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LEGAL INTERPRETING AT A TURNING POINT

LA INTERPRETACIÓN EN EL ÁMBITO JUDICIAL EN UN MOMENTO DE CAMBIO

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LA INTERPRETACIÓN JUDICIAL EN ESPAÑA EN UN MOMENTO DE CAMBIO

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Resumen

La publicación en la Unión Europea de la *Directiva 2010/64/UE del Parlamento Europeo y del Consejo, de 20 de octubre, relativa al derecho a interpretación y traducción en los procesos penales* ha marcado un antes y un después en una gran cantidad de aspectos relacionados con la interpretación en sede judicial y policial. Esta norma tiene como principal objetivo garantizar la interpretación judicial de calidad durante todo el proceso, como parte del derecho a la defensa y a un juicio justo.

España, como Estado Miembro de la UE, tiene la obligación de transponer la norma europea a su derecho interno. Se trata, pues, de un momento histórico en el que confluyen dos factores principales: la necesidad de cambiar la legislación para adaptarla a la nueva norma y la necesidad de implementar medidas para garantizar el cumplimiento de los nuevos mandatos.

En el presente artículo se realiza una revisión del estado de la cuestión sobre la interpretación judicial en España desde el punto de vista de la legislación y de la provisión de servicios, y se analizan las medidas que debe tomar nuestro país para garantizar que la interpretación en los tribunales de justicia se lleva a cabo con las debidas garantías. Estas medidas incluyen la formación de intérpretes y de operadores judiciales, la creación de sistemas de acreditación y registros, así como la consolidación del perfil profesional de los intérpretes.

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Abstract

"Legal Interpreting in Spain at a Turning Point"

The publication in the European Union of *Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings* has been a turning point in a great number of aspects related to court and police interpretation. The main objective of the Directive is to ensure quality legal interpretation throughout the process, as part of the right to defense and to a fair trial.

Spain, as a Member State of the EU, has the obligation to transpose this European Directive into its domestic law. Therefore, this is a historic moment in which two main factors converge: the need to change the legislation to bring it in line with the new Directive and the need to implement measures to ensure compliance with new mandates.

This paper reviews the present state of legal interpretation in Spain from the point of view of legislation and that of service provision and analyses the measures that Spain should take to ensure that court and police interpretations are carried out with due guarantees. These measures include the training of interpreters and legal operators, the creation of accreditation systems and records, as well as the consolidation of the professional profile of interpreters.

Palabras clave: Interpretación judicial. Profesionalización. Formación. Acreditación. Registro.

Keywords: Legal interpreting. Professionalization. Training. Accreditation. Register.

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1. Introducción

Uno de los pilares sobre los que se asienta el marco internacional y europeo de derechos humanos es la prohibición de discriminación, tanto directa como indirecta. En este sentido, la provisión de intérpretes a personas inmersas en procesos judiciales que desconocen el idioma o los idiomas oficiales es una medida clave para asegurar su no discriminación en el acceso a la justicia.

Como parte de su compromiso con la creación de un espacio de libertad, seguridad y justicia, la UE ha trazado un plan de trabajo y ha tomado una serie de medidas que se describen en el considerando 9 de la *Directiva* 2013/48:

> El 30 de noviembre de 2009, el Consejo adoptó una Resolución relativa al plan de trabajo para reforzar los derechos procesales de sospechosos y acusados en los procesos penales (en lo sucesivo, "plan de trabajo"). Mediante un enfoque gradual, dicho plan reclama la adopción de medidas relativas al derecho a la traducción e interpretación (medida A), el derecho a ser informado de sus derechos y de la acusación (medida B), el derecho a asistencia letrada y asistencia jurídica gratuita (medida C) y el derecho a la comunicación con familiares, empleadores y autoridades consulares (medida D), así como a salvaguardias especiales para aquellos sospechosos o acusados que sean personas vulnerables (medida E). En el plan de trabajo se subraya que el orden en el que se mencionan los derechos es solamente indicativo, por lo que puede modificarse en función de las prioridades. El plan de trabajo está concebido para funcionar como un conjunto; solo cuando se ejecutan todos sus componentes se alcanzan plenamente sus beneficios.

La medida A se ha visto materializada con la publicación de la *Directiva 2010/64/UE del Parlamento Europeo y del Consejo, de 20 de octubre, relativa al derecho a interpretación y traducción en los procesos penales* (en lo sucesivo, "la Directiva") que establece unas normas mínimas comunes para los países de la Unión Europea sobre el derecho a interpretación y a traducción en los procesos penales y obliga a los Estados Miembros a transponerla antes de octubre de 2013. En primer lugar, la Directiva establece que deberá facilitarse el derecho a interpretación y traducción a toda persona que no hable o no entienda la lengua del proceso; dicho derecho se aplicará a partir del momento en que se comunique a las personas que son sospechosas o que están acusadas de haber cometido una infracción penal y hasta la finalización del proceso.

Asimismo, la nueva norma europea establece que deberá facilitarse un intérprete a las personas inmersas en un proceso penal que tengan que comunicarse con su abogado en relación directa con cualquier interrogatorio o vista judicial durante un proceso. Otro requisito que establece la Directiva es que los Estados Miembros también deberán facilitar a los sospechosos o acusados la traducción de todos los documentos que resulten esenciales, entre los que se incluyen "cualquier resolución que prive a una persona de libertad, escrito de acusación y sentencia".[1]

La finalidad de la Directiva es que los Estados Miembros pongan en marcha mecanismos que garanticen la calidad de la interpretación y de la traducción en los procesos penales a fin de que se pueda garantizar el derecho de defensa y el derecho a un juicio justo, para reforzar la confianza mutua entre sí.

Como mecanismo para garantizar dicha calidad, la Directiva insta a los Estados a crear "uno o varios registros de traductores e intérpretes independientes debidamente cualificados". Con el fin de cumplir con la recomendación de la Directiva, los Estados Miembros deberán crear registros cuyos miembros cumplan una serie de requisitos que garanticen su solvencia profesional, por lo que, a nuestro entender, deberán contar con la adecuada formación y será necesario, además, que pasen unas pruebas objetivas de acreditación. La noción de "independiente" que cita la Directiva no está totalmente clara ya que puede aludir tanto a que sean personas no vinculadas a ningún organismo, como empresas o instituciones, como a que no tengan conflicto de intereses con la persona o personas para las que interpretan.

España, como Estado Miembro de la UE, también debe trasponer la Directiva a su legislación nacional, ya que en la actualidad cuenta con una legislación absolutamente desfasada, la cual da pie a la existencia de unos sistemas de provisión de servicios de traductores e intérpretes que en modo alguno garantizan la tutela judicial efectiva y el derecho de defensa, que son obligaciones del Estado de Derecho (véase apartado 2).

Como parte de ese plan de trabajo y de esas medidas que la UE ha establecido y que se describen más arriba, las garantías que establece la Directiva 2010/64/UE han sido reforzadas además por otras 3 directivas:

1. Para un estudio detallado de la Directiva 2010/64/UE, véase el artículo de Hertog en este volumen.

- *Directiva 2012/13/UE del Parlamento Europeo y del Consejo de 22 de mayo de 2012 relativa al derecho a la información en los procesos penales.*
- *Directiva 2012/29/UE del Parlamento Europeo y del Consejo de 25 de octubre de 2012 por la que se establecen normas mínimas sobre los derechos, el apoyo y la protección de las víctimas de delitos, y por la que se sustituye la Decisión marco 2001/220/JAI del Consejo.*
- *Directiva 2013/48/UE del Parlamento Europeo y del Consejo de 22 de octubre de 2013 sobre el derecho a la asistencia de letrado en los procesos penales y en los procedimientos relativos a la orden de detención europea, y sobre el derecho a que se informe a un tercero en el momento de la privación de libertad y a comunicarse con terceros y con autoridades consulares durante la privación de libertad.*

Todas ellas consideran el derecho a interpretación y traducción una garantía *de facto* para que víctimas y encausados puedan hacer efectivos sus derechos.

En el presente artículo se realiza una somera revisión de la situación actual de la interpretación judicial y policial en España,[2] desde el punto de vista legislativo y de provisión de servicios (RITAP 2011, Ortega Herráez 2011, Del Pozo Triviño 2013, Blasco Mayor 2013, Del Pozo Triviño & Borja Albi 2014) y se analizan diversos mecanismos para la creación de registros de intérpretes y traductores judiciales con el fin de aportar información sobre los pasos que debería seguir nuestro país para transponer correctamente las normas europeas antes mencionadas (Corsellis, Cambridge, Glegg & Robson 2007; Blasco Mayor 2013; Del Pozo Triviño 2013; Del Pozo Triviño & Borja Albi 2014). Asimismo, se analizan diversos modelos de formación y acreditación en interpretación judicial (Blasco Mayor, Del Pozo Triviño, Giambruno, Martin, Ortega Arjonilla, Rodríguez Ortega & Valero Garcés 2013; Giambruno 2014; Blasco Mayor 2013; Mikkelson 2014) y de formación de operadores judiciales para trabajar con intérpretes (Blasco Mayor 2014; Corsellis, Clement y Vanden Bosch 2011). En todos los puntos tratados se dedica especial atención tanto a las particularidades de las lenguas que hemos llamado "de menor difusión" y que son, en la actualidad, las más presentes en nuestros juzgados, como a la regulación y consolidación profesional de los intérpretes (Del Pozo Triviño 2013, Blasco Mayor 2013, Mikkelson 1996).

2. En adelante, todas las referencias que se hacen en el artículo a la interpretación judicial incluyen la interpretación policial.

2. Situación actual de la interpretación y traducción en procesos penales en España

2.1. Legislación española sobre interpretación y traducción en procesos penales

En el presente apartado se hace una breve revisión de la legislación española sobre el derecho a interpretación y traducción, especialmente en la jurisdicción penal. La *Ley de Enjuiciamiento Criminal* (LECr) al referirse a la fase de instrucción preliminar, llamada "sumario" dentro del procedimiento ordinario, que se sigue para los delitos castigados con más de nueve años de prisión, dice literalmente en su artículo 440:

> Si el testigo no entendiere o no hablare el idioma español, se nombrará un intérprete, que prestará a su presencia juramento de conducirse bien y fielmente en el desempeño de su cargo. Por este medio se harán al testigo las preguntas y se recibirán sus contestaciones, que éste podrá dictar por su conducto. En este caso, la declaración deberá consignarse en el proceso en el idioma empleado por el testigo y traducido a continuación al español.

Más adelante, refiriéndose a la cualificación y acreditación de los intérpretes, el artículo 441 dice así:

> El intérprete será elegido entre los que tengan títulos de tales, si los hubiere en el pueblo. En su defecto, será nombrado un maestro del correspondiente idioma, y si tampoco le hubiere, cualquier persona que lo sepa.

Vemos, por lo tanto, que la LECr, promulgada en 1882, en teoría establece un orden de prelación, ya que dice que el juez elegirá primero "a los que tengan el título", después "al maestro del correspondiente idioma" y, por último, "a cualquier persona que lo sepa". Sin embargo, el procedimiento abreviado, el cual se aplica cuando las penas privativas de libertad son inferiores a nueve años, ni siquiera menciona el orden de prelación que se establecía para el procedimiento ordinario, sino que dice literalmente que el intérprete no necesitará título oficial:

> Cuando los imputados o testigos no hablaren o no entendieren el idioma español, se procederá de conformidad con lo dispuesto en los artículos 398, 440 y 441, sin que sea preciso que el intérprete designado tenga título oficial.

Tal y como señala el *Libro blanco de la traducción y la interpretación institucional* (RITAP 2011: 19), "Los artículos de la LECr se han quedado obsoletos, son propios del siglo XIX y no reflejan la transformación que ha sufrido la sociedad española". Por otra parte, la *Ley Orgánica del Poder Judicial*, en su artículo 231, establece que los jueces y magistrados tienen potestad para nombrar intérprete a cualquier persona durante las actuaciones orales.

Como ya se ha mencionado, España debe adaptar esta legislación a las nuevas normas europeas. Sin embargo, en la fecha de publicación de este artículo, las directivas mencionadas en el apartado de Introducción aún no se han transpuesto a la legislación nacional española, de modo que el derecho manifiesto que recogen las normas europeas todavía no se garantiza en el contexto español.[3]

2.2. Provisión de servicios de interpretación en los procesos penales

Al amparo de este marco legal actual tan desfasado y permisivo, que ofrece a los jueces y magistrados la posibilidad de nombrar traductor/intérprete judicial "a cualquier persona que sepa la lengua" del proceso, sin necesidad de que se acredite ningún tipo de formación ni de capacitación profesional, no es de extrañar que surjan modelos de provisión de servicios que no garantizan la calidad de las traducciones y/o interpretaciones. En los párrafos que siguen se exponen los principales modelos de contratación de traductores e intérpretes que existen en España en la actualidad (RITAP 2011: 47-71, Ortega Herráez 2011). Según Ortega Herráez (2011: 95), existen en nuestro país tres sistemas de contratación de traductores e intérpretes en el ámbito judicial. En líneas generales, y sin tener en cuenta las peculiaridades de las Comunidades Autónomas que tienen transferidas las competencias de justicia, y que son la mayoría, los tres modelos de provisión de servicios de interpretación en España son actualmente los siguientes:

- Modelo tradicional: en este modelo conviven los intérpretes en plantilla (que acceden al puesto mediante un concurso-oposición) con intérpretes *freelance* (a los que se recurre cuando la carga de trabajo es muy elevada y cuando se requiere interpretación en idiomas para los que no hay intérpretes en plantilla).
- Subcontratación de servicios ("modelo de contratas"): las administraciones publican una licitación a la que se presentan empresas privadas. El hecho de que la empresa actúe de intermediaria hace que se reduzcan considerablemente las tarifas que reciben los intérpretes, lo cual a su vez hace que muchos profesionales no acepten las condiciones impuestas

3. Al cierre de este artículo, el proceso de trasposición de las directivas se estaba desarrollando, principalmente a través de dos proyectos de ley: estatuto de la víctima, que incorpora por primera vez en España el derecho de las víctimas a intérprete, y la modificación de la LECr, que reconoce el derecho de las víctimas y encausados a intérpretes profesionales y cualificados.

por las empresas concesionarias y que estas contraten a personas sin apenas formación ni experiencia.[4]

– Gestión integral pública de servicios de traducción e interpretación judicial: en este modelo, exclusivo de la provincia de Las Palmas, un único traductor-intérprete en plantilla se encarga de coordinar a todos los demás intérpretes. Este modelo, a pesar de no ser perfecto, tiene ciertas ventajas, como el hecho de que, al no haber intermediarios, los traductores e intérpretes cobren las tarifas íntegras que paga el Estado y de que hay un intérprete que ejerce cierto control sobre la calidad.

Desafortunadamente, el modelo que se ha impuesto en los últimos años en la mayor parte del territorio español es el llamado "modelo de contratas", mediante el cual la Administración, a través de licitación pública, contrata a empresas privadas los servicios de traducción e interpretación en los tribunales y también en la policía (Ortega Herráez & Foulquié Rubio 2008: 125). Dichas empresas son las encargadas de escoger a los traductores e intérpretes, de establecer los requisitos para su contratación (mínimos en la mayoría de los casos), así como de determinar sus condiciones de trabajo: horario, remuneración, y demás. Este modelo de contratas está redundando de forma muy negativa en la calidad de las interpretaciones así como en la percepción social que se tiene de la profesión. Por todo ello, existen numerosos colectivos que, tanto desde el mundo profesional como académico, están luchando por poner freno a esta práctica al tiempo que proponen fórmulas alternativas que velen por la calidad de la traducción y la interpretación, y por la racionalización del gasto (De Luna Jiménez de Parga 2009).

Una vez analizada la situación en la que se encuentra actualmente la interpretación en los tribunales españoles con respecto a la legislación y a la provisión de servicios, podemos concluir que España debe recorrer un largo camino para poder cumplir con los preceptos de la Directiva 2010/64/UE.

3. Registros de intérpretes judiciales

Como ya se ha mencionado, uno de los mecanismos que la Directiva propone a los Estados Miembros para asegurar la calidad de la interpretación judicial es la creación de "uno o varios registros de traductores e intérpretes independientes debidamente cualificados" (Art.5.2). Así pues, los Estados Miembros deberán crear registros cuyos miembros cumplan una serie de requisitos que garanticen su solvencia profesional. En los siguientes subapartados se abordan

4. Existen numerosas quejas y denuncias sobre los perjuicios que causa la contratación de traductores e intérpretes no profesionales en diversos ámbitos de la justicia (Handi 2012; De Luna Jiménez de Parga 2009).

algunas cuestiones importantes relacionadas con los registros de traductores e intérpretes y se realiza una propuesta de registro para España.

3.1. Definición del concepto

Según Corsellis, Cambridge, Glegg & Robson (2007: 140), una profesión es un grupo de personas que comparten un saber hacer experto, que profesan un código de valores para proteger a sus clientes, sus conocimientos y colegas y van más allá del interés personal de sus miembros. Para cumplir los requisitos establecidos en dicho código, los profesionales establecen sistemas nacionales, transparentes, sistemáticos, que rinden cuentas, entre los que se incluyen la selección, formación, acreditación, pertenencia a un registro, promoción de buenas prácticas, control de la calidad y establecimiento de procedimientos disciplinarios. Como indican las autoras, esta definición ya aparecía en el primer proyecto europeo sobre el derecho procesal a interpretación en la justicia europea, *Grotius 98/GR/131* (Hertog 2001), sobre la equivalencia de estándares de interpretación y traducción en todos los Estados Miembros, y fue aceptada por la Comisión Europea (Corsellis *et al* 2007: 140). Las autoras explican que no se refieren a un mero listado como registro:

> […] such a register is therefore, not a list or a directory but the public manifestation of a professional structure and of its integrity (op.cit.:141).

Más recientemente, el equipo de expertos europeos del proyecto *Qualitas*[5] (Giambruno 2014: 250) define el concepto de registro profesional como sigue:

> An independent voluntary or statutory body that registers and makes available the details of individuals who meet its criteria in terms of qualifications, experience and security clearance, and have agreed to observe its code of ethics/conduct along with its disciplinary procedures when any breach of the code is alleged. A professional register goes further than just a database or list.

Este concepto de registro como órgano "oficial" de profesionales cualificados e independientes, que se rige por normas oficiales a la vez que garantiza la independencia de los profesionales registrados, comprobando cualificaciones, experiencia, antecedentes penales y el cumplimiento de un código ético, y no un mero listado o base de datos, es el que inspira la Directiva 2010/64/UE. En el ámbito europeo, la creación de registros nacionales tiene como propósito establecer un sistema que permita a las autoridades de los diferentes Estados Miembros identificar y localizar intérpretes cualificados e independientes en

5. http://www.qualitas-project.eu/

todos los países de la UE sin tener que dudar de la calidad o legitimidad de sus servicios. Para lograr este objetivo, tiene que haber cierta uniformidad o armonización en cuanto a los criterios mínimos que deben reunir los profesionales de la interpretación en cada uno de los Estados Miembros. Un registro que no garantice la calidad necesaria no contribuye a la confianza mutua ni a la seguridad jurídica deseadas (Blasco Mayor *et al.* 2013, Blasco Mayor 2013).

A continuación analizaremos la situación actual en España y las distintas posibilidades sobre la creación y gestión de un registro de intérpretes y traductores judiciales.

3.2. Situación actual en España

En la actualidad existe en España un listado de traductores-intérpretes jurados gestionado por el Ministerio de Asuntos Exteriores y de Cooperación. Para constar en el listado es necesario haber superado las pruebas convocadas por la Oficina de Interpretación de Lenguas (OIL), o haber obtenido el reconocimiento de dicha Oficina por haber cursado y superado determinados créditos en traducción jurídica e interpretación de la extinta Licenciatura en Traducción e Interpretación[6] (*Orden AEX/1971/2002, de 12 de julio, por la que se establecen los requisitos y el procedimiento para la obtención del nombramiento de intérprete jurado por los licenciados en Traducción e Interpretación)*. En cuanto a las pruebas realizadas por la OIL para conceder el título de traductor-intérprete jurado (Vigier Moreno 2010: 26), se trata de una traducción directa general, una traducción inversa de un texto jurídico y una entrevista con los candidatos para asegurarse de que son capaces de hablar las lenguas de trabajo con fluidez. Ninguna de estas pruebas está relacionada con conocimientos sobre el ámbito judicial ni con la capacidad de interpretar, por lo que parece claro que la palabra "intérprete" no debería formar parte del título ya que no se comprueba la capacidad de los candidatos para interpretar, y solo conduce a mayor confusión con respecto al perfil profesional de los intérpretes en España.[7]

6. "Licenciatura" era la denominación del título que ha pasado a denominarse "grado" tras las modificaciones introducidas con la adaptación al Espacio Europeo de Educación Superior.
7. Originalmente el título se denominaba "intérprete jurado", sin la palabra traductor, de introducción reciente. Se ha mantenido la denominación "intérprete" como un vestigio del origen del título, otorgado a los primeros intérpretes de las Américas y que data del siglo XVI (Peñarroja Fa 2004). Dicha denominación resulta anacrónica y no se adecúa a la realidad profesional europea (Blasco Mayor 2013).

La OIL publica en su web un listado de traductores-intérpretes jurados que puede ser consultado por cualquier ciudadano que requiera de los servicios de estos profesionales. Está ordenado por lenguas y se limita a proporcionar el nombre y los datos de contacto de las personas que ostentan el título de traductor-intérprete jurado. Muy pocos titulados trabajan como intérpretes en el ámbito de la justicia penal; la mayoría trabajan en casos civiles y en traducciones juradas de documentos de diversa índole por tratarse de trabajos bien remunerados y con prestigio social.

La OIL no realiza ningún control de calidad sobre el desempeño profesional de las personas a quienes acredita ni se encarga de la formación continua y promoción profesional de sus titulados. Las características de las pruebas o el panorama profesional en el que habitualmente se circunscribe la actividad de los traductores-intérpretes jurados, totalmente al margen de los distintos perfiles que se dibujan en el ámbito judicial, no pueden garantizar apriorísticamente, o por sí mismas, que sus titulados estén capacitados para actuar como intérpretes judiciales.

En España, pues, no existe registro ni listado alguno de intérpretes judiciales. Puesto que, como se ha indicado en el apartado 2.2, la provisión del servicio se ha licitado a empresas privadas, son estas quienes deciden a quién enviar a trabajar como intérprete. En la mayoría de los casos, las personas que actúan como intérpretes no son profesionales ni traductores-intérpretes jurados, no han cursado estudios de Traducción e Interpretación, ni estudios superiores. Este modelo de gestión externa del servicio ha conducido al desgarro del tejido profesional en el ámbito judicial, que puede mejorar sensiblemente si se desarrolla un nuevo modelo que siga los mandatos de la Directiva 2010/64/UE, comenzando por el diseño y creación de un registro profesional de intérpretes y traductores judiciales en España según los mecanismos ya aprobados por la Comisión Europea en 2001.

3.3 Propuesta de registro para España

Para nuestra propuesta de un registro profesional en España nos basaremos en el modelo ya propuesto en el informe elaborado por la Conferencia de Centros y Departamentos Universitarios de Traducción e Interpretación de España (en adelante CCDUTI) para el Ministerio de Justicia español sobre la transposición de la Directiva 2010/64/UE (Blasco Mayor *et al.* 2013), en el que participaron activamente las autoras del presente artículo. Dicho informe toma como referencia las normas establecidas en el National Register of Public Service Interpreters (NRPSI) del Reino Unido, por tratarse del registro

de referencia en toda Europa, y con toda probabilidad el modelo de registro en el que se inspira la Directiva 2010/64/UE, adaptándolas a la realidad española:

a) El registro debe tener normas claras y transparentes.
b) Sus miembros deben ser intérpretes y/o traductores cualificados e independientes.
c) Deben someterse a un código deontológico.
d) Deben estar libres de antecedentes penales.
e) Deben abonar unas tarifas a modo de colegio profesional.
f) Deben renovar periódicamente la pertenencia al mismo. Se deben establecer pautas para la renovación, entre las que pueden incluirse la experiencia demostrable en el ámbito judicial y la realización de cursos de formación continua, o bien volver a examinarse si esos criterios de renovación no se han cumplido.
g) El uso del registro debe ser gratuito.
h) Se podrán contemplar distintas categorías según las lenguas y el tipo de acreditación del candidato.
i) El registro debe ser nacional, si bien debido a que las comunidades autónomas con lenguas propias tienen transferidas las competencias de Justicia, podría pensarse también en registros que incluyeran a profesionales que trabajen con dichas lenguas.

El acceso al registro debería realizarse en todos los casos mediante prueba de acreditación fiable y validada, tal y como se explica en el apartado 5. Puesto que el Ministerio de Justicia es la institución responsable de la transposición de la Directiva, y por tanto de su cumplimiento, amén de la provisión del servicio, parece lógico pensar que debería ser también responsable del proceso de acreditación. Para su diseño y el proceso de evaluación, el Ministerio debe contar con la colaboración de expertos académicos y profesionales. Alternativamente, la acreditación podría ser administrada por un instituto interuniversitario creado a tal efecto, mediante convenio con el Ministerio de Justicia.

Otra posibilidad, considerando la organización territorial, política y administrativa del estado español en comunidades autónomas, la mayoría de ellas[8] con competencias en la administración de justicia, es la creación de colegios profesionales de traductores e intérpretes en cada comunidad autónoma, encargados de la provisión del servicio y la gestión del registro. Esta modalidad ya se utiliza para la gestión y la provisión del servicio de los abogados

8. Andalucía, Aragón, Asturias, Canarias, Cantabria, Cataluña, Comunidad Valenciana, Galicia, Madrid, Navarra, País Vasco, La Rioja. Comunidades no transferidas: Castilla y León, Castilla-La Mancha, Extremadura, Murcia, Ceuta y Melilla. Fuente: https://www.administraciondejusticia.gob.es/paj/PA_WebApp_SGNTJ_NPAJ/descarga/08c_Doc_Estad%C3%ADstico_Traspasos_Competencias_Admón_de_Justicia.pdf?idFile=f96d9863-3b11-49a8-a64f-330eeac35158 (consultada el 5 /11/2014).

del turno de oficio en la administración de justicia española. El papel de los colegios profesionales en España tiene una larga tradición en el desarrollo y la evolución de las profesiones liberales. Según la legislación española vigente sobre colegios profesionales, que data del año 1974 (*Ley 2/1974, de 13 de febrero, sobre Colegios Profesionales)*,[9] en su art. 1.1, "los colegios profesionales son Corporaciones de derecho público, amparadas por la ley y reconocidas por el Estado, con personalidad jurídica propia y plena capacidad para el cumplimiento de sus fines", y según 1.3:

> …son fines esenciales en dichas Corporaciones la ordenación del ejercicio de las profesiones, la representación institucional exclusiva de las mismas cuando estén sujetas a colegiación obligatoria, la defensa de los intereses profesionales de los colegiados, y la protección de los intereses de los consumidores y usuarios de los servicios de sus colegiados, todo ello sin perjuicio de la competencia de la Administración Pública por razón de la relación funcionarial.

Por la estructura y naturaleza jurídica de los propios colegios, serían estos, de hecho, las instituciones mejor equipadas para asumir las competencias que se derivan de la Directiva. Por un lado, en su seno podría acogerse el registro, y al igual que en el caso de los abogados del turno de oficio, gestionar el servicio abasteciendo de intérpretes y traductores registrados para los juzgados y policía de la zona. Por otro lado, en colaboración con expertos de las universidades, y a través de un Consejo General de Colegios de Traductores e Intérpretes, podrían asimismo encargarse de los procesos de comprobación de antecedentes penales de los candidatos, administración y evaluación de los exámenes específicos relativos a la acreditación requerida para acceder al registro de intérpretes y traductores judiciales a la que se alude en el apartado 5. Además, los colegios se encargarían de velar por la calidad de los servicios que prestan sus colegiados, puesto que es una de sus misiones principales, cooperando con las autoridades judiciales en el establecimiento de mecanismos de control de la calidad, tanto apriorísticos (acceso mediante examen, formación continua de sus miembros) como *a posteriori* [evaluación de grabaciones y otros mecanismos de control de la calidad (Vidal Fernández 2007, Arangüena Fanego 2007), aplicación de procedimientos disciplinarios, etc.], en consonancia con el artículo 2, apartado 8, el artículo 3, apartado 9; y el artículo 5 de la Directiva. Por último, y en cooperación con los colegios de abogados, escuelas judiciales y academias de policía, se podrían impartir

9. Última actualización, publicada el 23/12/2009, en vigor a partir del 27/12/2009.

cursos formativos a estos operadores judiciales, tal y como establece la Directiva en su artículo 6 (véase apartado 6 del presente artículo).

Como quiera que la creación de colegios en las comunidades autónomas y el desarrollo de un examen requieren, además del desarrollo de normativa legal, de un tiempo considerable de ejecución, se podría crear un primer registro "provisional" y establecer una etapa de transitoriedad que deberá tener una fecha de caducidad, a cuyo vencimiento las personas interesadas en seguir en el registro deberán haber cumplido una serie de requisitos. Durante dicha etapa de transitoriedad se podría contemplar en principio la incorporación al registro "provisional" en los siguientes casos:

- Graduados/Licenciados en Traducción e Interpretación que puedan demostrar experiencia profesional real en el ámbito judicial.
- Traductores-intérpretes jurados (MAEC) que puedan demostrar experiencia real en el ámbito judicial.
- En el caso de las lenguas de menor difusión, se podría incluir a personas con experiencia demostrada o formación específica adquirida en otros países.

