment or articles for everyday use, machines, accessories and utensils". But the problem was that the term "Geräte [utensils]" is an extra word that appears only in the German version of the Regulation in question and that the English and French versions refer only to "instruments or apparatus" and "instruments et appareils", respectively.

The Court ascertained that the glass flasks at issue are bottles made specifically for research into tissue culture media which enable the solutions to be poured without their running down the side of the flask, thus meeting the strictest requirements regarding sterility. If the Court were bound by the word "Geräte" in the German version, it would rule in favor of the plaintiff, classifying the imported glass flasks as scientific instruments. But the Court disregards the less restrictive German term "Geräte [utensils]" and restricts the definition of a scientific instrument to an object used as a means to carry out scientific research, thus excluding objects in which research is carried out and which play only a passive role in the research process. Accordingly, as the glass flasks are not used as a means with which research is carried out but only as objects in which research is conducted, the Court decides that they cannot be classified as scientific instruments or apparatus. With this interpretation, the Court seems to suggest that a language version containing an extra term with a wider meaning different from the rest of the versions should not play a role in the interpretive process.

See also the case Milk Marketing Board of England and Wales v. Cricket St. Thomas Estate in which the Court disregarded the meaning warranted by the English version of the relevant provision.[630] One of the issues raised in the case was the question as to whether the concept of milk produced and marketed without processing also includes pasteurized milk. The English version diverges from the other versions in two ways. First, whereas the English version refers to pasteurized milk as one type of processed milk, the other versions, in particular the French and German versions, make a clear distinction between the treatment of milk, which includes the pasteurization of milk, on the one hand, and the processing of milk, on the other. Secondly, the Court also finds that the various provisions of the English version contain a number of "terminological discrepancies in the use of the terms 'processing', 'manufacture' and 'conversion'", whereas the other compared versions use these terms consistently.[631] In other words, while the first problem arises from reading the English version in light of the other versions, the second problem stems from the inconsistent use of terminology in the English version itself, revealed partly as a result of the language comparison. The Court finally concludes that the pasteurization process, which is a treatment at a specific temperature to keep the milk better and which does not significantly change the nature of the product, should not be enough reason to classify the milk as processed milk. This conclusion is also justified by the Court with further reasoning related to the objective of the Regulation.[632]

[630] CJEU Case C-372/88, Milk Marketing Board of England and Wales v. Cricket St. Thomas Estate [1990], ECR I-01345, ECLI:EU:C:1990:140.
[631] CJEU Case C-372/88, 1990: paras. 15-16.
[632] CJEU Case C-372/88, 1990: paras. 23-25.

(d) The historical method

The Zurita Garcia case illustrates how the investigation of the legal revision process helps find out the root of the linguistic discrepancy between different language versions.[633] The Court examines the legislative history of the legal revision process to determine why the Spanish language version differs from all other versions. The case deals with the issue of whether the regulation in question obliges Member States to expel third-country nationals without a valid visa or merely leaves this to the discretion of the Member States. While the Spanish version provides for an obligatory statement, the other versions put it merely in a permissible manner. Recalling the legislative history of the Regulation, the Court notes that the text was taken more or less exactly from the older Regulation and that all other language versions, with the exception of the Spanish version, are verbatim copies of the old Regulation. This was reason enough for the Court to reject the Spanish version as an erroneous translation and as having a meaning that does not correspond to the legislative purpose. In fact, the Court had also found Council documents showing that Spain had proposed a mandatory declaration to expel third-country nationals without a valid visa, but the proposal was later rejected. This was not cited as further justification in the case, although it would have supported the Court's ultimate conclusion.[634]

A common denominator in the above five cases in which the Court found variations or mistranslations is that the problems were found in only one language version. Moreover, in all the five cases, the language versions on which one of the parties would presumably have been able to rely were disregarded because they either contained incorrect translations or differed from the other versions. This is based on a justification in the settled case law that "the wording used in one language version of a Community provision cannot serve as the sole basis for the interpretation of that provision, or be made to override the other language versions in that regard".[635] This is in turn justified with the need to uniformly interpret and apply EU law.

6.5. Conclusion

Legal certainty is one of a handful of general principles of the CJEU and is referred in several hundreds of its judgments. This principle requires that law must be public, that it must be clear and precise, that its application and effects must be foreseeable for those subject to it, and that the protection of legitimate expectations must be guaranteed. However, the realization of these requirements that constitute the principle of legal certainty, if they are understood in absolute terms, is impossible and perhaps undesirable. This is among other things due to the nature of law, which is made by legislators who are inherently incapable of predicting and abstractly assessing all possible cases that might arise in the future, and to the inherent nature

[633] CJEU Joined Cases C-261/08 and C-348/08, María Julia Zurita García and Aurelio Choque Cabrera v. Delegado del Gobierno en la Región de Murcia [2009], ECR I-10143, ECLI:EU:C:2009:648, para. 56.

[634] Opinion of Advocate General Kokott on Joined Cases C-261/08 and C-348/08, María Julia Zurita García and Aurelio Choque Cabrera v. Delegado del Gobierno en la Región de Murcia [2009], ECR I-10143, ECLI:EU:C:2009:322, para. 53.

[635] CJEU Case C-187/07, 2008: para. 22; see also CJEU Case 29-69: Erich Stauder v. City of Ulm-Sozialamt [1969], ECLI:EU:C:1969:57: para. 3.

of language used in law, which always tends to deviate from what was predicted by the legislators. EU multilingualism compounds the problems. Therefore, one must shift to a relative conception of the requirements of legal certainty in order to examine whether the EU multilingual legal system offers workable certainty consistent with sufficient flexibility.

There are several interests that the CJEU seeks to consider in its task of achieving uniform interpretation of EU law and ensuring legal certainty. On the one hand, the Court takes the strict view that the failure to publish a law in a particular official EU language renders it unenforceable against individuals in that Member State. The Court also protects the parties' legitimate expectations by remedying the harm caused by their reliance on the official language version of their choice. To achieve this goal, the Court attempts to eliminate the ambiguity that caused the harm by interpreting the ambiguous language version in light of the other, clearer versions. But on the other hand, publication of a law does not imply that individuals have the right to refer to and observe only the version drafted in their own official language. There are several cases in which the Court disregards the right to rely on one's own official language version, notwithstanding the fact that the interpretation chosen by the court causes economic harm or criminal liability to the parties. This is particularly true in cases where an interpretation would lead to a different application of EU law in different Member States and would undermine the effectiveness of EU law. The need to uniformly interpret and apply all 24 language versions of primary and secondary EU law therefore overrides the right of citizens to their own language and requires that each language version be interpreted and applied in light of the versions in the other official languages.

The cases analyzed in this chapter also highlight a somewhat ironic result of the principle of equal authenticity. In some cases, the Court is confronted with situations in which only one or a few language versions have meanings that contribute to the interpretation of the provisions in the language of the proceedings that raised the linguistic problem in the first place. These circumstances compel the Court to give preference to the clearest meanings in the fewer language versions and to interpret the other versions in light of those fewer language versions. But the Court takes such an opportunity to point out that none of the language versions, regardless of the number of their speakers, may be disregarded in the multilingual legal interpretation process. In other cases, the Court eliminates the meaning in a single language version that it considers either to be a mistranslation that does not correspond to the objective pursued by the law or that does not fit into the general part of the law to which the provision belongs. In doing so, the Court professes that the equality granted to the speakers of all the 24 official EU languages is one of equal obligation to read legislation in a language other than their own. Even though each language version is original and has equal weight, one language version of a text of a provision is not considered in isolation during interpretation.

In all the selected cases analyzed in this chapter and in many other cases involving linguistic ambiguities, a common approach followed by the CJEU that can be identified is that the CJEU compares the provisions in the language of the proceedings (which raised the language issue in the first place) with a number of other language versions of the same provisions.[636] The different language versions provide the Court with additional resources that help it view the

[636] See also van der Jeught 2018: 12.

law from different angles and establish its meaning by using the traditional canons of legal interpretation. Just as the goal of the Augustinian method is to capture the essence of the Scripture, the comparison of different language versions by the CJEU is to capture the general purpose of the law that is interpreted. This general purpose of the law may then guide the Court to either find consensus among the various versions by uncovering a point that has been misstated in one or a few language versions, or to find threads running through the different versions that, taken together, point to an underlying purpose of the legislation.[637] In a way, this can be seen as an opportunity rather than an obstacle to facilitate the interpretation of multilingual legal texts, because it is the comparison of the same text in another language rather than external knowledge that the Court uses to obtain more clues about the meaning of the text and the purpose of the legislation.

Strictly speaking, one could conclude that the application of all the above methods leads to a situation where no single language version can be fully trusted, and since the addressees of legal norms cannot foresee the legal consequences of their behavior, there is no legal certainty in the multilingual legal system of the EU. Nevertheless, one can argue, following what Paunio states, that "the result of the interpretive process is perceived as correct insofar as the reasons given to justify the decision are convincing".[638] From this point of view, the EU multilingual legal system offers a workable certainty, sufficient flexibility and reasonable predictability. This view magnifies the contextuality of law rather than the notion of objectivity in adjudication and hiding behind the text. In the next chapter, I return to the Ethiopian legal system to characterize it as a system of weak legal multilingualism and investigate its legal interpretation process in light of the points discussed in this chapter.

[637] Solan 2008: 292.
[638] Paunio 2013: 112.

Chapter 7. Characterizing the Ethiopian language regime as weak legal multilingualism

7.1. Introduction

As discussed in Chapter 4, Amharic is designated by the Constitution of the Federal Democratic Republic of Ethiopia (FDRE Constitution) as the working language of the Federal Government, but the Constitution is silent on the status of English. Even though the constitutional document itself is written and published in both Amharic and English, Art. 106 of the constitution, which establishes the language version with the final legal authority, makes no reference to the authority of the English version. A literal translation of the Amharic version of this provision even seems to indicate that the Amharic version is the version that is given final legal recognition.[639] This can be interpreted to mean that the English version has no legal authority and that it should be considered a translated version for convenience, relied upon at one's own risk. On the other hand, the English version of Art. 106 provides that "[t]he Amharic version of this Constitution shall have final legal authority", implying that the English version is recognized as a legally binding version, subject, however, to a rule of interpretation in which the Amharic version prevails in the event of any discrepancy.

The current law governing the drafting and publication of federal laws, the Federal Negarit Gazeta Establishment Proclamation, issued in 1995 and still in force, prescribes that all laws of the Federal Government shall be published in the Federal Negarit Gazeta in both Amharic and English.[640] The Speaker of the House is responsible for the publication.[641] The Proclamation also states that in the event of any discrepancy between the Amharic and English versions, the Amharic version shall prevail.[642]

Against this backdrop, this chapter attempts to address the question of whether the English versions of Ethiopian laws should serve as objects of legal interpretation. Should the Constitution's silence on the status of English, as well as the above interpretation of the Amharic version of Art. 106 of the Constitution, be meant to serve as an argument that the English version of the Constitution, as well as other laws, have no legal authority? Is the publication of laws in both Amharic and English necessary only for convenience? Or is the English version recognized as the legally binding version, but subject to an interpretive rule that the Amharic version takes precedence in the event of a discrepancy, thus fulfilling what this study refers to as weak legal multilingualism? To this end, I begin by examining the current practice in the legislative process, namely the two-way translation of laws from English into

[639] The Amharic version of Art. 106 of the FDRE Constitution reads: "የዚህ ሕገመንግሥት የአማርኛ ቅጂ የመጨረሻው ሕጋዊ እውቅና ያለው ሰነድ ነው። {yäzihə həgämänəgəsətə yäʾamarəña qəji yämäṭ̣äräšawə həgawi ʾəwəqəna yaläwə sänädə näwə} [The Amharic version of this Constitution is the version with final legal recognition]." (translation mine)

[640] Federal Negarit Gazeta Establishment Proclamation, 1995, Art. 2(2) and (4).

[641] Federal Democratic Republic of Ethiopia (FDRE) House of Peoples' Representatives (HPR). 2021. የሕግ አወጣጥ ሂደትና የሕግ ረቂቅ ዝግጅት ማኑዋል [Legislative process and legal drafting manual]. 1st ed. Guideline No. 40(1) and (2): 74.

[642] Federal Negarit Gazeta Establishment Proclamation, 1995, Art. 2(4).

Amharic and a re-translation into English and determine the place of the English version of the laws (Section 7.2). I then discuss the place of English in the Ethiopian legal education and how this in turn influences the decision-making process in Ethiopian courts (Section 7.3). Finally, I present a case from the Federal Supreme Court Cassation Division (hereinafter the Federal Cassation) (Section 7.4). The presented case not only reflects the court's position on the question of whether the English versions of Ethiopian laws should serve as objects of legal interpretation but also establishes a binding precedent that lower courts must follow on how to treat the English version of Ethiopian laws.

7.2. English in the current legislative process in Ethiopia

It has been discussed in Chapter 5 on the legal transplantation process of modern Ethiopian laws that the process leading to the codification of the first six main codes consisted of several successive steps including a wholesale transplantation of the rules from a mixture of common and civil law legal systems. Two of these codes which are still in force, namely the 1961 Criminal Procedure Code of Ethiopia and the 1965 Ethiopian Civil Procedure Code, were originally drafted in English and only later translated into authenticated Amharic versions.[643] The remaining four codes which were originally drafted in French were also translated into Amharic and English; and both the Amharic and English versions of the six codes are published in the Negarit Gazeta.[644] The role of English has not diminished in the laws passed since then, because they have been influenced by the practice of the two-way translation of laws from English into Amharic and a re-translation into English, as the following discussion shows.

The FDRE Constitution, which came into force in 1995 and is still in effect, provides for a Federal Government structure with parallel legislative, executive and judicial branches for both the federal and state governments.[645] The House of Peoples' Representatives (HPR) is a body that has the power of legislation in all matters assigned by the FDRE Constitution to federal jurisdiction.[646] Though the term "legislative procedure" normally refers to the entire process from the genesis of the idea that leads to the drafting of a law to its adoption, the discussion in this section is limited to some aspects of the procedure at the federal level, particularly the institutional framework in which draft laws are prepared in Amharic and then translated into English.

7.2.1. Legislative procedures before the initiation of law

Initiating federal laws is mainly the duty of the Federal Government, particularly the executive branch. Members of the HPR, Committees of the House and Parliamentary Groups also have

[643] I distinguish between authentic Amharic version and authenticated Amharic version, the latter referring to those versions which were not originally drafted in Amharic, but whose Amharic translations were authenticated by being adopted by the Parliament, and the former referring to laws originally drafted in Amharic and adopted by the Parliament.

[644] The Negarit Gazeta was first established in 1942 to officially publish all government laws before coming into force (see Establishment of Negarit Gazeta Proclamation No. 1 of 1942). It is currently replaced by the Federal Negarit Gazeta and other official Gazetas established by the regional governments as well as the two cities governed by special charters (Addis Ababa and Dire Dawa).

[645] See Art. 50(2) of the FDRE Constitution.

[646] The FDRE Constitution, Art. 55(1).

the authority to initiate laws.[647] Even though the initiation of a law is the stage at which the legislative machinery is set in motion and the whole legislative process begins at the HPR, there are other important activities that take place even before the law takes the form of a draft and is sent for deliberation to the HPR. These steps include: conducting research on the issue that necessitates the drafting of the law, discussing the results of the research with all those who should be involved in the process, incorporating the input from the discussion and drafting the law in Amharic, holding repeated discussions on the draft law and revising it, translating the draft law into English, and having the Amharic and English versions of the drafts approved by the Council of Ministers, which finally forwards the draft law from all government agencies to the HPR for deliberations.[648] These steps shape the language of the law and must be carefully observed by the drafter, as most of these processes require the translation of terms and concepts from a variety of sources, mostly foreign and written in English, into Amharic and the subsequent (re-)translation of the full text into English.

However, as can be seen from reading a Legislative Process and Legal Drafting Manual recently prepared by the HPR (hereinafter referred to as the Manual), many challenges arise in the legislative process before the law takes the form of an initial draft.[649] According to the Manual, it is common practice among many government agencies to transplant laws from other countries without addressing the question of whether the laws are appropriate to local conditions. This reminds us of the debate over the possibility of legal transplantation between Legrand, who argues that legal transplantation is logically impossible, and Watson, who invokes the prevalence and great importance of legal borrowings by pointing to the extent of the reception of Roman law and the spread of English common law (see Section 5.2).[650] It has been argued that the success of legal transplantation largely depends on the process followed during and after transplanting the laws. It is therefore important to keep in mind, following Wang's comments that the transfer of legal culture, i.e. the conceptual immersion of lawyers into the target legal system and language, in our case the Ethiopian legal system and Amharic, is necessary if legal transplantation is to be successful.[651]

The Manual also spells out that there are government agencies that prepare the initial draft laws in English only. These laws are then translated into Amharic for discussion with those who are involved in the process, and then translated back into English. The Manual mentions that this results in the Amharic version of the law being of poor quality.[652] It is noteworthy that English plays such a significant role starting from the very early stages of the legislative process, at least in some cases. The question of whether producing an initial draft law in English only and then translating it into Amharic is solely responsible for the poor quality of the final version of the law, as deplored by the Manual, requires further research. However, it

[647] FDRE HPR 2021: Guideline No. 3: 25.

[648] FDRE HPR 2021: Guideline No. 3.1: 25; see also House of Peoples Representative of the Federal Democratic Republic of Ethiopia Rules of procedure and Members' Code of Conduct Regulation No. 3/2006: Art. 8.

[649] FDRE HPR 2021: Guideline No. 3.3(H): 31.

[650] See also Chen-Wishart, Mindy. 2013. Legal transplant and undue influence: Lost in translation or a working misunderstanding? *International & Comparative Law Quarterly* 62.1: 1-4.

[651] Wang, Ling. 2010. Legal transplant and cultural transfer: The legal translation in Hong Kong. *Across Languages and Cultures* 11.1: 88.

[652] FDRE HPR 2021: Guideline No. 3.3(I): 31.

is probably difficult for the English drafter to avoid the influence of the general culture, including but not limited to the legal culture, of the language in which the document is written. Legal translation is "the major conduit of legal transplant" when reforming the law of a receiving country,[653] and a choice has to be made as to whether foreign elements of the source text should be minimized when translating it into words that reflect the cultural values of Ethiopia (a translation strategy called domestication) or whether the foreignness of the original language text should be retained (foreignization).[654]

The approach to translation set forth in the Manual seems to prefer the domestication strategy in that it prescribes the translation of the draft law into English only after the initial draft has been written entirely in Amharic, the drafter has made all corrections to the Amharic version, and the final content and structure of the draft law is fixed.[655] It can be argued that the preparation of an initial draft in English does not encourage the law professionals drafting the law in their effort to find functional equivalents in the target language (Amharic) for the concept and the referent that the word in the source language represents. Once legal drafters, who also do legal translation from a foreign source language into Amharic, opt for a domestication strategy, they must strive to determine the actual meaning of each term and concept in the social reality of Ethiopian society and use terms and concepts that are already established in legal Amharic. Once the law is passed, it is difficult, if not impossible, to go back to the source language from which the term originated in order to determine the meaning of that term or concept when a dispute arises in court over the meaning of a particular term in the authentic Amharic version.

The next concern is to ensure that the English translation of the draft law reflects the full legal meaning of the Amharic draft. One challenge in this regard mentioned in the Manual is that some government agencies have the initial Amharic draft laws translated into English by private translators, which can result in the Amharic and English versions containing contradictory or different provisions.[656] The private translator, who has no legal training, is not familiar with legal language and cannot judge whether a term represents a corresponding legal concept, what legal effect a word or phrase should have, and how to achieve this legal effect in the other language.[657] The Manual therefore provides that the English version should be prepared by the drafters themselves with the help of an English language expert, or if this is not possible, a language expert should prepare the translation under the close supervision of the drafter.[658] In addition, the Manual also assigns bodies responsible for monitoring the

[653] Wang 2010: 83.

[654] Domestication and foreignization were terms first introduced by the German theologian and philosopher Schleiermacher, most notably as described in his 1813 lecture, to describe translation strategies. "Admitting (with qualifications like 'as much as possible') that translation can never be completely adequate to the foreign text, Schleiermacher allowed the translator to choose between a domesticating practice, an ethnocentric reduction of the foreign text to receiving cultural values, bringing the author back home, and a foreignizing practice, an ethnodeviant pressure on those values to register the linguistic and cultural differences of the foreign text, sending the reader abroad"; see Venuti, Lawrence. 2008. *The translator's invisibility: A history of translation*. 2nd ed. Abingdon: Routledge: 15.

[655] FDRE HPR 2021: Guideline No. 175.1: 159.

[656] FDRE HPR 2021: Guideline No. 3.3 (J): 31.

[657] Schroth, Peter W. 1986. Legal translation. *The American Journal of Comparative Law* 34, suppl. 1: 55.

[658] FDRE HPR 2021: Guideline No. 175.2: 159.

correct implementation of the translation process. In cases where the law is initiated and drafted by a government agency, the office of the Council of Ministers shall have the authority to verify that the law is accurately drafted in both Amharic and English before submitting it to the Council of Ministers for consideration and deliberation.[659] In cases where the initiation process is led by Members of the HPR, Committees of the House or Parliamentary Groups, the Secretariat of the House of People's Representatives is responsible for following up on issues related to translation.[660]

Let us come back to the question of how much recognition and authority the English version of Ethiopian laws should have in the context of legal interpretation. The procedures elaborated above reveal that despite the challenges mentioned above, the production of the English version of Ethiopian laws takes place before the draft laws enter the wider legislative process. The legislative procedures prior to the formal initiation of a draft law are as important, if not more important, than the process of initiation, deliberation and final adoption of a law in terms of the benefits that accrue from the clarifying effect of legal translation.

In fact, legal translation is both a challenge and an opportunity for the legal drafting process. It is a challenge because the translation of legal technical terms between languages requires great caution and a specialized knowledge of the law and the languages involved. The terminology adopted should reflect the legally correct meaning in the particular context they are used. The law can only be effective when it is meaningful in the context in which it is applied.[661] Though legal professionals want the translated text in the target language to be as close as to the source language, they soon realize that the faithful translation of a legal text is a difficult undertaking due to the complexity and uncertainty of legal language.[662] But translation is also an opportunity. As Schilling argues, "multilingual laws are linguistically superior to monolingual ones because of the clarifying effect of translations".[663] Translation shapes the original thought by introducing a different way of thinking that the second language requires and makes it possible to identify ambiguities in the original language.

If one thinks about the production of the English version of the Ethiopian laws, which takes place before the draft laws enter into the wider legislative procedure, it can be argued that the English translation made in the early stages has a clarifying effect in the legislative process and shapes the Amharic version. The fact that the draft laws are translated into English before the law is initiated, most possibly by the drafters of the laws themselves, or under their close supervision, means that the drafters get a second chance to read the text and address potential ambiguities contained in both versions. The drafter's willingness to consider the clarifications resulting from the translation process depends, among other things, on how much time has elapsed between the original drafting of the text and the translation, and on

[659] FDRE HPR 2021: Guideline No. 24.3: 63.

[660] FDRE HPR 2021: Guideline No. 40.3: 74.

[661] Šarcevic, Susan. 2000. Legal translation and translation theory: A receiver-oriented approach. Paper presented at the International Colloquium "Legal translation, theory/ies, practice", University of Geneva, February 17-19: 2, available at http://www.tradulex.com/Actes2000/sarcevic.pdf, last accessed August 27, 2022.

[662] Wagner 2003: 177.

[663] Schilling 2011: 1460.

whether the text is still in the hands of the drafter or has already been disseminated and become the object of dealings with other persons.[664] The earlier the translation is done, the more beneficial the impact of the translation process on the original draft legislation, especially when compared to an advice or recommendation that can only be included once the original draft legislative proposal has been translated and discussed by the different bodies involved in the legislative process. From this point of view, the argument that the English versions of Ethiopian laws have no legal authority and should be regarded merely as official translations to be relied upon at one's peril ignores the practical procedure that the English versions undergo in the legislative process, as well as their role in shaping the meaning of the Amharic versions in that process.

7.2.2. Deliberation and adoption of laws

The deliberation process in the HPR begins only after a draft law has been prepared in both Amharic and English.[665] In addition, the draft law must be accompanied by documents explaining the significance of the proposed law and its impact on the government's budget. It is not clear from the Manual or other sources if these additional documents must also be translated into English or if they are only presented in Amharic.

The deliberations on a draft law submitted to the HPR take place in two or three readings.[666] In the first reading, the body that initiated the law gives explanations on its content and purpose and a general debate on these explanation is held by members of the HPR.[667] The draft law may then be referred to a committee for further investigation, before the second reading in which it is deliberated upon in detail by the HPR. The HPR may then decide to pass the draft as law or refer it back to the committee for further reconsideration and a third round of reading.[668]

Amharic is the working language of the HPR, and every session is held in Amharic. However, Members of the House may express their opinion in any language in which they can effectively express their ideas, either by using the translation service provided by the House or, if necessary, by bringing their own interpreter.[669] The latter clause is included to accommodate speakers of other local languages in the House who feel unable to express their ideas in Amharic.

The Manual provides that prior to the publication of the law in the Negarit Gazeta, the approved law is reviewed by the lawyers of the Office of the Speaker of the HPR for its technical qualities, including whether the Amharic and English versions contain conflicting provisions.[670] This is another opportunity to ensure clarity of the language of the law and consistency between the English and Amharic versions. If divergences in both versions or other noncompliance with the technical requirements affecting the content of the law are

[664] Schilling 2011: 1477.
[665] HPR Rules of procedure Regulation 2006: Art. 50(8) (D).
[666] HPR Rules of procedure Regulation 2006: Art. 51.
[667] HPR Rules of procedure Regulation 2006: Art. 52(1) and (2).
[668] HPR Rules of procedure Regulation 2006: Arts. 53 and 54.
[669] HPR Rules of procedure Regulation 2006: Art. 25.
[670] FDRE HPR 2021: Guideline No. 39.3: 73.

detected after the adoption of the law, further consultations must be held with the Ministry that first submitted the draft law, the Attorney General and the Prime Minister's Office, and a decision must be taken.[671]

The above description of the process of deliberation and adoption of Ethiopian laws also shows that the English versions are not simply official translations. Both the English and the Amharic versions of the adopted laws receive some kind of legislative input by the HPR during the deliberation process. In addition, the fact that discrepancies between the two versions are reviewed prior to publication is an indication that the HPR has noted and approved the contents of both versions. This in turn leads to the assumption that both versions are expressions of a single legislative intent in different linguistic forms and therefore do not contradict each other. Whether these assumptions are confirmed at the level of the application of the law will be discussed in Chapter 8, in which judicial decisions rendered by the Federal Cassation are analyzed.

7.3. English in Ethiopian legal education

Compared to many other African countries where English enjoys high status, prominence and usage, the practical use of English in Ethiopia is limited, up to today, to a few functional areas. One of these areas where English plays a prominent role is in the state-sponsored education. The introduction of Western education in Ethiopia in the early 20th century after Emperor Menilek II opened schools in 1908 enabled the spread of foreign languages, including French and English. From that time on, "a triangulated competition among three languages between French, English and Amharic" began in the country.[672] Initially, French was the more influential foreign language in Ethiopia and used as a medium of instruction and taught as a subject in schools. But there were also schools that used English as their medium of instruction at the time.[673] French continued to have a lead over English during the reign of Emperor Haile Selassie until it was finally decided in 1947/8 to use English as the primary language of instruction at all levels of education. This decision can largely be attributed to the conviction of the Ethiopian government of the enormous external pressure exerted by the rise of English as a global language.[674] As Sharma notes, the goal of the English curriculum introduced during that time in Ethiopia was to meet the educational needs of learners, i.e. to provide them with British teaching methods and skills and access to books and instructional materials in English, to communicate with foreign teachers and serve as a gateway to passing professional examinations.[675] English was seen as a sign of social prestige by the small elite who could afford an education in English.

Amharic was soon introduced as the language of instruction in elementary school beginning in the 1950s. Nevertheless, the role of English in education has been maintained. English continued to be taught as a subject in grades 3-6 and was made the medium of instruction in

[671] FDRE HPR 2021: Guideline No. 39.5: 73.
[672] Daniel Abera. 2021. Foreign languages in Ethiopia: A heyday of French. *Journal of Afroasiatic Languages* 10.2: 296.
[673] Daniel 2021: 298.
[674] Cohen 2000: 85.
[675] Sharma, Gopal. 2013. English in Ethiopia. *Science, Technology and Arts Research Journal* 2.1: 75.

secondary and higher education.[676] The 1994 Education and Training Policy, which emphasizes the importance of mother tongue language instruction at the primary level, has not diminished the role of English in education.[677] It provides for English to be taught as a subject from the first grade and also to become the language of instruction for secondary and higher education. The policy is also issued in a form of law. The most recent Higher Education Proclamation issued in 2019 stipulates that the "medium of instruction in any institution, except possibly in language studies other than the English language, shall be English".[678]

This is of course also true for legal education. All Ethiopian law schools exclusively use English as their medium of instruction. Students learn legal terminology and concepts in English; and they study the English version of the Code laws. No course on legal Amharic is offered to students to help them understand legal texts written in Amharic, and students do usually not familiarize themselves with the Amharic versions of the laws during their studies. Therefore, students do not master the Amharic legal language nor the legal language of other regional working languages; they have little if anything to contribute to the construction of a genuine Ethiopian jurisprudence with its own language. Nevertheless, the law practitioners later practice law in Amharic or other regional working languages.

In contrast, though students are taught English at school, they hardly use it for natural communication in school, at home or at their work places after graduation. The impact of this is particularly evident in the externship programs that are implemented as part of the universities' law school curriculum. The law schools in Addis Ababa and various Regional States are all run by the Federal Government and admit students from all over the country, regardless of which local languages the students speak. During externships, students are expected to learn by representing clients or performing other professional duties under the supervision of practicing attorneys, or by observing or assisting practicing attorneys or judges in their work. However, this is sometimes complicated by the fact that students are not proficient in the languages spoken in the region where the law school is located, and English is not used at workplaces. The language barrier can also be a problem for the supervisors from the universities who are supposed to monitor the students' work at the externship sites. Supervisors may not speak the language in which their students are completing the externship, making on-site supervision difficult, if not impossible. In addition, the documents that must accompany externship reports may be written in a language that university supervisors do not understand, and it becomes hard for the supervisors to evaluate the students' work.[679]

In an effort to fill this gap, the Justice Sector Personnel Training Center, which is designed to prepare new judges and public prosecutors to perform their duties, ensure greater consistency in court decisions and keep judges updated about new methods, laws and other

[676] Michael Daniel Ambatchew. 1995. English in Ethiopia. *English Today* 11.3: 43-44.

[677] Federal Democratic Republic Government of Ethiopia. 1994. Education and training policy, April 1994. Addis Ababa: Section 3.5.

[678] Higher Education Proclamation, Art. 19(1).

[679] Abdi Jibril Ali. 2011. The need to harmonize Ethiopian legal education and training curricula. *Ethiopian Journal of Legal Education* 4.1: 21, available at http://dx.doi.org/10.2139/ssrn.1941256, last accessed October 5, 2021 .

knowledge, was set up in 2003.[680] Until that time, there was no formal practical training that new graduates had to undergo as apprentices.[681] In 2010, a law that establishes the completion of pre-candidacy training as one of the prerequisites for the appointment as a federal judge or public prosecutor was issued.[682] Compared to the externships that law students conduct during their university studies, the new graduate trainees and their supervisors in the Justice Sector Personnel Training Centers and the host institutions do not face language barriers in terms of communication, as they are required from the outset to speak and write primarily in the working languages of the institutions in which they are interning.[683]

As can be learned from the above explanation, law students make contact with the Amharic versions or the versions in other working languages of the laws only once they start their career as law practitioners. It can be argued, therefore, that due to the influence exerted by the Ethiopian legal education, it is likely that the meanings in the English version of the laws automatically find their way into the legal practitioners' understanding of the legal texts. This is evident, for example, in the writing style that judges use when drafting their judgments, as the following extracts from the decisions of the Federal Cassation show. The Amharic words in bold correspond to the English expressions added in parenthesesby the judges themselves :

> "የሰበር ስርዓት አይነተኛ አላማ ከሆኑት አንዱ በአንድ ሀገር ውስጥ **ወጥ የሆነ የሕግ አተረ[ጓ]ጎም እና አፈጻጸም** (Uniform interpretation and application of the law) መኖሩን ማረጋገጥ መሆኑ እሙን ነው። (bold added) [It is certain that one of the objectives of the cassation system is to ensure the uniform interpretation and application of law in a country]." (translation mine)[684]

> "አዲስ የተገኘው ማስረጃ **የውሣኔውን መሠረታዊ ይዘት የሚነካ** /Substantially affects the merit of the case/ መሆን አለበት። (bold added) [Evidence that is newly discovered must be one that substantially affects the merits of the case]." (translation mine)[685]

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[680] The Justice Sector Personnel Training Center Establishment Proclamation No. 364/2003, Federal Negarit Gazeta, Addis Ababa, 9th Year, No. 89, September 9, 2003, Art. 5.

[681] The first law school, Addis Ababa University School of Law (formerly Haile Selassie I University Faculty of Law), was established in 1963.

[682] The Amended Federal Judicial Administration Council Establishment Proclamation No. 684/2010, Federal Negarit Gazeta, Addis Ababa, 16th Year, No. 41, Art. 11(1)(f).

[683] Abdi 2011: 16.

[684] yäsäbärə sərəʾatə ʾayənätäña ʾalama kähonutə ʾanədu bäʾanədə hagärə wəsəṭə wäṭə yähonä yähəgə ʾatärägwagomə ḳəna ʾafäṣaṣämə (Uniform interpretation and application of the law) mänorunə marägagäṭə mähonu ḳəmunə näwə. Quoted from ፌዴራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት፤ ብሔራዊ ማዕድን ኮርፖሬሽን ኃ/የተ/የግ/ ኩባንያ v. ዳን ትሬዲንግ ኃ/የተ/የግ/ኩባንያ፤ ሰ.መ.ቁ. 42239፤ ጥቅምት 20/2003፤ ቅጽ 10: 345 [EFSCCD Case National Mineral Corporation PLC v. Dan Trading PLC, Cass. File No. 42239, October 30, 2010, Vol. 10: 345].

[685] ʾadisə yätägäñäwə masəräja yäwəsaniewənə mäsärätawi yəzätə yäminäka /Substantially affects the merit of the case/ mähonə ʾaläbätə. Quoted in ፌዴራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት፤ አበበች በጅጋ v. እነ ተስፋዬ አካሉ (2) ሰዎች፤ ሰ.መ.ቁ. 08751፤ ግንቦት 26, 2000 ዓ.ም ቅጽ 6: 2 [EFSCCD Case Abebech Bejiga v. Tesfaye Akalu et al., Cass. File No. 08751, June 3, 2008, Vol. 6: 2].

It is difficult to say what purpose the English expressions have in the above two paragraphs and what motivates the judges to add them. It could be that judges slip into English without realizing it because they are used to writing and reading law in English, or they do it intentionally because they think the English expressions help them better convey the thought in the argument. Further research is needed to uncover the motivations and goals of using both languages in a single sentence.

In other decisions of the Federal Cassation, one also finds texts alternating between Amharic and English, i.e. the judges switch codes without providing the corresponding Amharic translations for the English expressions inserted by quotation marks, as can be noted in the following paragraphs:

> "ይህ አተረጓጎም እኛ ብቻ ሣንሆን የዳበረ የሕግ ሥርአት ያላቸው አገሮች 'Limitation periods are to be construed strictly so as not to take away the right of the plaintiffs' በሚል መንገድ የሚከተሉት አተረጓጎም ነው። [This type of interpretation is common not only in our legal system, but also followed in countries that have a developed legal system which hold that 'Limitation periods are to be construed strictly so as not to take away the right of the plaintiffs']." (translation mine)[686]

As one notices, the statement begins with an Amharic phrase, followed by an English full sentence quoted from an unknown source and ends with an Amharic phrase. No translation is provided in the judgment for the quoted English sentence. The essence of the statement is that the type of legal interpretation expressed in the quote (the English sentence) is not only applied in Ethiopia, but also in countries with a "developed legal system". For a party who can only read or speak Amharic, it is impossible to understand this sentence, because only a combination of the Amharic and English portions gives the full meaning of what the author of the judgment intended. Oddly enough, this is similar to the way people switch codes to hide what they say from other people around. This is not to imply, however, that the judges intentionally want to hide what they write from the parties or those who read the judgment. In fact, given the legal training the judges received in English, it is not surprising that they directly quote English phrases that they believe strengthen their position. The lack of a corresponding translation into Amharic could be due to the fact that they did not sufficiently consider that the addressees of the judgments could be people who do not speak English.

Consider also the following sentence, in which an English word corresponding to the Amharic word is bracketed and in which again a complete English sentence is quoted without the corresponding Amharic translation.

> "በአንድ የፍትሃብሄር ጉዳይ ልዩ አዋቂዎች /Experts/ እና ልዩ አዋቂዎች ያልሆኑ ምስክሮች ቀርበው በተሰሙ ጊዜ 'In the civil context … lay evidence should not

[686] yəhə ʾatärägwagomə ʾəña bəča sanəhonə yädabärä yähəgə sərəʾatʾ yalačäwə ʾagäročə "Limitation periods are to be construed strictly so as not to take away the right of the plaintiffs" bämilə mänəgädə yämikätälutə ʾatärägwagomə näwə. Quoted in ፌዴራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት፤ የኢትዮጵያ ኤሌክትሪክ ፓይል ኮርፖሬሽን v. አማረ ገላው፤ ሰ.መ.ቁ. 36730፤ ሐምሌ 30/2002፤ ቅጽ 9: 348 [EFSSCD Case, Ethiopian Electric Corporation v. Amare Gelaw, Cass. File No. 36730, August 6, 2010, Vol. 9: 348].

> be preferred to expert evidence with out [sic] good reason' የሚለውን የማስረጃ ምዘና መርህ መከተል ይገባል። [When both expert and lay witnesses are heard in a particular civil case, a rule of evidence prescribing that 'In the civil context … lay evidence should not be preferred to expert evidence without good reason' must be followed]." (translation mine)[687]

The English term "experts" is provided for the Amharic expression "አዋቂዎች {läyu ʾawaqiwočə}", but it is not clear what the English term adds to the meaning of the sentence. As for the quoted English sentence, the same omission is made by not giving the corresponding Amharic translation. This sentence is hence completely incomprehensible to someone who does not speak or write both Amharic and English.

As in the above examples, one can find quoted English phrases and sentences in other judgments of the Federal Cassation.[688] But the influence of English in Ethiopian legal education and the impact of this influence on the way judges write their decisions and formulate legal arguments is even more far-reaching. In the following section, I discuss a Federal Cassation decision that reflects its position on the authority of the English versions of Ethiopian laws. This leads us to the discussion in Chapter 8, which examines legal interpretation in the context of weak legal multilingualism.

7.4. The position of the Federal Cassation on the authority of the English versions

The prominence of English in Ethiopian laws is further reinforced by a decision of the Federal Cassation that addressed exclusively the question of whether the English versions of Ethiopian laws should serve as objects of legal interpretation. In the case Ethiopian Revenues and Customs Authority v. Daniel Mekonnen, the Federal Cassation was confronted with a respondent who had been convicted and sentenced under Directive No. CTG/001/97, a law enacted by the National Bank of Ethiopia defining the crime of gold smuggling.[689] The respondent was first charged at the Federal First Instance Court for harming the Ethiopian economy by smuggling 46.96 kg of gold to Djibouti, in violation of the Directive.

The Federal First Instance Court convicted the respondent under the specific terms defining the crime of gold smuggling prescribed in the Directive.[690] However, the Court had to resort to the Monetary and Banking Proclamation No. 83/1994 Art. 59(2)(b), because the Directive

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[687] bäʾanədə yäfətəhabəherə gudayə läyu ʾawaqiwočə /Experts/ ʾəna ləyu ʾawaqiwočə yaləhonu məsəkəročə qärəbäwə bätäsämu gize "In the civil context … lay evidence should not be preferred to expert evidence with out [sic] good reason" yämiläwənə yämasəräja məzäna märəhə mäkätälə yəgäbalə. Quoted from ፌዴራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት፤ የሱ ኃ/የተ/የግ/ማህበር v. እነ ደጀኔ በቀለ /ሁለት ሰዎች/፤ ሰ.መ.ቁ. 65930፤ ሰኔ 14/2003፤ ቅጽ 12: 362 [EFSCCD Case Yesu PLC v. Dejene Bekele et al., Cass. File No. 65930, June 21, 2011, Vol. 12: 365].

[688] See, for example, ፌዴራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት፤ እነ ማማሽ ወ/ስላሴ (ሁለት ሰዎች) v. እነ ሰብለ ወንድይራድ (ሁለት ሰዎች)፤ ሰ.መ.ቁ. 35946፤ ጥቅምት 27 2001፤ ቅጽ 8: 7 [EFSCCD Case Mamash We/Silasie et al. v. Seble Wendyirad et al., Cass. File No. 35946, November 6, 2008, Vol. 8: 7].

[689] EFSCCD Case, Ethiopian Revenue and Customs Authority v. Daniel Mekonnen 2010: 341-45.

[690] The National Bank of Ethiopia issued Directive No. CTG/001/97 based on the powers conferred on the Bank by Monetary and Banking Proclamation No. 83/1994.

itself does not provide for penalties but only defines the crime of gold smuggling.[691] The respondent was sentenced to five years imprisonment and a fine of one million ETB (about 57,000 euros) on the basis of the contested Directive.[692]

The Federal High Court reversed both the conviction and the sentence and ruled that the respondent should be acquitted. The Court examined the question of whether a person should be convicted for violating a law that is not published in the Negarit Gazeta and whether a law exclusively written in English can hold someone accountable. It then concluded that Art. 59(2)(b) of Proclamation No. 83/1994, based on which the penalty is imposed, does not provide for specific details as to what a ban on the circulation of gold constitutes, and Directive No. CTG/001/97, which the National Bank issued to define the crime of gold smuggling, cannot hold someone accountable and should not even be considered an effective law, because it is not written in Amharic but only in English and not published in the Negarit Gazeta. This ruling of the Federal High Court was also upheld by the appeals division of the Federal Supreme Court.

Finally, the Federal Cassation reversed the decision of the Federal High Court as well as the Federal Supreme Court Appeals Division after examining the question of whether a person should be punished under a law that is exclusively written in English and not published in an official gazette. Before discussing the reasons for the reversal, a brief overview of legislative practice in Ethiopia is provided to contextualize it. As mentioned in Section 7.2 above, the HPR, as the legislative body of the Federal Government, promulgates all laws.[693] But in practice, the HPR enacts primary laws (proclamations) that set the general framework of the law and delegates (in the majority of cases) the power to enact subsidiary laws to the Council of Ministers and other governmental agencies owing to technical reasons. In effect, several proclamations contain provisions conferring the Council of Ministers the lawmaking power to issue more detailed regulations on the matters covered under the proclamation. The regulations, in turn, contain provisions that grant other government agencies the lawmaking power to issue directives containing operative rules on the subjects covered by the regulation. This lawmaking power may also include the power to issue rules that penalize a person's behavior. Federal crimes are therefore not assembled in one place, e.g. in the 2004 Ethiopian

[691] Art. 59(2)(B) of the Monetary and Banking Proclamation No. 83/1994 does not provide for an independent crime but establishes a range of punishment for aggravating circumstances to the crimes specified under Sub-art. (1) of the same article, in the event where the crime relates to an offense involving currency, gold, security, goods or any other property, contrary to the provisions of the Proclamation or regulations or directives issued pursuant to the Proclamation. Neither Sub-art. (1) of Art. 59 nor the entire Proclamation details what constitutes an offense related to gold. In a way, the provision sets a punishment for an act whose details are not provided in the same Proclamation.

[692] 1 EUR = 17.495 ETB on July 21, 2010, a date this court decision was rendered; see https://www.exchangerates.org.uk/ETB-EUR-21_07_2010-exchange-rate-history.html.

[693] See FDRE Constitution Art. 55(5). House of Peoples' Representatives Legislative Procedure Proclamation No. 14/1995, Art. 2(1), defines "law" as proclamations, regulations or directives that come into force upon approval by the House of Peoples' Representatives and subsequent publication in the Federal Negarit Gazeta, under the signature of the President, in accordance with the procedure laid down in the proclamation.