Durante dicha etapa de transitoriedad, y de manera excepcional, se podría permitir el acceso al registro a otros titulados universitarios que tengan experiencia acreditada en el campo con el fin de no bloquear el acceso de los profesionales que ya trabajan y lo hacen con solvencia.

Para aquellas lenguas en las que no existen Grados/Licenciaturas en Traducción e Interpretación, ni filologías, deberá exigirse a las personas que deseen formar parte del registro que realicen un curso de especialización, que pueden realizar las universidades en colaboración con las asociaciones profesionales.[10] En dichos casos, el Gobierno deberá incentivar y apoyar económicamente a las personas que hablan las lenguas con mayor demanda para que cursen estos estudios.

Si se plantea un reconocimiento de traductores e intérpretes judiciales pertenecientes a registros de otros Estados Miembros de la Unión Europea, tendría que garantizarse la reciprocidad, es decir, que traductores e intérpretes judiciales españoles acreditados para el presente registro también sean reconocidos en esos mismos países.

Una forma de garantizar la incorporación de intérpretes cualificados en el sistema judicial, bien sea a través de colegios, o de registros, es el establecimiento en la ley de un arancel profesional, al igual que en Alemania, Austria y

10. Véase "cursos propios" en el punto 4.2 sobre Formación. Dichos cursos tienen como objetivo la formación de perfiles profesionales con demanda en la sociedad que carecen de docencia reglada en los títulos oficiales.

otros países europeos, donde la tarifa que se abone a los intérpretes por hora/jornada está establecida en la ley o en el instrumento jurídico que regule la implementación de la Directiva. Con esta medida se evitarán los abusos que actualmente cometen las empresas adjudicatarias de las licitaciones públicas y se garantizará que los profesionales reciban una contraprestación justa por un trabajo que requiere gran especialización, fomentando así la consolidación de la profesión, la atracción de talento y la calidad, que redundarán en todo el proceso judicial. Solo así se podrán garantizar los derechos procesales, y cumplir los mandatos establecidos en la Directiva 2010/64/UE.

En España existen varios antecedentes. Concretamente de aplicación en todos los órdenes del ámbito judicial, existen los aranceles de los procuradores de los tribunales, contemplados en el *Real Decreto 1373/2003, de 7 de noviembre, por el que se aprueba el arancel de derechos de los procuradores de los tribunales,* por el cual se establecen tarifas muy detalladas según los ámbitos y el volumen del servicio de dichos profesionales.

En todo caso, el registro deberá observar las máximas de cualificación e independencia de sus miembros, por lo que no deberá ser dependiente ni estar al servicio particular de ningún organismo o entidad judicial o policial.

4. Formación en interpretación judicial

Han pasado ya algunos años desde que Gile escribiera:

> […] the training of professional translators and interpreters is still based essentially on professional experience, introspection, intuition and negotiations between trainers on methods and modalities rather than on research (2009:3).

En los últimos años se ha experimentado un crecimiento exponencial en investigación tanto sobre didáctica de la traducción y la interpretación general como sobre la didáctica de la traducción y la interpretación especializadas y, por ende, de la interpretación judicial. Al mismo tiempo, en los últimos años la oferta formativa universitaria en traducción e interpretación ha crecido enormemente, tanto en España como fuera de nuestro país. No obstante, la oferta de formación en traducción e interpretación judicial sigue siendo escasa y en la mayoría de los casos se limita a unos módulos específicos dentro de los programas generales de grado y posgrado. En el presente apartado se analiza la oferta formativa existente en la actualidad en Europa, y más específicamente en España, y se realiza una propuesta de enseñanza de la

traducción e interpretación judicial[11] que pueda dar respuesta a la creciente demanda existente en la actualidad y que se verá incrementada una vez que se articulen los mecanismos para la transposición de la Directiva y la creación de registros de intérpretes cualificados.

4.1. Formación reglada

En numerosos países europeos (Reino Unido, Alemania, Austria, Países Bajos, Bélgica, Italia, etc.) existen estudios universitarios de Grado y Máster en traducción e interpretación.[12] En cuanto a la formación de Máster en traducción e interpretación judicial, la mayoría de los Estados Miembros ofrece algún tipo de enseñanzas pero, o bien están integradas dentro de denominaciones más amplias, como Máster en traducción e interpretación, o bien se incluyen en másteres más específicos como son los dedicados a la formación en interpretación para los servicios públicos, la cual incluye, además de la judicial, la interpretación policial, sanitaria y en el ámbito educativo y de los servicios sociales. Por ejemplo, en el Reino Unido hay másteres que incluyen formación en TeI (Traducción e Interpretación) en los servicios públicos (como por ejemplo el de la University of Surrey), pero ninguno especializado exclusivamente en interpretación judicial. En Países Bajos, el Stichting Instituut van Gerechtstolken & -Vertalers (SIGV)[13] ofrece formación especializada y una acreditación específica para traductores e intérpretes judiciales en 20 idiomas.

En nuestro país, sobre 20 universidades públicas y algunas privadas ofrecen estudios de Grado en TeI (Baxter 2014) y algunas de ellas ofrecen estudios de Máster que incluyen formación en interpretación judicial y traducción jurídica. La formación de Máster disponible actualmente en España es la siguiente:

- Máster Universitario en Comunicación Intercultural, Interpretación y Traducción en los Servicios Públicos (Universidad de Alcalá de Henares), miembro de la Red de Másteres Europeos EMT Network.
- Máster en Traducción Jurídica e Interpretación Judicial (Universitat Autònoma de Barcelona).

11. Propuesta basada en el Informe realizado por Blasco *et al.* (2013) para el Ministerio de Justicia.
12. El proyecto OPTIMALE, *Optimising Translator Training*, financiado por UE, ha realizado un mapa interactivo que ofrece información actualizada sobre formación en traducción e interpretación en la UE (http://www.translator-training.eu/).
13. http://www.sigv.nl/

- Máster Universitario en Traducción Jurídico-Financiera (Universidad Pontificia Comillas de Madrid ICADE-ICAI), miembro de la Red de Másteres Europeos EMT Network.
- Máster Universitario en Traducción Institucional (Universitat d'Alacant-Universitat Jaume I – Universitat de València).

Ninguno de estos títulos está específicamente orientado a la interpretación en el ámbito judicial (si bien el de la Universidad Autónoma de Barcelona es el que presenta un perfil más específico). Sin embargo, es posible que todos ellos puedan actualizar sus contenidos para que aumenten los créditos dedicados a estas disciplinas. Existen hasta otros nueve másteres en traducción especializada ofrecidos por otras universidades españolas; algunos de ellos incluyen módulos de interpretación judicial o traducción jurídica, pero de forma más residual.

En relación con las lenguas de menor difusión, cabe destacar que el mencionado Máster Universitario en Traducción e Interpretación en los Servicios Públicos, de la Universidad de Alcalá de Henares, ofrece formación hasta en 10 pares de lenguas, con especial atención a lenguas consideradas de menor difusión que son, en realidad, las de mayor demanda en instancias judiciales. Las combinaciones lingüísticas en las que se imparte formación junto con el español son: alemán, árabe, búlgaro, chino, francés, inglés, portugués, rumano, ruso y polaco.

4.2. Formación no reglada: cursos propios universitarios

Un ejemplo de formación no reglada en el ámbito europeo es el Reino Unido, donde se ofrecen cursos universitarios de preparación para el examen de acreditación oficial del CIoL, el llamado Diploma in Public Service Interpreting (DPSI); tal es el caso del Diploma in Legal Interpreting[14] de la Universidad de Middlesex, con 45 créditos, y formación en 14 pares de lenguas.

En España, la *Ley Orgánica 6/2001, de 21 de diciembre, de Universidades*, en su art. 34.3, otorga a las universidades, en uso de su autonomía, la posibilidad de dispensar enseñanzas conducentes a la obtención de diplomas o títulos propios, así como enseñanzas de formación a lo largo de toda la vida. Estos títulos propios parecen ser una vía adecuada para cubrir la laguna existente en la formación de intérpretes judiciales, pues como señala el reglamento de 29 de mayo de 2013 que regula estos títulos de la Universidad de La Laguna,

> […] estas enseñanzas, cuyo interés radica en responder, de manera ágil y eficaz, a las demandas sociales de tipo cultural, científico, artístico o profesional,

14. http://www.mdx.ac.uk/courses/undergraduate/legal-interpreting

> complementan el conjunto de enseñanzas curriculares oficiales y forman parte, junto con estas últimas, de la oferta docente de cada Universidad, contribuyendo, en consecuencia, a dotarla de un perfil propio. La posibilidad de impartir todas estas enseñanzas no oficiales cubre una importante laguna en la oferta universitaria, de forma que permite a la Universidad responder al reto de la creciente competitividad del mercado laboral que exige una mayor cualificación a todos los trabajadores.

En la actualidad, existen en España dos cursos propios de postgrado que incluyen formación en traducción e interpretación judicial, pero no de forma exclusiva, sino dentro de un programa general de interpretación para los servicios públicos (hospitales, centros educativos, servicios sociales, entre otros). Dichos cursos son:

- Diploma de especialización en Traducción e Interpretación para los Servicios Comunitarios (Universidad de La Laguna).[15]
- Diplomatura de Postgrado en Interpretación en los Servicios Públicos de Cataluña (Universitat Autònoma de Barcelona).[16]

En ambos cursos, se presta especial atención a las lenguas de menor difusión. El primero ofrece formación en inglés, francés, alemán y ruso; y el segundo en árabe, chino, rumano, ruso, inglés y francés.

4.3. Propuesta de formación en interpretación judicial

La formación de intérpretes judiciales debe basarse en tres pilares fundamentales. Por un lado, debe incluir el aprendizaje de las técnicas, modalidades y estrategias de interpretación en sede judicial y policial. Por otro lado, debe incluir formación sobre derecho comparado en las combinaciones lingüísticas pertinentes[17] y, por último, debe abordar la deontología de la profesión (Dueñas González, Vásquez & Mikkelson 1991: 202). De cara al cumplimiento de unos requisitos comunes para todos los traductores e intérpretes de la UE, consideramos que los contenidos y el formato de esta formación deberían estar sancionados por la propia CE con la colaboración y el asesoramiento de

15. http://experto.webs.ull.es/
16. http://www.uab.es/servlet/Satellite/postgrado/diplomatura-de-postgrado-en-interpretacion-en-los-servicios-publicos-de-cataluna-arabe-chino-rumano-ruso-ingles-frances-/datos-basicos-1206597472083.html/param1-2996_es/param2-2009/
17. Los intérpretes que trabajan en países con sistemas judiciales inquisitoriales (España, Francia, Italia), requieren más formación sobre el sistema procesal penal y la terminología judicial que los que lo hacen en países con sistemas adversariales (Reino Unido, Estados Unidos) (Giambruno 2014).

expertos académicos y profesionales y, por supuesto, en consonancia con los distintos organismos acreditadores que se creen en cada Estado Miembro.[18]

Dicha formación específica podrían impartirla las universidades mediante la organización de Cursos propios y Diplomas, siguiendo el modelo de los que ya existen, con la colaboración de profesionales con experiencia en el sector.[19] Con el fin de abaratar los costes que implica la constitución de tribunales en muchos pares de lenguas, y de garantizar la homogeneidad del proceso, podría establecerse un tribunal evaluador único para todo el país.

En el caso de las lenguas de menor difusión, la formación no estaría tan centrada en las propias lenguas, ya que sería prácticamente imposible disponer de formadores en todas las combinaciones lingüísticas. El alumnado que desee acceder a la formación debería acreditar conocimientos de la lengua española y de la lengua con la que tiene intención de trabajar como intérprete judicial, y dicha acreditación de conocimientos lingüísticos deberá hacerse de conformidad con criterios homogéneos previstos en la normativa establecida para tal fin.

En todos los casos la formación estaría siempre encaminada al ejercicio práctico de la profesión, por lo que, además de incluir ejercicios que simulen situaciones reales, también sería conveniente que incluyera prácticas tuteladas siempre por profesionales, así como visitas a los juzgados y a dependencias policiales.

5. Sistema de acreditación de intérpretes judiciales

Para hablar con propiedad sobre un proceso de acreditación en España, es necesario, en primer lugar, acotar conceptos. Según la RAE, acreditación es un "documento que acredita la condición de una persona y su facultad para desempeñar determinada actividad o cargo", y certificación es "un documento en que se asegura la verdad de un hecho". Creemos que el término "acreditación" en español sería el más apropiado en el contexto que nos ocupa. Siguiendo dichas definiciones, en España no existe un sistema o proceso de acreditación en interpretación judicial, entendiendo por tal un procedimiento previamente establecido, en el cual los candidatos deben demostrar una destreza suficiente, es decir, que ofrezca garantías de calidad, al realizar una serie de pruebas diseñadas con métodos fiables y basadas en la realidad profesional.

18. Véase informe final de Grotius project I (2001/GRP/015), *Aequitas - Access to Justice across Language and Culture in the EU*.
19. Véase artículo de Hertog en este mismo volumen.

Dicho procedimiento o sistema, para ofrecer garantías de calidad, debe ser diseñado y evaluado por expertos externos.

Para el ámbito estadounidense citaremos a Mikkelson (2013: 66), quien apunta que las organizaciones son acreditadas y los individuos certificados. Además, incluye las licencias como alternativa a la certificación aunque éstas se refieren normalmente a autorizaciones institucionales concedidas a individuos que han demostrado ciertas competencias para desarrollar una actividad por un periodo de tiempo determinado. En las profesiones en las que existen licencias, estas son un requisito legal para ejercerlas, de modo que quien no tiene licencia no puede usar el título ni proveer el servicio. Por el contrario, una certificación suele ser un proceso voluntario al cual se somete un individuo, llevada a cabo normalmente por una asociación profesional o institución académica basada en la competencia demostrada y otros criterios como la experiencia profesional (Mikkelson 2013: 67).

5.1. Acreditación y estatus socio-profesional

En otras profesiones consolidadas, como la de abogado o ingeniero, son las propias asociaciones o colegios profesionales las que promueven las certificaciones "voluntarias". Con ellas se persigue ofrecer a los usuarios de los servicios profesionales garantías de que si contratan los servicios de un profesional acreditado, estos serán de calidad. A los profesionales acreditados les garantiza un prestigio y visibilidad profesionales, acceso a bolsas de empleo, asistencia en la movilidad en la Unión Europea, acceso a un seguro de Responsabilidad Civil, formación continua y otras ventajas de índole profesional.[20] En España no existe actualmente ningún organismo o colegio profesional de intérpretes judiciales que realice dichas funciones.

En España, en el polo opuesto a los perfiles profesionales consolidados y en proceso de continua evolución, se encuentra la interpretación judicial, una actividad que actualmente carece de definición clara, prestigio profesional y reconocimiento social. Por un lado, existen los intérpretes de plantilla (funcionarios o contratados laborales), tanto en el Ministerio de Justicia como en el Ministerio del Interior, que cada vez son menos y que subsisten a duras penas (Ortega Herráez 2011). Por otro lado, en los últimos años, tanto el Ministerio de Justicia como el Ministerio del Interior generalmente se

20. En España existen corporaciones profesionales como COGITI http://www.cogiti.es/Paginas/Ficha.aspx?IdMenu=A2238BD0-3048-4D9D-AB8C-C91C6FDFD475

abastecen de "intérpretes" a través de las empresas privadas que han ganado una licitación pública.[21]

El perfil profesional de intérprete judicial que se propone en la actualidad, y en el que se inspira la Directiva cuando se refiere a "intérpretes cualificados e independientes", es el del intérprete judicial como profesional autónomo y que ha obtenido una cualificación específica que le capacita para ejercer en el mercado profesional. Al igual que en una gran mayoría de profesiones liberales, tras obtener un título superior universitario específico que le habilita para el desempeño de su trabajo, el intérprete autónomo busca y obtiene empleo de una variedad de fuentes laborales, tanto en el ámbito judicial o jurídico (casos y mediación civil, notarías), como en el ámbito más generalista de la interpretación de conferencias (congresos, jornadas, cursos) y de la traducción. No es lógico pensar que se pueda subsistir únicamente de una sola fuente de ingresos en el mercado libre, por lo que el intérprete cualificado normalmente trabajará para distintos empleadores, tanto públicos como privados, e incluso diversificará su oferta, ampliando su perfil al de traductor. En estos mismos términos se plantea el perfil de intérprete judicial en *Status Quaestionis* (Hertog 2008), proyecto financiado por la Dirección General de Justicia de la Comisión Europea que analiza el estado de la interpretación judicial en Europa por medio de cuestionarios respondidos por autoridades judiciales e intérpretes de los Estados Miembros.

5.2. Acreditación y trastorno del mercado español

Junto con el desarrollo e implantación de un sistema de acreditación de intérpretes judiciales, el principal obstáculo para la regulación del acceso a la profesión es el fenómeno que Witter-Merithew & Johnson (2004: 20, *apud* Mikkelson 2013: 71) denominan trastorno del mercado o *market disorder,*[22] del cual España es un buen exponente:

> Defined as the current state of the interpreting market that reflects significant instability related to minimum standards for entry into the field and the lack of consistent and reliable professional control over the variables impacting the effective delivery of interpreting services (e.g., introduction into the field, working conditions, job descriptions, role and responsibility, wages).

21. Véase apartado 2.2 y Giambruno (2014: 174).
22. Wallace, en este mismo volumen, relaciona el fenómeno con la ausencia de registros profesionales.

En el caso español, el problema se ve agravado por la situación de auténtico oligopolio existente en la provisión del servicio, en manos de empresas interesadas en contratar a intérpretes a precios ínfimos con el fin de incrementar sus beneficios. Esto hace que las personas que trabajan como intérpretes no se molesten en obtener una formación, costosa en tiempo y dinero. Sin incentivos como la perspectiva de acceso a una profesión dignamente remunerada y prestigiosa, no habrá intérpretes que deseen formarse y acreditarse, y por tanto que garanticen una mínima calidad de las interpretaciones en los procesos judiciales.

A esta situación hay que añadir la disparidad de denominaciones, títulos e instituciones acreditadoras de intérpretes en España, que aportan confusión al ya escasamente perfilado panorama profesional. Es necesario que los títulos sean unívocos y con descripciones claras acerca de las competencias para las que habilitan. En este sentido, las universidades españolas están realizando un gran esfuerzo por vincularse todavía más a la profesión mediante la colaboración constante con intérpretes en activo, el desarrollo de jornadas y cursos con una clara orientación al mercado profesional, y la incorporación y descripción de las competencias profesionales en sus títulos.

5.3. Propuesta de acreditación europea: el proyecto QUALITAS

En el seno de *Qualitas: Assessing Legal Interpreting Quality through Testing and Certification* (Giambruno 2014), proyecto financiado por el programa Justicia Penal de la Unión Europea para la homogenización del sistema de acreditación de intérpretes judiciales en Europa, catorce expertos de siete países europeos han analizado y diseñado un sistema de acreditación para intérpretes judiciales basándose en experiencias que han funcionado tanto en Europa como en otros países (Estados Unidos, Canadá, Australia) así como en la aplicación de criterios y técnicas psicométricas de desarrollo de pruebas de evaluación.

El proyecto ha realizado un amplio y detallado estudio sobre el sistema de acreditación de intérpretes judiciales, tratando los siguientes puntos:

- Destrezas básicas mínimas y conocimientos legales y profesionales que deberían comprobarse en cualquier sistema de acreditación de intérpretes judiciales
- Principios básicos de diseño de pruebas y psicometría, así como su aplicación en pruebas para intérpretes judiciales con ejemplos
- Criterios para la selección de intérpretes en lenguas de menor difusión
- Aplicación de nuevas tecnologías a la interpretación judicial y policial: Interpretación remota (telefónica o por videoconferencia)
- Organización, administración y gestión de un sistema de acreditación de intérpretes judiciales.

5.4. Propuesta de acreditación de intérpretes judiciales en España

La propuesta de acreditación para España que presentamos a continuación está inspirada en gran medida en el informe de la CCDUTI para el Ministerio de Justicia (Blasco Mayor *et al.* 2013), y los resultados del proyecto *Qualitas* (Giambruno 2014).

5.4.1. Requisitos previos a la acreditación

Es importante establecer los requisitos previos que deben reunir los candidatos para presentarse al proceso de acreditación. Entre los factores que hay que considerar se incluyen la formación académica, la experiencia laboral acreditada, y algunos criterios de índole personal como pueden ser una edad mínima, la nacionalidad/ciudadanía o el no tener antecedentes penales, entre otros. Estos datos se podrían comprobar en una fase previa al proceso de acreditación por medio de una aplicación informática que excluyese automáticamente a los candidatos que no reuniesen los requisitos establecidos.

5.4.2. Dominio de los idiomas

Por la alta capacitación requerida para el ejercicio de la interpretación judicial, creemos que los posibles candidatos a la acreditación deben ser, siempre que sea posible, titulados superiores y demostrar una competencia lingüística de nativo o casi nativo. Así, el nivel C2, según el Marco Común Europeo de Referencia para las Lenguas (MCERL), es el nivel recomendado; sin embargo, es necesario comprobar los niveles reales de los candidatos, incluyendo el manejo de registros, el lenguaje especializado y la terminología técnica, entre otros elementos. Una opción para determinar si se ha alcanzado el nivel requerido es por medio de una "prueba eliminatoria" *(screening exam)* que puede ser de tipo test, pues es menos costoso que realizar un examen ante un tribunal. Solo las personas que superen este test de nivel lingüístico podrán acceder a la segunda fase del proceso.

5.4.3. Conocimientos del sistema legal y códigos deontológicos/de buenas prácticas

En el ámbito de la interpretación judicial, es universalmente reconocido que los procesos de acreditación deben incluir una evaluación de los conocimientos de los sistemas legales y de las normas de comportamiento profesional establecidas. Si un traductor o intérprete no conoce los elementos básicos del sistema en el que va a trabajar (estructura, procesos, derechos, instituciones,

participantes y demás), la posibilidad de cometer un error al trabajar en un entorno real aumenta exponencialmente.

Lo mismo se puede decir en relación con la deontología. Conocer y comprender los límites del comportamiento ético es imprescindible en este ámbito. La evaluación de estos conocimientos puede incluirse en un ejercicio eliminatorio general para todos los idiomas.

5.4.4. Elaboración de un instrumento de evaluación de la interpretación

Se trata de un proceso complejo que debe ser desarrollado por expertos de distintos campos, entre los que se debería incluir a expertos lingüistas, intérpretes experimentados, especialistas en psicometría, juristas y autoridades gubernamentales o representantes de los organismos que tengan funciones de control, supervisión o regulación en el sistema judicial. A continuación se presentan los principales factores que es necesario tener en cuenta en la elaboración de un instrumento de evaluación:

a) Tipo de acreditación y características básicas de las pruebas

Los candidatos deberán acreditarse por separado de cada combinación de lenguas en las que deseen ejercer (español-inglés, español-árabe, español-rumano, etc.). Siguiendo a Van Deemter, Maxwell-Hislop & Townsley (2014), lo imprescindible en la elaboración de un examen de interpretación es que debe basarse en la ejecución de tareas auténticas, es decir, en la realidad profesional de un intérprete que trabaja en el ámbito judicial *(performance-based)* y ser evaluado según parámetros preestablecidos, es decir, no condicionados por el número de candidatos o las necesidades del sistema judicial *(criterion-referenced)*. Estos dos conceptos, procedentes de la psicometría, no se pueden modificar si se quiere lograr un examen válido y fiable.

En cuanto a la evaluación, además, es necesario garantizar la fiabilidad entre los evaluadores para garantizar que cada ejercicio reciba un trato similar y que aprobar no dependa del evaluador en particular asignado para evaluar al candidato *(inter-rater reliability)* ni de los ánimos o situaciones puntuales de un evaluador que reciba decenas de ejercicios para evaluar *(intra-rater reliability)*.

b) Organización administrativa del examen de acreditación en traducción e interpretación judicial

En este apartado se recogen algunos aspectos importantes relacionados con la realización de los procesos de acreditación que no tienen que ver

específicamente con los ejercicios en sí, pero que son de igual importancia y contribuyen a que el proceso elaborado produzca los resultados deseados:

- Identificar a expertos que puedan formar parte del equipo de elaboración de los exámenes, el personal que va a encargarse de la realización de las sesiones de evaluación, y los evaluadores. Cada grupo debe participar en sesiones de orientación para garantizar una correcta administración de los exámenes.
- Determinar las necesidades logísticas (espacios, equipo informático, acústica, entre otros). El uso de tecnologías digitales en línea reduce en gran medida el coste y procedimiento administrativo de las pruebas, como ha demostrado el programa de evaluación de intérpretes en línea desarrollado por Middlesex University (Braun, Sandrelli & Townsley 2014: 120).
- Desarrollar materiales para los candidatos con información sobre los requisitos, el proceso de inscripción, el formato del examen, tarifas, plazos, e incluso algunos ejercicios a modo de ejemplo. El desarrollo de esta información será clave para atraer a candidatos cualificados y así evitar el coste elevado de realizar un examen con candidatos que no han logrado todavía los niveles necesarios para alcanzar el éxito esperado en el examen.

Podemos concluir, por tanto, que el proceso de evaluación y acreditación de intérpretes judiciales no es una tarea sencilla. Sin embargo, como se ha demostrado en párrafos anteriores, en los últimos años se ha avanzado mucho en la investigación e implementación de sistemas que tienen en cuenta tanto el objetivo de dicho proceso como las dificultades que entraña. Solo hace falta que los gobiernos de los Estados Miembros se convenzan de que el proceso de evaluación y acreditación de los candidatos a intérprete judicial es esencial para garantizar su competencia.

6. Formación de operadores judiciales para trabajar con intérpretes

Por último, pero no por ello menos importante, queremos abordar aquí la cuestión recogida en el artículo 6 de la Directiva 2010/64/UE sobre la formación de personal judicial para trabajar con intérpretes. Concretamente el artículo 6 insta a los Estados Miembros a

> …solicitar a los responsables de la formación de los jueces, fiscales y personal judicial que participen en procesos penales el que presten una atención particular a las particularidades de la comunicación con la ayuda de un intérprete, de manera que se garantice una comunicación efectiva y eficaz.

Consideramos que la formación de agentes judiciales tiene una importancia capital si se quiere conseguir la calidad de la interpretación a la que alude la Directiva a lo largo de su articulado.

Los sistemas de justicia son engranajes complejos en los que intervienen múltiples agentes. En la última década se han multiplicado los procesos penales con elementos extranjeros, "sea personales (víctimas, imputados, testigos, peritos) o materiales (transacciones financieras internacionales, pruebas situadas en otro país, etc.)", según indica Carmona Ruano (2013: IX). En este nuevo escenario judicial, y siguiendo al mismo autor refiriéndose a los jueces,

> no podemos permanecer pasivos y permitir que la irrupción de la dimensión internacional en los procesos suponga un obstáculo: por el contrario, hemos de asegurar no solo que los jueces y tribunales de nuestros países puedan afrontar estas circunstancias con normalidad, sino que además seamos capaces de obtener todas las enormes posibilidades que nos ofrecen las nuevas formas de cooperación que se están creando (Carmona Ruano 2013: X).

La normalidad y posibilidades de cooperación a las que alude Carmona Ruano pasan por la indefectible tarea de traslación de información, documentos e intercambios entre jurisdicciones y, por tanto, de unas lenguas a otras. Los jueces, abogados y demás operadores judiciales que trabajan actualmente en el sistema de justicia español rara vez trabajan con intérpretes profesionales, de ahí su absoluto desconocimiento de la actuación y comportamiento de un intérprete profesional, y de cómo realizar su trabajo con la mayor eficacia posible si necesitan la asistencia de un intérprete.

La colaboración entre juristas e intérpretes profesionales es, sin embargo, una reivindicación antigua del colectivo de intérpretes judiciales profesionales españoles, quienes "destacan la imperiosa necesidad de formar adecuadamente a los jueces, fiscales, policías, y en general todos los sujetos llamados a intervenir junto al intérprete" (Vidal Fernández 2007: 224). Es, por tanto, necesaria su formación a través de los cursos que se organizan dentro de sus corporaciones y asociaciones profesionales, y corresponde a las autoridades judiciales trasladar esta función formativa a las mismas. A continuación citaremos las organizaciones judiciales más relevantes en España: Consejo General del Poder Judicial, Red Judicial Española de Cooperación Judicial Internacional (REJUE), Red de Expertos en Derechos de la Unión Europea (REDUE), Red Judicial Europea (RJE), Eurojust. De entre las asociaciones de jueces, magistrados, fiscales y abogados destacan Jueces para la Democracia, Jueces Francisco de Vitoria, Asociación de la Magistratura, Unión Progresista de Fiscales, Asociación de Fiscales, Consejo General de la Abogacía, entre otros.

Igualmente importante es la formación de los Cuerpos y Fuerzas de Seguridad del Estado, pues forman parte del proceso penal durante la fase de instrucción, y su actuación requiere con frecuencia de la asistencia de intérprete.

Las escuelas más destacadas son la Escuela Nacional de Policía, el Centro de Altos Estudios Policiales y las academias de la Guardia Civil.