Criminal Code. Instead, they are scattered across many proclamations,[694] regulations and directives, making it difficult for an average citizen to locate them all.

The main question at issue before the Federal Cassation was whether the requirement of publication in the Negarit Gazeta in both Amharic and English should apply only to primary legislation or also to all subsidiary legislation. The language in which laws are written and the fact of their publication is very important, among other things, because of a well-known criminal law maxim that "ignorance of the law is no excuse", which lays a "duty on each citizen to take reasonable steps to acquaint themselves with the criminal law".[695] However, this also results in a reciprocal duty on the part of the government to make the law known to the citizens. Accordingly, the government has to make the law publicly available and announce its existence in an understandable language before it can take effect. "The possibility that laws may be enacted without notice to the public and that individuals may be held accountable for noncompliance with unknown and unknowable rules conflicts with the requirements of due process."[696] Determining the conditions under which ignorance of the law should be a legitimate defense to criminal liability is an undertaking beyond the scope of this study and will not be detailed here. However, the supposition that a law could penalize a person's behavior when it was impossible for the person to know the law raises the fundamental question of fairness.

The Federal Cassation concluded that there is no clear law prescribing that subsidiary laws should be written in a particular language or should be published in the Negarit Gazeta. The Federal Cassation's main justification was that the obligation to publish laws in the Negarit Gazeta only applies to the laws that are enacted by the HPR. Directives issued by government agencies should be considered effective laws that can bind everyone, regardless of whether they are published in the Negarit Gazeta or are written in English. What has to be verified, according to the Federal Cassation, is whether the primary legislation under which the National Bank Directive is issued (Proclamation No. 83/1994) confers legislative powers on the National Bank and whether this Directive is consistent with the objectives of the Proclamation.

More interesting, however, is the second reason given by the Federal Cassation for rejecting the respondent's argument. The Federal Cassation comments that the decision of the Federal High Court and the one upheld by the Supreme Court Appeal Division, if not reversed, would render inapplicable numerous subsidiary laws issued by government agencies that remain in force. What makes this case so remarkable is that in the final decision the consideration of the practical consequences of the decision carries more weight than the consideration of the non-official status of English in the Ethiopian legal system.

The reasoning of the Federal Cassation that there is no law that forces government agencies to use a specific language when issuing subsidiary legislation is contrary to what the FDRE

[694] For example, the Banking Business Proclamation No. 592/2008, Art. 58, contains 7 provisions on penalties for different types of offences related to the matters covered under the proclamation. Sub-art. (7) reads "any person who contravenes or obstructs the provisions of this Proclamation or regulations or directives issued to implement this Proclamation shall be punished with a fine up to Birr 10,000 and with an imprisonment up to three years".

[695] Husak, Douglas N. 1994. Ignorance of law and duties of citizenship. *Legal Studies* 14.1: 107.

[696] Murphy, Joseph E. 1982. The duty of the government to make the law known. *Fordham Law Review* 51.2: 256.

Constitution provides on the working language of the Federal Government. Amharic is the working language of the Federal Government, and the National Bank of Ethiopia would hence also be required to use Amharic in its operations, at least alongside English, as is the case in other laws. Concerning the practical considerations that the Cassation Division raised, it is understandable that the government's obligation to publish all regulations and directives in the Negarit Gazeta and issue them in the government's working language(s) results in inconvenience and additional costs, but these cannot outweigh the obligation to follow due process. It is only fair to convict or imprison an individual for the violation of laws that are possible to find and possible to know.

Nevertheless, the interpretation of a law by the Federal Cassation with a panel of five or more judges sets a binding precedent both for Federal and State Courts at all levels until it is reversed or amended by another decision of the same body.[697] This decision thus introduces in Ethiopian law a new principle that a law, even one written in English only, shall take effect or remain binding as long as it is enacted in accordance with the objectives set forth in the primary legislation directing its enactment. The decision clearly acknowledges the authority of the English version, even in the absence of its Amharic counterpart, and in effect officially introduces legal multilingualism in Ethiopian courts.

7.5. Conclusion

The forces of globalization, increasing economic interdependence and the resulting social and demographic changes have had a profound impact on patterns of language use around the world. English is used for more purposes and by more people than ever before.[698] Ethiopia is also no exception. English has been playing an active role for decades and still does in Ethiopia, but with no clear official status prescribed by higher laws such as the constitution. The use of English in the drafting of Ethiopian laws began with the wholesale transplantation and translation of modern laws in 1950s. Translation continues to play an important role in the drafting of laws in Ethiopia today. All of Ethiopia's federal laws are drafted in Amharic, but much of the content of the laws continues to be transplanted and translated from foreign, mostly English-language legal sources from which the legal concepts are adopted. These draft laws, written in Amharic, are subsequently translated or retranslated into English, debated by the House of People's Representatives (HPR), passed as law and published in both versions in the federal Negarit Gazeta, with the Amharic version being the sole authoritative version in the event of discrepancy between the two versions.

Considering that Amharic is designated in the Ethiopian Federal Constitution as the sole working language of the Federal Government and English has a non-official status, only with an implicit role granted through subsidiary legislation in the publication of federal laws, the Ethiopian legal system appears to be a monolingual legal system in which English versions are published for informational purposes only. However, this chapter has shown that there is enough reason for describing Ethiopia not as a monolingual legal system but as one characterized by weak legal multilingualism, with the English version recognized as a legally

[697] The Federal Courts Proclamation 2021, Art. 10(2).
[698] Taavitsainen & Pahta 2003: 3.

binding version but subject to an interpretive rule that the Amharic version prevails in the event of a discrepancy. To start with, if the English versions were considered translations for convenience only, it would not have been necessary to subject these versions to an interpretive rule giving precedence to the Amharic versions in case of discrepancy. The fact that Ethiopian law subjects the English versions to an interpretive rule is therefore a clear indication that the English versions have some authority in construing the meaning of a law. Furthermore, the investigation of the current practice in the legislative process, namely the two-way translation of laws from English into Amharic and a re-translation into English manifests the important position that English holds starting from the very initial stages of the legislative drafting process. The procedures leading up to the official publication of both versions by the HPR also strongly suggest that both versions are expressions of a single legislative intent in different linguistic forms and do therefore not contradict each other. The laws are translated by the legislature itself as part of the legal drafting process. Moreover, the English versions are officially published alongside the Amharic version after passing through all the above procedures. One may therefore argue that the English versions have a certain degree of interpretive authority even though the Amharic version is explicitly given paramountcy in case of discrepancies. Taking the authority of the English versions one step further, the Federal Cassation ruled that a law, even one written in English only and not translated into Amharic, shall take effect or remain binding as long as it is enacted in accordance with the objectives set forth in the primary legislation directing its enactment. Finally, it has been shown that the role of English in Ethiopian legal education and thus in shaping the decision-making process in the formulation of legal arguments in Ethiopian courts should not be underestimated. In summary, although the FDRE Constitution does not contain provisions for the official recognition of English as a working language, English plays a crucial role in the emergence of the phenomenon of weak legal multilingualism in Ethiopia. In the next chapter, concrete cases in which translational differences between the two versions are contested in court are discussed.

Chapter 8. Legal interpretation in the context of weak legal multilingualism: The role of English in the decisions of the Ethiopian Federal Supreme Court Cassation Division

> "[A]mbiguity in a text may remain unnoticed, especially if it results from bad translation. Even worse, incorrect translation can lead to mistakes as to the actual content of the Divine Scripture. The surest way to discover such problems is to place competing versions (both in Latin and in predecessor languages) side by side and look for differences."[699]

8.1. Introduction

In the 4th century, St. Augustine was concerned in *On Christian Doctrine* with the question of how we can be sure that we understand and therefore obey the scripture. According to him, that which is hidden under an ambiguous and unknown language is the cause for the lack of understanding, and his solution was to read the scripture both in the original Hebrew and Greek and in the various Latin translations.[700] Although comparing the Latin to the originals in Hebrew or Greek is Augustine's preferred solution, a comparison of the different Latin translations with each other is still much better than relying on a single translation for those who know neither Hebrew nor Greek. The comparison helps them infer meaning from the linguistic context.[701]

Augustine's ideas stimulate reflection on whether and how the actual content of Ethiopian law is hidden under ambiguous language caused by flawed translation. In addition to this, the practice of comparing the Amharic and English version of laws, as applied by the Federal Cassation, a chamber within the Court responsible for the uniform interpretation of Ethiopian laws, calls for a close scrutiny of the place of language comparison in the interpretation of Ethiopian laws (see Section 1.3). The Federal Cassation states in one of its decisions that ensuring the uniform application and interpretation of Ethiopian law is one of the fundamental objectives of establishing a cassation system in the country.[702] According to this decision, a cassation system is a means of ensuring the supremacy of the rule of law and legal certainty, and this is only possible if competent authorities are able to render uniform and high-quality decisions, if similar cases are treated similarly and if the decisions rendered by the courts and other competent authorities are ultimately reviewed through a cassation

[699] This quote is based on the procedure for reading multiple translations of the scripture that Augustine developed in late antiquity, and the method is now called "Augustinian interpretation"; see Solan 2014: 13.
[700] Solan 2008: 290.
[701] Solan 2008: 291.
[702] ፌዴራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት፤ ብሔራዊ ማዕድን ኮርፖሬሽን ታላ.የተ. የግል ኩባንያ v. ዳኒ ድሪሊንግ ታላ.የተ. የግል ኩባንያ፤ ሰ.መ.ቁ. 42239፤ ጥቅምት 29 2003፤ ቅጽ 10: 345-349 [EFSCCD Case National Mineral Corporation PLC v. Danny Drilling PLC, Cass. File No. 42239, November 8, 2010, Vol. 10: 345-349].

procedure that corrects fundamental errors of law.[703] This is also confirmed in a recent decision of 2022 in which the Federal Cassation expounded on its cassation power.[704]

Against this backdrop, I investigate in this chapter how the Federal Cassation strives to achieve uniform interpretation and application of Ethiopian law by particularly focusing on the question of how the phenomenon of weak legal multilingualism operates in the context of the legal interpretation practice of the Federal Cassation.[705] In doing so, I attempt to answer the following questions:

- What problems lead the judges of the Federal Cassation to compare the two language versions and base their final interpretation on the meaning supported by the English versions?
- How does the process of version comparison expose the language problems in Ethiopian laws and contribute to solving them?
- What justificatory power does the reasoning based on the version comparison have for the final result of the decision and for the solution of the language problems in the law?

To this end, selected decisions rendered by the Federal Cassation are discussed, categorized according to the type of law being interpreted, i.e. the cases are classified according to whether they involve a comparison between the original and translated versions (Augustine's preferred solution) or whether they involve translated versions being compared (his other option). Section 8.2 first explains the case selection process. In Section 8.3, I proceed with the examination of the role of language comparison between the English original versions with the authenticated Amharic versions in the laws of 1950s that are still in force. More particularly, I focus on cases that concern the interpretation of the Ethiopian Civil Procedure Code. Section 8.4 is devoted to the examination of which role the comparison of original Amharic versions with the English translations plays in interpreting the current laws originally drafted in Amharic by the Ethiopian Federal Government. In Section 8.5, I turn to investigating the practice of comparing the authentic Amharic translations with the semi-official English translations and demonstrate how this helps the Federal Cassation infer meaning from the linguistic context. Here cases involving a language comparison on the provisions of the Ethiopian Civil Code are discussed. Conclusions follow in Section 8.6.

[703] ፌዴራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት፤ ብሔራዊ ማዕድን ኮርፖሬሽን ኃላ.የተ. የግል ኩባንያ v. ዳኒ ድሪሊንግ ኃላ.የተ. የግል ኩባንያ፤ ሰ.መ.ቁ. 42239፤ ጥቅምት 29 2003፤ ቅጽ 10: 345-349 [EFSCCD Case National Mineral Corporation PLC v. Danny Drilling PLC, Cass. File No. 42239, November 8, 2010, Vol. 10: 345-349].

[704] ፌዴራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት፤ የአማራ ብሔራዊ ክልላዊ መንግስት ጠቅላይ ፍርድ ቤት እና በአማራ ብሔራዊ ክልላዊ መንግስት ጠቅላይ ፍርድ ቤት ዳኞች አስተዳደር ጉባኤ v. አበባው ታደሰ፤ ሰ.መ.ቁ. መጋቢት 29 2014 ዓ.ም፤ (ያልታተመ) [EFSCCD Case Amhara National Regional State Supreme Court & Amhara National Regional State Supreme Court Judicial Administration Council v. Abebaw Tadese, Cass. File No. 214219, April 7, 2022 (not yet published in print)], available at https://www.fsc.gov.et/DesktopModules/EasyDNNNews/DocumentDownload.ashx? portalid=0&moduleid=943&articleid=1852&documentid=1700, last accessed November 30, 2022.

[705] Weak legal multilingualism refers to a phenomenon where there is only one authentic language version of a law which prevails in case of any discrepancy, while the other version(s) are official translations (see the discussion in Chapter 1.3).

8.2. Case selection process

As mentioned in Chapter 1.3, the Ethiopian Federal Supreme Court publishes most of the judgments rendered by its Cassation Division in printed form and on its website.[706] Since the establishment of the Cassation Division in 2005, 24 volumes of Federal Supreme Court decisions have been published to date, with each volume containing approximately 100 to 160 cases, varying from volume to volume.

To select the cases for this study, I first searched all the volumes for English letters in the judgments written in Amharic, which has a different script. I do not claim to have collected an exhaustive list of all cases in which a comparison was made between the Amharic and English versions, because there is always the possibility that the judges relied on the English version in deriving the meaning of the provision in question and did not make this explicit in their reasoning. In the second step, I selected all cases in which the English versions are cited in the decisions. I then excluded from the initial selection those cases in which, in my personal judgment, the judges' motivation for citing the English versions was not reflected in the final outcome of the case. The excluded cases are those in which, for example, the Amharic and English versions are reproduced side by side in the decision without any mention of why this is done and how it contributes to the final decision.[707] Finally, cases in which it is explicitly mentioned that a comparison is made with the English version and where the comparison has some impact for the final outcome of the case were selected for this study.

As mentioned above, the selected cases are categorized according to whether the comparison is between the original and translated versions (Augustine's preferred solution) or whether they are translated versions being compared (his remaining option). Two things need to be quickly clarified before we get into the discussion of the cases: First, I have made this classification for discussing the cases only for convenience and not because the Federal Cassation or any other Ethiopian court would distinguish between original-translation and translation-translation comparison when interpreting the law. Secondly, it is beyond the scope of this study to make a quantitative statement about what percentage of cases decided by the Federal Cassation involve a version comparison. Therefore, I do not claim that the cases discussed below allow us to conclude that comparing the Amharic and English versions of Ethiopian laws is a commonly practiced method of interpreting the law in Ethiopian courts. My goal is to present the cases as illustrations of how the phenomenon of weak legal multilingualism operates in the context of the legal interpretation practice of the Federal Cassation.

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[706] The published decisions of the Federal Cassation are available at https://www.fsc.gov.et/Digital-Law-Library/Publications/Federal-Cassation-Decision-Series/category/cassation-volumes, last accessed November 20, 2022.

[707] The Amharic and English versions of Art. 675 of the Ethiopian Criminal Code are cited without any clear reason in, for example, ፌዴራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት፤ ጀማል መሐመድ v. የፌዴራል ዐ/ህግ፤ ሰ.መ.ቁ. 74530፤ ሰኔ 22 2004፤ ቅጽ 13: 316 [EFSCCD Case Jemal Mohammad v. Public Prosecutor, Cass. File No. 74530, June 29, 2012, Vol. 13: 316]; see also ፌዴራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት፤ ተፈሪ ሚናሞ v. የደቡብ ብሔር ብሔረሰቦችና ሕዝቦች ክልል ዐቃቤ ሕግ፤ ሰ.መ.ቁ. 89276፤ መስከረም 23 2006፤ ቅጽ 15: 395 [EFSCCD Case Teferi Minamo v. Public Prosecutor, Cass. File No. 89276, October 3, 2013, Vol. 13: 395].

8.3. Comparing the original English and the authenticated Amharic versions in legal interpretation

To give some context for our discussion in this section, it is important to recall that there are two code laws which are still in force in Ethiopia, namely the 1961 Criminal Procedure Code of Ethiopia and the 1965 Ethiopian Civil Procedure Code, which were originally drafted in English and only later translated into authenticated Amharic versions. Even though the English versions were published in the Negarit Gazeta along with the Amharic translations, it is only the Amharic version of the codes that the National Parliament authenticated as official and authoritative. Amharic was declared the only official language of the country in the 1955 Revised Constitution, and therefore the Amharic versions were to be the only binding versions used by the Ethiopian courts. Since Amharic remains the sole working language of the Federal Government under the FDRE Constitution of 1995, the Amharic version of the laws continue to become the only binding versions until today.

Although there is no specific law that gives authority to the English version of the above-mentioned codes, comparison between the Amharic and English versions is applied as a method to solve the language problems in the codes. This section focuses on cases in which an explicit language comparison is made in interpreting the provisions of the Civil Procedure Code.

8.3.1. Exposing translation errors and ambiguities

Art. 43 of the Civil Procedure Code provides for a procedure in which a defendant can apply to the court so that a third party should join in the proceedings. However, the meaning in the authenticated Amharic version differs considerably from the one in the English original. The Amharic version of Art. 43(2) uses the expression "በክሱ ውስጥ እንዳለ ሆኖ ይቆጠራል {bäkəsu wəsəṭə ʾənədalä hono yəqoṭäralə} [is deemed to be part of the suit]".[708] Therefore this expression does not clearly answer as to whether the third party joined in proceedings has the right to contest the plaintiff's claim against the defendant on whose behalf the summon was issued or is allowed to respond only concerning his own liability to the defendant. On the other hand, the English version, which uses the expression "… shall be deemed to be in the same position as a defendant", is clearer and helps answer the above question.[709]

In Awash Insurance Company v. Ali Mohammad et al., the Federal Cassation was confronted with the question of whether a party which joined in proceedings as a third party pursuant to Art. 43 of the Civil Procedure Code can only assert claims that he has against the defendant or whether the party is also entitled to raise issues against the plaintiff.[710] In the judgment by the

[708] Art. 43(2) of the Civil Procedure Code provides that "ሦስተኛ ወገን በክሱ ውስጥ እንዲገባ ፍርድ ቤቱ የፈቀደ እንደሆነ … በክሱ ውስጥ እንዳለ ሆኖ ይቆጠራል። {sosətäña wägänə bäkəsu wəsəṭə ʿənədigäba fərədəbetu yäfäqädä ʿənədähonä … bäkəkəsu wəsəṭə ʿənədalä hono yəqoṭäralə} [If the Court allows the intervention of the third party in the suit, … the latter is deemed to be part of the suit]." (translation mine)

[709] The English version of Art. 43(2) of the Civil Procedure Code provides: "Where the application is allowed, the third party … shall be deemed to be in the same position as a defendant."

[710] ፌዴራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት፤ አዋሽ ኢንሹራንስ ኩባንያ v. እነ አሊ መሐመድ፤ ሰ.መ.ቁ. 23692፤ ሃምሌ 3 አ.ም 1999፤ ቅጽ 6: 31 [EFSCCD Case Awash Insurance Company v. Ali Mohammad et al., Cass. File No. 23692, July 10, 2007, Vol. 6: 31].

Federal High Court against which a cassation application was filed, the Federal High Court had ruled that the applicant[711] (Awash Insurance Company), which intervened in the proceedings, was not entitled to contest the claims asserted by the respondent (plaintiff in the Federal High Court). The applicant was thus prevented from raising counter-arguments on the points that the original defendant could raise, such as the amount of the insurance sum claimed by the plaintiff, the question of whether the defendant himself was liable for the damage incurred, etc.

The Federal Cassation overturned the decision of the Federal High Court on the grounds that the latter had committed a fundamental error of law. It then remanded the case to the Federal High Court, framing the questions that the High Court had initially omitted but which would have been essential to the proper disposition of the case. Two important questions were identified:

(1) Against whom may the third party that joined in the suit assert claims?
(2) What type of claims does the law provide that the third party may assert in the suit?

The Federal Cassation employed the method of language comparison of the Amharic and English versions to find answers to these questions. Regarding the first question, the expression in the English version of Art. 43(2), "… shall be deemed to be in the same position as a defendant", leads the Federal Cassation to conclude that the third party joined in proceedings not only has the right to respond concerning his own liability to the defendant, but also contest the plaintiff's claim against the defendant on whose behalf the summon was issued. By combining the interpretive outputs of both language versions, the Federal Cassation is able to illuminate the provision from different angles and reach an interpretation that produces a more exact picture of its meaning.

As for the second question, the language comparison revealed that the provision in the Amharic version contains a translation error. The Amharic version of Art. 43(1) uses the expression: "… ሌላ ሦስተኛ ወገን ከኔ ጋር ድርሻ ካሳውን መክፈል አለበት {lela sosətäña wägänə käne garə dərəša kasawənə mäkəfälə ʾaläbätə} [… another third party must pay the share of indemnities with me]".[712] On the other hand, the English counterpart of the provision reads:

[711] In this study, I refer to a party filing an application before the Federal Cassation as the "applicant" and the other party called to respond "respondent". Each party's position in lower courts is also mentioned whenever necessary.

[712] The Amharic version of Art. 43(1) reads: "ተከሳሽ የሆነ ሰው በተከሰሰበት ነገር ውስጥ ተካፋይ ያልሆነ ሌላ ሦስተኛ ወገን ከኔ ጋር ድርሻ ካሣውን መክፈል አለበት የሚል ሲሆን በክሱ ውስጥ የሌለው ሦስተኛ ወገን በክሱ ውስጥ የሚገባበትንና ድርሻው የሆነውን ካሣ የሚከፍልበትን ምክንያት የድርሻውንም ልክ ጨምሮ ሦስተኛው ወገን በክሱ ውስጥ ይግባልኝ ብሎ በመግለጽ ማመልከቻውን ለፍርድ ቤቱ ማቅረብ ይችላል። {täkäsašə yähonä säwə bätäkäsäsäbätə nägärə wəsəṭə täkafayə yaləhonä lela sosətäña wägänə käne garə dərəša kasawənə mäkəfälə ʾaläbätə yämilə sihonə bäkəsu wəsəṭə yäleläwə sosətäña wägänə bäkəsu wəsəṭə yämigäbabätənəna dərəšawə yähonäwənə kasa yämikäfələbätənə məkənəyatə yädərəšawənəmə ləkə ṗäməro sosətäñawə wägänə bäkəsu wəsəṭə yəgəbaləñə bəlo bämägəläṣə mamäləkäčawənə läfərədəbetə maqəräbə yəčəlalə} [Where a defendant claims, 'another third party that is not part of the dispute must pay the share of indemnities with me', he may apply to the court for an order that this third person be made a party to the suit, setting forth his reasons why this person should be part of the suit, why he should pay the share of his indemnity, and the amount of his share]." (translation mine)

"… the third party is liable to make contribution or indemnity".[713] Comparing the two versions, the Federal Cassation realizes that the Amharic translators have conflated the two concepts of contribution and indemnities, but the English version provides explicitly for two different types of relationships that might cause the defendant to request the court for the intervention of a third party in a case: contribution and indemnity. Said differently, the Amharic version only refers to the "share of indemnities" and fails to mention the concept of "contribution". The same misunderstanding or oversight by the Amharic translators is reflected in another phrase in the same provision; see Art. 43(1) "ድርሻው የሆነውን ካሣ የሚከፍልበትን ምክንያት {dərəšawə yähonäwənə kasa yämikäfələbätənə məkənəyatə} [the reason why he should pay the share of his indemnity]" (translation mine).

Based on the English translation of Art. 43(1), the Federal Cassation analyzes each concept separately. Accordingly, the defendant has the right to invoke contribution to request the joinder of a third party in the proceedings if there are relations between him and the joining third party such as co-creditorship, co-debtorship, co-ownership or an obligation giving rise to joint and several liability. On the other hand, the defendant may invoke indemnity to request the court for a joinder of a third party in the proceedings if the defendant has an insurance relationship with the third party for a loss for which the defendant could be held liable.

The Federal Cassation then supports this reasoning with a teleological argument, stating that the purpose of procedural law is to conduct litigation in an organized manner according to the law and to resolve legal disputes expeditiously and inexpensively. Ordering the insurance company to pay damages on behalf of the defendant without giving it the right to defend itself against the claims raised by the plaintiff would mean allowing further litigation between the defendant and the insurance company. This would undermine the purpose of procedural law and should not be accepted.[714] Finally, the Federal Cassation instructs the Federal high Court to allow the applicant (the intervener) to raise its defenses based on the insurance contract concluded with the defendant and to contest the claims asserted by the plaintiff and any further defenses against the defendant. The consultation of the original English version thus offers the Federal Cassation the advantage to identify the distortion caused by the translation error in the Amharic version and to deal with the translation error in a manner consistent with the original intention of the drafter. The fact that the Court supports its reasoning with a teleological argument conveys the message that the meaning of the Amharic version is altered not because the Amharic version has less authority than the English version, but because the interpretation furthers the general purpose of the law.

8.3.2. Correcting functionally inequivalent parallel Amharic and English legal texts

Legal translators are not actually expected to produce parallel texts that are equal in meaning, but they must create parallel texts that are considered as functionally equal. This means that the legal texts produced by translators should be transparent enough to lead to the same legal

[713] The English version of Art. 43(1) clearly separates the concepts of contribution and indemnities. It reads: "Where a defendant claims to be entitled to contribution or indemnity from any person not a party to the suit, he may in his statement of defense show cause why the third party is liable to make contribution or indemnity and the extent of such liability and apply to the court for an order that such person be made a party to the suit."
[714] EFSCCD Case Awash Insurance Company v. Ali Mohammad et al. 2007: 31.

effect in practice.[715] Let us take Art. 233 of the Civil Procedure Code, which regulates the legal consequence in the event that a defendant, who has been served with a statement of claim and the annexes from the plaintiff, together with a summons requiring him to appear in court with his statement of defense on a specified date, appears in court without a statement of defense. While the Amharic version stipulates that the case will be heard ex parte (in the absence of the defendant), the English version of the same provision states that the case will be proceeded with, notwithstanding that the defendant appears without the statement of defense. This means that the legal consequence of appearing in court without a statement of defense provided for in the two versions is functionally different. The English version, unlike its Amharic counterpart, only waives the right of the defendant to present his statement of defense but does not prevent him from participating in the proceedings.

The Federal Cassation had to override the meaning in the Amharic version of Art. 233 of the Civil Procedure Code and apply the one in the English version in Shell Ethiopia General Partnership v. Aster Birhaneselassie.[716] The applicant was a defendant, and the respondent was a plaintiff in lower courts. The plaintiff first brought an action against the defendant before the Federal High Court, and the latter was served with a statement of claim and the annexes from the plaintiff together with a summons requiring him to appear before the court with his statement of defense on a date specified in the summons. But the defendant appeared without the statement of defense, and consequently, the Federal High Court ordered that the suit should be heard ex parte. Following this decision, the defendant learned that the plaintiff had amended the original statement of claim and therefore applied to the Federal High Court for permission to file a new statement of defense against the plaintiff's amended statement of claim. The Federal High Court rejected the applicant's request on the grounds that it had already been decided that the suit should be heard ex parte. The defendant appealed to the Federal Supreme Court Appeal Division and requested that the procedural error committed by the Federal High Court be corrected. However, the defendant's appeal was dismissed again, and the case finally reached the Federal Cassation.

The Federal Cassation justifies its decision to override the meaning of the Amharic from the point of view of the general purpose of the law, which is to guarantee the right of the disputing parties to be heard. Accordingly, failure to comply with a specific court order, which must be complied with at a specific adjourned date, should only deprive the defaulting party of the rights that flow from the adjournment and not go beyond. Therefore, the Federal Cassation concludes that the Federal High Court committed a procedural error when it decided that the suit should be heard ex parte merely because the defendant appeared in court without his statement of defense. Such a failure to file the statement of defense should only have resulted in him losing the right to file it another time. The Federal Cassation finally decides that the defendant should be served the amended statement of claim and be permitted to file a new statement of defense.

[715] Šarcevic 2000: 5.

[716] ፌዴራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት፤ ሼል ኢትዮጵያ አ/ማ v. አስቴር ብርሃነ ስላሴ፤ ሰ.መ.ቁ. 15835፤ ሃምሌ 29 1997 አ.ም፤ ቅጽ 2: 61-65 [EFSCCD Case Shell Ethiopia General Partnership v. Aster Birhaneselassie, Cass. File No. 15835, August 5, 2005, Vol. 2: 61-65].

A similar teleological reasoning is followed in Aster Ambaw v. Abebaw Kifle et al. in that the Federal Cassation overrides the meaning in the Amharic version under Art. 418(3) of the Civil Procedure Code and applies the meaning in the English counterpart instead.[717] In the case, the applicant filed an objection under Art. 418 of the Civil Procedure Code with a Municipal Court, claiming that the movable property that the court had attached in the litigation between the respondents could not be attached because it did not belong to the respondents but to her. However, the respondents argued that no written evidence had been submitted by the applicant to the court to prove that the property belonged to her, as required by Art. 418(3).[718] The Municipal Court rejected the applicant's objection on the grounds that oral testimony was not admissible as evidence in this case and that the applicant had not submitted written evidence showing that she had an interest in or owned the property. All Regional State Courts at different levels confirmed the decision by the Municipal Court.

However, the Federal Cassation invokes the general purpose of the provision to reverse the decision of the lower courts by applying the meaning of the English version.[719] The general purpose of the provision, according to the reasoning by the Federal Cassation, is to prevent that unnecessary objections aimed only at delaying the execution of a court decision are raised and to protect the property belonging to a third party, which is not the subject to a legal dispute, from being attached without sufficient evidence for the purpose of enforcing a court decision. The Federal Cassation further cites Art. 1193(1) and (2) of the Ethiopian Civil Code (rules governing the proof of possession of movable property) and states that there is no limitation on the type of evidence that the person seeking to prove possession of a movable property must present.[720] It then concludes that any type of evidence, including oral testimony, may be presented to prove that a person had an interest in or was in possession of the attached property at the time of the attachment, and this falls within the general purpose of the law.

Even if the law governing official language use prescribes that the clear meaning in the Amharic version has to be applied in cases of discrepancy,[721] the Federal Cassation disregards

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[717] ፌዴራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት፤ አስቴር አምባው v. እነ አበባው ክፍሌ/ሁለት ሰዎች/፤ ሰ.መ.ቁ. 97094፤ ህዳር 08 2009 አ.ም፤ ቅጽ 17: 28-31 [EFSCCD Case Aster Ambaw v. Abebaw Kifle et al., Cass. File No. 97094, November 17, 2016, Vol. 17: 28-31].

[718] The Amharic version of Art. 418(3) reads: "ተቃዋሚ ወይም መብት አለኝ ባዩ ከሚያቀርበው የመቃወሚያ ማመልከቻ ጋር ንብረቱ ላይ ያለውን የተቀዳሚነት መብት ወይም ባለይዞታነቱን የሚያረጋግጥ የጽሑፍ ማስረጃ አያይዞ ማቅረብ አለበት፡፡ {täqawami wäyəmə mäbətə ʾaläñə bayu kämiyaqerəbäwə yämäqawämiya mamäləkäča garə nəbərätu layə yaläwənə yätäqädaminätə mäbətə wäyəmə baläyəzotanätunə yämiyarägagəṭə yäṣəhufə masəräja ʾayayzo maqəräbə ʾaläbätə} [The objecting party or anyone claiming that he has a right over a property shall submit with his application of objection written evidence to show that he had some interest in or was in possession of the property attached at the date of the attachment]." (translation mine)

[719] The English version of Art. 418(3) of the Civil Procedure Code reads: "The claimant or objector shall adduce evidence to show that at the date of the attachment he had some interest in, or was possessed of, the property attached."

[720] Art. 1193 of the Civil Code reads as follows:

"(1) Whosoever is in possession of a corporeal chattel shall be deemed to possess it on his own behalf and to be the owner thereof.

(2) Whosoever disputes such ownership shall have to show that the presumption laid down in Sub-art. (1) is not justified in the circumstances."

[721] Federal Negarit Gazeta Establishment Proclamation, Art. 2(2) and (4).

the meaning in the Amharic version in this case. It rather relies on the non-authoritative English version as an important element of context in interpreting the scheme of the law and the intent of the legislature. The Federal Cassation then concludes that it does not serve the purpose of the provision to impose a requirement for proof of possession of a movable property other than that already provided for in the law, which also allows oral testimony. Again, a teleological argument is applied in the decision in order to provide a legitimate reason why the Court departed from the meaning of the Amharic version in the provision.

8.3.3. Determining translational correspondences between expressions of deontic modality in legal provisions

The term "deontic" derives from the Greek *déon*, meaning "duty", and "deontic modality" is a linguistic domain concerned with normative statements that come from a specific external authority imposing an obligation or granting permission. These are statements which either express acts of will on the part of the speaker with respect to a certain state of affairs, or through which the speaker imposes certain conditions on the addressee by means of directives.[722] Deontic expressions exist in everyday language as well as in languages for special purposes such as in legal acts, contracts or court decisions. Three types of positive and three types of negative meanings are often identified by linguists as belonging to deontic modality: "Permissive (deontic possibility), Obligative (deontic necessity) and Prohibitive, and non-Permissive, non-Obligative and non-Prohibitive".[723] Each type of deontic meaning in turn has other subtypes. Matulewska, for example, categorizes obligative meanings into three subtypes i.e. "unlimited duty", "conditional duty" and "external duty".[724]

While it may not be difficult to define and delineate the different types of deontic modality from a philosophical perspective, the bigger problem lies in the fact that the same expression may be used for different types of deontic modality depending on the context. In legal linguistics, the discussion revolves around the English modal expressions "shall" and "may", the most important terms in defining the scope of authority in the law, but whose actual meaning and application are highly controversial in determining how judges should interpret the degree of duty intended by the lawmaker.[725] "May" is often used to create discretionary authority in a form of permissive norms, understood as norms permitting performance and forbearance of some actions.[726] In contrast, David Mellinkoff, late Professor of Law at UCLA School of Law, writes that "shall" and "may" are often treated as synonyms in law, that context and interpretation easily influence either word, and that we should replace "must" or "be required" with "shall" unless the context can be clearly specified.[727]

Ethiopian judges also rely on certain definitions of "shall" and "may" in writing their decisions, but each judge may have different definitions of these modal verbs. In Tesfahun Wagnew v.

[722] Krzyżanowska, Magdalena. 2020. *Epistemic modality in Amharic*. Poznań: Adam Mickiewicz University (PhD dissertation): 111. Available at http://hdl.handle.net/10593/25801, last accessed June 10, 2021.
[723] Krzyżanowska 2020: 111.
[724] Matulewska, Aleksandra. 2010. Deontic modality and modals in the language of contracts. *Comparative Legilinguistics* 2: 77.
[725] Kimble, Joseph. 1992. The many misuses of shall. *Scribes Journal of Legal Writing* 3: 62.
[726] Kimble 1992: 66.
[727] Mellinkoff's *Dictionary of American Legal Usage*, 1992, as cited in Kimble 1992: 69.

Bejak Agro-commercial Enterprise, for example, the Federal Cassation relies on the conformity of the Amharic and English versions regarding the permissive nature of the statement under Art. 78 of the Civil Procedure Code as evidence to construe the provision as a non-mandatory one that can be disregarded.[728] In this case, the lower courts had passed an order against the defendant (now applicant) that the proceeding should be heard ex parte, as the defendant did not appear at the hearing after the summons had been duly served to him. The defendant's subsequent request to the court that the order be set aside was denied, but the defendant did not lodge his appeal with the higher court against the ex parte order entered against him. Instead, he waited until the final judgment had been rendered in the main proceeding and lodged his appeal on the merits of the case to an appellate court. The appellate court, however, dismissed the appeal of the defendant on the grounds that he had failed to appeal against the ex parte order entered against him in due course. The Court invoked Art. 78 of the Civil Procedure Code, according to which any defendant against whom an order has been passed ex parte may, within one month from the day on which he became aware of such order, apply to the court in which the order was passed to set the order aside. It then decided that the defendant does not have the right to appeal against the main judgment passed against him on the merits of the case.

When the case reached the Federal Cassation, the judges had to decide on whether a defendant against whom a court has passed an order to hear the case ex parte would have the right to appeal regarding the main proceedings on points of law and on the merits, notwithstanding the fact that he was not a party to the main proceedings. The Civil Procedure Code does not provide a clear answer to this question. However, answering the question of whether Art. 78 of the Civil Procedure Code is a mandatory procedure, non-compliance with which entails consequences, or whether it is merely a permissive procedure that can be followed by the parties at their discretion, allows the Federal Cassation to resolve the case. The Federal Cassation reads both the Amharic and the English version of Art. 78. The relevant part of the provision in its Amharic version states: "…ውሳኔው ወይም ትእዛዙ መሰጠቱን በተረዳ በአንድ ወር ጊዜ ውስጥ ቀርቦ ትእዛዙ ወይም ውሳኔው እንዲነሳለት ሊያመለክት ይችላል {wəsanewə wäyəmə təʿəzazu mäsäṭätunə bätäräda bäʿanədə wärə gize wəsəṭə qärəbo təʿəzazu wäyəmə wəsanewə ʿənədinäsalätə liyamäläkətə yəčəlalə} […he can, within one month of becoming aware of the judgment or order, request that the order or judgment be set aside]" (translation mine).[729]

Referring to the word "ይችላል {yəčəlalə} [can]" in the Amharic version and "may" in the English version, the Federal Cassation concludes that applying to the court to set aside the ex parte order is not the only option available to a defendant but an alternative option that a defendant can use at his own discretion. It then establishes that notwithstanding the fact that the defendant failed to appeal to the higher court for reversal of the ex parte order, the defendant

[728] ፌዴራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት፤ ተስፋሁን ዋኘው v. በጃክ አግሮ ኮሜርሻል ኢንተርፕራይዝ፤ ሰ.መ.ቁ. 36412፤ ጥቅምት 13, 2001 ዓ.ም ቅጽ 8: 12-15 [EFSCCD case Tesfahun Wagnew v. Bejak Agro-commercial Enterprise, Cass. File No. 36412, October 23, 2008, Vol. 8: 12-15].

[729] The English version of Art. 78(1) of the Civil Procedure Code reads: "Any defendant against whom a decree is passed or order made ex-parte or in default of pleading may, within one month of the day when he became aware of such decree or order, apply to the court by which the decree was passed or order made for an order to set it aside."

has the right to appeal against the judgment rendered against him on the merits of the case. Conformity of the Amharic and English versions with respect to the permissive nature of the statements is presented by the Federal Cassation as evidence to construe the law and serves as a rationale to accept an alternative procedure that the defendant is permitted to follow. It is also interesting to note the different interpretations as to the permissive or mandatory nature of the provision by the various levels of courts and how "may" in the English version finally determined the nature of the duty imposed by the lawmaker. I return to the controversies over the meaning of "shall" and its translation into Amharic in the next sections.

8.4. Comparing the original Amharic versions with the English translations of the current laws issued by the Federal Government

As discussed in Chapter 7, all Ethiopian federal laws are drafted in Amharic, although there are some practices of drafting laws in English first and then translating the drafts into Amharic. The Amharic drafts are subsequently (re-)translated into English, debated by the House of People's Representatives (HPR), passed as law and published in both versions in the federal Negarit Gazeta, with the Amharic version being the sole authoritative version in the event of discrepancy between the two versions.

Much of the content of the laws continues to be transplanted and translated from foreign, mostly English-language legal sources from which the legal concepts are adopted. Foreign legal experts are often invited by the Ministry of Justice for this task to assist in the seemingly constant process of legal reform, which often unintentionally exacerbates the problem.[730] The aim of this section is to examine cases rendered by the Federal Cassation in which the original Amharic versions are compared with the translated English versions. It is interesting to note that judges of the Federal Cassation still consider the language comparison method important even when they interpret laws originally written in Amharic. One must therefore ask what purpose the translated English versions of the laws serve in the interpretation process and how judges incorporate meaning from the English versions or override the meaning in the Amharic versions.

8.4.1. English version providing a meaning that contributes to the interpretation of the disputed provision in the Amharic version

When a law is issued in two or more language versions, it is inevitable that certain terms have different meanings in the different languages. Even if the meanings are similar, they may be narrower or broader. The different interpretations of these terms may also lead to disputes between the parties in court. In Habteweld Zergaw v. Samuel Assefa et al., for example, a question arose as to whether parties who complain against an administrative decision of the Ministry of Trade about the registration of trade names can bring fresh claims to regular courts or whether regular courts are only authorized to review these decisions on appeal.[731] The

[730] Briottet 2009: 339.

[731] ፌዴራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት፤ ሀብተወልድ ዘርጋው v. ሳሙኤል አሰፋ (ሁለት ሰዎች)፤ ሰ.መ.ቁ. 69603፤ ህዳር 08 2004 አ.ም፤ ቅጽ 13: 374-378 [EFSCCD Case Habteweld Zergaw v. Samuel Assefa et al., Cass. File No. 69603, November 18, 2011, Vol. 13: 374-378].

question was based on a dispute with respect to the interpretation of Art. 61(1) of Commercial Registration and Business Licensing Proclamation No. 686/2010. The Amharic version uses the wording "ለመደበኛ ፍርድ ቤት አቤቱታ ሊያቀርብ ይችላል {lämädäbäña fərədə betə ʾabetuta liyaqerbə yəčlalə} [may plead to regular court]" (translation mine).[732] This expression does not make it clear whether reference is made to a fresh claim submitted to a court having first instance jurisdiction or to an appeal lodged with a court having appellate jurisdiction for reviewing the administrative decision. The English version, on the other hand, specifically uses the phrase may lodge appeal in connection with his complaints with regular courts.[733]

The case started at the Federal First Instance Court when the applicant, against whom the Ministry of Trade had issued an administrative decision, filed a fresh claim with the Court. The respondents argued that the applicant did not have the right to file a fresh claim with courts having first instance jurisdiction, but could only appeal against the final decision of the Ministry for review in an appellate court. The Federal First Instance Court decided in favor of the respondents and the case finally reached the Federal Cassation.

The Federal Cassation determines that the provision, Art. 61(1), is vague. The Court primarily follows the contextual method and reads the provision in conjunction with other related provisions of the Proclamation. It then establishes that the Ministry is granted the final authority to make administrative decisions regarding trade names and that this authority must be respected. The fact that the provision restricts the type of complaints that can be filed in the courts to questions of law, not fact, is also brought forward as an additional justification to construe the provision narrowly. But the Federal Cassation also applies the method of language comparison in which it notes that the English version of Art. 61(1) offers a clearer meaning that helps to understand the vague Amharic expression. The Federal Cassation finally rules that since the decision of the Ministry is considered final, it is reasonable to interpret the Amharic term "አቤቱታ {ʾabetuta} [pleading]" narrowly to mean "ይግባኝ {yəgəbañə} [appeal]", following what the English version proposes. Accordingly, any party with complaints about the administrative decision taken by the Ministry of Trade should be allowed to appeal to have the final decision reviewed and not to file fresh claims with a court having first instance jurisdiction.

Interestingly, one could also have expected a different outcome in the case. The Federal Cassation could have applied the Amharic version of Art. 61(1) literally and taken the term "አቤቱታ {ʾabetuta} [pleading]" as it stands. The term "ʾabetuta" is not equivalent to the term

[732] The Amharic version of the provision reads: "በዚህ አዋጅ መሰረት በመዝገቢው መስሪያ ቤት ወይም አግባብ ባለው ባለስልጣን አስተዳደራዊ እርምጃ የተወሰደበት ማንኛውም ሰው ወይም ነጋዴ ወይም የንግድ እንደራሴ ሊኖረው ከሚችላቸው ቅሬታ ጋር በተያያዘ በህግ ጉዳዮች ላይ ብቻ ለመደበኛ ፍርድ ቤት አቤቱታ ሊያቀርብ ይችላል። {bäzihə ʾawajə mäsärätə bämäzəgabiwə mäsərya betə wäyəmə agəbabə baläwə balläsələṭanə ʾasətädadärawi ʾərəməja yätäwäsädäbätə manəñawəmə säwə wäyəmə nägade wäyəmə yänəgədə ʾənədärase linoräwə kämičəläwə qəreta garə bätäyayazä bähəgə gudayočə layə bəča lämädäbäña fərədə betə ʾabetuta liyaqerbə yəčlalə} [Any person, businessperson or commercial representative against whom an administrative decision has been taken by the registering office or the appropriate authority under this Proclamation may plead to a regular court only in matters of law]." (translation mine)

[733] The English version of Art. 61 reads: "Any person or a businessperson or a commercial representative against whom an administrative decision has been taken by the registering office or the appropriate authority may lodge appeal in connection with his complaints to regular courts only on matters of law."