No hay que olvidar a los futuros operadores legales que ya pueden recibir formación durante su etapa universitaria a través de las Escuelas de Práctica Jurídica de Colegios de Abogados y Universidades, y también en los Másteres de abogacía, puesto que en su futuro profesional se encontrarán en más de una ocasión con la necesidad de recurrir a un intérprete para entrevistarse con su cliente o con los testigos, o intervenir en un juicio asistido por intérprete.

Por último, se debe incluir en este colectivo a los equipos forenses, que con frecuencia trabajan asistidos por intérpretes en su trabajo cotidiano.

En recientes publicaciones tanto europeas (Corsellis, Clement & Vanden Bosch 2011; Townsley 2013) como nacionales (Blasco Mayor 2014), orientadas específicamente a la formación de operadores judiciales, se indican las características que debe poseer un intérprete judicial profesional, cómo detectar si el comportamiento del intérprete es profesional, y pautas para trabajar eficazmente con la asistencia de intérprete durante el proceso penal. Mediante un entrenamiento breve pero intensivo,[23] los operadores judiciales maximizarán el rendimiento de su trabajo al ser asistidos por intérpretes, lo cual redundará en beneficio de todos los implicados, del funcionamiento de la justicia española, y de la salvaguarda de los derechos fundamentales.

7. Conclusiones

La construcción de la Unión Europea ha hecho surgir un actor de suma importancia en el concierto internacional al crear un espacio de libertad, seguridad y justicia. Dentro de ese espacio es prioritario garantizar una serie de derechos entre los que se encuentran el derecho a la defensa y el derecho a un juicio justo, los cuales incluyen el derecho a la información de acusados y víctimas y, por ende, el derecho a interpretación y traducción en el caso de las personas que no hablan o no entienden la lengua del procedimiento. La UE ha tomado ya sólidas medidas para garantizar esos derechos, no solo *de jure* sino también *de facto* y por ello es importante que los Estados Miembros se rijan por ese mismo espíritu a la hora de transponer las normas europeas a la legislación nacional.

Nos encontramos, pues, en un momento histórico en el que España, como los demás Estados de la UE, tiene la oportunidad de crear un marco legislativo que no solo garantice el derecho a interpretación y traducción en los procesos

23. Véase el artículo de Hale sobre formación de jueces para trabajar con intérpretes en este mismo volumen.

penales (garantía *de jure*), sino también que ese derecho sea efectivo mediante un servicio de calidad prestado por profesionales formados y acreditados para tal fin (garantía *de facto*).

En este sentido, los Estados Miembros deberán crear mecanismos para garantizar la calidad de la interpretación judicial, entre los que cabe destacar un registro profesional, cuyo acceso debería regirse por criterios objetivos, medibles y fiables. El mejor modo de garantizar dichos criterios es desarrollar un sistema de acreditación. En cualquier caso, lo más importante es que el registro sea independiente, que opere a favor de los intereses del sistema de justicia, de los profesionales de la traducción y la interpretación y de la sociedad en general, y que exista un entendimiento claro y consensuado de su cometido y del importante papel que tiene.

Resulta lógico pensar que para que pueda haber intérpretes profesionales cualificados es necesario que exista una oferta formativa que pueda dar respuesta a las demandas reales de nuestra sociedad. Por ello, desde las instituciones responsables de la formación debe existir un compromiso claro con este cometido y articular ofertas que respondan a estas necesidades, tanto en términos de contenidos como de formato.

La creación de un proceso para la acreditación de intérpretes que presten sus servicios en el sistema de justicia es de suma importancia para las partes implicadas directamente en un proceso penal, pero también lo es para la sociedad en general. La inversión inicial en términos de mano de obra y fondos económicos se verá ampliamente compensada por los beneficios para todos, puesto que se establecerá un sistema correctamente configurado y aplicado que agilice los procesos judiciales y aporte calidad y profesionalidad a los mismos.

Es imprescindible implicar y formar a los agentes que intervienen en el proceso penal sobre cómo se trabaja con intérpretes. El sistema judicial es un engranaje del cual forman parte los intérpretes: desde las diligencias previas llevadas a cabo por los cuerpos de seguridad, pasando por los jueces, abogados, secretarios judiciales, equipos forenses; todo el conjunto de operadores que intervienen en el proceso penal debe conocer qué es un intérprete y cómo trabajar con la asistencia de estos profesionales.

Las autoridades europeas han demostrado su voluntad de fomentar la calidad en la interpretación judicial en Europa con la aprobación de directivas sobre los derechos fundamentales de acusados, testigos y víctimas, y financiando costosos proyectos a través de la Dirección General de Justicia de la Comisión Europea. Los gobiernos de los Estados Miembros y las administraciones de justicia deberían demostrar su voluntad de modificar la situación

mediante los mecanismos legales que tienen a su disposición, ya que la defensa de los derechos fundamentales recae finalmente en los propios Estados.

Bibliografía

ARANGÜENA FANEGO, Coral. (2007) "Conclusiones." En: Arangüena Fanego, Coral (ed.) 2007. *Garantías procesales en los procesos penales en la Unión Europea*. Valladolid: Lex Nova, pp. 389-394.

BAXTER, Robert Neal. (2014) "Undergraduate Interpreter Training in the Spanish State: An Analytical Comparison." *Sendebar* 25, pp. 219-246.

BLASCO MAYOR, María Jesús; Maribel del Pozo Triviño; Cynthia Giambruno; Anne Martin; Emilio Ortega Arjonilla; Nadia Rodríguez Ortega & Carmen Valero Garcés. (2013). *Informe sobre la transposición de la Directiva 2010/64/UE del Parlamento Europeo y del Consejo relativa al derecho a interpretación y traducción en los procesos penales*. Versión electrónica: https://www.academia.edu/8755014/Informe_sobre_la_transposición_de_la_Directiva_2010_64_UE_del_Parlamento_Europeo_y_del_Consejo_relativa_al_derecho_a_interpretación_y_traducción_en_los_procesos_penales

BLASCO MAYOR, María Jesús. (2013). "Quality of interpreting in criminal proceedings in Spain under European Directive 2010/64/EU". *Cuadernos de ALDEEU* 25, pp. 165-190.

BLASCO MAYOR, María Jesús. (2014) "La asistencia de intérprete en el procedimiento penal. Especial referencia a su papel en la vista oral." En: Cuerda, María Luisa (dir.) & Antonio Fernández Hernández (ed.) 2014. *Vistas penales. Casos resueltos y guías de actuación en sala*. Valencia: Tirant Lo Blanch, pp. 275-293.

BRAUN, Sabine; Annalisa Sandrelli & Brooke Townsley. (2014) "Technological support for testing." En: Giambruno, Cynthia (ed.) *Assessing Legal Interpreter Quality through Testing and Certification: The Qualitas Project*. Alicante: Universidad de Alicante, pp. 109-139.

CARMONA RUANO, Miguel. (2013) "Prólogo." En: Carmona Ruano, Miguel; Ignacio U. González Vega & Víctor Moreno Catena (dirs.) & Amaya Arnáiz Serrano (ed.) 2013. *Cooperación Judicial Penal en Europa*. Madrid: Dykinson, pp. IX-XI.

CORSELLIS, Ann, Jan Cambridge; Nicky Glegg & Sarah Robson. (2007) "Establishment, maintenance and development of a national register". En: Wadensjö, Cecilia; Birgitta Englund Dimitrova & Anna-Lena Nilsson (eds.) 2007. *The Critical Link 4. Professionalisation of interpreting in the community*. Amsterdam: John Benjamins, pp. 139-150.

CORSELLIS, Ann; Amanda Clement & Yolanda Vanden Bosch. (2011) "The training of members of the legal services working through legal interpreters and

translators." En: Townsley, Brooke (ed.) 2011. *Building Mutual Trust: A framework project for implementing EU common standards in legal interpreting and translation*. Londres: Middlesex University, pp. 278-316.

DE LUNA JIMÉNEZ DE PARGA, Pilar. 2009. *Informe sobre la calidad de la interpretación en los Juzgados de lo Penal de Madrid*. Versión electrónica: http://www.elgasconjurado.com/2010/02/15/informe-de-la-magistrada-pilar-de-luna-jimenez-de-parga/

DEL POZO TRIVIÑO, Maribel. (2013): "La interpretación en el contexto español actual. Nuevos retos para el futuro". En: Alonso Aragúas, Icíar; Jesús Baigorri Jalón & Helen Campbell (eds.) 2013. *Translating the Law. Theoretical and Methodological Issues. / Traducir el Derecho. Cuestiones teóricas y metodológicas*. Granada: Comares, pp. 57-65.

DEL POZO TRIVIÑO, Maribel & Anabel Borja Albi. (2014) "Court translation and interpretation in Spain. Towards a better future!" En: Bathia, Vijay K; Giuliana Garzone; Rita Salvi; Girolamo Tessuto & Christopher Williams (eds.) 2014. *Language and Law in Academic and Professional Settings: Analyses and Applications*. Aprilia: Novalogos, pp: 219-232.

DUEÑAS GONZÁLEZ, Roseann, Victoria F. Vásquez & Holly Mikkelson. (1991) *Fundamentals of Court Interpreting. Theory, Policy and Practice*. Durham: Carolina Academic Press.

GIAMBRUNO, Cynthia. (ed.) (2014) *Assessing Legal Interpreter Quality Through Testing and Certification: The Qualitas Project*. Alicante: Universidad de Alicante.

GILE, Daniel. (2009) *Basic Concepts and Models for Interpreter and Translator Training*. Amsterdam: John Benjamins.

HANDI, Elhassane Benhaddou. (2012) "La traducción y la interpretación en el Ministerio del Interior." En: Alonso Araguás, Icíar; Jesús Baigorri Jalón & Helen Campbell (eds.) 2012. *Ensayos sobre la traducción jurídica e institucional*. Granada: Comares, pp. 91-102.

HERTOG, Erik. (ed.) (2001) *Grotius project 98/GR/131. Aequitas. Equal Access to Justice across Language and Culture in the EU*. Amberes: Lessius Hogeschool.

HERTOG, Erik & Jan Van Gucht. (eds.) (2008) *Status Quaestionis: Questionnaire on the Provision of Legal Interpreting and Translation in the EU. AGIS project JLS/2006AGIS/052*. Amberes: Intersentia.

MIKKELSON, Holly. (1996) "Community interpreting: an emerging profession." *Interpreting* 1:1, pp. 125-129.

MIKKELSON, Holly. (2013) "Universities and Interpreter Certification". *The International Journal for Translation and Interpreting Research* 5:1, pp. 66-78.

MIKKELSON, Holly. (2014) "Evolution of Public Service Interpreter Training in the U.S." *FITISPos International Journal* 1:1, pp. 9-22.

ORTEGA HERRÁEZ, Juan Miguel & Ana Foulquié Rubio. (2008) "Interpreting in police settings in Spain". En: Valero Garcés, Carmen & Anne Martin (eds.)

Crossing Borders in Community Interpreting. Amsterdam: John Benjamins, pp. 123-146.

ORTEGA HERRÁEZ, Juan Miguel. (2011) *Interpretar para la justicia*. Granada: Comares.

PEÑARROJA FA, Josep. (2004) "Historia de los intérpretes jurados." *La linterna del traductor* 9. Versión electrónica: http://traduccion.rediris.es/6articulos_a.htm

TOWNSLEY, Brooke (2013) *Building Mutual Trust 2*. Versión electrónica: http://www.buildingmutualtrust.eu/

VAN DEEMTER, Roelof, Hilary Maxwell-Hyslop & Brooke Townsley. (2014) "Principles of testing." En: Giambruno, Cynthia (ed.) 2014. *Assessing Legal Interpreter Quality through Testing and Certification: The Qualitas Project*. Alicante: Universidad de Alicante, pp. 27-39.

VARIOS AUTORES (RITAP - Red de Intérpretes y Traductores para la Administración Pública). (2011). *Libro blanco de la traducción y la interpretación institucional*. Madrid: Ministerio de Asuntos Exteriores y Cooperación. Versión electrónica: http://ec.europa.eu/spain/pdf/libro_blanco_traduccion_es.pdf

VIDAL FERNÁNDEZ, Begoña. (2007) "Derecho a una interpretación y traducción fidedigna y de calidad. Artículos 8 y 9 de la Propuesta de Decisión Marco sobre las garantías procesales de los inculpados en procesos penales en la Unión Europea." En: Arangüena Fanego, Coral (ed.) 2007. *Garantías procesales en los procesos penales en la Unión Europea*. Valladolid: Lex Nova, pp. 214-231.

VIGIER MORENO, Francisco Javier. (2010) *El nombramiento de traductores-intérpretes jurados de inglés mediante acreditación académica: descripción de la formación específica y del grado de satisfacción de los egresados*. Granada: Universidad de Granada. Tesis doctoral inédita.

WITTER-MERITHEW, Anna & Leilani Johnson. (2004) "Market Disorder Within the Field of Sign Language Interpreting: Professionalization Implications". *Journal of Interpretation* 14, pp. 19-55.

BIONOTA / BIONOTE

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LEGAL INTERPRETING IN SPAIN AT A TURNING POINT

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Abstract

The publication in the European Union of Directive *2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings* has been a turning point in a great number of aspects related to court and police interpretation. The main objective of the Directive is to ensure quality legal interpretation throughout the process, as part of the right to defence and to a fair trial.

Spain, as a Member State of the EU, has the obligation to transpose this European Directive into its domestic law. Therefore, this is a historic moment in which two main factors converge: the need to change the legislation to bring it in line with the new Directive and the need to implement measures to ensure compliance with new mandates.

This paper reviews the present state of legal interpretation in Spain from the point of view of legislation and that of service provision and analyses the measures that Spain should take to ensure that court and police interpretations are carried out with due guarantees. These measures include the training of interpreters and legal operators, the creation of accreditation systems and records, as well as the consolidation of the professional profile of interpreters.

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Resumen

La publicación en la Unión Europea de la *Directiva 2010/64/UE del Parlamento Europeo y del Consejo, de 20 de octubre, relativa al derecho a interpretación y traducción en los procesos penales* ha marcado un antes y un después en una gran cantidad de aspectos relacionados con la interpretación en sede judicial y policial. Esta norma tiene como principal objetivo garantizar la interpretación judicial de calidad durante todo el proceso, como parte del derecho a la defensa y a un juicio justo.

España, como Estado Miembro de la UE, tiene la obligación de transponer la norma europea a su derecho interno. Se trata, pues, de un momento histórico en el que confluyen dos factores principales: la necesidad de cambiar la legislación para adaptarla a la nueva norma y la necesidad de implementar medidas para garantizar el cumplimiento de los nuevos mandatos.

En el presente artículo se realiza una revisión del estado de la cuestión sobre la interpretación judicial en España desde el punto de vista de la legislación y de la provisión de servicios, y se analizan las medidas que debe tomar nuestro país para garantizar que la interpretación en los tribunales de justicia se lleva a cabo con las debidas garantías. Estas medidas incluyen la formación de intérpretes y de operadores judiciales, la creación de sistemas de acreditación y registros, así como la consolidación del perfil profesional de los intérpretes.

Keywords: Legal interpreting. Professionalization. Training. Accreditation. Register.

Palabras clave: Interpretación judicial. Profesionalización. Formación. Acreditación. Registro

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1. Introduction

One of the pillars on which the European and the international framework of human rights is based on, is the prohibition of both direct and indirect discrimination. In this regard, the provision of interpreters to persons involved in judicial proceedings and who do not speak the official language(s) is a key measure to ensure non-discrimination from access to justice.

As part of its commitment to the creation of a plan of freedom, security and justice, the EU has developed a roadmap and has taken a series of steps which are described in recital 9 of Directive 2013/48:

> On 30 November 2009, the Council adopted a Resolution on a Roadmap for strengthening the procedural rights of suspected or accused persons in criminal proceedings (hereinafter 'the Roadmap'). Taking a step-by-step approach, the Roadmap calls for the adoption of measures regarding the right to translation and interpretation (measure A), the right to information on rights and information about the charges (measure B), the right to legal advice and legal aid (measure C), the right to communicate with relatives, employers and consular authorities (measure D), and special safeguards for suspects or accused persons who are vulnerable (measure E). The Roadmap emphasises that the order of the rights is only indicative and thus implies that it may be changed in accordance with priorities. The Roadmap is designed to operate as a whole; only when all its components are implemented will its benefits be felt in full.

Measure A has been materialised with the publication of *Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings* (hereinafter referred to as "the Directive") which sets out common minimum standards for EU Member States on the right to interpretation and translation in criminal proceedings and obliges Member States to transpose the Directive before October 2013. The Directive firstly provides the right to interpretation and translation to persons who do not speak or understand the language of the procedure. This right must be provided from the moment these persons are informed that they are suspected or accused of a criminal offence, up to the end of the criminal proceedings, including sentencing and ruling on appeal. The new European standard also establishes that an interpreter should be made available

for the persons concerned to communicate with their legal counsel on matters related directly to any questioning or hearing during the proceedings. Another requirement of the Directive is to ensure that Member States, within a reasonable time period, provide the suspected or accused persons with a written translation of essential documents, namely of any decision depriving them of liberty, charge or indictment and judgment.[1]

The objective of the Directive is that Member States establish mechanisms to ensure quality translation and interpretation in criminal proceedings in order to safeguard the right to defence and the right to a fair trial, and to strengthen mutual confidence between Member States.

As a mechanism for ensuring quality, the Directive urges Member States to set up "a register or registers of independent translators and interpreters who are appropriately qualified". In order to comply with the recommendation of the Directive, Member States must set up registers such that their members comply with a set of requirements that guarantee their professional solvency. To that end, they must have adequate training and must furthermore pass some objective accreditation tests. The notion "independent" cited in the Directive is not entirely clear since in a Spanish context, it may refer to interpreters that are not linked to any particular body, businesses or institutions, or that there is no conflict of interest with the person or persons they are interpreting for.

Spain, as a Member State of the EU, must also transpose the Directive into its national legislation since its current legislation is completely outdated, which has led to the presence of several systems for the provision of translation and interpretation services that in no way guarantee effective legal protection and the right to defence, which are obligations of the Rule of Law (see section 2 herein).

As part of the work plan and measures established by the EU and described hereinabove, the guarantees provided in Directive 2010/64/EU have been furthermore reinforced by another three Directives:

- *Directive 2012/13/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 22 May 2012 on the right to information in criminal proceedings.*
- *Directive 2012/29/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council framework Decision 2001/220/JHA.*

1. For a detailed study of Directive 2010/64/EU, see the article by Hertog in this same volume.

– *Directive 2013/48/EC of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.*

All of them consider the right to translation and interpretation as a *de facto* guarantee so that victims and defendants can enforce their rights.

This paper briefly reviews the current situation of legal interpretation in Spain, from a legislative and service provision point of view (RITAP 2011, Ortega Herráez 2011, Del Pozo Triviño 2013, Blasco Mayor 2013, Del Pozo Triviño & Borja Albi 2014) and analyses the diverse mechanisms for setting up registers of legal translators and interpreters with a view to providing information on the steps Spain should take to correctly transpose the European Directives mentioned above (Corsellis, Cambridge, Glegg & Robson 2007; Blasco Mayor 2013; Del Pozo Triviño 2013; Del Pozo Triviño & Borja Albi 2014). It likewise discusses the several training and accreditation models in judicial interpretation (Blasco Mayor, Del Pozo Triviño, Giambruno, Martin, Ortega Arjonilla, Rodriguez Ortega & Valero Garcés 2013; Giambruno 2014; Blasco Mayor 2013; Mikkelson 2014) and the training of legal operators to work with interpreters (Blasco Mayor 2014; Corsellis, Clement & Vanden Bosch 2011). Special attention has been paid both to the particularities of the so-called "less widely used languages" (which are currently the most used in Spanish courts) as well as to the regulation and consolidation of professional interpreters (Del Pozo Triviño 2013, Blasco Mayor 2013, Mikkelson 1996).

2. Current Situation of translation and interpretation in criminal proceedings in Spain

2.1. Spanish law on translation and interpretation in criminal proceedings

This section briefly reviews the Spanish legislation on the right to translation and interpretation, especially in criminal proceedings. The *Ley de Enjuiciamiento Criminal* (LECr)[Code of Criminal Procedure], when referring to the stage of preliminary investigation called "*sumario*" within the regular procedure, followed for crimes punishable by more than nine years in prison, in its Article 440, literally reads as follows:

> If the witness does not understand or speak Spanish, an interpreter shall be appointed, who shall swear to perform his duty well and faithfully. This method shall be used to question the witness and to receive his/her answers, which shall be channelled through the interpreter. In this case, the procedural

> declaration shall be recorded in the language of the witness and then translated into Spanish [Translated by authors].

This LECr, in its Article 441, makes reference to the qualification and accreditation of the interpreters, as follows:

> The interpreter shall be elected from among persons with a title, if any available in the town. In default thereof, a teacher of the corresponding language shall be appointed, failing which any person that knows the language shall be appointed [Translated by authors].

As can be seen, the LECr, which was enacted in 1882, in theory establishes an order of priority, since it states that the judge shall first choose "those who have the title", followed by "the teacher of the corresponding language" and, finally, "any person who knows the language". However, the summary procedure applicable when the deprivation of liberty is less than nine years, does not even mention the order of preference established for the regular procedure, but literally states that the interpreter does not need to have an official title:

> When the accused or witnesses do not speak or understand Spanish, the provisions of articles 398, 440 and 441 shall apply, there being no need for the interpreter appointed to have an official title [Translated by authors].

As pointed out by the *White Paper on Institutional Translation and Interpretation* (RITAP 2011: 19), "The articles of the LECr have become obsolete, are characteristic of the 19th century and do not reflect the transformation undergone in the Spanish society". On the other hand, the *Organic Law of the Judiciary*, in its Article 231, provides that judges and magistrates have the power to appoint any person as an interpreter during oral proceedings.

As has already been mentioned, Spain must adapt this legislation to the new European rules. However, on the date of publication of this Article, the Directives mentioned in the introduction paragraph have not yet been transposed into Spanish legislation such that the self-evident right contained in the European rules is still not guaranteed in the Spanish context.[2]

2. At the time of writing this paper, the process of transposition of the Directives is being implemented, primarily through two draft bills: statute of the victim, which for the first time in Spain incorporates the right of victims to an interpreter, and the modification of the LECr, which recognises the right of the victims and defendants to qualified and professional interpreters.

2.2. Provision of interpretation and translation services in criminal proceedings

Under the current outdated and permissive legal framework which offers judges and magistrates the possibility of appointing "any person who knows the language" as a court interpreter, without the need for any type of accredited training and professional capacity, it is not surprising then that this leads to service provision models that do not guarantee the quality of interpretations. The following paragraphs set out the main models currently used to recruit legal interpreters in Spain (RITAP 2011: 47-71, Ortega Herráez 2011). According to Ortega Herráez (2011: 95), Spain has three systems for recruitment of court interpreters.[3] Generally speaking, and without taking into account the peculiarities of the Autonomous Communities to which competences in the field of justice have been transferred (which are the majority), the three models currently used for the provision of translation and interpretation services in Spain are:

- The traditional model: in this model there is coexistence of the in-house interpreters (who access the position through a competitive exam) and the freelance interpreters (who are hired when workload is very high and whenever interpretation is required into languages for which in-house interpreters are not available).
- Outsourcing of services: administrations publish a tender to which private companies present bids. The fact that the company acts as an intermediary means that the rates received by interpreters are reduced significantly, which in turn means that many professionals do not accept the terms and conditions imposed by the companies awarded the bid and the companies in turn seek to recruit people with little or no training or experience.[4]
- Integral public management of legal interpretation and translation services: this model, unique to the province of Las Palmas, is based on the presence of a single in-house interpreter to coordinate and supervise the interpreters' team. This model, despite not being perfect, has certain advantages such as the absence of intermediaries, and thus translators and interpreters are paid full rates by the State, and also the presence of an interpreter who applies quality control to some extent.

Unfortunately, the model that has succeeded over the past years in most parts of Spain is the so-called "outsourcing model", by which the Administration, through a public tender, hires private companies to provide interpretation and

3. And police interpreters, except for the third model, that only applies to interpreting in the courts.
4. There are numerous complaints and allegations about the damage caused through recruitment of non-professional translators and interpreters in the several fields of justice (Handi 2012; De Luna Jiménez de Parga 2009).

translation services in court and police settings (Ortega Herráez & Foulquié Rubio 2008: 125). These companies are responsible for choosing interpreters, establishing the requirements for their employment (minimum in most cases) and determining their work conditions: hours, remuneration, etc. This model of hiring not only negatively affects translations and interpretations but also affects the manner in which the profession is perceived socially. For all these reasons, there are many groups both from the professional and the academic world who are struggling to stop this practice while simultaneously offering alternative formulae to ensure quality interpretation and rationalisation of expenditure (De Luna Jiménez de Parga 2009).

After analysing the current situation of interpretation in the Spanish courts and police[5] with regard to legislation and service provision, we can conclude that Spain has a long way to go in order to comply with the provisions of Directive 2010/64/EU.

3. Registers of legal interpreters

As has already been mentioned, one of the mechanisms that the Directive proposes to Member States to ensure quality court translation and interpretation is the creation of "one or more registers for appropriately qualified independent translators and interpreters" (Art.5.2). Therefore, Member States must set up registers such that members comply with a set of requirements that guarantee their professional solvency. The following sub-sections address some important issues related to registers of translators and interpreters and propose a register for Spain.

3.1. Definition of the concept

According to Corsellis, Cambridge, Clegg & Robson (2007: 140) "A profession is a group of people who share expert know-how, who profess a code of ethics (to protect their customers, their knowledge and peers) and who go beyond the personal interest of the group's members." To meet the requirements set forth in the code, these professionals establish national systems that are transparent, systematic and accountable. These systems cater to selection, training, accreditation, membership of register, promotion of good practices, quality control and establishment of disciplinary procedures. As indicated by the authors, this definition appeared in the first European project on the

5. When in need, the Spanish police may hire interpreters as freelancers without any agency intermediation.

procedural right to interpretation in European justice, *Grotius 98/GR/131* (Hertog 2001), concerning the equivalence of translation and interpretation standards in all EU Member States, and accepted by the European Commission (Corsellis et al. 2007: 140). The authors go a step further regarding the register:

> […] such a register is therefore, not a list or a directory but the public manifestation of a professional structure and of its integrity (op.cit.:141).

More recently, the team of experts of the European project *Qualitas*[6] (Giambruno 2014: 250) defines the concept of professional register as follows:

> An independent voluntary or statutory body that registers and makes available the details of individuals who meet its criteria in terms of qualifications, experience and security clearance, and have agreed to observe its code of ethics/conduct along with its disciplinary procedures when any breach of the code is alleged. A professional register goes further than just a database or list.

This concept of register that inspires Directive 2010/64/EU is not supposed to be just a simple list or database but an "official body" of qualified independent professionals governed by official rules, which furthermore guarantees the independence of these registered professionals, checks their qualifications, experience, criminal record, and compliance with the code of ethics. At the European level, the creation of national registers is meant to establish a system that would permit the authorities in the different Member States to identify and locate qualified independent translators and interpreters in all EU countries without having to question the quality or legitimacy of the services they offer. In order to achieve this goal, there must be some uniformity or harmonisation on the subject of the minimum criteria to be met by professional interpreters in each of the Member States. A register of operators that does not guarantee the required quality does not contribute to mutual trust or to the desired legal certainty (Blasco Mayor et al. 2013, Blasco Mayor 2013).

We will now analyse the current situation in Spain and present a proposal for the creation and management of a register of legal translators and interpreters.

3.2. Current situation in Spain

The Ministry of Foreign Affairs and Cooperation currently exhibits a list of translators and interpreters under its jurisdiction. In order to appear on this

6. http://www.qualitas-project.eu/

list, candidates need to pass an exam conducted by the Ministry's Languages Interpretation Office (hereinafter OIL), or must obtain accreditation from this office for having achieved certain credits in legal translation and interpretation in the now extinct Translation and Interpretation *Licenciatura*[7] *(Order-AEX/ 1971/2002, of 12 July 2002 laying down the requirements and the procedure for obtaining the title of sworn interpreter for Translation and Interpretation graduates)*. In regard to the tests carried out by the OIL to grant the title of sworn translator-interpreter (Vigier Moreno 2010: 26), they consist of a translation from and into Spanish of a legal text, and an interview with the candidates to ensure they speak the source and target languages fluently. None of these tests are related to knowledge of the legal field or the ability to interpret, and therefore it seems clear that the word "interpreter" should not be part of the title because the candidate's ability to interpret is not checked, which only leads to more confusion with regard to the professional profile of interpreters in Spain.[8]

The OIL publishes a list of sworn translators cum interpreters on its website and the list can be consulted by any citizen who requires the services of these professionals. It is organised by languages and contains the name and contact details of the sworn translator cum interpreter. Very few of these professionals work as interpreters in the field of criminal justice; the majority work in civil cases and do sworn translations of several types of documents, as these are well-paid jobs with social prestige.

The OIL does not perform any follow-up on the professional performance of the sworn translators nor does it organise ongoing training and career development programs for them. The nature of the tests or the professional scope of the activity of the sworn translators cum interpreters, which is entirely outside the different profiles drawn in the legal field, cannot *a priori* ensure that these sworn translators can successfully perform as court or police interpreters.