“ይግባኝ {yəgəbañə} [appeal]” in Ethiopian law. Proof of this is found in the Ethiopian Civil Procedure Code Art. 80(1), which translates “ʾabetuta” as “pleading”, which has a broader meaning than “appeal” and includes the statement of claim filed by the present applicant In the Federal First Instance Court.[734] So the Amharic version of Art. 61 (1) would not preclude the applicant’s fresh court action. The only restriction that the Federal First Instance Court could have imposed on the applicant, based on the literal application of the Amharic version, would have been to limit the questions to questions of law and to reject questions related to the facts. In light of this assertion, it could be argued that consideration of the clear meaning proposed by the English version in the above case is as compelling a reason as the contextual method chosen by the Federal Cassation in reaching its final decision.

8.4.2. Controversies over the meaning of “shall” and its translation into Amharic

“Shall” is the most common modal verb used in legal documents to express obligatory statements. But it is also used to express meanings of “entitlements, declarative statements, definitions, statements with negative subjects overlapping with ‘may’, directory requirements and future actions to be taken”.[735] Determining which of these meanings is intended by the lawmaker continues to be a challenge and a recurrent source of dispute in many court cases. The Plain English movement recommends using modal verbs such as “must” and “will” instead of “shall”.[736] Countries such as Australia, New Zealand, South Africa and, to some extent, the United States have started drafting shall-free legislation with successful results.[737] However, the introduction of such changes proposed by the Plain English movement is often met with resistance from those who insist that the interpretation of the “old-fashioned legal language”, namely “shall”, is well known and unambiguous.[738] Scholars in the field of legal drafting such as George Coode, Reed Dickerson, and Barbara Child insist that “shall” must continue to be used in mandatory rules which can be expressed in the form of obligations or prohibitions that either command one to do or refrain from doing a particular action.[739]

The problem is exacerbated in multilingual laws, especially when laws with modal expressions are translated from one language to another, unless the translator pays close attention to which meaning (out of a bundle of meanings) is expressed in a given context and what the corresponding word or construction is in the target language. Ambiguity arises when, for example, the Amharic version of a provision is phrased as a neutral statement that does not contain terms that explicitly express coercion or obligation, while the same provision of the English version is constructed with “shall”. Below is one relevant provision with which this case can be illustrated.

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[734] The English version of Art. 80(1) of the Ethiopian Civil Procedure Code whose Amharic counterpart is translated as “አቤቱታ {ʾabetuta}” reads: “Pleading shall mean a statement of claim, statement of defense, counter-claim, memorandum of appeal, application or petition and any other document originating proceedings or filed in reply thereto.”

[735] Felici, Annarita. 2012. ‘Shall’ ambiguities in EU legislative texts. *Comparative Legilinguistics* 10: 52.

[736] Matulewska 2010: 78.

[737] Felici 2012: 54.

[738] Matulewska 2010: 78.

[739] George Coode 1852, Reed Dickerson 1986, Barbara Child 1992, as cited in Kimble 1992: 61.

(1) በውጭ አገር የኢትዮጵያ ኤምባሲዎችና ቆንስላ ጽሕፈት ቤቶች ወደ ኢትዮጵያ የሚገቡ ሰነዶችን ያረጋግጣሉ። {bäwəč̣ə ʾagärə yäʾitəyop̣əya ʾembasiwočəna qonsəla ṣəhəfätə betočə yämigäbu sänädočənə yarägagṭalu} [Ethiopian Embassies and Consular Offices authenticate documents entering into Ethiopia]. (translation mine)[740]

A judge reading the provision in (1) and seeking to resolve a case based on this provision is confronted with several questions: Does this provision simply list the responsibilities of Ethiopian embassies and consular offices abroad? Or does the provision impose a duty on persons holding documents issued abroad? Will a document issued abroad be invalid because it was not authenticated by Ethiopian embassies and consular offices?

If the goal of the lawmaker, the House of People's Representatives, was to simply list the responsibilities of Ethiopian embassies and consular offices abroad, then the way the provision in (1) is worded is sufficient to express that intent. However, if the intent of the lawmaker was to regulate the criteria that a document issued abroad must meet in order to be admissible in Ethiopian courts or guide the conduct of the society toward this goal, the provision must be worded differently. Such a provision could look like in (2), in which "shall" is expressed by "ይኖርባቸዋል {yənorəbačäwalə}" in Amharic.

(2) ወደ ኢትዮጵያ የሚገቡ ሰነዶች ሰነዶቹ በተጻፉበት አገር ባሉ የኢትዮጵያ ኤምባሲዎችና ቆንስላ ጽሕፈት ቤቶች መረጋገጥ ይኖርባቸዋል። {wädä ʾitəyop̣əya yämigäbu sänädočə sänädoču bätäṣafubätə ʾagärə balu yäʾitəyop̣əya ʾembasiwočəna qonsəla ṣəhəfätə betočə märägagäṭə yənorəbačäwalə} [Documents entering into Ethiopia shall be authenticated by Ethiopian embassies and consular offices in the countries where the documents are issued.]

It would be even better if the lawmaker further clarified the provision by explicitly stating the consequence for a violation like in (3).

(3) ወደ ኢትዮጵያ የሚገቡ ሰነዶች ሰነዶቹ በተጻፉበት አገር ባሉ የኢትዮጵያ ኤምባሲዎችና ቆንስላ ጽሕፈት ቤቶች ካልተረጋገጡ በስተቀር ውጤት አይኖራቸውም። {wädä ʾitəyop̣əya yämigäbu sänädočə sänädoču bätäṣafubätə ʾagärə balu yäʾitəyop̣əya ʾembasiwočəna qonsəla ṣəhəfätə betočə kaltäregagäṭu bäsətäqärə wəṭetə ʾayənoračäwəmə} [Documents entering into Ethiopia shall be of no effect unless they are authenticated by Ethiopian embassies and consular offices in the countries where the documents are issued.]

Theoretically speaking, the lawmaker has all these options to choose from when drafting the provision, depending on which of the above goals it is pursuing. One may therefore assume that the lawmaker intended nothing further than simply listing the responsibility of Ethiopian

[740] Authentication and Registration of Document Proclamation No. 334/2003, Federal Negarit Gazeta, Addis Ababa, May 8, 2003, Art. 26(1).

embassies and consular offices abroad when drafting the provision as in (1). If one argues that courts must enforce the plain language of the law, it follows that this provision cannot be applied to enforce the intent described in (2) or (3). However, the interpretation of a legal provision depends largely on the context of the particular case being resolved, and the context might force the judges to ask whether the lawmaker intended to achieve one goal (as e.g. in (2) or (3)) but, unintentionally, worded it in such a way as to convey a message that achieves another goal (as in (1)).

Such issues are addressed in Karlo Kastelie v. Zewde Dominico, a case involving the admissibility into Ethiopian courts of documents issued abroad.[741] In a decision against which a cassation review was sought, the Federal High Court and the Appellate Division of the Federal Supreme Court had ruled that a will made abroad would remain valid even if it was not registered and authenticated by Ethiopian Embassies and Consular Offices abroad. The main argument of these courts was that the types of documents that do not have a legal effect unless they are authenticated and registered are listed under Art. 5(1) of the Authentication and Registration of Document Proclamation, and a will made abroad is not expressly included in this list.[742] One could also have expected the courts to consider the above provision in (1) as irrelevant to the disposition of the case and as merely listing the responsibilities of Ethiopian embassies and consular offices abroad and not imposing any further obligation or consequence for the noncompliance of its terms.

But the Federal Cassation reversed the decision of the lower courts by invoking the provision given in(1), reading it together with the English version of the same provision reproduced in (4).

> (4) Ethiopian Embassies and Consular Offices shall authenticate documents entering into Ethiopia.

By referring to the English version, the Federal Cassation invokes the important contribution of “shall” for the interpretation of the provision. It acknowledges in the decision that the drafters of the Amharic version in (1) did not use a term suggesting coercion or obligation in the provision, but simply constructed it neutrally. The Federal Cassation then argues: “The mandatory nature of this Amharic provision becomes clear only if one looks at the English version of the same which reads: ‘Ethiopian Embassies and Consular Offices shall authenticate documents entering into Ethiopia’”[743] (translation mine). The Court takes the occurrence of “shall” in the English version as sufficient proof to state that the intent of the lawmaker was beyond declaring the responsibility of Ethiopian embassies and consular offices. However, the issue in Karlo Kastelie v. Zewde Dominico was not whether Ethiopian embassies and consular offices are required to authenticate and register documents issued abroad, but whether a document issued abroad should be admissible in Ethiopian courts without having been authenticated by the Ethiopian Embassy or Consulate there. Therefore, referring to the English

[741] ፌዴራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት፤ ካርሎ ካስቴሊ v. ዘውዴ ደሚኒኮ፤ ሰ.መ.ቁ. 82232፤ መስከረም 25 2003, ቅጽ 11: 473-477 [EFSCCD Case Karlo Kastelie v. Zewde Dominico, Cass. File No. 32282, October 5, 2010, Vol. 11: 473-477.

[742] EFSCCD Case Karlo Kastelie v. Zewde Dominico 2010: 473-477.

[743] EFSCCD Case Karlo Kastelie v. Zewde Dominico 2010: 473-477.

version and the occurrence of “shall” as an indicator of a mandatory provision does not help the Federal Cassation to reach a final decision, and it must draw its conclusion based on another argument.

The Federal Cassation recognizes this fact in the decision by stating: “There is no clear provision in the Authentication and Registration of Document Proclamation stating that documents issued abroad are not legally valid unless they are registered and authenticated in accordance with the Proclamation. However, it cannot be inferred from this that a document issued abroad is admissible as a legal document in Ethiopian courts even without having been authenticated by Ethiopian embassies or consular offices. Failing to observe the mandatory requirement of authenticating a document issued abroad should result in the invalidation of the document”[744] (translation mine). One can notice here how the Federal Cassation moved from (1) to (4) in the reasoning process and then to (3) when reaching the final conclusion.

It can therefore be argued that the role that the Federal Cassation had in the case goes beyond applying the law and extends to establishing the law, i.e. reformulating the applicable provision. It first disregards the meaning in the Amharic version because of the word “shall” in the English version, which is claimed to show the mandatory nature of the provision. In the reasoning process, the Federal Cassation then goes further than what the English version provides by introducing an amendment clause which could look like this: “noncompliance with authentication or registration of a document issued abroad shall result in the invalidity of the document”. In doing so, the Federal Cassation seems to have concluded that “shall”, even in its function to declare a legal result, carries enough force to give a direction that the rule must be obeyed, despite the fact that the rule does not specify or mandate any particular sanction.

The Federal Cassation has also rendered another binding decision by following a similar approach of interpreting a legal provision with “shall” as one that imposes a duty and with clear consequences in case of noncompliance. Consider the legal interpretation that the Federal Cassation gives to Art. 46(1) of the Trademark Registration and Protection Proclamation No. 501/2006 in the case Yoseph Hailu General Limited Partnership et al. v. Public Prosecutor.[745] The Amharic and the English versions of the provision read as follows:

> (5) ይህ አዋጅ ከመውጣቱ በፊት የተቀመጡ የንግድ ምልክቶች ይህ አዋጅ ከወጣበት ጊዜ ጀምሮ በአስራ አምስት ወራት ጊዜ ውስጥ መመዝገብ ይኖርባቸዋል። {yəhə ʾawajə kämäwəṭatu bäfitə yätäqämäṭu yänəgədə mələkətočə yəhə ʾawajə käwäṭabätə gize jäməro beʾasəra ʾaməsətə wäratə gize wəsəṭə mämäzəgäbə yənorəbačäwalə} / Trademarks deposited before the entry into force of this proclamation shall be submitted for registration with in

[744] EFSCCD Case Karlo Kastelie v. Zewde Dominico 2010: 473-477.

[745] ፌዴራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት፤ እነ ዮሴፍ ሀይሉ ጠቅላላ ንግድ ኃ/የተ/የግ/ማህበር /ሁለት ሰዎች/ v. የፌዴራል ዓቃቤ ሕግ፤ ሰ.መ.ቁ. 69899፤ ሐምሌ 29, 2003፤ ቅጽ 12: 280-283 [EFSCCD Case Yoseph Hailu General Limited Partnership et al. v. Public Prosecutor, Cass. File No. 69899, August 5, 2011, Vol. 12: 280-283].

> [sic] eighteen month[s] beginning from the entry in to [sic] force of this proclamation.[746]

Compulsion or obligation is indicated here by the term "ይኖርባቸዋል {yənorəbačäwalə}", which corresponds to "shall" in the English version, but whose unambiguous English translational equivalent would be "be required to". The relevant question to be raised here is that of the consequences of a violation. Those who have obtained a trademark registration certificate for the ownership of a trademark from the Ethiopian Intellectual Property Office prior to the adoption of the Proclamation are obliged to submit their application to have their trademarks re-registered within fifteen months from the effective date of the Proclamation. But what if the trademark owners fail to do this? Would their trademarks still be worth protecting from infringement? The literal interpretation of the aforementioned provision does not provide an answer to this question, and the courts of different levels also held different views on this point.

In the above judgment, the public prosecutor (now respondent) charged the accused (now applicant) for the offence of infringing the rights of Amdhun General Limited Partnership, which had registered a trademark "Orion" with the Ethiopian Intellectual Property Office, and deceiving customers by selling products with a similar trademark "ORIQN". The Federal High Court proved that the trademark "Orion" was lawfully registered with the Ethiopian Intellectual Property Office before the Trademark Registration and Protection Proclamation came into force. But the trademark was not submitted for re-registration after the coming into force of the Proclamation. The accused was also found guilty of selling products that have a similar trademark "ORIQN" and thereby misleading customers. However, this was found out only after 4 years had elapsed after the Proclamation came into force. The Federal High Court ruled that the accused was found guilty of intentionally violating the right of Amdhun General Limited Partnership protected under the Trademark Registration and Protection Proclamation and passed a rigorous imprisonment of 5 years and other additional criminal punishments. The Federal Supreme Court Appeal Division confirmed the decision of the Federal High Court.

However, the Federal Cassation in its binding decision that reverses the decisions of the lower courts states that any person who has registered a trademark with the Ethiopian Intellectual Property Office prior to the effective date of the Trademark Registration and Protection Proclamation must comply with all the mandatory conditions prescribed in the Proclamation before obtaining or claiming protection under the Proclamation. These mandatory conditions bind not only persons claiming rights under the Proclamation but also the office to which responsibility for implementing the Proclamation is granted. According to the reasoning of the Federal Cassation, Art. 46(1) of the proclamation is a mandatory provisions whose nonobservance results in clear consequences. Given that re-registration within the prescribed time limit is a mandatory requirement, it logically follows that a trademark not re-registered is not worthy of legal protection against any interference. Therefore, the Federal Cassation

[746] It should be noted here that while the English version of the provision mentions 18 months as a time frame for re-registering trademarks deposited before the entry into force of the proclamation, the Amharic version mentions 15 months. This could either be a simple typo or, alternatively, an indication that those who draft the laws and those who do the English translation are independent bodies.

decides that the applicant should be acquitted on the grounds that the public prosecutor could not prove that the trademark "Orion" was re-registered with the Ethiopian Intellectual Property Office after the Proclamation came into force and that the applicant cannot be found guilty of infringing the right of a lawfully registered trademark owner.

Interestingly, the use of the word "shall" in the English version of the provision is cited by the Federal Cassation as the main reason for labeling the provision mandatory. As in the case between Karlo Kastelie v. Zewde Dominico, the Federal Cassation introduces a new amendment clause to the original legal provision concerning the consequence of noncompliance with the provision. If one had to rewrite the provision in (5) with the newly introduced clause, it could look as follows:

> (6) Trademarks deposited before the entry into force of this proclamation shall be submitted for registration within fifteen months beginning from the entry into force of this proclamation. Trademarks not submitted for re-registration within this time limit shall obtain no legal protection/shall be considered to have been waived or cancelled.

Here, the question arises why the lower courts disregarded the requirement of re-registration of previously registered trademarks and decided that "Orion" is a trademark worthy of legal protection. The ruling does not give a clear answer to this. One possible explanation for the courts' decision could be that they did not consider the term "___" to be a word with sufficient force to entail a legal consequence for noncompliance. As a result, they did not consider the requirement for re-registration to be a mandatory one. On the other hand, the Federal Cassation cites the English version to confirm that the Amharic term "ይኖርባቸዋል {yənorəbačäwalə}", which is the English translation of "be required", has the same force as "shall". In other words, in contrast to the decision of the lower courts, the Federal Cassation interprets the provision as one that imposes a duty and with clear consequences. This is all the more remarkable when one considers the implications of designating a provision as mandatory with consequences for noncompliance as illustrated in the case summarized above.

8.5. Comparing the translated language versions to each other

As laid out in Chapter 5, four of the six codes adopted in the 1950s as part of Ethiopia's massive codification process were originally written in French and only then translated into Amharic and English. The National Parliament authenticated only the Amharic version of the codes as official and authoritative, and the English versions were published in the Negarit Gazeta as official translations along with the Amharic versions. Of the four codes, the Criminal Code was completely revised in 2004 and the Commercial Code in 2021. Some parts of the Civil Code were also replaced by new codes.[747] Nevertheless, a large part of the Civil Code is still applicable and regulates the legal relationships in certain areas, such as laws regulating

[747] For example, the revised Family Code enacted by the Federal Government in 2000 and the family codes subsequently issued by the respective state governments made the civil law provisions on family matters inapplicable.

general obligations and special contracts, succession, representation as well as other laws which are not replaced by more recent laws.

Currently, there is no way for the courts to compare the Amharic versions of these codes with the original French versions when faced with cases that require interpretation of these areas of law. The French drafts, which could have explained the original intent of the drafters and bridged the differences between languages, legal systems and cultures, remained only drafts and were not authenticated. Nor were they given status as subsidiary documents to which reference could be made. This section therefore addresses the comparison of the authenticated Amharic and the semi-official English translations in the interpretation of these codes by the Federal Cassation.

8.5.1. Technical word compounds that are linguistically unusual in general Amharic

In the case Zinash Bekele v. Haregeweyn Bekele, the Federal Cassation compares the English and Amharic translations of the Civil Code and attempts to clarify technical word compounds that are unusual in non-legal Amharic.[748] In this case, the Federal Cassation interprets Art. 913 of the Civil Code, the Amharic version of which contains newly coined Amharic legal terms that are uncommon in the common language and not easily interpretable by laypersons and lawyers who are not used to legal Amharic. The term "legacy" in the English version of Art. 913 is translated with the Amharic terms "የኑዛዜ ስጦታ {yänuzaze səṭota}", literally meaning 'donation through a will'. The English phrase "rule of partition" in the same provision is translated as "የክፍያ ደንብ yäkəfəya dänəbə}", literally meaning 'rule of payment'. There were no corresponding terms in the traditional Ethiopian legal system for the terms "legacy" and "rule of partition". Since Ethiopian lawyers are educated in English and study the English versions of the law codes, it could be argued that the terms representing these abstract concepts are sufficiently defined by the English translational equivalents.

The judges of the Federal Cassation also seem compelled to clarify the language in Art. 913 by using the English version as a guide for understanding the newly coined Amharic terms in the judgment. To this end, both the Amharic and the English version of the provision are reproduced word for word and placed next to each other at the beginning of the judgment.[749] Moreover, the English terms "legacy" and "rule of partition" are used in brackets along with

[748] ፌዴራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት፤ ዝናሽ በቀለ ማንደፍሮ v. ሐረገወይን በቀለ፤ ሰ.መ.ቁ. 18394፤ መጋቢት 21 1999፤ ቅጽ 8: 274-278 [EFSCCD Case Zinash Bekele Mandefro v. Haregeweyn Bekele, Cass. File No. 18394, March 30, 2007, Vol. 8: 274-278].

[749] The Amharic version of Art. 913 states: "የኑዛዜው ቃል የተናዛዥን ተቃራኒ ሐሣብ የሚገልጽ ካልሆነ በቀር ከውርስ ሃብት አንድ ድርሻን ወይም አንድ ንብረትን ሚቹ ለወራሾች መስጠቱ ተራ የሆነ የክፍያ ደንብ እንጂ እንደ ኑዛዜ ስጦታ ነው ተብሎ አይቆጠርም። {yänuzazewə qalə yätänazažənə täqarani hasabə yämigäləṣə kaləhonä bäqärə käwərəsə habətə ʾanədə dərəšanə wäyəmə ʾanədə nʾanədə bʾanədə rätʾanədə nəbərätənə mwaču läwärašočə mäsəṭätu tära yähonä yäkəfəya dänəbə ʾənəji ʾənədä nuzaze səṭota ʾayəqoṭärəmə} [Unless the wording of the will expresses a contrary intention of the testator, the donation of a portion of the estate or a property by the testator to the heirs shall not be deemed as a donation through a will, but as an ordinary rule of payment]." (translation mine) The English version of the same provision reads: "An assignment of a portion of the succession or of property forming part of such succession made by the testator to one of his heirs shall not be deemed to be a legacy but a mere rule for partition, unless the contrary intention of the testator emerges from the disposition."

the newly coined Amharic legal terms throughout the judgment.[750] The judges' consistent use of the English terms in brackets alongside their newly coined Amharic equivalents is similar to the technique used by legal translators. Depending on their knowledge of the subject, legal translators can create a word anew to substitute the target term; adopt a literal translation, translate the target term with a loanword, use a hyperonym (semantically more general umbrella term), display the target term with the source term in brackets or use the source term with a footnote.[751] These approaches are taken by legal translators in order to make specific legal concepts or technical terms that are unusual in the common language better understandable.[752] As court decisions are primarily addressed to laypersons, they must appeal to general language. In a similar fashion like legal translators, the judges of the Federal Cassation also use the terms in the English version throughout the decision in brackets along with the newly coined Amharic terms to allow for greater clarity and understanding of the language in which the decision is written.

The Federal Cassation follows the same approach of providing the English terms in brackets in the case Geta Trading Private Limited Company v. Commercial Bank of Ethiopia.[753] In the case, the Federal Cassation aims to resolve the question of how to distinguish unlawful contracts from those that do not meet the legal requirements (illegal contracts) and to determine what their legal consequences are. The judges first define the two central concepts: The Amharic phrase "ሕገ ወጥ ውል {həgä wäṭə wələ} [unlawful contract]" is defined as "a contract that is not permitted by law or to which a legal prohibition applies" (translation mine). The Amharic phrase "የህጉን መስፈርት የማያሟላ ውል {yähəgunə mäsfärətə yämayamwala wələ} [a contract that does not fulfill the legal requirement]" is defined as "a contract that does not fulfill the requirements under the provisions of the general law of contracts or the laws on special contracts or any other law at the time of the conclusion of the contract" (translation mine).[754] Throughout the decision, the Federal Cassation consistently uses the English terms "unlawful contracts" and "illegal contracts" in brackets when identifying the principal distinction between the two types of contracts and their consequences.

Despite the similarity in the approach of providing in brackets the English terms in the two cases above, the judges' motivations for doing so differ from one case to the other. The judges in the first case seem to be concerned with making uncommon or non-transparent technical terms more easily understandable. The motivation in the second case rather seems to be to establish the Amharic translations as proper legal terms by constantly equating them with their English equivalents.

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[750] The following is an extract from the case Zinash Bekele v. Haregeweyn Bekele: "ከዚህ ድንጋጌ ለመገንዘብ የሚቻለው በኑዛዜው የሚከናወኑ ተግባሮች የኑዛዜ ስጦታ /legacy/ ወይም የክፍያ ደንብ /rule of Partition/ ሊሆኑ እንደሚችሉ ነው {käzihə dənəgage lämägänəzäbə yämičaläwə bänuzazewə yämikänawänu tägəbaročə yänuzaze səṭota /legacy/ wäyəmə yäkəfəya dänəbə /rule of Partition/ lihonu ʾənədämičəlu näw} [What can be understood from this provision is that either a legacy or a rule of partition may be carried out by a will]." (translation mine)

[751] Stolze 2013: 65.

[752] Stolze 2013: 65.

[753] ፌዴራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት፤ ጌታ ትሬዲንግ ኃ/የተ/የግ/ማህበር v. የኢትዮጵያ ንግድ ባንክ፤ ሰ.መ.ቁ. 43226፤ የካቲት 7 2003፤ ቅጽ 12: 58-62 [EFSCCD Case Geta Trading Private Limited Company v. Commercial Bank of Ethiopia, Cass. File No. 43226, February 14, 2011, Vol. 12: 58-62].

[754] EFSCCD Case Geta Trading Private Limited Company v. Commercial Bank of Ethiopia 2011: 58-62].

8.5.2. Choosing between two competing legal provisions with respect to the duty imposed by "shall"

In Section 8.4.2, it has been shown that the existence of the word "shall" or the equivalent Amharic term "ይኖርባቸዋል {yənorəbačäwalə}" in a legal provision is given much weight in determining the mandatory nature of legal provisions even without a clear statement of the consequences of a violation. Against this background, the question arises as to whether the presence of the word "shall" or the statement of a clear consequence for noncompliance carries more weight in determining the mandatory nature of the obligation that the provision is intended to impose. In the case Mekuanent Werede v. Meskerem Dagnew et al., the Federal Cassation has difficulties to choose between two competing provisions of the Civil Code that should be applicable.[755] In the case, it was proved before the lower courts that the contract of sale of a house had been concluded in writing but had not been registered with a court or notary. The question to which the Federal Cassation had to find an answer was: Should this contract be declared invalid? To answer this question, the Federal Cassation had to determine whether to apply Art. 1723(1) of the Civil Code, in which no clear consequence for noncompliance is stated, and Art. 2877, which clearly states the consequence. The decision quotes both the Amharic and English versions of the provisions one after the other, but for ease of reading, I reproduce below only the English version of the provisions, as there are no meaning differences between the two versions:

> (7) A contract creating or assigning rights in ownership or bare ownership on an immovable or an [sic] usufruct, servitude or mortgage of an immovable shall be in writing and registered with a court or notary.[756]
>
> (8) A contract of sale of an immovable shall be of no effect unless it is made in writing.[757]

The "shall" in (7) is translated as "ሞሆን አለባቸው {mähonə ʾaläbačäwə} [must be]", the "shall" in (8) is translated as "ፈራሽ ይሆናል {färašə yəhonalə} [shall be invalid]".[758] In ordinary, non-legal Amharic, one would use "ሞሆን አለባቸው {mähonə ʾaläbačäwə} [must be]" when imposing an obligation as in (7). But a person who is familiar with Amharic legal language may also understand that "ፈራሽ ይሆናል {färašə yəhonalə} [shall be invalid]" in (8) is a phrase expressing obligation. It can thus be argued that the way English "shall" is translated to Amharic in the two quoted provisions does not pose a problem for a judge who interprets them. Both the Amharic and the English version are cited in the decision, possibly because the judges want to assert that the provisions are unambiguous.

One can see from the provisions in (7) and (8) that they deal with the conditions that should be met in order to conclude a valid contract of an immovable property. But the consequence

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[755] ፌዴራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት፤ መኳንንት ወረደ v. እነ መስከረም ዳኛው (አራት ሰዎች)፤ ሰ.መ.ቁ. 34803፤ ጥቅምት 27 2001፤ ቅጽ 8: 294-300 [EFSCCD Case Mekuanent Werede v. Meskerem Dagnew et al., Cass. File No. 34803, November 6, 2008, Vol. 8: 294-300].

[756] The Civil Code of The Empire of Ethiopia, Proclamation No. 165/1960, Art. 1723(1).

[757] The Civil Code of The Empire of Ethiopia, Art. 2877.

[758] See the Amharic versions of Art. 1723(1) and Art. 2877 of the Civil Code.

of noncompliance with the requirement of (8) is stated, while (7) is silent about it. Moreover, while (7) prescribes an additional condition, namely the registration of the contract with a court or a notary, (8) is silent on this.

The Federal Cassation fails to reach a unanimous decision on the question of whether the requirement of registration with the notary should be disregarded because the provision (7) does not clearly state the consequence of noncompliance with the requirement. Let us consider the majority opinion and the dissenting opinion in more detail. Both sides argue vigorously to support their position by comparing the legal provisions in (7) and (8) in order to decide which of the two contains stricter provisions and should therefore be applied to the case at hand.

(a) The majority opinion

The four judges who write the majority opinion cite a precedent previously decided before the same Federal Cassation, the case of Gorfe Werqneh v. Aberash Dubarge et al.[759] It is acknowledged in the precedent that there are two equally plausible alternatives to resolve the case.

The first line of argument would be to apply the basic Latin maxim *specialia generalibus derogant*, freely translatable as "special rules derogate from the general rules". This is a principle whereby a special statutory or code provision which diverges from the general one has the effect of derogating from it without repealing it for the limited field it covers.[760] This means practically that a judge who has to deal with a disputed special type of contract, such as a contract for the sale of a house, must first refer to the special provisions of the law on the sale of immovable property and solve by the general provisions of "Contracts in General" only what remains to be solved for lack of solution in the special law of the sale of immovable property. Since Art. 2877 in (7) is under the special section on the sale of immovable property and Art. 1723(1) in (7) is under the section containing the rules for contracts in general, applying the special law leads to the conclusion that a contract made in writing for the sale of an immovable property is valid even if it is not registered with a court or notary.

The second line of reasoning is to look beyond the literal wording of the provisions to question the general purpose served by the provisions. The Federal Cassation establishes that the general purpose of the provisions is to give better protection to the security of the transfer of contracts related to immovable property. In light of this reasoning, "Art. 1723, which establishes a stricter and more distinct requirement, should be the governing rule regarding the form in which a contract for the sale of immovable property should be concluded" (translation mine).[761] Art. 1723(1) is considered stricter than Art. 2877, not because it explicitly states the consequences of noncompliance, but because it prescribes an additional condition to what is stated in Art. 2877 of the Civil Code. Accordingly, this argument leads to the

[759] ፌዴራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት፤ ጎርፌ ወርቅነህ v. እነ ወ/ሮ አበራሽ ዱባርጌ (ሁለት ሰዎች)፤ ሰ.መ.ቁ. 21448፤ ሚያዚያ 30 1999፤ ቅጽ 4: 41-45 [EFSCCD Case Gorfe Werqneh v. Aberash Dubarge et al., Cass. File No. 21448, May 8, 2007, Vol. 4: 41-45].

[760] Krzeczunowicz 1983: 8.

[761] EFSCCD Case Gorfe Werqneh v. Aberash Dubarge et al. 2007: 41-45].

conclusion that a contract of sale of immovable property shall be invalid even if it is concluded in writing, unless it is registered with a court or notary.

In the final decision, the Federal Cassation comments that the first line of argument based on the principle *specialia generalibus derogant* should be applicable only when it is impossible to enforce the application of the special and the general provisions simultaneously. The Federal Cassation holds that the contradiction between the two provisions is only apparent. There is no contrary wording in Art. 2877 that prevents the registration of contracts of sale of immovables with a court or notary. Moreover, it states that the second line of argument respects the high importance attached to contracts related to the transfer of immovable property, without violating the special provision under Art. 2877.

The reasoning given and the conclusion reached by the majority opinion in the case Mekuanent Werede v. Meskerem Dagnew et al. is the same as in the precedent Gorfe Werqneh v. Aberash Dubarge et al.: unless the two requirements under Art. 1723(1) are met, there shall be no valid contract but a mere draft of a contract. "Even if the contracting parties have agreed and the witnesses and the parties have signed the contract on the sale of the house, Art. 1723 of the Civil Code has made it mandatory that these contracts must be registered with a court or notary for these contracts to be valid. Where there is no registration, there is no valid contract between the parties" (translation mine).[762] Whether the Federal Cassation adheres to this interpretation in other cases or applies an opposite argument to override its decision will be addressed in Section 8.5.3. Before, let us consider the dissenting opinion in the same case.

(b) The dissenting opinion

The dissenting opinion, written by Judge Ali Mohammad, argues that the contract should be declared valid. Judge Ali relies on linguistic counterarguments to support his position.[763] He examines the language used in laws governing contracts in the English and Amharic versions and tries to draw a clear distinction between permissive, mandatory and directory rules of contract. According to this opinion, permissive rules of contract only supplement the contract, presuming what the parties would have intended if they had adverted to the minor problems left unsolved. The parties are free to disregard such presumption-based rules through expressly mentioning everything they want. Obviously, failure to comply with these provisions does not affect the legality of the contract. On the other hand, mandatory provisions of the law of contract are those provisions that the parties who enter into an agreement using their freedom of contract are obliged to follow. The legislator prescribes to the parties not only what they have to do, but also the consequence, i.e. noncompliance with the strictly prescribed rules leads to the nullity or voidability of the contracts.[764]

Judge Ali also recounts that legal education in Ethiopian law schools and other scholarly writings on the subject tend to forget the third category of rules, namely the directory provisions of contract law. He argues: "We must seek to understand the source of the problem

[762] See the majority opinion on EFSCCD Case Mekuanent Werede v. Meskerem Dagnew et al. 2008: 294-300.
[763] See the dissenting opinion on EFSCCD Case Mekuanent Werede v. Meskerem Dagnew et al. 2008: 294-300.
[764] See the dissenting opinion on EFSCCD Case Mekuanent Werede v. Meskerem Dagnew et al. 2008: 294-300.

at hand by examining the appropriateness of the methods we use to answer the question of which statutory provisions in our legal system are permissive provisions, which are mandatory provisions and which are directory provisions, and identify the nature of the provisions" (translation mine).[765] As is common practice among many lawyers, provisions that use Amharic words such as "ሊሆን ይችላል {lihonə yəčəlalə} [may be]", "ሊፈፀም ይችላል {lifäṣämə yəčəlalə} [may be made]", or "የተፈቀደ ነው {yätäfäqädä näwə} [be permitted]" are considered permissive provisions; and words in the English versions such as "may", "be possible", "be permissible" and similar other words indicate that the provisions are permissive. On the other hand, provisions containing Amharic words such as "መሆን አለበት {mähonə ʿaläbätə} [must be (shall be)]", "ሊፈፀም ይገባዋል {lifäṣämə yəgäbawalə} [shall be done]", "ማድረግ አለባቸው {madərägə ʿaläbačäwə} [shall do]" and similar other expressions, and the English versions containing words like "shall", "ought to", "must", "may not" and similar other expressions are mandatory legal provisions. However, Judge Ali states that determining the nature of a provision based solely on the modal verbs used by the legislature is a misleading method. According to him, this method turns out particularly problematic when distinguishing between mandatory and directory provisions.

Therefore, a close examination of the entire provision is required, as Judge Ali argues, before determining whether it is a directory or mandatory provision. Directory provisions of contract law refer to the set of rules intended to guide society toward a desired goal and prescribe what the legislature wants when establishing or enforcing a contractual relationship. Even if directory provisions are prescriptive in nature, the consequence of the nonobservance of the conditions is intentionally left unstated in the law, and such nonobservance does not invalidate the contractual relationship. To support this argument, Judge Ali cites the dictionary meaning of "directory" in the decision: "the observance of which is not necessary to the validity of the proceeding to which it relates, statutory provisions which do not relate to the essence of things to be done, and as to which compliance is of convenience rather than substance are directory".[766] He then concludes that Art. 1723(1) of the Civil Code should be considered only as a directory provision and not as a mandatory provision for three reasons: firstly, the consequence of failure to fulfill the condition to register the contract with the court or notary has been intentionally omitted from the provision. Judge Ali quotes: "Mandatory provisions prescribe, in addition to requiring the doing of the thing specified, the result which will follow if they are not done whereas the terms of directory provisions are limited to what is required to be done."[767] Secondly, the legislator should be considered as a reasonable body that was aware that the institutional framework for the registration of contracts concerning immovable property was not yet established in Ethiopia when the Civil Code was promulgated in 1960. Therefore, Art. 1723(1) should be considered as a mere aspiration of the lawmaker in the form of a directory provision to be followed for convenience, and not as a mandatory provision with clear consequences leading to the invalidity of a contractual relationship

[765] See the dissenting opinion on EFSCCD Case Mekuanent Werede v. Meskerem Dagnew et al. 2008: 294-300.

[766] Which dictionary is cited is not mentioned in the decision. But it is a direct quotation, and no Amharic translation is provided; see the dissenting opinion on EFSCCD Case Mekuanent Werede v. Meskerem Dagnew et al. 2008: 294-300.

[767] No corresponding Amharic translation is provided in the decision. See the dissenting opinion on EFSCCD case Mekuanent Werede v. Meskerem Dagnew et al. 2008: 294-300.

concluded over immovable property. Finally, the decision taken by the majority opinion to declare the contract invalid for lack of registration with a court or notary does not fulfill the legislative purpose behind the provision; it goes beyond the task of interpreting the law and has the effect of creating new law.

Judge Ali tries to convince his colleagues that the presumption that "shall" is mandatory should be challenged especially when the mandatory "shall" defeats the intent of the legislature or infringes on the principle of separation of powers. Someone who strives to draft clear laws would agree with Judge Ali when he says that stating clear consequences for a violation in a legal provision should be a decisive factor for the distinction between the "shall" in a set of rules which are merely intended to guide the conduct of the society toward a desired goal and the "shall" in a set of rules which are absolute and must be followed immediately. Despite all argumentative efforts, the Federal Cassation could not reach a unanimous decision on whether a provision which stipulates clear consequences for a violation is stricter than one that is silent about the consequences.

8.5.3. Two competing mandatory provisions: The Federal Cassation applying the opposite argument

In a later case, Alehegn Gebrehiwot v. Atinesh Bekele,[768] that is comparable to that discussed in Section 8.5.2, the Federal Cassation reaches a contrary conclusion and bases itself on arguments that oppose those brought forward earlier. The case concerns the question of whether a contract of donation of a house that has not been registered with a notary or court should be considered a mere draft or whether it should be considered a valid document from which a right can be asserted. Art. 2443 of the Civil Code says the following about a donation relating to an immovable property. Only the English version is reproduced below.

> (9) A donation relating to an immovable or a right on an immovable shall be of no effect unless it is made in the form governing the making of a public will (Art. 881-883).[769]

The phrase "shall be of no effect" is translated with the Amharic phrase "ፈራሽ ነው {färašə näwə} [is invalid]" in the Amharic version, which can arguably be considered an even stricter obligation than "ፈራሽ ይሆናል {färašə yəhonalə} [shall be invalid]" in (8). Thus, the way the provision is translated into Amharic does not seem to have much impact on the interpretation of the provision.

For the analysis here, it is not necessary to go into the details of what is prescribed regarding the form governing the making of a public will. Suffice it to say that these provisions do not impose any special requirements for the registration of contracts of donation over an immovable property with a court or notary. It is also proved by the lower courts that the

[768] ፌዴራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት፤ አለኸኝ ገ/ሀይወት v. እነ አጤነሽ በቀለ (ሦስት ሰዎች)፤ ሰ.መ.ቁ. 39803፤ ሐምሌ 2 2001፤ ቅጽ 8: 369-372 [EFSCCD Case Alehegn Gebrehiwot v. Atinesh Bekele et al., Cass. File No. 39803, July 9, 2009, Vol. 8: 369-372].

[769] Note that a cross-reference to Art. 881-883 of the Civil Code is made in the English version as opposed to the Amharic version.

contract of donation of the house was concluded in accordance with the special form stipulated in Art. 881-883 of the Civil Code. What is interesting instead is the method that the Federal Cassation followed to resolve the case.

None of the previous decisions discussed in Section 8.5.2 are referenced in this case. However, the Federal Cassation follows the method of comparing Art. 1723(1) of the Civil Code, which is under the section containing the general rules for contracts, and Art. 2443 of the same code, which is placed under the special section on the donation of immovable property, and then decides which of the provisions is applicable to the case. It has to determine whether the additional condition prescribed in (7), namely the registration of the contract with a court or a notary, must necessarily be met in order to conclude a valid contract of donation of a house. Generally speaking, a contract of sale of an immovable property and a contract of donation of an immovable property have the same effect, as they both create an ownership right over the immovable property. This means that the general purpose of the law to give better protection to the transfer of immovable property can be assumed to be the same for both types of transfer. One would then expect that the Federal Cassation followed its earlier decision in a comparable case and decide according to the second line of arguments discussed in Section 8.5.2, unless a valid reason is given that makes the present case an exception.

Contrary to this expectation, the Federal Cassation applies the first line of arguments. The reasons given for the decision are contrary to those given in the previous case. The basic Latin maxim *specialia generalibus derogant* is taken to be the governing principle in the present case. Consequently, the additional requirement of registration with a court or notary is said not to apply to contracts of donation of immovable property, as this requirement is found under Art. 1723(1), a rule under general rules of contracts. Moreover, unlike in the previous case, the absence of a clear provision regarding the requirement of registration with a court or notary in the special provisions regulating the donation of immovable property is not considered a merely apparent contradiction. The Federal Cassation comments that the special provisions governing the donation of immovable property do not stipulate that contracts of donation of immovable property should be registered with a court or notary and therefore this requirement should not be applicable to these types of contracts. Recall that the same argument was taken as a ground to reach an opposite result in Section 8.5.2.

8.5.4. Summarizing the role of the English versions in determining translational correspondences between expressions of deontic modality

The question of what degree or form of duty the terms “shall” and “may” or their equivalents in English and Amharic prescribe, and what the consequences of a violation are, has become a particular point of contention in many court cases discussed in the previous sections. The way Ethiopian courts use the English versions to help them determine translational correspondences between expressions of deontic modality in the Amharic and English versions can be said to be unpredictable, inconsistent or even arbitrary. In Tesfahun Wagnew’s case, the Federal Cassation reads the Amharic and the English versions of Art. 78 of the Civil Procedure Code and invokes the conformity of the term “ይችላል {yəčəlalə} [can]” in the Amharic and “may” in the English version to conclude that the provision is a permissive one that can either be followed or disregarded at the discretion of the defendant (see Section

8.3.3). In Karlo Kastelie case, the Federal Cassation has used the term “shall” in the English version to transform a neutral Amharic statement, which contains no terms explicitly expressing coercion, into a mandatory provision, the violation of which entails consequences. The Yoseph Hailu General Limited Partnership case raised a controversy between the lower courts and the Federal Cassation as to whether the Amharic term “ይኖርባቸዋል {yənorəbačäwalə}”, which is the English translation of “be required”, has the same force as “shall”, carrying consequences for noncompliance. While the lower courts considered that the term yənorəbačäwalə is not strict enough to entail consequences, the Federal Cassation establishes a clear consequence for noncompliance with the provision, citing the “shall” in the English version as the reason for classifying the provision as mandatory. Interpreting “shall” in such a manner is an important line where the legal and illegal is defined. The meaning given to the term “ይኖርባቸዋል {yənorəbačäwalə}” supported by the term “shall” in the English version, makes all the difference, whether one has to serve 5 years behind bars and in addition pay a significant fine, or be set free (see Section 8.4.2).

Such an interpretation of “shall”, however, does not seem to help judges in cases where a choice has to be made between two competing mandatory provisions with “shall” for application in a particular case. Recall the heated argument among the judges of the Federal Cassation in the Mekuanent Werede case as to whether there should be a difference between, on the one hand, a “shall” provision that is to be construed as mandatory, i.e. that prescribes not only the performance of the particular act but also the consequence that will result if it is not performed, and, on the other hand, a directory provision that limits itself to saying only what is required and intentionally omits from the provision the consequence of failure to comply with the conditions. Four of the Federal Cassation judges in the case invoked teleological reasoning to argue that a “shall” in the English version of the provision at hand should be construed as mandatory even in the absence of an explicit statement of the consequences of its noncompliance, while the remaining one judge insisted that the provision should be considered a mere directory provision (see Section 8.5.2).