At present, there is neither a register nor any list of court and police interpreters in Spain. As indicated in section 2.2. above, this is because the provision of the service has been outsourced to private companies, and it is these

7. *Licenciatura* was the name of the degree prior to the EHEA changes. It is now called *Grado*.

8. The title was initially called "interpreter" and did not contain the word translator, which was recently added. The name "interpreter" was retained as a vestige of the original title that was given to the first interpreters of the Colonial America, and dates back to the XVI century (Peñarroja 2004). That title seems anachronistic and does not conform to the European professional profiles (Blasco Mayor 2013).

companies who decide on which interpreters to hire. In most cases, the persons working as interpreters are not professionals and neither are they sworn translators cum interpreters. They likewise have no studies in translation and interpretation or in languages. This outsourcing model has destroyed the professional fabric, which can only be improved if a new model is established in accordance with the provisions of Directive 2010/64/EU, in which the first step would be the design and creation of a professional register of legal interpreters and translators in Spain, in line with the mechanisms already approved by the European Commission in 2001.

3.3. Proposal for a Register in Spain

The proposal for a professional register in Spain put forward by the authors relies on the model already proposed in the report prepared by the Conference of University Departments and Centres of Translation and Interpretation of Spain (hereinafter CCDUTI) for the Spanish Ministry of Justice on the transposition of Directive 2010/64/EU (Blasco Mayor et al. 2013). The authors participated actively in writing the said report which bases its proposals in the rules laid down in the UK's National Register of Public Service Interpreters (NRPSI), since it is the reference register in Europe, and is possibly the model register that inspired Directive 2010/64/EU. Our model adapts the NRPSI rules to the Spanish reality as follows:

a) The register must have clear and transparent rules.
b) Members must be qualified and independent interpreters and/or translators.
c) They must abide by a code of ethics.
d) They must have no criminal record.
e) They must pay a professional association membership fee.
f) They must periodically renew membership of the same. Guidelines for renewal should be established, which may include demonstrable experience in the field of justice and ongoing training courses. Candidates who fail to comply with these requisites should be re-examined.
g) The register should be free for end-users.
h) Different categories of membership can be contemplated according to the languages and the type of accreditation of the candidate.
i) The register should be established at national level but given that the autonomous communities[9] with own languages have justice powers transferred to them, alternate registers that include professionals who work with these languages may also be considered.

9. Or regions.

Access to the register should in all cases be through a reliable and validated accreditation test as explained in section 5. Given that the Ministry of Justice is the institution responsible for the transposition of the Directive and hence of its compliance, it would only be logical to think that the Ministry should not only be responsible for the provision of this service but also for the accreditation process. The Ministry should avail of the collaboration of academic experts and professionals for designing the register and the evaluation process. Alternatively, the accreditation could be managed by an inter-university consortium created for that purpose through an agreement with the Ministry of Justice.

Another possibility, considering the territorial, political and administrative organisation of the Spanish state into autonomous communities, most of which[10] have justice powers, is the creation of professional associations called "*colegios*" of translators and interpreters in each autonomous community, which shall be responsible for the service provision and management of the register. This modality is already in use for management and provision of duty counsel services in the Spanish administration of justice. The role of the professional *colegios* in Spain has a longstanding tradition in the development and evolution of the liberal professions. Article 1.1 of the valid Spanish legislation on *colegios*, which dates back to the year 1974 (*Law 2/1974, of 13 February 1974*), defines *colegios* as follows: "[…] corporations under public law, protected by law and recognised by the State, with their own legal status and full capacity to engage in their business purpose", and Article 1.3 describes their purpose as follows:

> essential business purposes in these corporations consist of regulation of professional activities, exclusive institutional representation of the same when they are subject to compulsory membership, defence of the professional interests of its members, and protection of the interests of consumers and users of the services provided by its members, without prejudice to the powers of the Public Administration by virtue of their official relationship. [Translated by authors]

The structure and legal nature of the *colegios* would make them best suited to assume the competences derived from the Directive. On the one hand, they

10. Andalusia, Aragon, Asturias, the Canary Islands, Cantabria, Catalonia, Valencia, Galicia, Madrid, Navarra, the Basque Country, La Rioja. Communities where justice powers are not transferred: Castile-Leon, Castile-La Mancha, Extremadura, Murcia, Ceuta and Melilla. Source: https://www.administraciondejusticia.gob.es/paj/PA_WebApp_SGNTJ_NPAJ/descarga/08c_Doc_Estad%C3%ADstico_Traspasos_Competencias_Admón_de_Justicia.pdf?idFile=f96d9863-3b11-49a8-a64f-330eeac35158 (consulted on 5/11/2014).

could be the ones running the register and just as in the case of the lawyer *colegios*, also be responsible for appointing the duty interpreters and for managing the service for provision of registered interpreters to courts and police in the area. On the other hand, and in collaboration with experts from universities, and through a General Council, they could also be made responsible for the processes of criminal background verification of candidates, and furthermore could be entrusted with administration and assessment of the specific tests related to the accreditation required for membership on the register of court interpreters and translators. In addition, the *colegios* would be responsible for ensuring quality of services provided by their members because one of their main missions is to cooperate with the judicial authorities to establish quality control mechanisms, both *a priori* (access through examination, continuing professional development of its members) and *a posteriori* [evaluation of recordings and other quality control mechanisms (Vidal Fernández 2007, Aranguena Fanego 2007), application of disciplinary procedures, and so on], in accordance with Article 2 (8), Article 3 (9), and Article 5 of the Directive. Finally, and in cooperation with the bar associations, law schools and police academies, training courses to these court operators could be provided, in accordance with Article 6 of the Directive (see section 6 of this article).

Given that the creation of *colegios* in the autonomous communities and the preparation of tests require the passing of legal regulations that would take some time, the justice administration could consider to first create a "transitional" register with an expiry date, such that individuals interested in continuing membership on the register after the expiry date shall have to fulfil a set of requirements. During this transitional stage, membership to the register could initially be considered in the following cases:

- Graduates in Translation and Interpretation who can demonstrate real professional experience in the legal field.
- Sworn translators cum interpreters (appointed by the OIL) who can demonstrate real experience in the legal field.
- In the case of the less widely spoken languages, persons with proven experience or specific training gained in other countries could also be included.

During this transitional stage and as an exception, other graduates with proven experience in the field can be accepted for membership to the register, in order not to block the access of persons already working in the field and doing a good job.

For those languages in which there are no degree programs offered in Translation and Interpretation or in Languages, candidates shall be required to take a specialisation course, which could be offered by universities in

collaboration with professional associations.[11] In such cases, the Government should encourage and financially support the persons who speak these greatly demanded languages to take the said courses.

If validation of legal translators and interpreters from other EU Member States becomes an issue, then there should be a reciprocal guarantee in place, i.e. that the Spanish accredited legal translators and interpreters must also be recognised in these other EU Member States.

One way to ensure incorporation of qualified interpreters into the judicial system, either by way of *colegios* or by way of registers, is through the establishment of a professional tariff Act present in countries like Germany, Austria and other EU Member States, where the fee to be paid to the interpreters per hour or per day is set in the law or the legal instrument which regulates the implementation of the Directive. This measure would help to avoid the abuses currently committed by companies awarded public tenders and would furthermore ensure that professionals receive fair compensation for work that requires high specialisation, thereby promoting consolidation of the profession, attraction of talent and quality, which will provide benefits to the entire judicial process. This is the only way to guarantee procedural rights, and comply with the mandates established by Directive 2010/64/EU.

There are a number of precedents in Spain, such as the tariffs of solicitors, which are applied throughout the justice system and which are referred to in *Royal Decree 1373/2003 of 7 November 2003, approving the fees of solicitors,* wherein detailed fees are established according to the scope and volume of services provided by these professionals.

In any case, the register should observe the maxims of qualifications and independence of its members, and therefore cannot be dependent on or be at the particular service of any agency or legal/police entity.

4. Training for legal interpreters

It has been some years since Gile wrote:

> […] the training of professional translators and interpreters is still based essentially on professional experience, introspection, intuition and negotiations between trainers on methods and modalities rather than on research (2009:3).

11. See section 4.2. on specialist and diploma programmes. The objective of these courses is to cater to the professional profiles demanded by society whenever formal teaching programs of official titles do not cover these languages.

There has been an exponential growth in research in recent years, not only in the didactics of general translation and interpretation but also in the didactics of specialised translation and interpretation and, therefore, of court interpretation. At the same time, the recent offer of university training in translation and interpretation has grown enormously, both in Spain and abroad. However, the offer for training in court translation and interpretation remains low and in most cases is limited to a few specific modules within the general undergraduate and postgraduate programs. This section discusses the current training offer in Europe, and more specifically in Spain, and a proposal is put forward for legal translation and interpretation[12] training which could provide a response to the growing current demand that will increase once the mechanisms for the transposition of the Directive and the creation of registers of qualified interpreters are articulated.

4.1. Formal training: undergraduate and postgraduate

Many European countries (UK, Germany, Austria, Netherlands, Belgium, Italy, etc.) offer university Bachelor's and Master's degree programs in translation and interpretation studies.[13] In regard to the training of Master's programs in court translation and interpretation, the majority of the Member States offer some type of program but they are either integrated within larger ones, such as Master's degree in translation and interpretation, or are included in more specific Master's programs such as the ones dedicated to training in interpretation for the public services, which in addition to court interpretation also includes interpretation for the police, health, education and social services fields. For example, the United Kingdom has Master's programs that include training in public services translation & interpretation (University of Surrey), but none specialises exclusively in court interpretation. In the Netherlands, the Stichting Instituut van Gerechtstolken & -Vertalers (SIGV)[14] offers specialised training and specific accreditation for court translators and interpreters in 20 languages.

In Spain, about twenty public universities and some private ones offer undergraduate programs in T&I (Baxter 2014) and some of them offer Master's

12. Proposal based on the report written by the Conference of the Translation and Interpretation Centres for the Ministry of Justice (Blasco et al. 2013).
13. The EU funded OPTIMALE - *Optimizing Translator Training* project offers an interactive map that provides up-to-date information on training in public services translation and interpretation in the EU (http://www.translator-training.eu/).
14. http://www.sigv.nl/

programs that include training in court interpretation and legal translation. The Master's programs currently on offer in Spain are the following:

- Master's Degree in Inter-cultural Communication, Interpretation and Translation in the Public Services (University of Alcalá de Henares), a member of the European Masters Network (EMT).
- Master's Degree in Legal Translation and Court Interpretation (Autonomous University of Barcelona).
- Master's Degree in Legal-Financial Translation (Universidad Pontificia Comillas ICADE (Madrid-ICAI), a member of the European Masters Network (EMT).
- Master's Degree in Institutional Translation (Universitat d'Alacant - Universitat Jaume I - Universitat de València).

None of these programs is specifically oriented to interpretation in courts (although the one offered at the Autonomous University of Barcelona is the one that presents a more dedicated profile). However, all of them can update their contents to increase credits for these disciplines. There are up to nine other specialised translation Master's programs offered by other Spanish universities; some of which include modules in court interpretation or legal translation, but these are very few.

In relation to the less widely spoken languages, it should be noted that the above-mentioned Master's Degree in Translation and Interpretation in the Public Services, from the University of Alcalá de Henares, offers training in up to ten language pairs, with special attention to the languages considered as less widely spoken which are, in fact, the most demanded today in legal settings. Language combinations in which training is provided along with Spanish are: German, Arabic, Bulgarian, Chinese, French, English, Portuguese, Romanian, Russian and Polish.

4.2. Non-formal training: specialist and diploma programmes offered by universities

An example of non-formal training at European level is the United Kingdom, where university preparation courses are offered for the official Chartered Institute of Linguists (*CIOL*) accreditation, the so-called Diploma in Public Service Interpreting (DPSI); as is the case of the Diploma in Legal Interpreting[15] offered at the University of Middlesex, with 45 credits, and training in 14 language pairs.

15. http://www.mdx.ac.uk/courses/undergraduate/legal-interpreting

In Spain, Article 34(3) of *Basic Law no. 6/2001 of 21 December 2001 of Universities* grants to universities, by virtue of their autonomy, the possibility of offering programs leading to diplomas or degrees, as well as lifelong learning courses. These programmes seem to be an adequate way to fill the gap that exists for legal interpreter education, as indicated in the regulation of 29 May 2013 which regulates these degrees at the University of La Laguna,

> […] these programmes, whose interest is to provide a quick and effective response to cultural, scientific, artistic or professional social demands, complement the set of regulated (official) curricular programmes and together comprise the offer from each University, thereby contributing to providing a unique profile to the University. The possibility of offering all these specialist programmes covers an important gap in the range of university studies on offer, in that it permits the University to respond to the challenge of the growing needs of a competitive labour market that demands highly qualified workers [Translated by authors].

There are currently two such programmes in Spain that offer training in court and police interpretation and translation but not on an exclusive basis. These are set within a general Public Services Interpretation program (hospitals, schools, social services, etc.). These courses are:

- Specialist Diploma in Translation and Interpretation for Community Services (University of La Laguna)[16]
- Postgraduate Diploma in Interpretation in the Public Services of Catalonia (Universitat Autònoma de Barcelona)[17]

Both courses pay special attention to the less widely spoken languages. The former provides training in English, French, German and Russian; while the latter is offered for Arabic, Chinese, Romanian, Russian, English and French.

4.3. Training proposal for legal interpretation

The training of legal interpreters should be based on three fundamental pillars. On the one hand, it should include learning of interpreting techniques, methods and strategies for court and police settings. On the other hand, it should include training in comparative law and police proceedings in the relevant language combinations[18] and, finally, it should address the professional

16. http://experto.webs.ull.es/
17. http://www.uab.es/servlet/Satellite/postgrado/diplomatura-de-postgrado-en-interpretacion-en-los-servicios-publicos-de-cataluna-arabe-chino-rumano-ruso-ingles-frances-/datos-basicos-1206597472083.html/param1-2996_es/param2-2009/
18. Interpreters working in countries with inquisitorial judicial systems (Spain, France, Italy) require more training in the criminal justice system and legal terminology than

code of ethics (Dueñas González, Vásquez & Mikkelson 1991: 202). In order to comply with the common requisites for all EU interpreters and translators, we believe that the EU should provide guidelines on the contents and format of this training with collaboration and advice from academics and professionals and, obviously, in consonance with the several accrediting bodies created in each Member State.[19]

Such specific training could be provided by universities through degree and diploma programmes, in accordance with the already existing models, and in collaboration with experienced professionals from the field.[20] In order to reduce costs incurred in the establishment of examination boards for many language pairs and to guarantee homogeneity of the process, a single board of evaluators could be established for the entire country.

In the case of the less widely spoken languages, training would not be so focused on the languages themselves, since it would be practically impossible to have trainers in all language combinations. Students wishing to get trained would have to demonstrate knowledge of Spanish and the language in which they wish to work as legal interpreters (not always their mother tongue), and such accreditation of linguistic knowledge should be done pursuant to uniform criteria provided for in the rules established for this purpose.

Such training, in all cases, should be always geared towards hands-on practice of the profession, and therefore, in addition to containing exercises that simulate real-life situations, it should also include internships supervised by professionals and visits to courts and police units.

5. Accreditation system for legal interpreters

In order to speak knowledgeably on the process of accreditation in Spain, we need to first define the concepts. According to the Spanish Language Royal Academy (RAE), accreditation is a "document that certifies the condition of a person and his/her faculty to undertake a particular activity or position", and certification is "a document that guarantees the truth of a fact". We believe that the term "accreditation" in Spanish would be the most appropriate in the present context. In accordance with these definitions, Spain does not have a system or an accreditation process for legal interpretation. This means that it

those in countries with adversarial systems (United Kingdom, United States) (Giambruno 2014).

19. See final report of Grotius project I (2001/GRP/ 015), Aequitas - Access to Justice across Language and Culture in the EU

20. See article by Hertog in this same volume.

does not have a previously established procedure, in which candidates must demonstrate sufficient skills, to guarantee quality through the performance of a set of tests designed with reliable methods and based on the reality of the profession. Such procedure or system to guarantee quality must be designed and evaluated by external experts.

For the English-speaking context, Mikkelson (2013: 66) explains that organisations are accredited while individuals are certified. She furthermore includes licensing as an alternative to certification even though it typically refers to institutional authorisations granted to individuals who have demonstrated certain skills for carrying out an activity over a specified period of time. In professions with licenses, these are a legal requirement to engage in the profession, and therefore anyone not having a license cannot use the title or provide the service. A certification is usually a voluntary process to which an individual submits himself/herself, normally performed by a professional association or an academic institution and is based on proven competency and other criteria such as professional experience (Mikkelson 2013: 67).

5.1. Accreditation and socio-professional status

In consolidated professions such as lawyers or engineers, it is the very professional associations or bodies that promote such "voluntary" certifications. Their aim is to guarantee quality to users of professional services when they hire an accredited professional. The accredited professionals are likewise guaranteed professional prestige and visibility, access to employment pools, assistance with mobility in the European Union, access to civil liability insurance, ongoing training and other professional benefits.[21] Spain currently does not have any professional body or association of legal interpreters that performs these functions.

Legal interpretation in Spain is an activity that currently lacks clear definition, occupational prestige and social recognition, and therefore can be said to lie exactly at the opposite end when compared to consolidated professional profiles that are in constant evolution. On the one hand, there are in-house interpreters hired by the Ministry of Justice and the Ministry of Home Affairs, who are becoming increasingly scarce and strive to survive (Ortega Herráez 2011). On the other hand, in recent years both the Ministry of Justice and the

21. There are professional corporations such as COGITI in Spain http://www.cogiti.es/Paginas/Ficha.aspx?IdMenu=A2238BD0-3048-4D9D-AB8C-C91C6FDFD475

Ministry of Home Affairs are usually provided with "interpreters" through private companies that have won a public tender.[22]

The proposed legal interpreter professional profile, on which the Directive is inspired when it refers to "qualified and independent interpreters", is that of a self-employed professional who has obtained a specific qualification that enables him/her to engage in a professional activity. Just like in the majority of the liberal professions, after obtaining a specific university degree that permits one to work in a profession, the self-employed interpreter seeks and obtains work from a variety of job sources, not only in the legal or court fields (court cases, civil mediation, notaries) but also within a general scope of conference interpreting (congresses, conferences, courses), and that of translation. It would be illogical to believe that one can survive solely from just the one source of income in the free market, and therefore qualified interpreters normally work for several employers, both public and private, and even diversify their offer by expanding their profile to that of a translator. The profile of legal interpreter is defined along the same lines in *Status Quaestionis* (Hertog 2008), a project funded by the EU's D. G. Justice that analyses the status of legal interpretation in Europe via a questionnaire survey carried out on the judicial authorities and interpreters in the Member States.

5.2. Accreditation and disruption of the Spanish market

Along with the creation and implementation of an accreditation system for legal interpreters, the main obstacle for the regulation of access to the profession is the phenomenon that Witter-Merithew & Johnson (2004: 20, *apud* Mikkelson 2013: 71) call disruption of the market or *market disorder,*[23] of which Spain is a good example:

> Defined as the current state of the interpreting market that reflects significant instability related to minimum standards for entry into the field and the lack of consistent and reliable professional control over the variables impacting the effective delivery of interpreting services (e.g., introduction into the field, working conditions, job descriptions, role and responsibility, wages).

In the Spanish case, the problem is compounded by the presence of a real oligopoly for service provision, in the hands of companies interested in hiring interpreters at ridiculously low rates in order to increase their profit. This means that the persons working for them as interpreters do not bother to get

22. See section 2.2 and Giambruno (2014: 174).
23. Wallace, in this same volume, relates the phenomenon with the absence of professional registers.

training, which is costly in terms of time and money. In the absence of incentives for access to a decently paid and prestigious profession, there will be no interpreters willing to get trained and be accredited, to ensure a minimum quality of interpretations in the legal process.

This situation is compounded by the disparity of names, titles and accrediting institutions for interpreters in Spain, that further add to the confusion to the poorly profiled professional scenario. Titles need to be unambiguous and provide clear descriptions on the competencies the title holder can perform. In this sense, the Spanish universities are putting great effort into the profession through constant collaboration with active interpreters, by organising seminars and courses with a clear orientation towards the professional market, and by including and specifying the professional competencies of their titles.

5.3. Proposal for European accreditation: the Qualitas project

In *Qualitas: Assessing Legal Interpreting Quality through Testing and Certification* (Giambruno 2014), a project funded by the EU's Criminal Justice Program for standardisation of the accreditation system for court interpreters in Europe, fourteen experts from seven European countries analysed and designed an accreditation system for legal interpreters based on experiences that have worked in Europe and in other countries (United States, Canada, Australia), as well as on the application of psychometric criteria and techniques for developing assessment tests.

The project carried out an extensive and detailed study on the accreditation system of court interpreters, along the following points:

- Minimum basic skills and legal and professional knowledge that must be checked in any accreditation system for legal interpreters
- Basic principles of test design and psychometrics, and application of these in legal interpreting tests
- Criteria for the selection of interpreters in less widely spoken languages
- Application of new technologies in police and court interpretation: video conferencing and remote interpretation
- Organisation, administration and management of an accreditation system for legal interpreters.

5.4. Proposal for accreditation of legal interpreters in Spain

The accreditation proposal presented below for Spain is largely inspired in the report prepared by the CCDUTI for the Ministry of Justice (Blasco Mayor et al. 2013), and the results of the *Qualitas* project (Giambruno 2014).

5.4.1. Prerequisites to accreditation

It is important to establish the prerequisites that candidates must fulfil for entry into the accreditation process. Among the factors that must be considered are academic training, accredited work experience and some criteria of a personal nature such as minimum age, nationality/citizenship and no criminal record, among others. These data can be checked in a phase prior to the accreditation process by means of a computer application that automatically excludes candidates who do not meet the established requirements.

5.4.2. Mastery of languages

The high training level needed for engaging in legal interpretation means that potential candidates for accreditation must, whenever possible, be graduates and demonstrate a native or near-native linguistic level. Thus, the level C2, according to the Common European Framework of Reference for Languages (CEFRL), is the recommended level; however, the candidate's real proficiency should be checked, including handling of registers, specialised vocabulary and technical terminology, among other components. A screening exam, which may be a multiple-choice test because it is less expensive than conducting an examination with an examinations board, is recommended to check language proficiency. Only candidates who pass this language proficiency test will be able to access the second phase of the process.

5.4.3. Knowledge of the legal system and code of ethics/good practice

It is universally recognised in court interpretation that the accreditation process must include an assessment of the candidate's knowledge of the system and of the professional rules of conduct. If a translator or interpreter does not know the basic elements of the system in which he/she will be working (structure, processes, rights, institutions, participants and the like), then the possibility of making a mistake when working in a real environment increases exponentially.

The same can be said with regard to ethics. Knowing and understanding the limits of ethical behaviour is essential in this area. The assessment of this knowledge can be included in a general qualifying exercise for all languages.

5.4.4. Development of an instrument for assessment of interpretation

This is a complex process which must be designed by experts from different fields and should include experts from linguistics, experienced interpreters

and specialists in psychometrics, jurists and government officials or representatives of agencies entrusted with tasks of controlling, supervising and regulating the judicial system.

Below are the main factors which need to be taken into account when developing an assessment tool:

a) Type of accreditation and basic characteristics of the tests

Candidates must separately accredit each language combination they would like to work in (Spanish-English, Spanish-Arabic, Spanish-Romanian, etc.). According to Van Deemter, Maxwell-Hislop & Townsley (2014), the first essential for designing an interpretation examination is that it must be based on the performance of authentic tasks, that is to say, it must be based on the real experience of a professional interpreter who works in the judicial field *(performance-based)* and should be assessed according to pre-set parameters, i.e. not conditioned by the number of candidates or the needs of the judicial system *(criterion-referenced)*. These two concepts from psychometrics must not be changed if we want to achieve a valid and reliable examination.

In regard to assessment, reliability of evaluators must be established to ensure that each exercise will receive a similar treatment and that passing does not depend on the particular examiner assigned to assess the candidate *(inter-rater reliability)* or on the emotions or situations of an examiner who receives dozens of exercises for assessment *(intra-rater reliability)*.

b) Administrative organisation of the accreditation examination for legal interpretation

This section lists some important aspects of the accreditation processes that do not specifically deal with exercises as such but which are equally important for the process developed to produce the desired results:

- Identification of experts that can form part of a team that prepares examinations, the staff that conduct the examinations, and the examiners. Each group should participate in orientation sessions to ensure proper administration of examinations.
- Determination of logistics requirements (spaces, computer equipment, acoustics, among others). The use of on-line digital technologies greatly reduces costs and administrative procedures for examinations, as has been demonstrated in the on-line programme for assessment of interpreters developed by Middlesex University (Braun, Sandrelli & Townsley 2014: 120).
- Development of materials for candidates with information on the requirements, registration process, exam format, rates, deadlines, and

> even some exercises by way of example. The development of this information will be crucial to attracting qualified candidates and to avoid the high cost of performing an exam with candidates that have not yet achieved the levels needed to get the desired success in the exam.

We can therefore conclude that the assessment and accreditation process of court interpreters is not an easy task. However, as demonstrated in earlier paragraphs, a lot of progress has been made lately in research and implementation of systems that take into account both the objective of the process and the inherent difficulties. All that is needed now is that governments of the Member States realise that the assessment and accreditation of court interpreting candidates is an essential process.

6. Training of legal operators to work with interpreters

Last but not the least, we would like to address the issue contained in Article 6 of Directive 2010/64/EU on training of judicial staff to work with interpreters. More specifically Article 6 states that Member States:

> ...shall request those responsible for the training of judges, prosecutors and judicial staff involved in criminal proceedings to pay special attention to the particularities of communicating with the assistance of an interpreter so as to ensure efficient and effective communication.

We believe that the training of judicial staff is of prime importance if we want to achieve the quality of interpretation mentioned throughout the Directive.

Justice systems are complex systems with multiple actors. The last decade has seen a multiplication of criminal proceedings involving foreigners, "either on the personal front (victims, defendants, witnesses, experts) or on the material front (international financial transactions, evidence located in another country, etc.)", says Carmona Ruano (2013: IX). In this new judicial scenario, the author's comment on the judges:

> …we cannot remain passive and let the emergence of the international dimension in proceedings become an obstacle but rather, we should ensure that the judges and courts in our countries are able to handle these circumstances normally and that we are able to benefit from all the enormous possibilities offered by the new forms of cooperation that are being created (op. cit.:X). [Translated by authors]

The normality and possibilities of cooperation to which Carmona Ruano refers is the exchange between jurisdictions of information and documents from one language to another. The judges, lawyers and other court operators currently working in the Spanish justice system rarely work with professional interpreters, hence their absolute ignorance of the performance and

behaviour of a professional interpreter, and how to perform best with the assistance of an interpreter.

The collaboration between lawyers and professional interpreters is a long-standing demand from the Spanish professional legal interpreters group, who "stress the urgent need for adequate training of judges, prosecutors, police, and in general anyone who has to work through an interpreter" (Vidal Fernández 2007: 224). Training through courses is therefore needed and this can be organised within their corporations and associations, and it is the judicial authorities who should be responsible for this training role. The following are some of the most relevant judicial organisations in Spain: *Consejo General del Poder Judicial* [General Council of the Spanish Judiciary], *Red Judicial Española de Cooperación Judicial Internacional (REJUE)* [Spanish Judicial Network of International Judicial Cooperation], *Red de Expertos en Derechos de la Unión Europea (REDUE)* [Network of Experts in European Union Law], *Red Judicial Europea (RJE)* [European Judicial Network (EJN)], Eurojust. The most outstanding among the associations of judges, justices, prosecutors and lawyers are *Jueces para la Democracia* [Judges for Democracy], *Jueces Francisco de Vitoria* [Judges Francisco de Vitoria], *Asociación de la Magistratura* [Association of Judges], *Unión Progresista de Fiscales* [Progressive Union of Public Prosecutors], *Asociación de Fiscales* [Association of Public Prosecutors], *Consejo General de la Abogacía* [General Council of Spanish Lawyers], among others.

Equally important is the training of the State Security Forces, since they are part of the criminal process in pre-trial proceedings, and they usually require the assistance of an interpreter to perform their duties. The most prominent learning centres are the National Police Academy, the Centre for Higher Police Studies and the Civil Guard Academy.

We cannot forget either the future legal operators that can be trained during their university education through the Schools for Legal Practice of the Bar Associations and the Universities, and also via a Master's programme in Law, since their professional career will on more than one occasion require them to work through an interpreter to interview a client or a witness, or intervene in a trial conducted with the assistance of an interpreter.

Finally, the forensic teams, who are frequently assisted by interpreters in their daily work, should also be included in this training group.

Recent publications at both European (Corsellis, Clement & Vanden Bosch 2011; Townsley 2013) and national levels (Blasco Mayor 2014), specifically target the training of legal operators, and outline the requisites that a professional legal interpreter should have, in order to help legal staff detect

whether an interpreter has acted professionally. Guidelines for working effectively with the assistance of an interpreter during the criminal process have also been established. Brief and intense training[24] can help judicial operators to maximise their performance when working with interpreters, and this not only benefits all persons involved but also contributes to the smooth operation of the Spanish justice system and safeguards fundamental rights.

7. Conclusions

The construction of the European Union has given rise to an actor of great importance on the international arena by creating a space of freedom, security and justice. This space should primarily ensure a set of rights including the rights to defence and the right to a fair trial, which encompass the right to information of the defendants and the victims and, therefore, the right to interpretation and translation in the case of persons who do not speak or understand the language of the procedure. The EU has already taken strong measures to ensure these rights, not only *de jure* but also *de facto*, and it is therefore important for Member States to be governed by that same spirit when transposing the European standards into national legislation.

We are now at a historic moment in time when Spain, just like the other EU Member States, has the opportunity to create a legislative framework that will not only guarantee the right to translation and interpretation in criminal proceedings (*de jure* guarantee), but also to make this right effective through a quality service provided by trained professionals accredited for that purpose (*de facto* guarantee).

To that end, Member States must establish mechanisms to ensure quality legal interpretation by creating a professional register and access to the same should be through objective, measurable and reliable criteria. The best way to ensure compliance of these criteria is by developing an accreditation system with an independent register that functions in the interests of the justice system. The register should also strive towards the well-being of the translation and interpretation professionals and of society in general. Furthermore, there should be a clear understanding and consensus on its functions and the important role it plays.

It is logical to think that, in order to have skilled professional interpreters, we need to have a training offer that would be able to respond to the real demands from society. Therefore, the institutions responsible for training

24. See Hale on the training of judges to work with interpreters in this same volume.

must show a clear commitment to this mission and provide training offers that meet these needs, in terms of both content and format.

The creation of an accreditation process for interpreters who provide services in the justice system is not only of utmost importance to the parties directly involved in criminal proceedings but also beneficial to society in general. The initial investment in terms of labour and economic funds will be largely offset by the benefits gained by all, thanks to a well configured system that will expedite the judicial process and confer quality and professionalism to the same.

It is therefore essential to train agents that participate in criminal prosecution processes on how to best work with interpreters. Interpreters participate in the judicial system procedures right from pre-trial proceedings carried out by the State security forces to the later processes that involve judges, lawyers, court clerks, forensic teams, and the entire set of operators involved in the criminal process. All of these professionals ought to know who an interpreter is and how to best work with his/her assistance.

The European authorities have shown a willingness to promote quality court interpretation in Europe by creating Directives on the fundamental rights of defendants, witnesses and victims, and also by financing expensive projects through the EU's D.G. Justice. Member States Governments and the Justice Administrations should demonstrate their willingness to change the present situation by implementing the legal mechanisms they have at their disposal because the defence of fundamental rights is the responsibility of the States themselves.

Bibliography

ARANGÜENA FANEGO, Coral. (2007) "Conclusiones." In: Arangüena Fanego, Coral (ed.) 2007. *Garantías procesales en los procesos penales en la Unión Europea*. Valladolid: Lex Nova, pp. 389-394.

BAXTER, Robert Neal. (2014) "Undergraduate Interpreter Training in the Spanish State: An Analytical Comparison." *Sendebar* 25, pp. 219-246.

BLASCO MAYOR, María Jesús; Maribel del Pozo Triviño; Cynthia Giambruno; Anne Martin; Emilio Ortega Arjonilla; Nadia Rodríguez Ortega & Carmen Valero Garcés. (2013) *Informe sobre la transposición de la Directiva 2010/64/UE del Parlamento Europeo y del Consejo relativa al derecho a interpretación y traducción en los procesos penales*. Electronic version: https://www.academia.edu/8755014/Informe_sobre_la_transposición_de_la_Directiva_2010_64_UE_del_Parlamento_Europeo_y_del_Consejo_relativa_al_derecho_a_interpretación_y_traducción_en_los_procesos_penales

BLASCO MAYOR, María Jesús. (2013) "Quality of interpreting in criminal proceedings in Spain under European Directive 2010/64/EU." *Cuadernos de ALDEEU* 25, pp. 165-190.

BLASCO MAYOR, María Jesús. (2014) "La asistencia de intérprete en el procedimiento penal. Especial referencia a su papel en la vista oral." In: Cuerda, María Luisa (dir.) & Antonio Fernández Hernández (ed.) *Vistas penales. Casos resueltos y guías de actuación en sala.* Valencia: Tirant Lo Blanch, pp. 275-293.

BRAUN, Sabine, Annalisa Sandrelli & Brooke Townsley. (2014) "Technological support for testing." In: Giambruno, Cynthia (ed.) *Assessing Legal Interpreter Quality through Testing and Certification: The Qualitas Project*. Alicante: Universidad de Alicante, pp. 109-139.

CARMONA RUANO, Miguel. (2013) "Prólogo." In: Carmona Ruano, Miguel; Ignacio U. González Vega & Víctor Moreno Catena (dirs.) & Amaya Arnáiz Serrano (ed.) *Cooperación Judicial Penal en Europa.* Madrid: Dykinson, pp. IX-XI.

CORSELLIS, Ann, Jan Cambridge, Nicky Glegg & Sarah Robson. (2007) "Establishment, maintenance and development of a national register." In: Wadensjö, Cecilia; Birgitta Englund Dimitrova & Anna-Lena Nilsson (eds.) 2007. *The Critical Link 4. Professionalisation of interpreting in the community*. Amsterdam: John Benjamins, pp. 139-150.

CORSELLIS, Ann; Amanda Clement & Yolanda Vanden Bosch. (2011) "The training of members of the legal services working through legal interpreters and translators." In: Townsley, Brooke (ed.) 2011. *Building Mutual Trust: A framework project for implementing EU common standards in legal interpreting and translation*. London: Middlesex University, pp. 278-316.

DE LUNA JIMÉNEZ DE PARGA, Pilar. 2009. *Informe sobre la calidad de la interpretación en los Juzgados de lo Penal de Madrid*. Electronic version: http://www.elgasconjurado.com/2010/02/15/informe-de-la-magistrada-pilar-de-luna-jimenez-de-parga/.

DEL POZO TRIVIÑO, Maribel. (2013): "La interpretación en el contexto español actual. Nuevos retos para el futuro." In: Alonso Aragúas, Icíar; Jesús Baigorri Jalón & Helen Campbell (eds.) 2013. *Translating the Law. Theoretical and Methodological Issues. / Traducir el Derecho. Cuestiones teóricas y metodológicas*. Granada: Comares, pp. 57-65.

DEL POZO TRIVIÑO, Maribel & Anabel Borja Albi. (2014) "Court translation and interpretation in Spain. Towards a better future!" In: Bathia, Vijay K.; Giuliana Garzone; Rita Salvi; Girolamo Tessuto & Christopher Williams (eds.) 2014. *Language and Law in Academic and Professional Settings: Analyses and Applications*. Aprilia: Novalogos, pp: 219-232.

DUEÑAS GONZÁLEZ, Roseann; Victoria F. Vásquez & Holly Mikkelson. (1991) *Fundamentals of Court Interpreting. Theory, Policy and Practice*. Durham: Carolina Academic Press.

GIAMBRUNO, Cynthia (ed.) (2014) *Assessing Legal Interpreter Quality Through Testing and Certification: The Qualitas Project*. Alicante: Universidad de Alicante.

GILE, Daniel. (2009) *Basic Concepts and Models for Interpreter and Translator Training*. Amsterdam: John Benjamins.

HANDI, Elhassane Benhaddou. (2012) "La traducción y la interpretación en el Ministerio del Interior." In: Alonso Araguás, Icíar; Jesús Baigorri Jalón & Helen Campbell (eds.) 2012. *Ensayos sobre la traducción jurídica e institucional*. Granada: Comares, pp. 91-102.

HERTOG, Erik (ed.) (2001) *Grotius project 98/GR/131. Aequitas. Equal Access to Justice across Language and Culture in the EU*. Antwerp: Lessius Hogeschool.

HERTOG, Erik & Jan Van Gucht (eds.) (2008) *Status Quaestionis: Questionnaire on the Provision of Legal Interpreting and Translation in the EU. AGIS project JLS/2006AGIS/052*. Antwerp: Intersentia.

MIKKELSON, Holly. (1996) "Community interpreting: an emerging profession." *Interpreting* 1:1, pp. 125-129.

MIKKELSON, Holly. (2013) "Universities and Interpreter Certification." *The International Journal for Translation and Interpreting Research* 5:1, pp. 66-78.

MIKKELSON, Holly. (2014) "Evolution of Public Service Interpreter Training in the U.S." *FITISPos International Journal* 1:1, pp. 9-22.

ORTEGA HERRÁEZ, Juan Miguel & Ana Foulquié Rubio. (2008) "Interpreting in police settings in Spain." In: Valero Garcés, Carmen & Anne Martin (eds.) 2008. *Crossing Borders in Community Interpreting*. Amsterdam: John Benjamins, pp. 123-146.

ORTEGA HERRÁEZ, Juan Miguel. (2011) *Interpretar para la justicia*. Granada: Comares.

PEÑARROJA FA, Josep. (2004) "Historia de los intérpretes jurados." *La linterna del traductor 9, n.p.* Electronic version: http://traduccion.rediris.es/6articulos_a.htm

TOWNSLEY, Brooke (ed.) (2013) *Building Mutual Trust 2*. Electronic version: http://www.buildingmutualtrust.eu/

VAN DEEMTER, Roelof, Hilary Maxwell-Hyslop & Brooke Townsley. (2014) "Principles of testing." In: Giambruno, Cynthia (ed.) 2014. *Assessing Legal Interpreter Quality through Testing and Certification: The Qualitas Project*. Alicante: Universidad de Alicante, pp. 27-39.

VARIOUS AUTHORS (RITAP. Red de Intérpretes y Traductores para la Administración Pública). (2011). *Libro blanco de la traducción y la interpretación institucional*. Madrid. Ministerio de Asuntos Exteriores y Cooperación. Electronic version: http://ec.europa.eu/spain/pdf/libro_blanco_traduccion_es.pdf

VIDAL FERNÁNDEZ, Begoña. (2007) "Derecho a una interpretación y traducción fidedigna y de calidad. Artículos 8 y 9 de la Propuesta de Decisión Marco sobre las garantías procesales de los inculpados en procesos penales en la Unión Europea." In: Arangüena Fanego, Coral (ed.) 2007. *Garantías procesales en los procesos penales en la Unión Europea*. Valladolid: Lex Nova, pp. 214-231.

VIGIER MORENO, Francisco Javier. (2010) *El nombramiento de traductores-intérpretes jurados de inglés mediante acreditación académica: descripción de la formación específica y del grado de satisfacción de los egresados*. Granada: Universidad de Granada. Unpublished doctoral dissertation.

WITTER-MERITHEW, Anna & Leilani Johnson. (2004) "Market Disorder Within the Field of Sign Language Interpreting: Professionalization Implications". *Journal of Interpretation* 14, pp. 19-55.

BIONOTE / NOTA BIOGRÁFICA

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DIRECTIVE 2010/64/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE RIGHT TO INTERPRETATION AND TRANSLATION IN CRIMINAL PROCEEDINGS: TRANSPOSITION STRATEGIES WITH REGARD TO INTERPRETATION AND TRANSLATION

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Abstract

It is difficult to overestimate the importance of Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings. It is the first directive under the Lisbon Treaty, the first directive in the field of Justice (up till then one had recourse to framework decisions only), the first directive on language since the founding treaties of the EU and, of course, the first directive on issues of translation and interpretation. In this contribution we will discuss the relevant policy-making history leading up to the Directive, highlight the main challenges the Directive presents to the Member States that need to transpose this binding Directive into their own legislation and practice and, finally, suggest a number of strategies and policies that could help the transposition process, both in the short and long term.

Resumen

Resulta difícil sobreestimar la importancia de la Directiva 2010/64/UE del Parlamento Europeo y del Consejo, de 20 de octubre de 2010, relativa al derecho a interpretación y a traducción en los procesos penales. Se trata de la primera directiva emanada del Tratado de Lisboa, de la primera directiva en el ámbito de la justicia (hasta entonces se recurría solamente a las decisiones marco), de la primera directiva sobre lenguas desde los tratados fundacionales de la UE; y, por supuesto, de la primera directiva sobre traducción e interpretación. En la presente publicación, se analiza el historial

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de decisiones políticas relevantes que han llevado a la aprobación de la Directiva, se destacan los principales retos que presenta la Directiva para los Estados Miembros que tienen que transponer esta norma de obligado cumplimiento a su propia legislación y ejercicio; y, finalmente, se sugieren una serie de estrategias y políticas que pueden ser útiles durante el proceso de transposición, tanto a corto como a largo plazo.

Keywords: Directive. Legal interpreting. Legal translation.

Palabras clave: Directiva. Interpretación judicial. Traducción judicial

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1. The background

There are a number of fundamental reasons why the EU – the Commission, Council and Parliament – has evolved over the years from a predominantly political and socio-economic enterprise and become increasingly proactive in the area of justice. It was the *Maastricht Treaty* (1993) which first introduced justice and home affairs as "matters of common interest" for the EU while the *Amsterdam* (1999) and *Nice* (2000) *Treaties* set out the ambition to shape the EU into "an area of freedom, security and justice". The prime political expression of this development is the *Charter of Fundamental Freedoms of the European Union* (2000) which, in Chapter VI Justice, Articles 47 and 48 addresses the "Right to an effective remedy and to a fair trial" and the "Presumption of innocence and right of defence".[1]

In this so-called 'third pillar' of the EU, the preeminent objectives were cooperation and mutual trust between the Member States and mutual recognition of judicial decisions. However, it was quite clear from the beginning that such mutual confidence by the authorities as well as citizens in the legal systems of the Member States ultimately rests on reliable communication. This explains why from the start of this development, the importance of competent interpretation and translation in the area of justice was highlighted.

Secondly, cooperation was also urgently needed in the face of new threats (terrorism, organized crime, human trafficking, etc.). The abolition of controls at internal frontiers within the EU, the enlargement of the Union, the dramatic events of 11 March 2004 in Madrid and 7 July 2005 in London, reinforced the need for further cooperation in the area of criminal justice. This objective materialized most prominently in a number of 'Framework Decisions' on e.g. obtaining evidence in criminal matters, human trafficking, money laundering, child pornography, terrorism, etc. A framework decision was the legal instrument available to the Commission under the so-called

1. http://www.europarl.europa.eu/charter/pdf/text_en.pdf
This 'genesis' survey of *Directive 2010/64/EU* is based on a selection of relevant primary documents only and contains no further references to publications on EU policy, law or interpreting.

'third pillar' and it required the unanimous approval of all Member States in the EU Council. No doubt one of the most effective of these, and one that will return later in our discussion of *Directive 2010/64/EU*, is the *Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States*, which replaced the divergent extradition procedures within the EU, making it easier, for example, for a Belgian national suspected of a criminal offence in Spain to be surrendered and stand trial there.[2] The issue of confidence in one another's legal procedures is highlighted here in the following observation on the reliability of communication:

> Few Member States accept an EAW in a language other than their official language. This extends to requests for supplementary information […]. The scarcity of translation capacity in some Member States, associated costs, difficulties in translation into some of the less common languages in short periods of time or the bad quality of translations are recurrent arguments in this regard. (Council of the European Union 26 May 2009 Crimorg 55; Cope 68; EJ 24; Eurojust 20)

On the other hand, there was always the understanding that steps taken to enhance the more efficient execution of justice needed to be counterbalanced by the safeguarding of fundamental and citizens' rights. A third reason therefore was the divergence among the Member States and their tenuous relationship vis-à-vis the *European Convention for the Protection of Human Rights and Fundamental Freedoms* (ECHR), particularly Article 5.2 ("Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.") and Article 6.3 ("Everyone charged with a criminal offence has the following minimum rights: a. to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him; [...] e. to have the free assistance of an interpreter if he cannot understand or speak the language used in court.").[3] The need for better compliance with the *Convention* manifested itself uncomfortably in the string of decisions by the European Court of Human Rights (ECtHR) against EU Member States and it was therefore one of the great challenges of any EU-initiative in this area to position itself in the future much more in line with the requirements of the *Convention*.[4] After

2. *Official Journal 18.07.2002* and http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2002:190:TOC
3. http://www.echr.coe.int/Documents/Convention_ENG.pdf
4. Some noteworthy cases are: Luedicke, Belkacem & Koc v. Germany (1978), Artico v. Italy (1980), K. v. France (1983), Kamasinski v. Austria (1989), Brozicek v. Italy (1989), Cuscani v. United Kingdom (2002), Conka v. Belgium (2002), Ucak v. the United Kingdom (2002), Lagerblom v. Sweden (2003), Coban v. Spain (2003 and 2006), Husain v.

all, the procedural rights of all European citizens should be protected across languages, cultures or impediments. Interpreters and translators therefore constituted a critical link in the communication whenever and wherever an EU citizen became involved in the legal system of another Member State.

This concern was obviously also sparked by the increased mobility of citizens throughout Europe. They may go on holiday, study or seek employment in another Member State and occasionally they find themselves involved in legal problems in that country. According to Eurostat,[5] the total number of foreigners, including citizens of other EU Member States and non-EU citizens residing in an EU country in 2013, was 20,370,366. In Germany 7,696,413 foreign residents were recorded, in Spain 5,072,680, in the United Kingdom 7,696,413, in Italy 4,387,721 and in France 4,089,051. In this envisaged "area of freedom, security and justice" the EU needed to ensure that the rights of its citizens, be they victims, defendants or prisoners were protected, including when crossing borders. EU citizenship should carry with it the right to a fair trial no matter where one is in the Union. However, citizens were facing practical and legal difficulties when they needed to exercise the rights they have at home in another Member State. One cannot have a fair trial if the accused does not understand the language of the proceedings. EU citizens should never feel that their rights are weakened because they left home. In short, justice needed to be guaranteed across borders.

In addition, there has always been the cost issue with regard to legal interpreting and translation (LIT). Member States were indeed spending substantial amounts of money on LIT without any guarantees whatsoever that quality was actually ensured. In the course of the negotiations on the second Framework Decision proposal (cfr. infra), the Commission published an *Impact Assessment Study* estimating the cost of LIT in the Member States (*Commission staff working document*, Brussels, 8.7.2009; SEC(2009) 915). For Italy, for example, the cost of interpretation in 2006 (number of criminal proceedings involving non-nationals x €200) was assessed at €11,826,200, the cost of translation (30 pages on average x anywhere between €255 and €1500) at between €15,078,045 and €88,696,500. For Spain, it was assessed at €19,485,200 for interpreting and somewhere between €24,843,630 and

Italy (2005), Hermi v. Italy (GC 2006), Isyar v. Bulgaria (2008), Panasenko v. Portugal (2008), Baka v. Romania (2009), Diallo v. Sweden (2010), Khatchadourian v. Belgium (2010), Mann v. the UK and Portugal (2011) etc. For an interesting presentation on the main issues highlighted by these cases, see the contributions by James Brannan of the ECtHR to the EULITA TRAFUT workshops at http://www.eulita.eu

5. http://epp.eurostat.ec.europa.eu

€146,139,000 (again depending on the cost per page) for translations. The point is not so much whether these figures were absolutely reliable and correct, but that LIT in criminal proceedings in any EU Member State involved a considerable cost, though one that came without quality assurances. This is clearly an untenable situation that, at least in the eyes of the Commission, needed to be remedied.

In sum, the provision of inadequate LIT in criminal proceedings was seen as an infringement of fundamental human rights as well as undermining the rights of EU citizens and residents in the EU. The situation jeopardized the principle of mutual trust between Member States and cost the system dearly in terms of money, time and quality of justice. In the end, it prevented all legal stakeholders from doing the professional job they wanted and needed to do. But given the insufficient numbers of trained LITs in the Member States, the very different quality standards, the lack of compatible national registers as well as the lack of interdisciplinary guidelines for best practices, the need to include LIT in any initiative ensuring stronger procedural safeguards in criminal proceedings throughout the EU became an urgent priority.

2. The preliminary stages

In order to understand the content and remit of *Directive 2010/64/EU*, it may be useful to retrace succinctly some of the crucial steps along the road. Following the *Amsterdam Treaty* (1999), the European Council laid down the priorities for the Justice and Home Affairs policy areas in three subsequent five-year action programmes, i.e. 'Tampere', 'The Hague' and 'Stockholm'. As indicated above, the issue of access to and quality of interpreting and translation featured right from the beginning as one of the fundamental rights and procedural safeguards to be guaranteed. Consequently, the Action Grants call in the first Grotius programme included LIT and invited projects in this field. The first important and still very relevant project was Aequitas (Grotius project 98/GR/131), which described the required LIT competences, training, code of conduct and guidelines of good practice as well as good working arrangements with other legal professionals.[6] It was followed by the Aequalitas project (Grotius project 2001/GRO/015), which sought to disseminate these recommendations throughout the EU.

In 2002, the EU Commission embarked on its own initiative on 'Procedural Safeguards in Criminal Proceedings' with a Consultation Paper,

6. All EU projects on LIT can be consulted on the EULITA website http://www.eulita.eu. See under 'LIT Materials'.

followed by a Questionnaire for the Member States, a seminar on the Quality of Justice and a Hearing on the Consultation Paper. This consultation round led to a Discussion Paper and a Meeting of Experts, resulting in the publication of a Green Paper on Procedural Safeguards for Suspects and Defendants in Criminal Proceedings throughout the European Union in February 2003 (Brussels, 19.2.2003, COM(2003) 75 final).[7]

It should be noted that the scope of the *Green Paper* was much wider than the current Directive. It actually encompassed a package of five procedural rights: the right to legal assistance and representation both before and at the trial; the right to a competent, qualified interpreter and/or translator so that the accused knows the charges brought against him/her and understands the procedure; the right to consular assistance to foreign detainees; the right to information on rights, including written notification of rights (the 'letter of rights'); and proper protection for especially vulnerable categories, i.e. the rights of persons who cannot understand or follow the proceedings.

This *Green Paper* was welcomed by the LIT community as it contained virtually everything – from training and certification to registration, code of ethics and working arrangements with the legal professionals – that had been proposed in the Grotius projects, which clearly had inspired the section on LIT: Member States would be required to have a system to train LITs and a system for their certification, including a registration system, establish continuous professional development (CPD), have a system for monitoring the provision and quality of LIT, have a code of ethics and guidelines for good professional working practices and offer training to judges, public prosecutors and solicitors on how to work with LITs. Many other stakeholders such as the CCBE (Conseil des Barreaux Européens), NGOs (Fair Trials International, Amnesty International, etc.), even the European Parliament welcomed the proposals as well. However, some Member States were sceptical, some downright negative: they felt the ECHR was a sufficient legal instrument to deal with these issues and that, following the subsidiarity principle, these matters belonged to the Member States' prerogatives. They also felt that such an initiative would entail an unnecessary, unwanted and overhasty harmonisation of criminal law across the Member States and they were greatly concerned about the financial implications of the proposals.

Nevertheless, the EU Commission moved forward on the issue with the presentation of a *Proposal for a Council Framework Decision on certain*

7. http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52003DC0075&-from=EN

Procedural Rights in Criminal Proceedings throughout the European Union (COM (2004) 328 final – 28.4.04).[8] It is important to repeat that a framework decision was the most binding legal instrument available in matters of justice and that it needed unanimous approval from the Member States. The *Proposal* continued the 'package' approach, aiming to establish common minimum standards in the same five areas as the *Green Paper*. With regard to LIT, the *Proposal* repeated fundamental principles such as the fact that interpretation should be "free of charge to the suspected person", also available to "persons with hearing or speech impairments" and that it should be provided as soon as possible "after it has come to light that the suspect does not understand the language of the proceedings" (Article 6). Interestingly, the *Proposal* already included "police questioning" and "meetings between the suspect and his lawyer" as specific instances for attention. Free translation of the documents which the defendant "needs to understand in order to have a fair trial" had to be provided (Article 7), though the article did not identify them and put the onus "on the competent authorities to decide what documents shall be provided in translation but the suspect's lawyer has the right to request further documents in translation". Article 8 on the 'accuracy' of the translation and interpretation, however, was very vague. All quality safeguards on LIT mentioned in the *Green Paper* (training, certification, a register, CPD, codes, working arrangements, etc.) had now been watered down to the mere requirement that "The standard of interpretation and translation must be good enough" and if not,

> lawyers, judges, defendants or anyone else involved in criminal proceedings who becomes aware that the required standard of interpretation has not been met by a particular interpreter or in a particular case may report it so that a replacement translator or interpreter may be provided.

Remarkably though, for sign language Article 6 required that "it is important that only qualified and experienced sign language interpreters are assigned for court proceedings or police interviews". Article 9 required audio or video recording of the proceedings as a "method of verification" of the accuracy of the interpretation and Article 16 instituted a duty to collect data to monitor the provision of LIT (the number of persons for whom the services of an interpreter or translator was required, nationalities, languages, etc.). Apart from the comprehensiveness of the *Proposal*, it is these two articles, no matter how valuable (Article 9) or useful (Article 16) that would play a decisive role in its future fate.

8. http://www.ecba.org/extdocserv/projects/ps/Latest_Council_text.pdf

In the course of the difficult negotiations on the *Proposal*, the idea arose to support the Commission momentum with a timely EU project under the then Agis programme: *Status Quaestionis: Questionnaire on the Provision of Legal Interpreting and Translation in the EU* (AGIS project JLS/2006/AGIS/052).[9] This elaborate survey on LIT in the Member States showed that sufficient LIT skills and structures were not yet in place throughout the EU and, secondly, that although a process of development was in progress, it was still too variable in quality and quantity.

As could be expected, the responses to the proposed Framework Decision were once again quite diverse. Some Member States, the EU Parliament and in particular its important Civil Liberties Committee and, of course, the Commission itself, were supportive of the *Proposal* because it strengthened mutual cooperation and trust and greater compliance with the *Convention*. Other stakeholders (Amnesty International, the European Criminal Bar Association [ECBA], the LIT community, etc.), although disappointed because the *Proposal* was seen as a step back from the *Green Paper*, supported it because it at least laid down some minimum standards regarding procedural safeguards in criminal proceedings. But the old arguments that the *Convention* and its concomitant ECtHR case law were sufficient, that the *Proposal* contravened the subsidiarity principle and that it would lead to a national legislation muddle and an increase of costs, ultimately carried the day. As far as LIT was concerned, one can imagine that some Member States balked at Article 9 (to record and archive all interpreting in court) and Article 16 (the collection of data). In the end, after negotiations which dragged on from 2004, six Member States remained opposed and the *Proposal* was finally shelved in June 2007.

The real breakthrough came with the Stockholm 'Roadmap' (2009) strategy, an initiative of the Swedish EU presidency (1st half 2009) to develop a *Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings*, adopted by the Council on 30 November 2009.[10] It identified proposals on five legislative measures – the right to interpretation and translation; the right to information about rights (the 'Letter of Rights'); the right to legal advice and legal aid; the right for a detained person to communicate with family members, employers and consular authorities; and the right to protection for vulnerable suspects – but it proposed to do so on a step by

9. Available on www.eulita.eu

10. Brussels, 18 September 2009. 13235/09. Droipen 93. Copen 166. Published Official Journal of the European Union, 4.12.2009. See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:295:0001:0003:EN:PDF
See also http://www.eujusticia.net/index.php/proceduralrights

step basis. This meant breaking up the huge package of procedural safeguards into manageable bits – the 'saucissonage' strategy – and since so much work had already been done on LIT and the feeling existed that it might be the 'easiest' of the safeguards for which to get unanimous approval fairly quickly, the Council agreed to put forth as a first legislative proposal a new *Proposal for a Framework Decision on the right to interpretation and translation in criminal proceedings* (Brussels, 8.7.2009, COM(2009) 338 final. 2009/0101 (CNS).[11]

A comparison of the two proposed framework decisions shows that the new *Proposal* was definitely an improvement on the earlier one. For instance, it again included the right to interpretation during police questioning and all necessary meetings between the suspect and his lawyer but also in proceedings for the execution of a European Arrest Warrant. This time the right of appeal against a decision finding that there is no need for interpretation was explicitly mentioned. As for translation, Article 3 now listed the essential documents that always needed to be translated and the fact that Member States needed to ensure that there is a right of appeal against a decision to refuse the translation of such documents. Article 5 on the quality of interpretation and translation, however, again remained vague ("Interpretation and translation shall be provided in such a way as to ensure that the suspect is fully able to exercise his rights"), though it included in the same article the need for "training to judges, lawyers and other relevant court personnel in order to ensure the suspect's ability to understand the proceedings". Of course, Articles 9 and 16 of the earlier *Proposal*, which stirred so much opposition, were gone. Although definitely a step forward, this *Proposal* too was, fortunately enough, not the final word.

While negotiations on the new *Proposal* were under way, on the 1st December of 2009, the *Treaty of Lisbon* was signed, amending the earlier treaties on the EU. For our purposes the following articles are crucial: Article 2 establishing the area of freedom, security and justice; Article 6 recognising that the *Charter of Fundamental Rights of the European Union* shall have the same legal value as the treaties, and that the EU as a political entity, and not only its Member States individually, shall accede to the *European Convention for the Protection of Human Rights and Fundamental Freedoms* and that these rights shall constitute general principles of EU law. Furthermore, the European Parliament and the Council can become co-legislators in virtually all areas of civil and criminal justice matters, with Article 9. 3. stating that "The Council shall act by a qualified majority except where the Treaties provide otherwise", thus

11. http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0338:FIN:EN:PDF

allowing for far greater flexibility than previously possible when unanimity was required in matters of justice. Given this new context, a number of Member States, with the support of the Commission and the Parliament, decided in March 2010 to re-submit the *Proposal for a Framework Decision* (the legal instrument available until then in matters of Justice) as a directive, the legal measure now at their disposal and one that would ensure that its provisions would have to be implemented in the legislation and procedural practices of the Member States.