The Federal Cassation found it unfair to apply the same argument in the Alehegn Gebrehiwot case, a similar judgment rendered a year later. One does not find any explanation why the very same legal principle, namely *specialia generalibus derogant*, which was rejected in the Mekuanent Werede case due to the teleological reasoning used to resolve the case, is now used to justify the final decision. It is also disconcerting that previous similar cases have not been mentioned as precedent in the latter case (see Section 8.5.3). One can therefore conclude that there is no guiding method to help judges decide when to apply the principle that was used in another similar case or when to reach the opposite result by applying the counter-principle.

8.6. Conclusion

Despite the official status of Amharic as the working language of the Federal Government, and even more so despite the clear priority given to Amharic versions of Ethiopian laws over the English ones in the event of discrepancy, the cases discussed in this chapter have shown that the English versions of Ethiopian laws play a very important role in the binding decisions of

the Federal Cassation. This is evident in all cases where the English original is compared with the translated and authenticated Amharic version, the Amharic original is compared with the translated English version, or both versions are compared as translated versions with the Amharic version having a higher authority due to its authentication.

One must also evaluate the cases in light of what the Federal Cassation itself describes as the fundamental objectives of establishing a cassation system in Ethiopia, namely, the uniform application and interpretation of Ethiopian law, ensuring the supremacy of the rule of law and legal certainty, and the need to treat similar cases similarly. This requires looking at the motivations that lead judges to refer to the English versions and rely on their meaning in resolving the cases. From this viewpoint, two broad categories of cases can be formed. The first category consists of cases where the Federal Cassation cites the English version to complement the meaning in the Amharic version. This includes cases in which the English version is cited to show that the meaning of the Amharic and English versions is identical, and to use the English version as additional support to prove that the interpretation chosen by the court is correct. Cases in which the English version is cited to make uncommon and technical terms newly coined in Amharic more understandable or easier to comprehend, and those which intend to establish the Amharic translations as proper legal terms by repeatedly equating them with their English equivalents in brackets, can also be included in this broad category. The second category is one where the English version is cited to correct the meaning in the Amharic version. The Federal Cassation does this when the Amharic version contains substantial translation errors or terms which are functionally inequivalent compared to the ones in the English version, when a narrow term in the English version qualifies a broad term in the Amharic version and gives the provision a more precise meaning that serves as an answer to the question disputed by the parties, or when the interpretation of the modal expression “shall” as a mandatory provision better suits the interpretive result sought by the judges.

In the first category of cases, the legitimate expectation of citizens to rely on the Amharic version, one of the basic elements of legal certainty, is assumed to have been met, because the meaning of the Amharic versions is not altered by the one in the English versions. One can also conclude that finding a meaning in the English version that complements or confirms the meaning in the Amharic version is in the spirit of achieving uniform interpretation of Ethiopian law, especially if one considers both versions as expressing a single legislative intent in different linguistic forms. Nevertheless, one can still question the motivation for relying on the English version for the final decision of the case in which the English version is cited to show that the meaning of the Amharic and English versions is identical. Is the Amharic version not authoritative enough to conclude that the term “ይችላል {yəčəlalə} [can]” in the Amharic version is an optional clause? Perhaps the motivation for citing the English version in such cases is rooted in the judges’ legal training in English, which influences their judgment about the correct interpretation of the particular legal provision. However, this last point on the role of the Ethiopian legal education in the decision-making process is only a preliminary conclusion that needs to be verified by further research.

As to the second category of cases, the English version serves the important function of providing additional context for understanding the Amharic version of the provision being

interpreted and enabling the judges to resolve the cases on the basis of better reasoned opinions. This can be argued to be enhancing legal certainty, because legal certainty also includes a reasonable person's expectation that the authorities act reasonably and in accordance with the law.[770] Furthermore, in some of the cases in which the meaning of the Amharic version is replaced by the one in the English version, the Federal Cassation supports its interpretation with teleological reasoning, setting forth the general purpose of the law in which the provision is contained and explaining how that interpretation furthers that purpose. Sometimes a systematic method is also applied to justify that the meaning of the English version is preferable to the Amharic one. The meaning ultimately used to resolve such cases can thus be argued to be the result of the Augustinian approach, which allows judges to draw more clues from the clearer version of the same provision to interpret the more ambiguous one, and thus construct one common purpose of the law. Focusing on the general purpose of the law and linking the final decision to that purpose has a symbolic advantage in that it suggests that the meaning of the authoritative Amharic version is interpreted differently to fit the general purpose of the law.

But still, since the interpretive process has the effect of overriding the meaning of the authoritative Amharic versions, it could also be argued that it leads to greater unpredictability in the interpretation of Ethiopian law and thus runs counter to the legitimate expectation of citizens to rely on the Amharic versions. Moreover, one notices that the objective of treating similar cases similarly is not achieved in many cases in which the English versions are cited to determine translational correspondences between expressions of deontic modality in the Amharic and English versions. The Federal Cassation often advances on the interpretation that the duty imposed by "shall" is absolute even when there is a legal provision that does not expressly state the consequences of noncompliance or even when the Amharic version is constructed with a neutral statement not containing terms that explicitly state compulsion or obligation. In some other cases, however, where the interpretation of the modal expression "shall" does not seem to correspond to the interpretive result sought by the judges, other justifications are given to reach a different result. Therefore, legal multilingualism, despite its disadvantages in multiplying the indeterminacy of law, also offers the court an opportunity to determine the meaning of the law from different linguistic angles.

[770] Paluszek 2013: 102.

Chapter 9. Conclusion

Although there are countries in the world that have not granted official status to any language in their territory by law, the default assumption since the end of the 20th century is that legislation should regulate which language(s) may or must be used for public purposes. The importance of laws regulating official language use cannot be underestimated, since any modern polity, be it a state or a supranational entity such as the European Union, is confronted with the problem of linguistic diversity and this diversity must be carefully managed. Laws governing official language use primarily address the questions of which languages should be used to draft and publish laws as well as the status that should be accorded to a specific language version during legal interpretation by courts. These laws in turn create legitimate expectations of citizens regarding which laws govern their actions. They also regulate the government's reciprocal duty to ensure that citizens know the laws in a language they understand. Courts promise to fulfill this legitimate expectation of citizens and ensure legal certainty by presuming that citizens know the extent of the obligations imposed on them by a particular law and foresee its consequences when they refer to a law written and officially published in a language they understand.

The main premise of this research project was that laws on official multilingual use serve a similar function of regulating linguistic diversity in a given territory and governing the conduct of institutions involved in law-making and legal interpretation with regard to their language use. In this sense, the structural problems faced by the Ethiopian and EU legal systems and language regimes are functionally similar, as both systems regulate their linguistic diversity and decide on which languages are to be officially recognised, which languages are to be used in lawmaking and what authority each language version of a law is to be granted when the courts interpret the multilingual laws. Based on the above premise, the following three central questions were raised to assess the language and legal regimes of the EU and that of Ethiopia in a comparative perspective: (1) What factors shaped the laws on official multilingualism in the EU and in Ethiopia? (2) How do the laws on official multilingualism in each system guide multilingual lawmaking processes? (3) How do courts in a multilingual environment meet the legitimate expectations of citizens created due to laws regulating official language use? The following sections summarize how the study attempted to answer each question and draw conclusions.

9.1. What factors shaped the laws on official multilingualism in the EU and in Ethiopia?

This study has treated the laws governing official language use in Ethiopia to be functionally equivalent to those governing official multilingualism in the EU. The study found that in both language regimes, the choice of official or working language(s) has historical roots and lasting effects on the language legislation of the respective polities. However, the social, historical and political factors that have shaped official multilingualism in the two systems are different, and these differences explain how official multilingualism was established in each system and why there are differences in the status of the languages that receive official status.

The EU is the most officially multilingual polity in the world and has been addressing multilingualism from its inception until today, i.e. for more than seven decades. The European Economic Community was launched in 1957 as a project after two major world wars had broken out in Europe within a span of around thirty years. Former wartime adversaries who sought change and were guided by the vision of creating a supranational entity sat at the same table as founding members of the Community. One of the means of granting a level playing field to all founding members was the recognition of the right to use their own official languages.[771] All four official languages of the six founding member states were therefore considered equal for all purposes, and linguistic equality has since become a practice through the inclusion of all primary languages of the Member States as official EU languages. In this sense, the official multilingualism in the EU can be seen as the result of a political crisis that led to the vision of creating a supranational entity to prevent a crisis of a similar magnitude.

Apart from this historical reason, official multilingualism is maintained to reflect the political structure of the EU as a supranational polity that balances equality of states (as do inter-governmental organizations) and equality of citizens (as do sovereign states).[772] All citizens of EU Member States enjoy electoral rights and are directly bound by EU legislation, which also applies before the national courts of the Member States. This makes it necessary that the respective official languages of each Member State are used for direct communication with its citizens.

The historical factor that led to official multilingualism in Ethiopia is somewhat similar to that of the EU in the sense that it resulted from a severe political crisis triggered by war. The crisis in Ethiopia was partly ignited by the resentment of non-Amharic-speaking ethnic groups against linguistic assimilation and the suppression of Ethiopian languages other than Amharic. The roots of this crisis, in turn, go back to the emergence of the modern Ethiopian state. The state expanded during the era of Emperor Menilek II (1889-1913) from the northern Ethiopian highlands, where Amharic was spoken, to the southern borders of today's country. Through this process, many ethnic groups that did not speak Amharic were integrated into the Ethiopian Empire. Amharic, however, remained the instrument to link the newly incorporated areas with the central government.[773] Both the revised Ethiopian Constitution of 1955 and the 1987 Constitution of the People's Democratic Republic of Ethiopia declared Amharic to be the official language of the entire state. Ethiopia therefore promoted official monolingualism until the fall of the military government in 1991, with Amharic being recognized as the only official language throughout the country.

The military struggle of the ethnically organized groups finally led to the fall of Ethiopia's military government popularly known as the Derg in 1991, the adoption of the 1991 Transitional Charter and the subsequent adoption of the FDRE Constitution in 1995, which claims to grant equality to all of the 91 languages that are spoken according to current counts as mother tongues on its territory.[774] The coalition of ethnically oriented political parties, the

[771] Orban 2008.
[772] Leung 2019: 103.
[773] Cohen 2000: 79.
[774] Eberhard et al. 2022.

Ethiopian People's Revolutionary Democratic Front (EPRDF), which governed Ethiopia thereafter for around 3 decades, wanted to send a clear signal of the change of political regime and intended to build a new national identity. A series of measures that drastically changed the rules governing language use were taken: the unitary form of government was replaced by a federation whose member states are mostly demarcated by ethnolinguistic borders; the equality of all Ethiopian languages was constitutionally recognized; Amharic was demoted from the official language of the entire state to the working language of the Federal Government; and finally, member states forming the federation were constitutionally granted the power to choose their own working languages. Official multilingualism in Ethiopia is therefore the result of an effort to strike a balance between the equality of ethnic groups through the elimination of historical injustices and the recognition of their linguistic equality on the one hand, and the continuity of the role of Amharic in building a viable country on the other.

Another similarity between the two language regimes being compared is that both simultaneously promote and restrict multilingualism. In other words, professing equality among all languages and the simultaneous selection of some languages for a special function is a common phenomenon in the EU and the Ethiopian official multilingualism. Based on the principles of equality of Member States and equality of all official languages, Art. 1 of Council Regulation 1/1958/EEC lists the 24 official languages of the Member States of the EU and designates them as the official and working languages of the European institutions.[775] All EU official languages are used for legal functions such as the publication of legislation and other documents of general application. But at the same time, the case law of the Court of Justice of the European Union (CJEU) has interpreted Art. 6 of the above Council Regulation to the effect that European institutions can choose their working languages "for specific cases" by stipulating such a choice in their Rules of procedure or by providing an objective justification for this choice of languages.[776] This contradiction enables the EU official multilingualism to be flexible enough to allow the assertion of equality among official languages and the simultaneous designation of some official languages as working languages (see Section 3.2.3).

The different EU institutions have different linguistic preferences, which they have developed in practice. In the European Central Bank, only English is used as a working language. The European Commission uses only a limited number of official (also referred as procedural) languages for its internal functions, mainly English, followed by French and, to a lesser extent, German.[777] French is used as the working language of the CJEU, and Member States are encouraged to appoint only judges who have a knowledge of French.[778] Although parties to a case have the right to choose between one of the 24 EU official languages as their language of the case, the judges deliberate exclusively in French. All other versions, including the one in the language of the case, published in the European Court Reports and available at the Court's database, are translations. If discrepancies are found between the French version and

[775] Council Regulation No. 1/1958, last amended 2013.
[776] CJEU Case C-566/10 P, 2012; see also CJEU case T-275/13, 2015; CJEU Case T-124/13, 2015; CJEU Case T-148/13, 2013.
[777] Voslamber 2018: 338.
[778] Schilling 2011: 1469.

that of the language of the case, it is considered a translation error and corrected accordingly. This means that there are a few languages that have a special role and status among equal languages.

In a similar manner, Art. 5(1) of the FDRE Constitution also proclaims that all the approximately 91 languages in Ethiopia spoken as mother tongues have equal official status. As a clear sign of the equality of all ethnic groups in the country, the constitution grants them the right to develop their languages. The explanatory note of the Constitution specifies that "all languages, without being classified as high or low in any respect, are accepted as languages of daily communication, public offices, education, and the courts".[779] However, this assertion is qualified in Sub-art. (2) and (3) of Art. 5, which selects Amharic as the working language of the Federal Government and grants the Regional States the authority to choose their own working languages. The symbolic equality status that the constitution grants all the 91 languages cannot, for practical matters, guarantee their use in the legislature or the judiciary.

The language arrangement created by the FDRE Constitution and the regional (subnational) constitutions adopted by the Regional States, essentially promotes the territorial autonomy of ethnic groups and enables the so-called territorial multilingualism to prevail. As laid out in Chapters 2 and 4, territorial multilingualism is an arrangement based on a principle according to which public authorities establish an official language regime in their territory or in a part thereof and determine which language(s) is/are to be used in the public sphere, i.e. in the administration, in the courts and in the schools.[780] Under this arrangement, six Ethiopian languages, namely Oromo, Tigrinya, Somali, Afar, Harari and Sidaama are used as working languages at regional levels. Upon the adoption of the 2020 language policy by the Federal Government, which envisions having five federal working languages, all the above Ethiopian languages except Harari and Sidaama are anticipated to be elevated to federal working languages. This means that these languages will have equal official status with Amharic, at least at the federal level.

Nevertheless, since a policy does not have a binding force, Amharic continues to be the sole working language of the Federal Government. In addition, five of the eleven Regional States as well as two City Governments that make up the Ethiopian Federation have designated Amharic as the working language of their respective regions in their regional constitutions and city government proclamations. Even in the Regional States that have adopted languages other than Amharic, laws are published in Amharic, along with the English version and the version in the regional working language. Currently, Amharic is the mother tongue of about a third of the population and the lingua franca in large parts of Ethiopia.

It can hence be concluded that the application of the principle of equality of all languages in the official multilingualism of Ethiopia and the EU is governed by a contradiction which aims to regulate language rights and language restrictions simultaneously and which makes some languages "more equal" than others. But the criteria used for selecting special languages are different from the one for professing equality of all the recognized languages in both language regimes. While a justification based on the principles of equality of all ethnic groups in the

[779] Explanatory note to the 1995 Ethiopian Constitution.
[780] Van der Jeught 2017: 181.

case of Ethiopia or equality of Member States and equality of all official languages in the case of the EU is sufficient to proclaim equality of all languages, other special factors interfere to justify the choice of a language for special purposes. The most widely used languages in the different EU institutions, i.e. English, followed by French and German, have comparatively better currency in the linguistic market of the EU, again due to linguistic demographics and the geographical reach of these languages. The historical and institutional reasons that explain why the CJEU was influenced by the French language and the French judicial model are also relevant justifications that fit into this discussion.

Likewise, the choice of six working languages by the Ethiopian Regional States is due to the fact that these languages are spoken by the dominant ethnic groups in the respective Regional Governments. The remaining Regional States have chosen Amharic as their working language because the regions are so ethnically heterogeneous that choosing one language or another within the regional boundaries causes problems, so Amharic is considered neutral for all the ethnic groups. Designating Amharic as the sole working language of the Federal Government was due to the longer writing tradition of the language in comparison to others, the high number of primary and secondary speakers and other pragmatic considerations. Historical reasons that led to the use of Amharic as a common language across ethnic groups and as a means of national unification as well as identity formation also play a significant role. In fact, the historical role of Amharic is not a unique feature of Ethiopian history. Many nations of the world, including France promoting French and the United States opting for English, as well as most African countries choosing the languages of the former colonial powers followed the same route.

Finally, one difference in the way the contradiction is managed in the EU and the Ethiopian language regimes must be noted. Although the EU institutions have the right to choose their working languages “for specific cases” by specifying such a choice in their Rules of procedure, none of the institutions has enacted clear legislation to this effect. It is only the practice of the different institutions that shows the chosen languages “for specific cases” such as posting notices for open competitions or preparing a base text for deliberation during legislative drafting. In contrast, Ethiopia manages this contradiction through the constitutions at both the federal and regional levels. The working languages are all specified in the federal and regional constitutions. Nevertheless, this contradiction in both the EU and the Ethiopian official multilingualism is meant to achieve a similar goal, i.e. to be flexible enough to assert the equality of all languages and to simultaneously designate some languages for special functions. Any study of a country’s official multilingualism must therefore go beyond the legal provisions and consider the historical, political and social aspects that contribute to its functioning.

9.2. How do the laws on official multilingualism in each system guide multilingual lawmaking processes?

Laws regulating official multilingualism are primarily concerned with the question of which languages should be used in the drafting and publication of laws and what status the language version should have in the interpretation of the law by courts. In order to examine the

question of how laws regulating official language use guide multilingual lawmaking processes, this study has taken the legislative process of the Ethiopian Federal Government to be functionally equivalent to the ordinary legislative procedure of making EU legislation in EU institutions. To facilitate the comparison, the term "legal multilingualism" has been proposed, following previous scholarly work on this topic, to refer to "the situation where legal systems function in two or more languages".[781] Accordingly, multilingualism in the EU was presented as a system representing strong legal multilingualism, where all official language versions of a law are equally authentic. On the other hand, Ethiopian multilingualism was presented as a system representing the weak variant of legal multilingualism, namely a system where there is only one authentic language version of a law which prevails in case of any discrepancy.

From the way the two systems are classified, it appears at first glance that they constitute two opposing systems of legal multilingualism. However, a closer study of the two systems has revealed a more varied picture and certain similarities between the two systems have been identified. After examining the institutional procedures and practices of drafting and publishing laws, this study concludes that the legal history of the polity in which the institutions are located, as well as practical considerations affecting the language arrangement for communication purposes, are as important factors as, or even more so than, the legal provisions governing official language use. This is true for both the EU and the Ethiopian legal systems and language regimes.

The equal authenticity of EU legislation, which is directly related to ensuring the equality of Member States and their official languages, has been present since the very beginning of the EU project, when the parallel drafting of legislation with six Member States and four official languages was still a feasible option. Currently, the EU has not six but 27 Member States and not four but 24 languages. If parallel drafting was maintained today, this would result in an ideal situation in which all 24 official languages of the EU would be used from the drafting of all EU legislation up to the publication of equally authentic language versions. In contrast, Ethiopia was officially a monolingual country until 1991, with Amharic as the only officially recognized language, which meant that laws were drafted and published only in Amharic. Under the 1995 FDRE Constitution, all 90+ mutually unintelligible languages spoken as mother tongues are considered equal for all purposes, which should ideally lead to a situation in which all Ethiopian citizens have access to laws published in their own mother tongue. However, none of the above situations reflect the reality of how laws are drafted and published in both systems.

For political and historical reasons discussed in Section 9.1, all instruments of primary and secondary EU law must be considered equally authentic for purposes of interpretation. Yet, to say that all versions of a legislation are equally authentic does not mean that they are created simultaneously in all 24 official languages. When new Member States join the EU, for example, they translate all EU laws in force at the time of their accession exactly as they find them and declare these translations to be authentic and on an equal footing with the other

[781] Leung 2019: 18.

language versions. What the new Member States consider to be an equally authentic language version is therefore a translated original version of the law.

One finds the procedure of accepting a "translated original" version as authoritative in the Ethiopian legal system, which was officially monolingual. This is due to the special role that English, and to some extent French, have played in Ethiopia for decades and continue to play today, without being accorded a clear official status dictated by overarching laws such as the constitutions.

The spread of foreign languages, including French and English, began with the introduction of Western education in Ethiopia in the early 20th century.[782] Initially, it was decided to use English as the primary language of instruction at all levels of education. However, in the early 1950s, Amharic replaced English and was introduced as the language of instruction in elementary schools. English was maintained as a subject at all levels and remained the language of instruction in secondary and higher education, including legal education.[783]

In addition to its role in legal education, English has also served as the language of law from the modernization of the Ethiopian legal system in the 1950s to the present. Bilingual or even trilingual lawmaking has therefore been an important feature of the Ethiopian legal system since 1950s. As shown in Chapter 5, early experiences with multilingual lawmaking in Ethiopia, which began with the codification of the first six main codes in 1950s, was complex and consisted of several successive steps: a wholesale transplantation of the rules from a mixture of common and civil law legal systems, the drafting of the texts in French or English, the translation of the draft texts into Amharic and English, a series of discussions and deliberations on the proposed content of the codes, and the final adoption by the National Parliament of the translated Amharic version as the only authentic version. Thus arose a mixed Ethiopian legal system in which three languages meet: Amharic, English and French. Whereas the French master texts were never published and are therefore not accessible, official English versions of the Codes were published in the Negarit Gazeta.

Six comprehensive codes were drafted by foreign experts in French or English, but it is the translated original Amharic versions that were finally adopted as law in the National Parliament. What is unique to the Ethiopian case is that the translated original Amharic versions are given even higher authority than the original French or English versions. In other words: While the EU system does not distinguish between the version in which the legislation was originally drafted and the translated original, the Ethiopian National Parliament adopted the translated originals as authoritative versions, which means that the meaning of the translation may even override the meaning of the English original due to the status of Amharic as the only national language of the entire state at the time.