3. Directive 2010/64/EU

It is difficult to overestimate the importance of *Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings*.[12] It is the first directive under the *Lisbon Treaty*, the first directive in the field of Justice, the first directive on language since the founding treaties of the EU and, of course, the first directive on issues of translation and interpretation. In the following section we will present the articles of *Directive 2010/64/EU* under four main subheadings, thus highlighting at the same time the challenges the Member States face when transposing the *Directive* into national legislation and administrative provisions.

3.1. The Rights Challenge

Article 1. Subject matter and scope

The right to interpretation and translation applies to criminal proceedings as well as – very explicitly – to proceedings for the execution of a European Arrest Warrant. LIT has to be provided from the time one is made aware by the competent authorities of a Member State that one is suspected or accused of having committed a criminal offence until the conclusion of the proceedings, i.e. until *res judicata*. In other words, the *Directive* does not apply to post-trial situations (such as probation or prison) though it does apply from the moment any action is taken against someone who is suspected or accused of having committed a crime, such as an arrest or a search warrant. In these cases LIT has to be provided without delay. However, the right does not apply to situations of minor offences (i.e. which are settled out-of-court such as

12. Official Journal of the European Union, L 280/1, 26.10.2010. http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:280:0001:0007:en:PDF

traffic violations), unless the offence at some later stage enters proceedings before a court.

Article 2. Right to interpretation

1. Without delay, during police questioning, all court hearings and any necessary interim hearings;
2. Interpretation must also be available for communication between suspected or accused persons and their legal counsel, a provision now in line with the important 'Salduz' arrest of 27 November 2008 of the ECtHR in Strasbourg;[13]
3. The right includes appropriate assistance for persons with hearing or speech impediments which affect their ability to communicate effectively. The prosecution, law enforcement and judicial authorities should ensure that such persons are able to exercise the rights effectively, for example by taking into account any potential vulnerability that affects their ability to follow the proceedings and to make themselves understood. In this context it is important to realize that, generally speaking, when an EU law, in this case the *Directive*, provides an individual right, it has to come with an effective remedy in case of non-compliance;
4. A procedure or mechanism to ascertain whether suspected or accused persons speak and understand the language of the criminal proceedings and whether they need the assistance of an interpreter. Interpretation (as well as translation; see Art.3) should be provided in the native language of the suspected or accused persons but could also be provided in any other language that they speak or understand. However, great care needs to be taken here (particularly by defence lawyers) that the problems ensuing from languages of lesser diffusion are not offhandedly dealt with. The rights of defence and the fairness of the proceedings must be safeguarded;
5. The right to challenge a decision finding that there is no need for interpretation and the possibility to complain that the quality of the interpretation is not sufficient. When the quality of the interpretation is considered insufficient to ensure a fair trial, the competent authorities should be able to replace the appointed interpreter;
6. Videoconferencing, telephone or the internet may be used unless the physical presence of the interpreter is required in order to safeguard the fairness of the proceedings;

13. http://hudoc.echr.coe.int/

7. In proceedings for the execution of a European Arrest Warrant which, by definition, involve more than one Member State.

Article 3. Right to translation

1. A written translation of all documents which are essential. Another instance where the *Directive* goes further than the *ECHR* because the documents are explicitly identified: any decision depriving a person of his liberty, the charge or indictment, and the judgment. These documents must be provided within a reasonable period of time, in any case avoiding a delay that would make further procedural steps, such as an appeal, impossible;
2. Any other document which is essential. This will usually happen at the request of defence counsel and will be for the presiding judge to rule on;
3. The right to challenge a decision finding that there is no need for the translation of documents or passages thereof and the possibility to complain that the quality of the translation is not sufficient;
4. As an exception, an oral translation or oral summary of essential documents may be provided instead of a written translation on condition that this does not prejudice the fairness of the proceedings. National legislation or procedural practice will have to lay down and state the reasons for such exception(s). Usually this will be at the discretion of the presiding magistrate or judge but the *Directive* explicitly suggests it should be an exception and stresses the caveat that it must not jeopardize the fairness of the proceedings;
5. Any waiver of the right to translation must be subject to prior legal advice and in the full knowledge of the consequences of such a waiver, and the waiver must be unequivocal and voluntary. These are stringent conditions, and different from the right to interpretation where no such waiver of one's right is possible;
6. The executing Member State shall ensure that any person who does not understand the language in which the European Arrest Warrant is drawn up, or into which it has been translated by the issuing Member State, is provided with a written translation.

3.2. The Cost Challenge

Article 4. Costs of interpretation and translation

"Member States shall meet the costs of interpretation and translation resulting from the application of Articles 2 and 3, irrespective of the outcome of the proceedings".

3.3. The Quality Challenge

Article 2.5.

"[... W]hen interpretation has been provided, the possibility to complain that the quality of the interpretation is not sufficient to safeguard the fairness of the proceedings."

Article 2.8.

"Interpretation shall be of a quality sufficient to safeguard the fairness of the proceedings, in particular by ensuring that suspected or accused persons have knowledge of the case against them and are able to exercise their right of defence."

Articles 3.5. and 3.9.

When a translation has been provided, "the possibility to complain that the quality of the translation is not sufficient to safeguard the fairness of the proceedings";

Translation "shall be of a quality sufficient to safeguard the fairness of the proceedings".

Article 5

1. "Member States shall take concrete measures to ensure that the interpretation and translation provided meet the quality required under Article 2(8) and Article 3(9)." It is left to the Member States to decide what these quality measures should be, but they have to be demonstrable and concrete. It also seems to imply that the responsibility to ensure quality ultimately lies with the Member States, even if they procure the services of an external agency;
2. "In order to promote the adequacy of interpretation and translation and efficient access thereto, Member States shall endeavour to establish a register or registers of independent translators and interpreters who are appropriately qualified." Although "shall endeavour" may sound rather weak, it does mean that Member States must demonstrably show how they have implemented the requirement of a register that guarantees 'adequacy' and 'quality' of translation and interpretation. Common sense dictates that one cannot be qualified unless one is trained. But this crucial requirement has been left disappointingly vague and the fact that such registers, once established, shall be "made available", "when appropriate"

to legal counsel and relevant authorities instead of compulsory (with a possible protocol in case of emergency or impossibility) is another weak point. Moreover, what is puzzling is the use of the word 'independent' in the Article. Is it an implied reference to section 5.3. and the issue of 'confidentiality' and are both sections to be read as a requirement for LITs to abide by a code of conduct, or is it to be interpreted as an instruction not to use other legal professionals (such as police officers or lawyers) as interpreters? Perhaps maximizing the potential of this constructive ambiguity by applying both interpretations would be the best course to follow for the Member States;

3. Member States shall ensure that interpreters and translators be required to observe confidentiality regarding interpretation and translation. This would seem to imply a binding code of conduct or ethics for LITs, with accompanying disciplinary procedures in case of breaches of the code.

3.4. The administrative challenges

Article 6

"Member States shall request those responsible for the training of judges, prosecutors and judicial staff involved in criminal proceedings to pay special attention to the particularities of communicating with the assistance of an interpreter so as to ensure efficient and effective communication." This is an interesting requirement which, strangely enough, leaves out key stakeholders such as defence lawyers and, of course, the LITs themselves.

Article 7

Member States are required to keep records of the interpretation or translation assignments, using a recording procedure in accordance with the law of the Member State concerned.

Article 9

"Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 27 October 2013."

Article 10

"The Commission shall, by 27 October 2014, submit a report to the European Parliament and to the Council, assessing the extent to which the Member

States have taken the necessary measures in order to comply with this Directive, accompanied, if necessary, by legislative proposals."

4. The transposition

Strictly speaking, in the short-term, the Member States needed to adapt national legislation and administrative provisions to the requirements of the *Directive* by 27 October 2013 and submit a report to the Commission on their transposition measures by 27 October 2014. The national provisions communicated to the Commission by the Member States concerning the *Directive* can be consulted on the EUR-Lex Archive site.[14] At the time of writing (June 2014), there is no information as yet available on Belgium, Spain, Portugal and Slovakia while all other Member States have filed references to legislative implementation measures. In Germany, as one can see, there is now a new *Gesetz zur Stärkung der Verfahrensrechte von Beschuldigten im Strafverfahren vom 2. Juli 2013*; in France, the *Décret no 2013-958 du 25 octobre 2013 portant application des dispositions de l'article préliminaire et de l'article 803-5 du code de procédure pénale relatives au droit à l'interprétation et à la traduction*; in the Netherlands there is the *Wijziging van het Wetboek van Strafvordering ter implementatie van richtlijn 2010/64/EU (vertolking en vertaling) van 12/03/2013;* and in Sweden, the *Lag om* ändring *i lagen (1975:689) om tystnadsplikt för vissa tolkar och* översättare. *Svensk författningssamling, 2013:664*.[15]

It is beyond the scope of this article to analyse in any detail the substance of all these national legislative initiatives in the Member States. They do reveal an interesting range of transposition policies and strategies, from a *minimum minimorum* to a truly substantial approach adhering to both the letter and the spirit of the *Directive*. Ultimately, all national measures will have to stand the test of the Commission's interpretation of the *Directive*. The simple fact of the matter is that EU legislation needs to be abided by. If not, financial penalties can be imposed for not meeting a transposition deadline. By the end of 2014, the transitional phase set out in the *Lisbon Treaty* for the area of justice will

14. http://old.eur-lex.europa.eu

15. The absence of information on the site does not automatically mean there are no initiatives. One may simply not have communicated them at this stage. In Belgium, for example, there is a bill before parliament (DOC 53 1499/006 of 14 February 2014) envisaging the establishment of a register of forensic experts and a second, separate one of LITs, with important differences in the admission and competences criteria. LITs will need to have a 'relevant' degree (not specified) or two years of relevant experience. They will have to pass a test on 'legal knowledge' only, with a five-year transition period.

end and will lift current judicial limitations to the Commission's role as guardian of the *Treaty* also in the area of police and judicial cooperation in criminal matters, meaning the Commission will have the power to launch infringement proceedings against a Member State in case of non-compliance with the *Directive*. Additionally, some extra pressure can be brought on Member States by means of the EU Justice scoreboard, a comparative tool which provides information on the justice systems in the Member States and in particular on the quality and efficiency of justice. There can be no doubt that the degree of compliance with this *Directive* will also figure on this 'naming and shaming' league table.[16] However, it is an illusion to think that in most Member States the transposition of the *Directive* will change the LIT landscape overnight. The core concepts and objectives of the *Directive* concern 'quality'. This will and cannot be achieved by simply substituting all and sundry LIT lists which circulate locally, regionally, on a police officer's or court clerk's desk for a new national register.

Therefore, we need to take a long(er)-term perspective to survey which steps should be taken to ensure that the objectives that are envisaged in the *Directive* are really and fully implemented.

Step 1: Establish a working group on LIT

Data should be collected, analysed and disseminated by a working group consisting of all relevant stakeholders as a basis for nationally or regionally co-ordinated and informed planning in order to meet the requirements with regard to LIT and later on to monitor incremental development and progress.

Interesting data would relate to current demand in terms of legislation relating to LIT, number of criminal cases employing LITs, budget allocated and spent on LIT, when an interpreter or translator is engaged and with what qualifications, in which language, in which geographical location, where qualified LITs were needed but none were available because e.g. none exist in the language/dialect required or for reasons of distances or time constraints, etc. On the other hand, it would be useful to draw up a *status quaestionis* of current supply of qualified LITs in terms of numbers, languages, qualifications, registration, membership in a professional body, available training, numbers currently in training, qualifications of trainers, in which languages and locations, available CPD and whether a quality monitoring system is in place or not.

16. http://ec.europa.eu/justice/effective-justice/files/justice_scoreboard

Step 2: Develop an overall strategy and quality chain in LIT

Two documents could be helpful in this respect: the *EU Resolution* and the *Reflection Forum Report*.

The *Proposal for a Resolution of the Council and of the Governments of the Member States meeting within the Council fostering the implementation by Member States of the right to interpretation and to translation in criminal proceedings* sets out a comprehensive strategy to implement quality LIT in the Member States.[17] These are some of its relevant recommendations:

(5) Member States should ensure that professional bodies representing accredited/certified interpreters and translators are in place.
(6) Member States should organise appropriate training structures for interpreters and translators.
(7) Member States should have a system of continuous professional development.
(9) Member States should ensure that there is a system of accreditation/certification for interpreters and translators who can be employed in criminal proceedings.
(10) Member States should ensure that there is a system of registration for accredited/certified interpreters and translators.
(15) Member States should ensure that only accredited/certified interpreters and translators carry out interpretations.
(17) In situations where it is appropriate, interpretation could be provided by a certified/accredited interpreter at a remote location, for example by using videoconference facilities.
(20) Member States should ensure that there is a Code of Conduct for interpreters and translators, as well as Guidelines for Good Practice.
(22) Member States should ensure that there is a mechanism for evaluation of the systems aiming to ensure the quality of interpretation and translation given in criminal proceedings.

A second useful document is the report of the *Reflection Forum on Multilingualism and Interpreter Training*.[18] In spite of its title, this report focuses explicitly on LIT and contains, very much in line with the *Resolution*, interesting recommendations to the Member States.

17. Brussels, 15 July 2009, Council of the European Union, 12116/09, DROIPEN 66, COPEN 139.
See http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2012116%202009%20INIT
18. http://www.eulita.eu, where the report can be consulted in EN, FR, DE and SP

Recommendation I

– The legal services and professionals should recognize the professional profile of the legal interpreter and translator.

Recommendation II

– Member States should provide appropriate training both for new and already practising legal interpreters and translators;
– Such training should lead to a nationally recognized professional certification and be accredited by a recognized authority;
– Efforts should be made to develop equivalent training throughout the EU to ensure mutual trust and cooperation.

Recommendation III

– The Professional Code of Conduct and the Guidelines to Good Practice should be an integral part of the training.

Recommendation IV

– A national register of qualified legal interpreters should be kept, and the use of only registered legal interpreters made mandatory.
– The national registers should aim for EU consistency, thus allowing mutual access.

Step 3: Implement available good practice information on the Directive

In order to assist all relevant legal stakeholders as well as LIT associations and training institutes during the implementation process, the TRAFUT (Training for the Future) project (Criminal Justice Programme project JUST/JPEN/AG/1549) organised four workshops that were held throughout the EU in the course of 2011 and 2012. Experts from DG Justice and the Secretariat of the EU Council, from the European Court of Justice, the ECtHR, the European Criminal Bar Association, the Council of Bars and Law Societies in Europe, and the European Forum of Sign Language Interpreters, along with judges, prosecutors, lawyers, police officers, representatives of ministries of Justice and of national LIT associations, academics and trainers, all discussed good practice models and strategies to achieve a coherent management and implementation process of the *Directive*. All presentations are available on the EULITA website.[19] Collectively, these presentations contain useful material, for instance on:

– the background and overall objectives of the *Directive* and the challenges of its transposition into national legislation; the extent to which

19. http://www.eulita.eu

its principles and articles meet or go beyond the landmark decisions on translation and interpretation of the ECtHR;
- the issue of cost, including the problems that arise from ill-considered outsourcing and procurement;
- the issue of quality in LIT, with the views and expectations of service providers (e.g. the courts or the police), the users (e.g. lawyers or probation officers) as well as LIT trainers;
- the issue of national registers of LITs: admission procedures, qualifications, register management, etc., including the future integration of Member States' registers into an EU LIT database, as envisaged in the e-Justice portal;
- the training of both legal professionals and LITs, good practice models for effective communication and working arrangements;
- modern communication technologies in criminal proceedings such as video-link interpreting and the issue of appropriate assistance for vulnerable persons.

Step 4: Establish training in LIT

Common sense suggests that in matters as serious as acquittal or conviction, fair trial or victims' support, one would not want to rely on untrained, inexperienced, unqualified LITs . No one would put their trust in the hands of a defence counsel dragged in from the street or would submit to an interview by an 'ad hoc' police officer. Therefore, it is obvious that the requirement in the *Directive* to ensure quality LIT implies that the LITs themselves have been properly trained. The *Directive* does not explicitly mention training of LITs (it refers to training in Article 6 for legal professionals only) probably because it was felt that the emphasis on quality implied the need for training. Perhaps it was felt to be beyond the remit of DG Justice (and a matter of professional education and qualifications).[20] It is also the case that the ECtHR in its deci-

20. Nevertheless: "Training of legal translators and interpreters was widely recognised both as necessary and as specific to answer their need for knowledge of the peculiarities of the different judicial systems and of European legal vocabulary. Some indicated that their training could be considered as part of European judicial training as such. In view notably of the Directive on the right to interpretation and translation in court proceedings, a proper understanding by legal translators and interpreters is necessary and would contribute to the expedient conduct of proceedings (and thus to a reduction in litigation costs). One focus of this training could be on the interaction between legal interpreters and translators on the one hand, and judges, prosecutors, judicial staff, and lawyers on the other hand." European Commission 2010 Consultation on European Judicial Training (Ref. Ares (2011) 413544 - 13/04/2011).

sions has consistently shied away from defining the issue of quality and the professional qualifications of LITs.

At the moment there are sufficient models available for training and it is for the stakeholders in any particular Member State to decide which would be the best option for them. It may be that some academic institutions will take the initiative and offer a B.A. or an M.A, either in 'community' or 'public services' interpreting and translation, hence wider than legal only, or even a specific LIT programme. Such academic programmes have clear advantages, such as the possibility of selecting students (on the basis of degrees or previous education), staff expertise, appropriate infrastructure, a certain thoroughness and depth of learning, a grounding in supporting and related subjects. And importantly, they lead to recognised certification and accreditation. On the other hand, these institutions by necessity can offer only a limited range of languages, there is the risk of a lack of specific LIT competences in a broader curriculum and the academic staff may not always possess the necessary practical experience; the selection of students is based on official qualifications rather than background, or experience, or indeed on the needs of the country or region; and finally, as one knows, convincing academic authorities to introduce a new curriculum is a Herculean task.

One might therefore, in addition to or in conjunction with the academic stream or else independently, opt for professional/vocational training programmes. It is important they be offered by a trustworthy institution (be it academic, educational or judicial) and that the certification of graduates, after valid and reliable testing, be authorised by the official national or regional authority responsible for accreditation. Such programmes are usually evening and weekend classes, increasingly making additional use of distance learning and range on average between 120 and 220 hours. The advantages are that the selection of students is not rigidly degree-based but can be done, for example, on the basis of a national and foreign language(s) proficiency tests (if so desired with an additional aptitude and motivation interview), that the course is not hampered by strict academic curriculum regulations but can be run language-independent and/or language-specific. Such programmes allow more flexible involvement of stakeholder trainers (from the courts, the Bar, the police, etc.) and can be run at potential low cost if one can convince the authorities of these stakeholders to invest staff time in the programme because qualified LITs simply allow them to do a better job. Perhaps the main advantage is that one can respond much more directly and quickly to the language needs in a particular country or region, given that any top ten of

languages (which will almost certainly not be the ones taught in higher education) covers roughly 80% of the needs in criminal proceedings.

But whichever format one chooses, any LIT programme will revolve around a number of core competencies to be acquired. These competencies will have to be trained in a curriculum that would probably contain all or most of the following modules:

- Module 1: Introduction to LIT, state of the art in the EU and the national practice.
- Module 2: Resources and information retrieval in LIT.
- Module 3: Language issues: legal language, terminology, discourse and pragmatics, the range of registers most commonly used in the legal contexts, genre-studies.
- Module 4: Knowledge of the legal system(s): structures, procedures, processes and personnel; knowledge of the relevant aspects of criminal and civil law, the main settings, augmented by observation visits, internships.
- Module 5: Interpreting/Translation theory, skills and strategies.
- Module 6: Professional Code of Conduct and Guidelines to Good Practice.
- Module 7: Integrated interpreting/translation skills through case studies, role plays, mock courts, translation assignments, etc.
- Module 8: Professional issues: awareness of the national professional association(s), working arrangements with legal professionals, how to accept and prepare for assignments, potential health and safety issues, time, diary and financial management, the need for continuous professional development, etc.

There is, of course, a considerable body of literature on the training of LIT but within the context of DG Justice Action Grants only, a number of interesting EU projects on LIT such as Aequitas, Building Mutual Trust 1 and 2, the IMPLI project on interpreted police interviews, Qualitas on the assessment and testing of legal interpreting competences and Qualetra on legal translation, provide a wealth of materials.

Step 5: Videoconferencing

Given the mention of videoconference and other forms of remote interpreting (telephone, internet) in the *Directive*, its increasing use by police and judicial authorities in both national (e.g. for security reasons or to avoid transporting

prisoners to a perfunctory hearing) and EU contexts (e.g. the hearing of a witness or victim abroad), as well as the importance attached to it in the e-Justice programme, LIT training programmes should pay due attention to the specific requirements of this mode of interpreting.[21] We refer the reader here to the e-Justice site and to the research and results of two completed EU Avidicus projects on interpreted videoconferencing in criminal proceedings.[22]

Step 6: Registers

One of the aims of training and certification is the establishment of a register of qualified LITs and the use by the police and judicial services of 'appropriately qualified' LITs only. As said above, there will always be emergencies when a specific language/dialect requirement cannot be met by a trained LIT within the legal time framework available, but in these cases a protocol should be drawn up explaining the actions taken and reasons why. A thorough pre-briefing should be held and an appropriate interviewing style adopted in order to minimize the problems possibly resulting from the emergency situation. But gradually and over time it should become established practice to use only LITs who are qualified and are on the official register. EULITA has drawn up initial guidelines for the concept and content of such registers including the legislation applicable to a (national/regional) register; the scope of application of the register (courts, police, immigration…); the admission procedures; the general requirements (nationality, age, absence of criminal record, security vetting…); the specific requirements (languages, translation and /or interpreting, training, experience, specialisation[s]…); the requirements for entry into the register (oath, seal, code of conduct…); duration and renewal of registration; complaints and disciplinary procedures; the accessibility of the register (courts, police, lawyers, general public…); the administrative management of the register.[23]

Such a national register has the additional advantage of being a step on the road to an EU-wide register of LITs, which would allow for the trustworthy use of an LIT in e.g. European Arrest Warrant proceedings, rogatory commissions or remote interpreting situations. As a matter of fact, the working party on e-law (e-Justice) supports harmonizing LIT databases on common standards in equivalent national registers to enhance mutual cooperation

21. https://e-justice.europa.eu/content_videoconferencing
22. http://www.videoconference-interpreting.net/
23. http://eulita.eu/antwerp-programme

throughout the EU.[24] A DG Justice project – LIT search (JUST/2013/JPEN/AG/4556) – is exploring the necessary steps and parameters to arrive at such an EU-wide LIT register.

A final advantage of an official register is that it offers an opportunity to do away with all sorts of informal and personal lists of LITs who have perhaps (or most likely) never been trained or tested and who continue to feed a certain perception of LITs among other legal professionals that does not do justice to what a properly trained and qualified LIT does. Therefore, training should also be offered to all the 'ad hoc' LITs presently on these lists but the principle must remain that in the end no one is allowed onto the official register who has not been tested and certified.

Step 7: Manage the costs of LIT

Providing LIT services in criminal proceedings entails a considerable cost and certainly in times of budgetary crisis this is, understandably, a worrying concern for all Member States. When the EU Commission presented its 2009 impact study referred to above, for the Netherlands the cost was estimated at €10,718,400 for interpreting and between €13,665,980 and €80,388,000 for translation, whereas in 2010 the actual total cost for LIT amounted to €34,946,000. In Belgium, the cost for interpreting was estimated at €3,725,600 and between €4,750,140 and €27,942,000 for translation whereas the actual total cost in the year of the impact study (2009) was €17,772,730. In 2010 the sum total had risen to €24,916,672. An extra €5,547,315 was spent on transcribing and translating wire-taps, a dramatic increase by 77% compared to 2009.[25]

These are considerable expenditures – and still rising –, and costs are a real concern. Service providers are therefore looking into better management of travel and waiting time of interpreters, the use of technology (video-links, telephone interpreting hubs, etc.), the promotion of terminology databases, translation memories, etc., to reduce time spent on translation, a greater expertise of LITs employed in special assignments (e.g. re-transcribing and re-translating a long bungled wire-tap is an astronomically expensive business), etc. This poses a double challenge to training institutes as well as professional associations. They need to bring these skills (e.g. remote interpreting or translation memory competences) into their training and actively

24. e-Justice document 13949/12 of 27 September 2012 on 'Translators and interpreters databases' and 'find a legal translator or interpreter' on https://e-justice.europa.eu
25. http://www.cmro-cmoj.be/sites/default/files/files/gerechtskosten_2010_NL.pdf

engage in negotiations with the authorities on these cost-cutting strategies. If they do so, they will at least have a chance to defend the principle that there can be no compromise on quality. All too often these days Member States turn to outsourcing of LIT services, committing the unforgiveable sin of letting the control of quality, remuneration of the LITs and ultimate responsibility for the service slip out of their hands, with disastrous consequences in every case where one has gone down that road. The authorities need to be assured over and over again that quality of LIT allows everyone to do a better job, that it minimizes the risks of miscarriages of justice, avoids appeals or convictions in 'Strasbourg', and that it safeguards fundamental human rights which each one of us at some point may stand in dire need of.

Step 8: Involve all relevant legal professions in training and in good practice working arrangements

Training institutes and LIT associations can play an important role in fostering awareness of LIT and good practice working arrangements with legal professionals. Some strategies seem self-evident: legal professionals could be invited to teach in the training programmes; training institutes could offer to teach a (shorter or longer, compulsory or optional) module on justice across languages and cultures to Law Faculty students; legal professional associations (of judges, lawyers, police…) could be approached to put LIT issues on their CPD agenda. Furthermore, materials could be distributed such as the recommendations from various EU projects (e.g. Aequitas [Chapter 9], Building Mutual Trust 1 [Chapter 9], the Avidicus projects' recommendations on remote interpreting, Building Mutual Trust 2 and the *IMPLI* project on interpreted police interviews). There are the *Guidelines for a more effective communication with legal interpreters and translators*, a joint project of EULITA and ECBA (European Criminal Bar Association), available on www.eulita.eu, and the *Guide to Roadmap Rights* of Fair Trials International (www.fairtrials.net), and indeed the many examples of good practice available in various Member States.

Once again, the important point is for all stakeholders to be (or become) aware of the fact that the *Directive* sets new, binding standards. Judges, as the ultimate guardians over the proceedings in their courts, are now bound by this EU law taking precedence over national law. Police officers as well as lawyers should from now on make sure that in their dealings with suspects, defendants, witnesses or victims, the quality of their work is not imperilled by deficient interpreting or a sub-standard translation.

5. Beyond *Directive 2010/64/EU*

In the area of criminal justice, fundamental rights and access to justice have been further strengthened by progressively expanding the set of fair trial rights. On 22 May 2012, *Directive 2012/13/EU of the European Parliament and of the Council on the right to information in criminal proceedings* was adopted[26] and in October 2013 *Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest* was passed.[27] Another directive which is relevant in this context is *Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime*.[28] All three directives contain articles on the provision of translation and interpretation which should be provided in accordance with the quality standards required by *Directive 2010/64/EU*. For instance, Article 7 of the Directive on victims' rights ensures that victims who do not understand or speak the language of the criminal proceedings concerned are to be provided with interpretation "free of charge, during any interviews or questioning of the victim during criminal proceedings". They have the right to challenge a decision finding that there is no need for interpretation or translation and the possibility to complain that the quality of the interpretation is not sufficient to exercise their rights or understand the proceedings. When appropriate, "communication technology such as videoconferencing, telephone or internet may be used, unless the physical presence of the interpreter is required in order for the victim to properly exercise their rights or understand the proceedings". Furthermore,

> [a] victim who does not understand or speak the language of the criminal proceedings concerned shall receive translations free of charge of (a) the complaint of the criminal offence to the competent authority; (b) any decision ending the criminal proceedings related to the criminal offence reported by the victim including at least a summary of the reasons for such a decision; and (c) information essential to the victim's exercise of their rights in criminal proceedings in accordance with their needs and their role in those proceedings. (*Directive 2012/29/EU,* Art. 6.4)

26. Official Journal of the European Union, 1.6.2012. http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2012:142:TOC
27. Official Journal of the European Union, 6.11.2013. http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2013.294.01.0001.01.ENG
28. Official Journal J L 315, 14/11/2012. http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32012L0029

The constant references to and inclusion of the fundamental principles of *Directive 2010/64/EU* in all related criminal proceedings legislative instruments goes to show how crucial this particular directive is in safeguarding fair trial rights. New proposals for directives on the strengthening of certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings, on procedural safeguards for children suspected or accused in criminal proceedings will further strengthen the bedrock upon which EU justice policy is built.

The end of 2014 marks a turning point in the development of EU Justice policy. The European Council's five-year Stockholm Programme and the related Commission Action Plan of priorities in the area of freedom, security and justice – one of the EU's objectives of the *Treaty of Lisbon* – will come to an end. After two years of negotiations, a new Justice Programme and a new Rights, Equality and Citizenship Programme were adopted by the European Parliament and the Council, with their accompanying Action Plans and budgetary provisions.[29] However, the principles enshrined in *Directive 2010/64/EU* will surely continue to be the point of reference for all matters of translation and interpretation in criminal proceedings. There can also be no doubt that over time its principles will come to guide practice in civil proceedings, for example in mediation or alternative dispute resolution, in post-trial proceedings such as probation or in other legal settings like asylum hearings or detention centres. Whatever its shortcomings, *Directive 2010/64/EU of the European Parliament and of the Council on the Right to Interpretation and Translation in Criminal Proceedings* offers all authorities, legal professionals, LITs, LIT training institutes and professional associations a unique legal instrument to work with to ensure quality of translation and interpreting in criminal proceedings. At the same time, it presents them with a formidable challenge and responsibility. But that *Directive 2010/64/EU* is a landmark, a milestone, of this there can be no doubt.