Even though all language versions of EU legislation remain equally authentic once published, Euro-English has become the de facto working language in EU legislative institutions, including for negotiations and drafting – not because this is politically or legally feasible, but only because institutional language needs to be simplified for communication purposes, efficiency

[782] Daniel 2021: 296.
[783] Michael 1995: 43-44.

and due to the time constraint when drafting laws.[784] The base legislative text is therefore drafted in Euro-English and then translated into the other official languages, which finally become equally authentic versions. In this sense, the EU's de jure multilingualism is facilitated by the use of English as a lingua franca, thereby resulting in a tendency towards de facto monolingualism. But still, several language versions may often already be in play at the drafting stage, even if the original text is mainly negotiated in Euro-English.[785]

Similarly, English has a more far-reaching influence than what is prescribed in law in Ethiopia, but due to other practical reasons. The FDRE Constitution designates Amharic as the only working language of the Federal Government. It would not be politically acceptable for the FDRE constitution to give English the same status as Amharic or any other defined status. A law enacted by the House of People's Representatives (HPR), a federal legislative body, however, requires that federal laws be published in Amharic and English, and that in the event of any discrepancy between the two versions, the Amharic version takes precedence.[786] The recent Higher Education Proclamation issued in 2019 also provides that the "medium of instruction in any institution, except possibly in language studies other than the English language, shall be English".[787]

The role of English as a globally influential language makes its impact on the Ethiopian legislative process even greater. The Ethiopian legal system is still a developing legal system, and many concepts have continued to be adopted from globally more influential legal systems through transplantation and translation into the Ethiopian legal system. As this study has revealed, some initial draft laws are even prepared entirely in English and only later translated into Amharic for deliberation by the Council of Ministers and then by the Parliament. In most cases, however, federal laws are drafted in Amharic, and the production of the English translation takes place before the draft laws enter into the wider legislative procedure. The Parliament deliberates in Amharic, but every correction, amendment and insertion made in the Amharic version has to be included in the English version in parallel. The consistency between the two versions is checked before they are published in the Negarit Gazeta. This shows that the translation is produced in the early stages of the Ethiopian legislative process and then continuously checked by the different bodies involved in the process up to the publication stage, thereby leading to the impression that both the Amharic and English versions are expressions of a single legislative intent in different linguistic forms.

Finally, both systems compared face the challenge of legal translation, albeit to different degrees in terms of the complexity of the translation process. The number of languages involved in the translation process as well as the overall structure of the EU system obviously increase the complexity of the process. In addition, as Šarčević remarks, the EU legal system is a developing legal system that "continues to be dependent on the legal systems of the Member States".[788] One can therefore consider translation in the EU legal system not as a translation within one legal system, but as a translation across the twenty-seven legal systems

[784] Otero Fernández 2020: 215.
[785] Engberg 2014: 148.
[786] Federal Negarit Gazeta Establishment Proclamation, Art. 4.
[787] Higher Education Proclamation, 2019, Art. 19(1).
[788] Šarčević 2013: 9.

of the EU Member States. What an outsider might consider an inconsistent wording or an unusual formulation in EU law may not be due to an error on the part of the EU translator but due to the translator's conscious decision to reconcile various divergent interests. One can therefore conclude with certainty that the unique position of translators in the EU legal structure and their role in drafting legal texts to achieve the goal of a single legal text in many languages is one that has no equivalent at the global level.

Due to the lack of available data, it was difficult to systematically reconstruct whether the legal translators involved in Ethiopia's legal modernization process in 1960s had the necessary background knowledge to adequately translate the legal and linguistic content of the source languages to Amharic and whether they understood the legal traditions from which the provisions of the codes originated. However, from the sketch of the triangular comparison between the French, English and Amharic versions presented in Section 5.6, one can conclude that poor legal translations cause problems in the law codes, such as the inability of the translated texts to reflect the underlying purpose of the law and their inability to convey the abstract concepts of the original French versions. The Ethiopian legal translation process therefore seems to have been confronted with the difficulty of finding terminological equivalents, since Amharic (the target language) was less frequently used as a legal language at that time. Legal translation continues to be a challenge in recent Ethiopian laws that are enacted in Amharic and English, as evidenced by cases that ended up in court and were decided by the Federal Cassation due to discrepancies between the two versions.

9.3. How do courts in a multilingual environment meet the legitimate expectations of citizens created due to laws regulating official language use?

Paluszek defines the principle of the protection of legitimate expectation as "a principle according to which a reasonable person is able to predict the legal consequences of his or her behavior and expect the authorities to act fairly and reasonably, according to the law".[789] A reasonable person is presumed to be able to foresee the legal consequences of his conduct and to expect the authorities to comply with the law if the law is written in an understandable language, clearly formulated and published officially. In a polity where the official use of language is regulated by law, any law should be considered an enforceable law only if it is written in a language designated as the official or working language of the legislative body of the state in which the citizen lives. This assertion leads to the assumption that citizens know the extent of the obligations imposed on them by the law and foresee the consequences of a particular instrument relying on the version of their own official language. This means that laws governing official language use create legitimate expectations of citizens regarding which laws govern their actions and also regulate the government's reciprocal duty to ensure that citizens know the laws in a language they understand.

However, the principle of the protection of legitimate expectations, which presupposes the foreseeability of the application and effects of laws, is difficult to fulfill, given the nature of the law, even in legal systems where the law is written in only one language. Legislators in any

[789] Paluszek 2013: 102.

legal system are inherently incapable of predicting and abstractly assessing all possible cases that might arise in the future. In addition, due to the inherent nature of language used in law, the application of laws always tends to deviate from what was predicted by the legislators. Multilingual lawmaking and interpretation makes this even more complex, an aspect this study has addressed.

This study has established functional equivalence between the CJEU, the only organ within the EU with competence to settle the meaning of enacted EU legislation for the whole EU territory, and the Ethiopian Federal Cassation, the only body responsible for passing judgments that are binding on all lower courts throughout Ethiopia, with the aim of achieving uniform interpretation of Ethiopian law. The dichotomy between strong and weak legal multilingualism developed in previous scholarly works on this topic[790] has been used in the study to facilitate comparison of the two systems in terms of how courts in both systems meet the legitimate expectation of citizens when interpreting multilingual laws.

In the EU's strong legal multilingualism, the 24 language versions are assumed to have identical meaning, which is at odds with the inherent nature of language. Two main questions can be raised: First, how does the CJEU gives equal weight to all 24 equally authentic language versions while achieving a uniform interpretation of EU law; and second, how can the right to legitimately rely on one's own language version be reconciled with the need for uniform application of EU law when there are differences in meaning between the different versions? The CJEU considers several interests in its task of achieving uniform interpretation of EU law and ensuring legal certainty. It takes the strict view that the failure to publish a law in a particular official EU language renders it unenforceable against individuals in that Member State.[791] However, the requirement of publication of a law does not imply that individuals have the right to refer to and observe only the version drafted in their own official language. To be sure, the Court protects the parties' legitimate expectations by remedying the harm caused by their reliance on the official language version of their choice in some exceptional cases such as the HX case.[792] In this latter case, the Court has attempted to eliminate the ambiguity that caused the harm by interpreting the ambiguous language version in light of the other, clearer versions. In the majority of cases discussed in Chapter 6, EU citizens are guaranteed the right to rely on a single language version only to the extent that the meaning in this language version does not conflict with the other versions.

Although the principle of equal authenticity seems to imply that none of the language versions is to be disregarded or preferred, a close examination of the CJEU's judgments, in particular the process by which judges find a common core of meaning by comparing the different language versions, reveals that the meaning in one or more language versions is preferred or rejected for different reasons. The CJEU disregards the right to rely on one's own official language version, particularly in cases where an interpretation would lead to a different

[790] See Schilling 2011 and Leung 2019.
[791] CJEU Case C-161/06, 2007.
[792] CJEU Case C-423/16 P, 2017.

application of EU law in different Member States and would undermine the effectiveness of EU law.[793]

In some cases, the Court is confronted with situations in which only one or a few language versions have meanings that contribute to the interpretation of the provisions in the language of the proceedings that raised the linguistic problem in the first place. These circumstances compel the Court to give preference to the clearest meanings in the few language versions and to interpret the other versions in light of those few language versions. But in other cases, the Court has rejected arguments from parties who asked the Court to ignore a meaning suggested by language versions that represent only a small portion of the EU population.[794]

The need to uniformly interpret and apply all 24 language versions of primary and secondary EU law therefore overrides the right of citizens to their own language and requires that each language version be interpreted and applied in light of the versions in the other official languages. Ironically, the equality granted to speakers of all 24 official EU languages is one of equal obligation to read legislation in a language other than their own. This means that a person relying on the law cannot reasonably rely on only one language version, as the interpretation based on one or more language versions may lead to disregarding the ordinary meaning in the other version. In this sense, it can be assumed that cases in which judges are confronted with different language versions of a law when resolving disputes pose a challenge to fulfilling the legitimate expectation of citizens and affects legal certainty, since no single language version can be fully trusted.

Nevertheless, what is common in most cases is that the Court identifies the general purpose of the statute and ties the ultimate conclusion to that purpose when deciding the case. This has a symbolic advantage, to say the least, in that it gives the impression that none of the languages are disregarded or favored in the construction of a meaning. One can therefore argue, following what Paunio states, that "the result of the interpretive process is perceived as correct insofar as the reasons given to justify the decision are convincing".[795] From this point of view, the EU multilingual legal system offers a workable certainty, sufficient flexibility and reasonable predictability. This view magnifies the contextuality of law rather than the notion of objectivity in adjudication and hiding behind the text.

In the weak legal multilingualism of the Ethiopian system, several linguistic and legal factors interfere in the decisions of the Federal Cassation to cause the non-authoritative English version to override the meaning of the authoritative Amharic version, even though there is a rule to the contrary in laws regulating official language use. In a particular case discussed in Sections 1.1 and 7.4, the constitutional provision designating Amharic as the only working language was not compelling enough to annul a law that was drafted only in English and not in Amharic.[796] For the Federal Cassation, annulling a law simply because it is not written in Amharic would disrupt the stability of the existing practice of drafting and publishing

[793] CJEU Case 35-75, 1975; CJEU Case C-236/97 1998.

[794] CJEU Case C-296/95, 1998: paras. 36-37; see also CJEU Case C-5/05, 2006: para. 40; see also Opinion of Advocate General Kokott on Case C-423/16 P, HX v. Council of the European Union, 2017: paras. 36 ff.

[795] Paunio 2013: 112.

[796] EFSCCD case, Ethiopian Revenue and Customs Authority v. Daniel Mekonnen 2010: 341-345.

directives issued by government agencies in Ethiopia. This strong role of English is also confirmed in other binding decisions rendered by the Federal Cassation in which the Amharic version is compared with the English versions. This role is evident in all cases discussed in Chapter 8 where the English original is compared with the translated and authenticated Amharic version, the Amharic original is compared with the translated English version, or both versions are compared as translated versions with the Amharic version having a higher authority due to its authentication.

Based on the motivations that lead the judges of the Federal Cassation to refer to the English version and to rely on its meaning in deciding the cases discussed in Chapter 7, two broad categories of cases can be formed: relying on the English version to correct the meaning in the Amharic version and citing the English version to complement the Amharic meaning. The judges rely on the English version to correct the meaning in the Amharic version when the latter contains substantial translation errors or terms which are functionally inequivalent compared to the ones in the English version, when a narrow term in the English version qualifies a broad term in the Amharic version and gives the provision a more precise meaning that serves as an answer to the question disputed by the parties, or when the interpretation of the modal expression “shall” as a mandatory provision better suits the interpretive result sought by the judges.

Similar to the practice of the CJEU, the Federal Cassation supports its interpretation with teleological reasoning in some of the cases in which the meaning of the Amharic version is replaced by the one in the English version. Sometimes a systematic method is also applied to justify that the meaning of the English version is preferable to the Amharic one. Here too, setting forth the general purpose of the law in which the provision is contained and explaining how that interpretation furthers that purpose helps convey the message that the judges are not violating the rule of interpretation that gives precedence to the Amharic version but are interpreting the law to serve its purpose. But still, since the interpretive process has the effect of overriding the meaning of the authoritative Amharic versions, it could also be argued that it leads to greater unpredictability in the interpretation of Ethiopian law and thus runs counter to the legitimate expectation of citizens to rely on the Amharic versions.

In contrast to the above cases where the English version is cited to correct the meaning in the authoritative Amharic version, the Federal Cassation cites the English version to complement the meaning in the Amharic version in order to show that the meaning of the Amharic and English versions is identical, and to use the English version as an additional tool to prove that the interpretation chosen by the court is correct. Cases in which the English version is cited to make uncommon and newly coined technical terms in Amharic easier to comprehend, and those which intend to establish the Amharic translations as proper legal terms by repeatedly equating them with their English equivalents in brackets, can also be included in this broad category. In these cases, one can safely conclude that the legitimate expectation of citizens to rely on the Amharic version, one of the basic elements of legal certainty, is assumed to have been met, because the meaning of the Amharic versions is not altered by the one in the English versions. One can also conclude that finding a meaning in the English version that complements or confirms the meaning in the Amharic version is in the spirit of achieving uniform interpretation of Ethiopian law, especially if one considers both versions as expressing

a single legislative intent in different linguistic forms. It is my hope that the cases discussed in Chapter 8 for illustrative purposes stimulate further research that recognizes the practical role of the English version of Ethiopian laws in both lawmaking and legal interpretation, and raise awareness among legal scholars of the bilingual and sometimes trilingual nature of Ethiopian laws.

In conclusion, the comparative approach I have taken in addressing this topic, and my effort to bring the Ethiopian legal system and its language regime closer to the addressees of this thesis who may not be familiar with it, have helped me to reflect on and generate genuine understanding of the legal system of my own country. The most important insight I can leave readers with is that official language laws serve more functions than the purposes set forth by the legislator, and thus any study must understand the interplay of the different institutions, which sometimes conflict with one another, in implementing the laws on official language use. I also hope to have shown that the official multilingualism in the two compared systems is a response to challenges that are unique to each system, and future research on laws on official language use must be done in the light of their functional relation to the particular society in which the institutions implementing the laws are found.

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List of interviewees

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Belachew Driba, head of Legal Department, Ethiopian Federal Ministry of Culture & Tourism, August 5, 2021: file with the author.

Gidisa Fayera, Public Prosecutor, West Shewa Zone Justice Department, Oromia Regional State, telephone interview, September 20, 2022: file with the author.

Sobotta, Christoph. Legal Secretary (Référendaire), Chambers of Advocate General Juliane Kokott, CJEU, online interview, March 23, 2022, file with the author.

DEGINET WOTANGO DOYISO

Lebenslauf

1. Ausbildung

09/2019-07/2023	Universität zu Köln, Lehrstuhl für US-amerikanisches Recht
	Doktorand und Promotionsstipendiat des DAAD Doktorvater: Prof. Dr. Kirk W. Junker
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	Doktorverteidigung: 05.07.2023, Note: magna cum laude
Sommer 2022:	Universität zu Köln, Akademie für europäischen Menschrechtsschutz (Prof. Dr. Angelika Nussberger)
	Schwerpunktseminar im Internationalen Menschenrechtsschutz
	Titel der Hauptseminararbeit: *Human Disability Rights in the Case Law of the European Court of Human Rights: Evolving Trends*
	Note: 13 Punkte
11/06-22/11/2022	Universität zu Köln, Europäische Rechtslinguistik (Prof. Dr. Isolde Burr-Haase)
	Cologne Summer School for European Legal Linguistics (CSS-ERL)
	Aufgabe: Simulation der Position des Rates der Europäischen Union im laufenden ordentlichen Gesetzgebungsverfahren zur Anwendung des Grundsatzes des gleichen Entgelts für gleiche oder gleichwertige Arbeit zwischen Männern und Frauen durch Lohntransparenz und Durchsetzungsmechanismen
10/2012-07/2014	Ethiopian Civil Service University, Addis Abeba, Äthiopien
	Master-Abschluss in Comparative Public Law and Good governance (LLM), Betreuer der Forschung: Dr. Christophe van der Beken
	Titel der Masterarbeit: *Subnational Constitutional Amendment and Revision Processes in Ethiopia: The Oromia National Regional State in Comparative Perspective*
	GPA 3.92 (von 4)

10/2002-08/2007	Addis Ababa University, Addis Abeba, Äthiopien: Bachelor-Abschluss in Rechtswissenschaften (LLB) GPA 3.10 (von 4)
09/1998-06/2001	Durame Senior Secondary School, Durame, Äthiopien Äthiopisches Abitur (ESLC)

2. Stipendien, Preise und Weiterbildungen

05/2021	Right Livelihood Junior Scientist Zentrum für Entwicklungsforschung (ZEF), Universität Bonn
06/2014-07/2014	Mandela Washington Fellowship for Young African Leaders Förderer: Regierung der Vereinigten Staaten von Amerika Training für staatsbürgerliche Führungsrollen an der Rutgers University, International and Global Affairs Center, New Jersey, USA
01/2010-12/2010	Weiterbildung für Unternehmer im sozialen Bereich in Trivandrum, Kerala, Indien Förderer: Kanthari (International Institute for Social Entrepreneurs), ein Programm von Braille Without Borders 10/2010: IISE-Leistungspreis 12/2010: Abschlusszertifikat
01/2008-11/2009	Berufsvorbereitende Ausbildung für Richter und Staatsanwälte im Federal Justice Organs Professionals Training Center, Addis Abeba, Äthiopien

3. Beruflicher Werdegang

11/2018-09/2019 Dozent an der juristischen Fakultät, Wachemo University, Southern Nations, Nationalities and Peoples Regional State (Äthiopien)

- Unterricht in Verfassungsrecht (Studierende im 1. Jahr) und Strafprozessrecht (Studierende im 3. Jahr)
- Begutachtung und Benotung von Klassenarbeiten, Hausarbeiten, Referaten, mündlichen Präsentationen und Prüfungen

11/2015-09/2019	Rechtsanwalt im Southern Nations, Nationalities and Peoples Regional State (Äthiopien) • Zivilklagen, strafrechtliche Anklagen, Berufungs- und Kassationsbeschwerden sowie sonstige Beschwerden bei den zuständigen Stellen • Vereinbarungsprotokolle für Unternehmen und NGOs
04/2015-10/2015	Praktikant bei der National Union of Disabled Persons of Uganda (NUDIPU) • Ausarbeitung eines Berichtsentwurfs mit Empfehlungen an den UN-Ausschuss für die wirtschaftlichen, sozialen und kulturellen Rechte von Menschen mit Behinderungen • Entwicklung eines Projektkonzepts für die Umsetzung und Überwachung der CRPD in Uganda und Einreichung des Konzeptes bei der Organisation Disability Rights Fund • Ausarbeitung von Vorschlägen zur Verfassungsänderung für den ugandischen Parlamentsausschuss im Auftrag des NUDIPU
10/2007-04/2015	Staatsanwalt in der Justizbehörde der Kembata-Tembaro-Zone, Southern Nations, Nationalities and Peoples Regional State, Äthiopien • Untersuchung und Einreichung von Strafanzeigen vor Gericht und Weiterverfolgung der Fälle bis zur endgültigen Entscheidung • Rechtliche Unterstützung für Opfer von Straftaten, um sie vor weiterem Schaden zu bewahren, der von Straftätern verursacht werden könnte • Besuch von Haftanstalten, um die Achtung und Durchsetzung der Menschenrechte von Gefangenen zu gewährleisten bzw. durchzusetzen
seit 04/2004	Sprachassistent im laufenden Projekt zur Dokumentation der Kambaata-Grammatik von Dr. Yvonne Treis • Produktion von und Austausch über Sprachdaten • Terminierung von Interviews und Aufnahmesitzungen • Unterstützung bei der Transkription und Übersetzung von Audio-Aufnahmen • Logistischen Unterstützung während der Exkursionen von Yvonne Treis

4. Sprachkenntnisse

English	Exzellente Kenntnisse in den Bereichen Hören, Sprechen, Lesen, Schreiben (Computer und Braille)
Deutsch	Sehr gute Kenntnisse in Hören, Sprechen, Lesen, Schreiben (Computer und Braille)
Amharisch	(Arbeitssprache der äthiopischen Bundesrepublik): muttersprachliche Kompetenz in den Bereichen Hören, Sprechen, Lesen, Schreiben (Computer und Braille)
Kambaata	(Äthiopische Minderheitensprache): muttersprachliche Kompetenz in den Bereichen Hören, Sprechen, Lesen, Schreiben (Computer und Braille)

5. Wissenschaftliche Veröffentlichungen und Übersetzungen

Deginet Wotango Doyiso. (2022). [Book review] Endurence Midinette Koumassol Dissake, Language and legal proceedings: Analyzing courtroom discourse in Cameroon. *Linguistique et langues africaines* 8(1). https://doi.org/10.4000/lla.1040

Treis, Yvonne & Deginet Wotango Doyiso. (forthcoming 2023). Onomatopoeias in Kambaata. In: Körtvélyessy, Lívia (ed.). *Onomatopoeia* [Comparative Handbooks of Linguistics]. Berlin: De Gruyter Mouton. https://hal.archives-ouvertes.fr/hal-03719892

Treis, Yvonne & Deginet Wotango Doyiso. (2019). "Matters and maize bread taste good when they are cool": Temperature terms and their metaphorical extensions in Kambaata (Cushitic). *Studies in African Linguistics* 48, 2: 225-266. https://doi.org/10.32473/sal.v48i2.118041

Saint-Exupéry, Antoine de. (2018). *Qakkichchu Laaha* [Le petit prince]. Translated by Deginet Wotango Doyiso & Yvonne Treis. Neckarsteinach: Tintenfaß. [ISBN: 978-3-946190-70-7]

Sewalem Tsega & Deginet Wotango Doyiso. (2018). Post-graduate Training Manual on the Rights of Persons with Disabilities, Center for Human Rights, Addis Ababa University.

Deginet Wotango Doyiso. (2012). *Kambaata traditional dispute resolving mechanisms: Their impact on the present Ethiopian criminal justice administration.* Saarbrücken: LAP. [ISBN: 978-3-659-23188-9] (Veröffentlichung meiner LLB-Arbeit)

Köln, August 2023