29. Regulation (EU) nº 1382/2013 of the European Parliament and of the Council of 17 December 2013 establishing a Justice Programme for the period 2014 to 2020 and Regulation (EU) nº 1381/2013 of the European Parliament and of the Council of 17 December 2013 establishing a Rights, Equality and Citizenship Programme for the period 2014 to 2020.

BIONOTE / NOTA BIOGRÁFICA

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STRATEGIES FOR PROGRESS: LOOKING FOR FIRM GROUND

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Abstract

Over the last thirty years, there have been various and increasing efforts made to establish effective and consistent public service interpreting and translation. Good progress has been made but there are impasses. This paper attempts to stand back and look objectively at where, and more importantly how, we might proceed from here.

This could be said to be a turning point for legal interpreting for two reasons. Firstly, enough time has elapsed for us to copy our scientific colleagues, who view the process of exploring and eliminating unsatisfactory approaches overtly, so that what does not work is recognised and discarded. Secondly, this process of exploration has enabled us to clarify and define what does work in order to focus our energies and take matters forward.

Resumen

A lo largo de estos últimos treinta años se han producido diversos y crecientes esfuerzos para establecer unos servicios de traducción e interpretación en los servicios públicos que fuesen eficaces y coherentes. Aunque se han realizado importantes progresos, existe cierto estancamiento. Este artículo pretende alzar la vista y proporcionar una visión objetiva sobre hacia dónde, pero sobre todo cómo se puede proceder a partir de este momento.

Cabría decir que la interpretación judicial se encuentra en un punto de inflexión por dos razones. En primer lugar, ha transcurrido tiempo suficiente para ser capaces de imitar a nuestros colegas científicos, que abordan de manera abierta el proceso de evaluación y eliminación de planteamientos insatisfactorios, identificando y descartando lo que no funciona. En segundo lugar, este proceso de exploración nos ha permitido aclarar y definir lo que sí funciona con el fin de centrar bien nuestras energías y avanzar.

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Palabras clave: Interpretación judicial. Comunidad de práctica. Registros. Evaluación. Planificación.

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1. Introduction

Turning points can only be effective if they are taken strategically on the basis of adequate information. The last twenty or thirty years have seen the development of a worthwhile body of evidence, based on both academic research and practical experience. This supports the clarification of three broad areas:

- aims, against a realistic appraisal of what exists
- which strategies have proved to be unhelpful, or only partly helpful, in reaching those aims
- which strategies have proved to be successful to a significant degree.

The development experience is producing in legal interpreters a genuine community of practice (D'Hayer 2013) with a growing professional self-confidence. There is an emerging core consensus, which allows for cultural differences in approaches by individual member states. At the same time, those working in the legal services have become aware of the role and identity of professional legal interpreters and translators (LITs). This has come about in large part through their experience of working with properly trained, qualified and experienced LITs, where they exist; doing their task with a dignified competence which complements their own.

2. Clear aims

There is a need to go back regularly to basics, to check that progress remains on track. The core principles of aims will, inevitably, be expanded in the light of experience but it could be said that a commonality of aims has evolved. That commonality of aims has an importance because the legal, health and social services of each country increasingly have to communicate with those in other countries; for example in prevention of terrorism and of trafficking drugs and people, and where medical and social matters cross national borders. An international consistency of basic standards and approaches is needed so that individual countries can have mutual trust in each other's interpreting and translation.

In broad terms, the aims are threefold. They have all been described elsewhere (Hertog 2001, Hertog 2003, Corsellis 2008) and may be summarised, along with some crucial steps towards them, as follows:

2.1. National, independent professional registers of public service interpreters and translators (PSITs)

Professional registers are independent, not-for-profit, voluntary or statutory bodies which register, and make freely available, the details of individuals who have met their criteria and agree to profess/observe a specified code of conduct/ethics. The criteria include: qualifications at the recognised minimum graduate level; proven, relevant experience and security clearances. Standards are maintained through regular re-registration requirements. A register also administers transparent disciplinary procedures where breaches of its code are alleged. A register is *not* merely a database or a list.

The level and approach to professional assessment is at the core of a register. A current EU funded project, Qualitas,[1] seeks to define and offer assessment strategies to colleagues in other member states, and to promote a consistency of qualifications across the EU. The project began by summarising the *status quo,* which showed an existing unevenness in developments, as can be seen from the EU country profiles on the Qualitas website. It will take time to bring about the consistency required. The project Building Mutual Trust 1[2] developed freely downloadable training materials, to offer colleagues examples in order to assist in their course provision.

In the long-term, there is a need for reliable and consistent national PSIT registers, which may be accessed with confidence from other countries. This, in its turn, will require careful thought and planning on such matters as disciplinary procedures where, for example, a LIT from country A is alleged to have breached professional codes in country B.

In the shorter term, it is envisaged that a database will be set up on the e-justice portal. A pilot LIT Search project has just begun, coordinated by Lessius Hogeschool, and is due to report in October 2015. It is looking, presumably in the first instance, at databases as well as registers and exploring the modalities and practical features that would be needed and how these might link between member states.

1. www.qualitas-project.eu
2. www.buildingmutualtrust.eu

2.2. National professional structures for PSITs

PSITs also need the protection of structures normal to any professions, which include national examination bodies, membership organisations to give support, and trade unions. These are at various stages of development in many member states. Austria, the Czech Republic, Poland and the UK have registers based upon qualifications, while others such as Spain are in the process of development.

EULITA, the European Legal Interpreters and Translators Association, was established through an EU project to act as a focus for these developments.[3]

2.3. National guidelines for good practice for those employed by the public services and working across languages and cultures

PSITs do not work in a vacuum. Their colleagues in other professions, with whom they work, need to be adept at accommodating both the interpreting process and the bicultural nature of the interaction, and be professionally accountable for those skills. The Directive 64/2010/EU about legal interpreting is specific about the requirements to train those working in legal systems in these skills. The outcomes of the EU project Building Mutual Trust 2 have begun this by offering freely downloadable multilingual basic training videos.[4]

As can be seen from the Country Profile section of the Qualitas project mentioned above, alongside the formal EU funded projects, committed work is taking place in each member state, at varying stages of development, including training courses, assessments and practice. Many, however, are finding that their routes to what they wish to achieve are blocked. This can be due, for example, to lack of political will and consequent inadequate provision of resources for training, accreditation and employment.

3. Impasses

The main component parts have been carefully explored, defined and recorded in, *inter alia,* Aequitas and Aequalitas: two EU funded projects designed to define, and then share, the necessary minimum standards of training and good practice for legal interpreters for all member states. One would think it was simply a matter of following their recommendations.

Why then cannot they always be satisfactorily implemented? Over ten years ago, the recommendations of Aequalitas (EU project Grotius programme

3. www.eulita.eu
4. www.buildingmutualtrust.eu

2001/GR8/015) (Hertog 2003) included a chapter by this author for a simple three-phase cycle of a development spiral, which would have been cost-effective to apply. This may be summarised as:

1. Establish foundations, in terms of:
   – management structures
   – assessing present and future demand
   – beginning training trainers, interpreters and legal services
   – setting up remedial training for students requiring it to start training next year
   – setting out systems for employment, deployment, supervision and support.
2. Begin annual systems for:
   – assessment of trainers, interpreters and legal services
   – professional registration for those who qualify
   – putting in place employment and deployment systems for those registered
3. Propel spiral of informed development, while increasing range of languages and numbers, through on-going:
   – training
   – assessments
   – registration
   – supervised and supported employment of skills sets.

It was perhaps naïve to think that it could, or would, be done in some form. There was a general, if unspoken, expectation that such a straightforward development would be implemented in the face of pressing social need.

4. Negative research findings are a positive

The reasons why things are not done, or done in a sub-standard way, can be more interesting than why they are. Scientists are crisply overt about negative findings. They make rigorous efforts to identify and record approaches that do not work out so that, through a process of elimination, they can find what does work and not waste time on fruitless exercises. It is useful to know when to cut your losses.

Maybe we should adopt the generality of the scientific approach. This might be a good moment to take a cold, objective look at what approaches have been of limited or no use, so that we can have the confidence to move on to what might be of more use. This can only be done in general terms

because of differences in countries and how they manage social change, but even then this might aid a helpful thought process. Timing is also a consideration because what has no purchase now may have that at a later stage. Care should also be taken to use this process as a reality check of the world as it is, and put that to good use without becoming over-cynical.

What, then, are some of the approaches to constructive progress which have been proved to be unhelpful?

4.1. Governments

The following extract from a Fair Trials International report sets out six important and related EU Directives:

> The fundamental right to a fair trial is enshrined in EU law but it does not receive the same level of protection in every European country.
> At the end of 2009 the European Union adopted a defence rights "Roadmap", paving the way for fair trial rights to be better protected throughout Europe. As of April 2014, three new laws have been adopted under the Roadmap and three more have been proposed by the Commission.
> The first Directive, on the right to translation and interpretation, means that nobody will be denied a fair trial because they do not speak or understand the language of the country in which they are arrested. The Directive was adopted in October 2010, and should have been implemented by member states by October 2013.
> The second Directive, on the right to information in criminal proceedings, was adopted in May 2012 and must be implemented by member states in time for June 2014. The Directive means that anyone arrested in the EU will be supplied with key information about their basic legal rights and the charges against them in a language they understand, without which they cannot effectively prepare for trial.
> The third Directive, on the right to access a lawyer following arrest and to communicate with a consular official or nominated person (such as a relative), was adopted in October 2013. Most significantly, the Directive guarantees people facing criminal proceedings the right to be advised by a lawyer – from arrest through to a case's conclusion.[5]

This clearly illustrates the context of the Directive relating the interpreting. It is not enough only to be able to communicate between languages. To have access to justice one also needs access, through that communication, to information and legal assistance operating within a robust and reliable legal system. The uneven background of the existing legal structures are admirably summarised by Fair Trials International, after the report above, in an

5. http://www.fairtrials.org/justice-in-europe/eu-defence-rights/

interactive map that shows which member states are implementing the relevant EU Directives and how.[6]

The Fair Trials statement concludes with three coming Directives and underlines the work yet to be done to implement all six:

> Meetings with members of our Legal Experts Advisory Panel during 2013 have demonstrated that member states have a lot of work to do in order to make the rights set out in these three directives a reality for suspects and defendants facing criminal proceedings.

In November 2013, the Commission published a new package of three proposed directives, on the right to legal aid, the presumption of innocence and procedural safeguards for children facing criminal proceedings. Negotiations on these remaining "Roadmap" measures are expected to commence in late 2014.

Following these Directives, there has been a sort of expectation that "they", at government level, would take on board responsibility for legal interpreting and translation because of the legal requirements, pressing social need and public good. In fact, responses from governments have been variable in terms of solid, practical delivery, despite expressions of good will which may or may not be sincere._

Governments differ between countries and between elections, guided by their innate philosophies, cultures and experiences. This was recognised by Ozolins (1998) in a prescient paper he gave at the second Critical Link conference. Governments differ because they are made up of people, elected by other people, in the same way as our students differ. We learn to accommodate our students; to work with their assets, try to get round their shortcomings and nudge them forwards.

Perhaps these analytical skills should be applied in respect of our governments. They have to be asked for what they *can* deliver well. Equally importantly, but more difficult, is to divert them from unhelpful strategies, such as an inappropriate use of technology when excellent work has been done on its appropriate implementation in the AVIDICUS projects,[7] whose rigorously detailed reports can be seen on their website. If used correctly, remote interpreting can assist in such situations as where witnesses are in another country or where children are better not in a court room, in routine matters such as bail hearings and perhaps more extensively. But caution should be used and

6. http://www.fairtrials.org/justice-in-europe
7. www.videoconference-interpreting.net

the current AVIDICUS 3 project is looking carefully at implementation in practice.

How useful are governments in this context? This is explored by Sasso & Malli (2004: 49):

> As we can see, the current absence of political will can leave community interpreting in a flux, but simply enacting or pursuing a public policy agenda will not necessarily cure community interpreting of its ills. Perhaps the question is not whether the industry needs public policy, but whether it is, indeed, needed at this point in our evolution. Time may be better spent on clearly defining the professional structure and process of training, certification, enforcement, membership and role definition – a progression articulately stated in Holly Mikkelson's 1996 article "The Professionalisation of Community Interpreting".

This may well be true but there are things that only a government can do and are beyond the remit or power of the interpreting profession. Passing and implementing necessary legislation, guaranteeing the integrity of an independent legal system and providing adequate budgets to legal services, are crucial responsibilities of the state. What government can do beyond those basic responsibilities may have to be gauged on an individual basis.

4.2. Lowering standards of training and practice

The first question too often asked is not, "how well can we do this?" but "how little can we get away with?"

The unequivocal answer lies in the national and international minimum interpreting standards that have been painstakingly developed and published. It is abundantly clear that anything below C2/C1 as set out by the Common European Framework of Reference for Languages (CEFR)[8] levels of language skills may not produce accuracy of legal interpreting.

Sometimes pressures to reduce standards come from so way-out that they are breathtaking. One such taken forward in the UK is that public service personnel, such as monolingual police officers, can predict the linguistic complexity of a future assignment. It may be assumed that, based on their perception of the importance of the exchange, "interpreters" with minimal level language skills could be allocated to such events as community relations communications. There are even educational establishments which take money for training "interpreters" in a week, and have been known to award certificates of doubtful value.

8. www.coe.int/lang-CEFR

One of the main stumbling blocks appears to be a lack of the decision makers' conceptual ability to recognise that there cannot be sufficient, suitably qualified legal interpreters in all the languages and locations needed by next week; coupled with the lack of management ability to plan and organise an incremental system to achieve that aim over a realistic time-scale, while making responsible arrangements to bridge the gaps in the short-term.

There is a significant difference between incremental levels of training towards a recognised professional qualification, and wasting resources on lower level short-term compromises that never become satisfactory long-term solutions. The engagement of trainees with lower level skills may be necessary in the short-term, where better solutions are not available, but for their sake and for their clients' sake, these arrangements must be surrounded by safeguards which include absolute transparency and not forgetting appropriate insurance cover.

Publications and circulations about PSIT contain litanies of evidence of failures where sub-standard levels of skills or practice have been applied. It is difficult to quantify with sufficient precision to make the exercise worthwhile, but it is self-evident that the accumulated costs of failure are likely to exceed the cost of getting it right in the first place. It can be revealing, however, to do a fairly simple costing of the results of inadequate or no interpreting such as lost court days, appeals and remands in custody, and look at how many legal interpreters could be trained for that sum.

4.3. Outsourcing

The logic is understandable but the math does not add up. Particularly in non-EU countries where most public services are commercialised, the notion that arrangements for PSIT can be handed over to a private company may seem logical. But that means that a worthwhile profit must be produced in a context where both the clients (the public services and the Other Language Speakers) normally have limited resources. Unless sufficient resources are allocated to the public services, this usually leads to lowering interpreting standards, working conditions and fees, which have had disastrous results. Since the introduction of outsourcing in the UK, over one thousand qualified legal interpreters have felt obliged to refuse to take work from the commercial companies involved.

Furthermore, professional accountability is weakened. Conflicts of interest abound where a commercial company takes on a multiplicity of roles, such as being both employer and regulatory body. Overall slippage of standards takes place swiftly and is difficult to recover from.

5. What is the firm ground?

What then can be done to overcome the negative pressures, such as the examples above? There I would agree with Sasso & Malli (2004), that the time and effort available would be best spent simply by building the profession. If a critical mass of qualified competent legal interpreters can be achieved, they would provide a viable alternative to short-term solutions and, equally importantly, be responsible for their own profession with sufficient weight to withstand, for example, any judiciary which lacks integrity and independence.

Who would do this? Where is the solid ground on which to build? Three such areas are suggested as a start:

1. PSITs themselves. They are intelligent, resourceful people who know their profession and are proud of it. They are learning to be collaborative and a community of practice is developing. They have the potential to work with others towards the common aims. A good example of this is the recently formed ENPSIT, the European Network for Public Service Interpreters and Translators.[9]
2. Front-line public services mostly appreciate both the need for good interpreting, and the skills sets needed to do it. While some doctors and so forth may still say that children and family members make satisfactory interpreters, even they are learning that is not the case. From their close contact with the public, they are beginning to understand the time it takes to learn an official language to a level where reliable communication can take place and that, in the meantime, assistance is required.

   There is an increasing awareness of the risks of inadequate interpreting, not just to other language speakers but also to providers of public services themselves, who have a professional responsibility for their decisions and are accountable for them. Where those decisions are based on inaccurate information, because decisions have been made deliberately to engage sub-standard interpreting and translation, they are at risk: at risk from litigation and from disciplinary actions within their own professions.

   The public service employees are therefore in an informed position to put pressure on their own authorities to fund, deploy and employ PSITs effectively. In many cases they appreciate the negative pressures legal interpreters are under, because they too are suffering from them.

9. www.enpsit.eu

3. Academia has been relatively solid in this area. Their own protocols for standards have gone a good way to protecting standards for training PSITs and for research. Inevitably, there will be some papers written, and even given at conferences, which attempt to spin gold out of very little damp straw, but that is the way of things and they usually disappear in light of day and reality.
   The best of academia knows how to pursue excellence with diligence, and should be in a position to bring that rigour to taking matters forward by example in all sectors of this field.

6. Conclusions

We have the confidence and experience to recognise and deflect non-productive strategies.

We have at least three increasingly firm areas on which to build. If those three were able to collaborate consistently on a local or regional basis, capacity building could take place in ways which would make the optimum use of energy and resources. National and international consistencies would follow.

Professional progress consists of a series of larger and smaller turning points. Each one should be subject to collective and constant evaluation, so that misjudgements can be spotted quickly and accommodations made to changing circumstances. The success of each one depends upon the soundness of the decisions and implementation of the one before it.

We have come a long way, and much of the going has been tough, but things are looking up. As a successful war leader said, at another turning point, "this is not the end. It is not even the beginning of the end. But it is, perhaps, the end of the beginning".

References

CORSELLIS, Ann. (2008) *Public Service Interpreting: the First Steps*. Basingstoke: Palgrave Macmillan.

D'HAYER, Danielle. (2013) "Public service interpreter education: A multidimensional approach aiming at building a community of learners and professionals." In: Schäffner, Christina; Krzysztof Kredens & Yvonne Fowler (eds.) 2013. *Interpreting in a Changing Landscape*. Amsterdam: John Benjamins, pp. 321-337.

HERTOG, Erik (ed.) (2001) *Aequitas: Access to Justice across Language and Culture in the EU*. Antwerp: Lessius Hogeschool.

HERTOG, Erik (ed.) (2003) *Aequalitas: Equal Access to Justice Across Language and Culture in the EU*. Antwerp: Lessius Hogeschool.

OZOLINS, Uldis. (1998) "Communication Needs and Interpreting in Multilingual Settings: The International Spectrum of Response." In: Roberts, Roda; Silvana E.Carr; Diana Abraham & Aideen Dufour (eds.) 1998. *The Critical Link 2. Interpreters in the Community*. Amsterdam: John Benjamins, pp. 21-34.

SASSO, Angela & Kiran Malli. (2014) "Trying to Fit a Square Peg into a Round Hole. Is Community Interpreting Just Too Big for Public Policy? The Canadian Experience." *FITISPos* 1:1, pp. 42-50.

Webgraphy

QUALITAS. Assessing Legal Interpreting Quality through Testing and Certification. Electronic version: <http://www.qualitas-project.eu/>

Building Mutual Trust. A Framework Project for Implementing EU Common Standards in Legal Interpreting and Translation. Electronic version: <http://www.buildingmutualtrust.eu/>

EULITA. European Legal Interpreters and Translators Association. Electronic version: <http://www.eulita.eu/>

FAIR TRIALS INTERNATIONAL. Electronic version: <http://www.fairtrials.org/>

AVIDICUS. Electronic version: <http://www.videoconference-interpreting.net/>

COUNCIL OF EUROPE. Common European Framework of Reference for Languages: Learning, Teaching, Assessment (CEFR). Electronic version: <http://www.coe.int/t/dg4/linguistic/cadre1_en.asp>

ENPSIT. Europees network voor social tolken en vertalen. Electronic version: <http://www.enpsit.eu/>

BIONOTE / NOTA BIOGRÁFICA

Ann Corsellis OBE is a Vice President and Honorary Fellow of Chartered Institute of Linguists UK. She coordinated projects for the development of systems for the selection, training, assessment, good practice and registration of public service interpreters in the UK and was the first chairman of the National Register of Public Service Interpreting. She coordinated the first EU project on legal interpreting and participated in related subsequent EU projects. Her publications include *Public Service Interpreting: the First Steps* (Palgrave Macmillan, 2008).

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RESISTING MARKET DISORDER AND ENSURING PUBLIC TRUST: REIMAGINING NATIONAL REGISTERS FOR LEGAL INTERPRETERS IN THE UNITED STATES AND THE EUROPEAN UNION

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Abstract

This article aims to describe the current state of affairs as regards national registers of legal interpreters and translators (LITs) in the United States and the European Union. After a brief overview of what translation and interpreting studies researchers and EU project participants recommend about their construction and utilization, a case will be made for the use of national registers as essential tools in two important struggles: professionalizing legal translation and interpreting and building public trust. Based on current models and recommendations by researchers, a proposal will be put forth for minimum characteristics of a national register of LITs. Rather than an afterthought, the interpreter register merits scrutiny and careful elaboration precisely because of an ever more ubiquitous need for states and countries to implement measures which are fair, transparent, cost-effective, which guarantee due process, and which provide users with ways to make an objective value judgment regarding the competence of the interpreters they commission.

Resumen

El presente artículo pretende describir el estado de la cuestión de los registros nacionales de intérpretes y traductores judiciales en los Estados Unidos y en la Unión Europea. Después de examinar brevemente las recomendaciones de investigadores y participantes en proyectos especializados a nivel europeo, se defenderá la importancia de utilizar los registros nacionales para dos fines importantes: profesionalizar la traducción y la interpretación judicial, así como fomentar la confianza pública. A continuación se planteará una propuesta, basada en modelos actuales y recomendaciones

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de investigadores que contempla las características mínimas de un registro nacional. Debido a la necesidad cada vez más presente de implementar medidas que sean justas, transparentes, sostenibles y que protejan los derechos procesales de los ciudadanos, el registro debe ser elaborado cuidadosamente y con el esmero apropiado. Así también se puede garantizar que los usuarios de dichos registros dispongan de información objetiva sobre la competencia de los intérpretes a quienes contratan.

Keywords: Legal interpreting. European Directive. Professionalization. National register. Regulation.

Palabras clave: Interpretación judicial. Directiva Europea. Profesionalización. Registro nacional. Regulación.

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1. Introduction: National Registers at a Turning Point

Recent and vital work to guarantee language rights in criminal and civil proceedings is currently being carried out both in Europe and the United States. In the European context, Member States are in the process of implementing Directive 2010/64/EU, a measure which aims to guarantee adequate[1] translation and interpreting in criminal proceedings. Similarly, in the United States efforts are being undertaken by the newly configured Council of Language Access Coordinators (CLAC)[2] as it becomes more and more apparent that, in spite of enjoying robust legislative support, language access continues to be an uphill battle in many US courts. In a forcefully-worded guidance letter issued by the Civil Rights Division of the US Department of Justice on August 16th, 2010, Assistant Attorney General Thomas E. Perez addressed all chief justices and state court administrators. The letter acknowledged that "despite efforts to bring courts into compliance, some state court system policies and practices significantly and unreasonably impede, hinder, or restrict participation in court proceedings and access to court operations based upon a person's English language ability" (Perez 2010: 2).

Both Europe and the United States face challenges in guaranteeing due process rights while endeavoring to comply with legislation in the face of

1. Article 2, paragraph 8 of the Directive states that "Interpretation provided under this Article shall be of a quality sufficient to safeguard the fairness of the proceedings, in particular by ensuring that suspected or accused persons have knowledge of the case against them and are able to exercise their right of defence" (Directive 2010: 5).
2. Presumably in response to Department of Justice insistence on greater oversight in matters concerning language access, in the spring or summer of 2012 the Council of Language Access Coordinators (shortened to CLAC, like the Consortium for Language Access in the Courts before it) was chartered. The Council of Language Access Coordinators differs markedly from its predecessor in that it "consist(s) of individuals designated by the COSCA (Conference of State Court Administrators) member in each state who are interested in or associated with the provision of language access services to the courts, such as language access program coordinators" (COSCA n.d.: 1). A representative of every US state and territory (the Language Access Coordinator) has now been designated to be the point person for the provision of language access services to the courts.

budgetary constraints, anti-immigrant sentiment, and limited access to qualified interpreters. Members of law enforcement and officers of the court often do not know how to locate interpreters who work in languages of limited diffusion (LLDs) and, even when they can, they often have virtually no way of knowing objectively how skilled the person may actually be as an interpreter. As vast territories which are ethnically and linguistically diverse, the European Union and the United States share similar challenges and are being asked to formalize mechanisms by which all court participants are guaranteed equal footing in the courts through the use of qualified interpreters (Blasco Mayor, Del Pozo Triviño, Giambruno, Martin, Ortega Arjonilla, Rodríguez Ortega & Valero Garcés 2013; COSCA n.d.; Corsellis 2011; Directive 2010; Morgan 2011; Ortega Herráez, Giambruno & Hertog 2013; Pérez 2010). This article posits the use of a national register, often referred to as a registry or a roster in the United States, as a tool that can give administrators the information they need about an interpreter's skills while at the same time offering legal interpreters and translators (LITs) a multi-faceted tool in the struggle towards professionalization.

While there is no official nationwide or state-level mandate to create a national register of qualified interpreters in the United States, the European Union does, in fact, have such a mandate. As a requirement for admission, all EU Member States are signatories to the European Court of Human Rights (ECHR). Article 6 of the ECHR provides that anyone facing a criminal charge should be provided with the services of an interpreter, free of charge, if s/he does not understand the language of the proceedings (Morgan 2011: 5-6). The European Commission found, however, that cost was often an impediment to Member States in fulfilling their ECHR obligations; that interpreters and translators often worked under poor conditions; and that Member States had difficulty recruiting sufficient LITs given that "the profession suffers from a lack of status, with translators and interpreters sometimes being poorly paid, not having social benefits (such as paid sick leave and pension rights) and complaining that they are not consulted enough by their counterparts in the legal profession" (Morgan 2011: 6-7). Much like in the United States, it became clear that longstanding non-compliance with existing laws was pervasive, similar to the way that many US states continue to act in direct violation of Title VI of the Civil Rights Act (Ortega Herráez, Giambruno & Hertog 2013; Wallace forthcoming). One powerful remedy has been the aforementioned EU Directive, which has been the driving force behind the establishment of minimum education requirements, systems of accreditation, continuing education requirements, and the elaboration of codes of ethics and standards of

practice. Directive 2010/64/EU states that "The implementation of the principle of mutual recognition of decisions in criminal matters presupposes that Member States have trust in each other's criminal justice systems" (Directive 2010: 1), and finds that one of the key initiatives to aid in this endeavor is the building and sharing of information based on harmonized, reciprocal standards. Specifically, Member States are directed to facilitate access to national databases of legal translators and interpreters where such databases exist (Directive 2010: 4). Furthermore, article 5, paragraph 2 states that

> In order to promote the adequacy of interpretation and translation and efficient access thereto, Member States shall endeavor to establish a register or registers of independent translators and interpreters who are appropriately qualified. Once established, such register or registers shall, where appropriate, be made available to legal counsel and relevant authorities (Directive 2010: 6).

Multiple efforts have been made at the level of European Commission-funded work groups and projects to tackle a variety of aspects of training and credentialing court and legal interpreters. In a Europe that invests heavily in the model of a multicultural and multilingual society and which boasts a historically well-established history of translator and interpreter training (Pym 2014: 186), the construction of national registers promises to build in all of the elements with which status within a profession is signaled, including aspects such as credentialing, oversight, and professionalism. To that end, this article aims to describe the current state of affairs as regards national registers of legal interpreters and translators in the United States and the European Union. While generalizations about the EU or the US (along with any attempt to impose common solutions across the board) may at the surface appear to ignore the individualities and complexities of each set of systems, their commonalities are striking. Both bodies consist of linguistically and culturally diverse states with varying histories of credentialing, testing and training. Most, if not all, are faced with identifying qualified interpreters in languages of lesser diffusion. The mere fact that the parts of the whole work independently and sometimes at odds with each other creates the opportunity to explore the benefits of consistency and harmonization.

Accordingly, after a brief overview of what translation and interpreting (TI) studies researchers and EU work group participants recommend about their construction and utilization, a case shall then be made for the use of national registers as essential tools in two important struggles: professionalizing legal translation and interpreting, and building public trust. Although the creation of national registers has already occurred in a handful of European

nations, many still do not comply with this feature of the Directive. In the United States, initiatives are in their infancy. Furthermore, this article aims to go beyond the vision of the register as a mere list of practicing professionals, contemplating registers as a tool for professionalization, an aspect which remains under-examined in current scholarship.

Based on current models and recommendations by researchers, a proposal will be put forth which posits minimum characteristics of a national register of LITs. Rather than an afterthought, the concept of the interpreter register merits scrutiny and careful elaboration precisely because of an ever-more ubiquitous need for states and countries to implement measures which are fair, transparent, cost-effective, which guarantee due process, and which provide users way to make a value judgment regarding the competence of the interpreters they commission. By making interpreters' qualifications transparent, registers can contribute directly to the public trust. In turn, low morale and market disorder can be mitigated by approaching the register as a vehicle for interpreter professionalization.

2. The Current State of Affairs in the EU and the US: National Registers in Theory and in Practice

Among the flurry of initiatives, studies, policy analyses and work group final reports which have been generated by various European Commission projects in anticipation of the transposition of Directive 2010/64/EU, interpreter registers are often mentioned, seldom described, and almost never critically examined. The need for searchable databases seems to be taken for granted, but current research reflects few efforts to carefully analyze their utilization and composition. There are notable exceptions, nonetheless. The following section reviews the state of the art of the interpreter register, in practice and as described by scholars and policy work groups. Subsequently, the extent to which such registers exist currently in the European Union and the United States is deliberated.

2.1 Recent Scholarly Explorations of National Registers

Beyond the confines of European Union work groups, scholarly treatments of the topic of national registers of interpreters are scarce. The most comprehensive discussion on the subject of national interpreter registers comes from a team of authors headed by Ann Corsellis, Vice President of the Chartered Institute of Linguists of the United Kingdom. Corsellis and her colleagues maintain that "A national register has obvious advantages for setting professional

standards, making accredited PSI (public service interpreter) skills more easily accessible and making available the widest possible range of language combinations countrywide" (Corsellis, Cambridge, Glegg & Robson 2007: 139) and, indeed that is exactly what the UK's National Register for Public Service Interpreters (NRPSI) provides. As a well-constructed, monitored and comprehensive model to emulate, the NRPSI was established in 1994. Having separated from the Chartered Institute of Linguists in April of 2011, the NRPSI today serves as an independent voluntary regulator, prescribing qualifications, ensuring that standards for conduct are met, and investigating complaints[3]. It boasts an office team of five full-time and two part-time employees and is financed mainly through a combination of fees from interpreters and subscriptions from the public services (Corsellis, Cambridge, Glegg & Robson 2007: 142). The UK's National Register has long recognized that a profession arises where trust has to be engendered, and there is inherent value in having access to interpreters who have had a prior objective assessment of their language and professional skills and who are required to observe a code of conduct. The NRPSI is free, accessible to the public, and fully searchable online.

On a more regional level in Italy, Mette Rudvin describes two strands of the LEGAII (Legal interpreting in Italy: Training, Accreditation and the Implementation of a National Register) project at the University of Bologna. With the overarching goal of creating constructive, collaborative relationships between the university and local Bologna institutions, Rudvin suggests that the creation of a national register is crucial to the project's success. Since in Italy there is currently no system of certification or accreditation for court interpreters, the LEGAII project is tasked with setting up a register, at least at the regional level, that is in accordance with the EULITA project that is currently underway to create standards across the EU for an interpreter database (Rudvin 2014: 78). While LIT stakeholders from the United States may not be familiar with EULITA (the European Legal Interpreters and Translators Association)[4] nor

3. http://www.nrpsi.org.uk/.

4. The TRAFUT (Training for the Future) final report describes the role of EULITA and the national associations it represents in its memberships as "crucial in assisting Member States during the implementation process (of Directive 2010/64/EU). The steps that have been taken towards the provision of quality legal interpreting and translation in the EU, an EU code of conduct guaranteeing cross-border integrity, best practice working arrangements with other legal professionals in multilingual criminal proceedings, the setting up of national registers, etc., will affect not only the system operation of all Member States in this area but even more importantly, trickle down to all EU citizens who find themselves involved, be it as a witness, victim or defendant, in a criminal proceeding across languages" (n.d.: 10).

with the various projects that the organization sponsors and reports on, it is within these project work groups that nearly all systematic studies regarding national registers are to be found. There appear to be no formal examinations of the creation or administration of national registers within US scholarship nor in other areas of the world beyond Europe. For this reason, an examination of the current state of affairs of national registers would be incomplete without an overview of the EU projects which have acknowledged the role of the register or proposed active solutions in preparation for the transposition of Directive 2010/64/EU.

2.2 EU Projects and National Registers

On February 19th, 2003, the European Commission presented a Green Paper on Procedural Rights in Criminal Proceedings for Suspects throughout the EU. The Green Paper maintains that Member States must:

> ... have a system for training specialised interpreters and translators ending with a recognised certificate; have a system for accreditation of such translators and interpreters; introduce regulations for registration which must not be unlimited so as to encourage the persons involved to keep up their knowledge of the language and of legal procedure, if and when they wish to renew their registration; set up a system of continuous professional development so that legal interpreters and translators will be able to maintain their skills at a proper level; draw up a code of conduct and guidelines for proper working standards which must be equivalent throughout the EU or correspond as far as possible; and provide training for judges, public prosecutors and lawyers so that they will have a better insight into the role of the translator and the interpreter, resulting in a more efficient mutual collaboration (Hertog & Van Gucht 2008:15-16).

The resulting *Status Quaestionis* Questionnaire on the Provision of Legal Interpreting and Translation in the EU published in 2006 was a follow-up to previous projects, and its primary objective was to examine "the state of affairs concerning one fundamental procedural right, i.e. the right to access to justice across languages and culture or in other words, the right to a free interpreter and the translation of all relevant documents in criminal proceedings" (Hertog & Van Gucht 2008: v). The EU-wide questionnaire compiled composite country profiles of each Member State and weighed and ranked countries on a number of essential performance indicators, the most relevant to this article being those related to regulation of the profession. The report's authors argue that "National registers of equivalent standard and common codes of conduct could allow mutual access, provided there were also equivalent similar professional frameworks for employment and good practice"

(Hertog & Van Gucht 2008: 196). Foundational efforts such as the information-gathering *Status Quaestionis* and the Green Paper on Procedural Rights were supported and disseminated by the aforementioned EULITA. Although there are several European Commission-funded projects which focus on various ways to facilitate the successful transposition of Directive 2010/64/EU[5], those which have contributed most to an international dialog on national registers are, indubitably, *Aequitas* and *TRAFUT* (Training for the Future).

The *Aequitas* (Access to Justice across Language and Culture in the EU) study makes specific recommendations about the registration of LITs, citing the National Register of Public Service Interpreters in the UK as an example. The authors recommend making registration obligatory, "which means that interpreters and translators who are not registered in the National Register cannot work for the police and the legal services, and that the police and the legal services are obliged to use only registered interpreters and translators" (Grollmann, Martinsen, & Rasmussen 2001). Furthermore, the authors recommend utilizing national registers to cover several services at the same time including hospitals, schools, and social welfare organizations, effectively creating an all-encompassing public service interpreter register similar to the UK model. Authors Grollmann, Martinsen and Rasmussen also posit recommendations about what the register should contain, including areas of specialization and interpreter availability, and recommend differentiation, meaning that interpreters at different stages of professional development would appear on the register at different tiers or levels.

The *TRAFUT* (Training for the Future) project team was formed and funded in order to "assist all relevant stakeholders such as ministry officials, the various legal professions involved (judges/magistrates, prosecutors, lawyers and the police), as well as the associations and training institutes of legal interpreters and translators during the process of implementation [...] of this Directive (2010/64/EU)" (*TRAFUT* n.d.: 4). The project leaders held four workshops throughout the EU during 2011 and 2012 in Ljubljana, Slovenia;

5. More information about the *QUALITAS* (Assessing Legal Interpreting Quality through Testing and Certification) project can be found at http://www.qualitas-project.eu/custom-user/112 and *QUALETRA* (Quality in Legal Translation) at http://www.eulita.eu/qualetra-0. The *AVIDICUS 3* project (http://www.videoconference-interpreting.net/?page_id=154) focuses on the use of videoconferencing in bilingual legal proceedings that involve an interpreter. The *ImPLI* project (Improving Police and Legal Interpreting) at http://www.eulita.eu/impli-improving-police-and-legal-interpreting) positively acknowledges the Directive's inclusion of a need for registers and discusses them briefly in terms of usefulness for recruitment purposes.

Madrid, Spain; Helsinki, Finland; and Antwerp, Belgium[6]. The meetings featured experts from the EU Commission, the Directorate-General for Justice, the Secretariat of the EU Council, the European Court of Justice, the European Court of Human Rights, the European Criminal Bar Association, the Council of Bars and Law Societies in Europe, and the European Forum of Sign Language Interpreters, in addition to judges, prosecutors, lawyers, police officers, representatives of ministries of justice and of national professional associations of legal interpreters and translators, academics and trainers. Among other final recommendations, *TRAFUT*'s final report proposed a basic outline of a national register of legal interpreters and translators based on presentations which touched on the use, administration, development and implementation of national registers (*TRAFUT* n.d.: 13-16). Indeed, these EU contributions to the international dialog on the import of national LIT registers stand alone, serving as potential models for initiatives in the United States and other parts of the world.

2.3 The Current Reality of National Registers in Europe and the United States

At present there is no nationwide, spoken-language roster of court and legal interpreters in the United States. As a rather fractured set of systems, each state has the authority to train, accredit and hire LITs based on whatever criteria they establish. An exploration of the court interpreting / language access web site portal for each US state and territory reveals that out of 50 states and the five territories of American Samoa, Guam, the US Virgin Islands, Puerto Rico, and Washington DC, 28 states or territories (50.9%) have no publicly searchable lists or databases of court interpreters. Of those that do, 11 have electronic searchable databases and 16 have lists in the form of pdf files. The databases and lists contain a combination of domains such as name, language, location, level of qualification, and availability (distance willing to travel, willingness to work nights and weekends, etc.). All interpreter rosters differentiate levels of competence in some way, usually from two to four levels, although the array of qualifying adjectives describing the various tiers is dizzying[7]. There is no comprehensive database which marries the information available on individual state courts' web sites.

6. Links to the agenda of the four *TRAFUT* workshops and selected presentations can be accessed at http://www.eulita.eu/training-future.
7. Interpreters are designated as certified, master, registered, and qualified, among many other options.

There is one initiative taking place at the national level in the United States which is geared towards the construction of a national register of interpreters who can provide services remotely. The work group members consist of Language Access Advisory Committee (LAAC) members as well as state court interpreter program managers who were selected for having robust remote interpreting projects already existing in their states, or who had some other related special interest or area of expertise. The group's overarching objectives are to improve access to more qualified interpreters and to explore and develop the use of technology which will, theoretically, be more cost efficient in the long run. The template for the register was built from scratch by the National Center for State Courts, but the work group's intention is to populate the national register with information from all states whose interpreters wish to be listed on it and who fit the criteria for inclusion (C. Capati, personal communication, June 24, 2014). The register will be searchable by language and will be differentiated by tiers based upon various existing levels within state programs[8]. At this time the domains contemplated for the national register will be basic, and will include each interpreter's name, state, city of residence, language, tier (level of certification), phone number, email, and availability for in-person, audio or video sessions. The registry will be available to the managers of each state's court interpreting program and possibly later on to vendors, although it is still not clear when the register will go live, what systems will be in place to manage and update it, how many staff members it will require, and whether or not the register will generate any revenue. The National Center for State Courts will maintain the registry.

Furthermore, the issue of requiring interpreters to abide by a code of ethics and potentially sanctioning them is an issue that is being worked on as the team develops protocols for inclusion on the registry. Since there is currently no national code of ethics (states have individual codes), the question of discipline is unclear and the issue of jurisdiction needs to be discussed further. Similarly, if an interpreter does not comply with continuing education requirements in states that require them, it is unclear what the consequences

8. Tier differentiation proved to be somewhat controversial, according to Capati (2014). A few of the "sticky issues" identified include the fact that some states will not recognize an interpreter's test scores from another state if that person passed the test using a partial pass system. Some states also use a "master" level which includes those who passed the FCICE (Federal Court Interpreter Certification Examination) or those who passed the CLAC (state-level) oral test at 80% or higher on all sections. In some states, each individual sight translation section must be passed at 70% while in others a minimum of 65% is acceptable as long as the composite sight translation score is at least 70% (C. Capati, personal communication, June 24, 2014).

will be or how compliance will be monitored. As regards enforced usage of interpreter selection based on highest level of accreditation, the work group hopes that each state will start with the most qualified interpreter and work their way down the roster based on availability, but a selection procedure is not to be mandated at this time (C. Capati, personal communication, June 24, 2014).

The overall panorama of national registers is quite similar in the Member States of the European Union, where there are currently national registers in only a handful of countries including Slovenia, the Czech Republic, Finland, Ireland, Luxemburg, Malta, Holland, Slovakia, Sweden, Spain, and the United Kingdom (Blasco Mayor, Del Pozo Triviño, Giambruno, Martin, Ortega Arjonilla, Rodríguez Ortega & Valero Garcés 2013). It is notable that of the six countries represented on the *ImPLI* work group (which focused more on police interpreting and included Belgium/Flanders, the Czech Republic, France, Germany, Italy, and Scotland/UK), three countries had national registers and three did not. Some did have local and /or regional registers, however (*ImPLI* n.d.: 59-71).

The two European countries in which ample reflections upon national registers and the state of LIT professionalization have been published are certainly the United Kingdom and Spain; the former, perhaps for having the most elaborate, independent and longstanding national register, and the latter for having such a robust tradition of training and research that few questions related to the field go unexamined[9]. As an established tool which fulfills a vital social and public function, Corsellis (2000) discusses how the NRPSI has a role in enabling the public services to fulfil their responsibilities. The UK Register goes beyond providing suitably qualified LITs to creating management structures which support access to services. In Spain, in contrast, "the 'register' itself is a pdf document on a webpage, not a database, and there is no management whatsoever" (Blasco Mayor 2013: 170). Furthermore, in addition to being so out of date that cases of deceased translators and interpreters still being listed have been reported (2013: 188), Blasco Mayor identifies the current national Spanish register as being utterly ineffectual. Not only does it not list interpreters in some of the languages most needed in court and police settings as there are no LITs registered for those languages, but additionally, the lack of regulation of the profession directly impacts the

9. Spain is the only European country boasting 22 universities that offer translation and interpreting degrees (Blasco Mayor 2013: 166), and currently there are 19 active translation studies journals published there (Franco Aixelá 2012: 340).

register's engendering of public trust. Quality is simply unaccounted for. In sum, "the Ministry cannot guarantee that services provided by the translators it certifies are quality translations or interpreting since it performs no quality control over their work nor has any control over the number and type of assignments they accept" (Blasco Mayor 2013: 170). Things are bound to look up, however. One of the latest EU projects, *LIT Search*[10], is a pilot project aimed at exploring the modalities and practical features of national databases which will eventually be linked. The project, coordinated at KU Leuven, will include sign language interpreters and will eventually be housed on the e-justice portal, a site that is envisioned to function as a sort of one-stop shopping place for all justice-related matters.

3. Raising Expectations: What can a National Register do for the Profession?

Legal and court interpreting is still very much an emerging profession. Scholars who subscribe to Trait Theory place both signed and spoken language interpreting in a state of market disorder (Tseng 1992; Mikkelson 2013; Hessmann, Salmi, Turner & Wurm 2011), described as "the current state of the interpreting market that reflects significant instability related to minimum standards for entry into the field and a lack of consistent and reliable professional control over the variables impacting the effective delivery of interpreting services" (Mikkelson 2013: 71). The focus of this study is to examine those aspects of market disorder which can be mitigated and contravened through the development of differentiated interpreter registers, advocating for their construction and enforced utilization. In addition to aiding in the evolution of interpreting as a profession, national registers can also contribute to transparency and public trust.

3.1 Registers to Combat Market Disorder

The current state of public service and legal interpreting as a profession has been explored by researchers analyzing the sociology of professionalization through lenses such as Bourdieu's concept of distinction (Monzó 2009). Others postulate the training of public service providers as part of the march towards professionalization (Corsellis 2000; Salaets 2012). Two other major theories discussed in articles about the professionalization of both spoken

10. See http://www.eulita.eu/lit-search-%E2%80%93-pilot-project-eu-database-legal-interpreters-and-translators.

language and signed language interpreting include Trait Theory and Control Theory, both of which place interpreting into the category of a professionalizing occupation (Tseng 1992; Witter-Merithew & Johnson 2004; Monzó 2005; Pym, Grin, Sfeddo & Chan 2012; Mikkelson 2013).

Not to be confused with the psychological theory related to the human personality which bears the same name, Trait Theory takes the view that a profession is an occupation with certain characteristics (Winter 1988: 21) and, depending on the nature of said characteristics, an occupation is said to be further along (or not) in the professionalization process. Control Theory examines professional power, such as the extent to which an occupation exercises control over the determination of the substance of its work while also taking into account the extent to which specific occupations have progressed in their struggles for professional status (Tseng 1992: 19-20). Trait Theory overlaps with Control Theory in the insistence that a consolidated profession defines expertise on its own, without having content of knowledge imposed upon it by other professions. Scholars such as those previously mentioned tend to find common ground when identifying the "traits" or "signals" that a bona fide profession encapsulates. These include characteristics such as specialized knowledge, fraternity, self-regulation (Monzó 2005), formal study, a recognized degree of expertise, and licensure or accreditation. Others include elements such as initial and in-service training, recognized assessment at all levels, guidelines to good practice, and disciplinary procedures (Corsellis 2011).

Unfortunately, court and legal interpreting continues to be largely unregulated both in Europe and in the United States. Interpreters as well as litigants are unprotected, and in discussions surrounding professionalization, there is no small amount of anecdotal and scholarly discussion of the problems that continue to beset public service interpreting. Such deficiencies include low wages[11], low social prestige, misunderstanding by society, and very limited authority or power over the working conditions and standards that are established, severely limiting the collective authority of the field (see Bell 2000; Helmerichs 2004; Witter-Merithew & Johnson 2004; Monzó 2005 & 2009; Hessmann, Salmi, Turner & Wurm 2011; Blasco Mayor 2013; Rudvin 2014).

11. The *ImPLI* final report finds that "… there is a notorious lack of funds (for police interpreting), which means that in most cases the only selection criterion is price. As a result, poor remuneration often means poor quality since qualified interpreters do not accept police interpreting assignments under such conditions. Poor quality of unqualified interpreters is also one of the reasons for the mistrust among the police as far as working with interpreters is concerned" (n.d.: 17).

When credential requirements for employment vary, when there exists a lack of consensus between the profession and the market place as to the common attributes of an entry-level practitioner, or when there is insufficient consumer and public appreciation assigned to the complex work of interpreting, market disorder ensues, both for signed language and spoken language interpreting (Witter-Merithew & Johnson 2004; Mikkelson 2013).

Market disorder, also referred to as market disorientation, is described by Joseph Tseng as follows:

> Practitioners in the market cannot keep outsiders from entering practice. They themselves may have started practice as outsiders or quacks. Recipients of the service either have very little understanding of what practitioners do or very little confidence in the services they receive. It is very likely that the public simply does not care about the quality of the services. Hence, distrust and misunderstanding permeate the market. What matters more to clients, in the absence of quality control, is usually price. Whoever demands the lowest fees gets the job. Therefore, advertising and price-cutting are commonplace in the market. The rights of the clients are normally not protected, and malpractice as a result frequently occurs. When the clients need services, they simply call upon anyone who is around and asking a reasonable fee. Clients who demand quality services are usually troubled by the fact that they do not know where to get qualified practitioners for services (Tseng 1992: 44-45).

As a response to market disorder, "employers tend to trust professional experience or their own recruitment tests rather than academic qualifications or membership of an association" (Pym, Grin, Sfeddo & Chan 2012), and potential clients and users of interpreter services often mistrust practitioners in this phase of professionalization. A well-constructed and faithfully utilized register, however, can lend transparency to interpreters' skills, aid in the profession's resistance to outsourcing and abusive language service provider (LSP) practices, fight against interpreter invisibility, postulate a roadmap to career progression for interpreters, and provide indispensable access to LITs who work in languages of lesser diffusion. Through transparency and accountability, furthermore, the EU Directive's need to engender public trust is more likely to be satisfied.

3.2 National Registers and Public Trust

The concept of mutual trust in other Member States' criminal justice systems is one of the very foundations of EU Directive 2010/64/EU. Article 2 insists that the "Interpretation provided under this Article shall be of a quality sufficient to safeguard the fairness of the proceedings, in particular by ensuring that suspected or accused persons have knowledge of the case against them

and are able to exercise their right of defence" (Directive 2010: 5). To have any hope of being able to expect a minimum standard of adequate performance, the profession requires mechanisms by which a client can judge for him/herself the degree of quality of the services rendered at the point of delivery. Without some kind of regulation, "[…] the public loses its undoubted right to be protected from charlatans and crooks, to be guaranteed a product which is not substandard and to have recourse to an authority which can provide compensation if it is" (Bell 2000: 148).

Rudvin (2014) identifies the lack of transparency in interpreters' skills and competences as one of the major flaws in the current interpreter recruitment system in Italy, an argument which speaks directly to issues of quality. The *ImPLI* final report on police and legal interpreting in the EU makes the case that the lack of centralized registers has a direct effect on the lack of quality control. As the report laments the lack of centralized registers and quality assessment bodies, it proclaims that "National quality control systems do not exist. Local initiatives do exist but are too fragmentary at the present time. There is no system in place to verify the accuracy of interpretation and translation. In some countries (for example France, Belgium), there are not centralised registers of legal interpreters from which criminal justice authorities can select interpreters" (*ImPLI* n.d.: 39).

Moreover, registers can reflect understanding of and adherence to codes of ethics and standards of practice. The regulation of practice provided through the codes of conduct allows for its members to commit to disciplinary procedures where breaches of the code are alleged and, when necessary, appropriate action can be taken (Corsellis 2004: 126). While the existence of a code of ethics does not oblige people to abide by it, interpreter breaches have repercussions on the profession as a whole, diminishing the public trust that is so crucial (Hale 2007: 105). In terms of public trust, a freely available national register characterized by transparency can be a powerful tool. In the absence of such transparency, "[un] registro de operadores que no garantice la calidad necesaria no contribuye a la confianza mutua ni a la seguridad jurídica deseadas" (Blasco Mayor, del Pozo Triviño, Giambruno, Martin, Ortega Arjonilla, Rodríguez Ortega & Valero Garcés 2013: 4).

3.3 Beyond Professionalization and Public Trust: Other Important Uses of the National Register

This article has focused on national registers of LITs as a weapon against market disorder and as an aid to transparency and building the public trust. However, national registers have additional professionalizing capabilities. If

their usage is enforced and relied on by users across court and criminal justice systems, national registers can aid in the resistance against outsourcing of interpreting work to agencies, as currently happens in several EU countries and several US states, putting LITs in harm's way of abusive practices at the hands of unethical language service providers.

Blasco Mayor (2013: 170) explains Spain's dubious honor of having been the first European country to outsource court interpreting services in 2003, a state of affairs which she believes has led to the current situation in which chaos and absence of professionalism reign. There is no quality control, no training or certification required, and fees paid by the service providers are akin to those of an unskilled worker[12]. Unfortunately, the United Kingdom followed Spain's controversial lead in early 2012 (Ortega Herráez, Giambruno & Hertog 2013), privatizing court interpreting services to disastrous effect as "Rates for interpreters were slashed to barely subsistence levels overnight, leading to the vast majority of interpreters choosing to boycott the new contract rather than accept … pitiful pay and conditions[13]." Having recourse to a vendor-neutral recruitment source, especially for interpreters of LLDs, could provide a viable alternative to outsourcing, the effects of which were so devastating for LITs in the United Kingdom that the nation's contract with a private language services provider

> …ha sido objeto de una investigación en el seno del Parlamento británico a cargo de la Comisión Parlamentaria de Justicia [… y…] a causa de este mal paso, el anterior Ministro de Justicia británico tuvo que dimitir, y la actual Ministra no tiene el apoyo ni siquiera de su propio grupo parlamentario con respecto al actual modelo de provisión de traductores e intérpretes judiciales en su país (Blasco Mayor, del Pozo Triviño, Giambruno, Martin, Ortega Arjonilla, Rodríguez Ortega & Valero Garcés 2013: 5).

Conversely, national registers can act as a ladder of opportunity for career progression, setting out a roadmap of professional upward mobility for interpreters in terms of credentialing and training. What Corsellis, Cambridge, Glegg & Robson (2007) describe as "levels of membership", and what is referred to often in the United States as differentiation or tiers, "…provides a professional

12. "In Spain the administration pays up to 60 EUR per interpreting hour to outsourced agencies, who in turn pay the interpreter between 8 and 12 EUR per hour. Pay is a major concern of the interpreters and low pay is a major disincentive" (Blasco Mayor 2013: 175). The Canary Islands Model discussed in the same article, however, shows a marked contrast with the rest of the country. With no agency to intervene, court interpreters were earning 44 euro per hour in 2008 (Blasco Mayor 2013: 172).
13. See http://www.opendemocracy.net/ourkingdom/joel-sharples/realities-of-outsourcing-court-interpreters-mean-miscarriages-of-justice.

structure through which linguists can develop their skills and earn professional status and recognition" (Corsellis, Cambridge, Glegg & Robson 2007: 142). A publicly visible, oft-utilized and well-monitored path to higher status and recognition helps morale in addition to giving more objective information to the public, another way in which national registers can combat market disorder[14]."

In a similar vein, then, it stands to reason that a national register functions also to undermine the traditional invisibility under which LITs have labored. At a time in which governments and society at large still cannot even tell the difference between a translator and an interpreter, even in a country such as Spain which boasts 22 universities that offer translation and interpreting degrees (Blasco Mayor 2013: 66), increased visibility contributes to the professionalization of LITs as well as functioning as a recruiting tool, especially for interpreters of languages of lesser diffusion.

4. A Proposal: Rethinking National Registers

Based on the models and findings discussed, a proposal can be made which pulls together the best attributes of a national register at the service of interpreter professionalization and public trust[15]. Active work groups exploring issues of the building of national registers would do well to consider the following positive attributes of a forward-looking register.

First and foremost, rosters should be differentiated, distinguishing between para-professional and professional practitioner competence. Not only should more advanced skills garner higher levels of compensation[16], but "… the important thing is that the exact level of qualification and experience of each interpreter and translator appears clearly from the Register in order to ensure that the clients get the interpreter or translator who best matches their needs" (Grollmann, Martinsen, & Rasmussen 2001). They should contain, at the very least, the criteria suggested by Corsellis (2004: 125): interpreter

14. As an example, the national register in Norway acknowledges that one of its functions is to "encourage interpreters to document and improve their skills and competencies." See http://www.eulita.eu/ljubljana-workshop.
15. The *Comisión de la Conferencia de Centros y Departamentos Universitarios de Traducción e Interpretación* (CCDUTI) makes explicit recommendations for an improved national register for Spain in Blasco Mayor et al. 2013.
16. While the decision to regulate minimum fees may be controversial or unwelcome in some countries, the *TRAFUT* final report recommends that countries enact legislation on LIT fees both for criminal and civil law proceedings (*TRAFUT* n.d.: 16). The CCDUTI group fully agrees (Blasco Mayor, del Pozo Triviño, Giambruno, Martin, Ortega Arjonilla, Rodríguez Ortega & Valero Garcés 2013).

qualifications, training undertaken leading to the examination, experience, security vetting, references as to character and suitability, and the practitioner's pledge to adhere to a code of conduct and to abide by disciplinary procedures in the case of a dispute. National registers should be fully searchable by any domain, and should include areas of expertise that may cross over into areas of other public services such as healthcare interpreting (and its related specialties), social services, and educational settings. At some point an online booking system might be considered.

Furthermore, in data collection as in data provision, consistency has its virtues and constitutes "one of the essential planks of good planning and organisation" (Corsellis 2004: 123). Harmonizing the domains across state and national lines in the interest of standards and consistency can only benefit the profession. The United States, especially, should seek to build a national register based on the "common platform" concept (Pym, Grin, Sfeddo & Chan: 2012). Especially in the realm of interpreter credentialing/certification, harmonization acts as a guarantee of an interpreter's professional training and adhesion to a professional code of ethics. In an effort to learn from each state or country's best practices, creating equivalency could bring essential uniformity[17]. In other words, the practical benefits and judicial security inherent to reciprocity would equally benefit the United States as well as the Member States of the European Union.

The characteristic of national registers which would have the most profound effect on combatting market disorder and fomenting the public trust is the enforcement and requirement of its use: in other words, making the register a required first stop, with rules of law or statutes that require that the most qualified interpreter with the areas of expertise and the language combinations needed are contacted first. Even with good intentions and good will, non-compliance with state and federal laws requiring free language access in the courts still seems to be common fare in the United States (Schweda Nicholson 2004: 49). Until robust laws governing the use of national registers as tools to find the most appropriate and most highly skilled interpreter available are put into place, the use of uncertified and unqualified interpreters is likely to continue. In a similar vein, the *TRAFUT* final report, in its basic outline of a national register of LITs, recommends that countries enact legislation "in order to achieve uniform standards for the admission to registers and the

17. One caveat might be the irregularity in access to and quality of court interpreter training in the 50 US states. Nonetheless, it should be noted that there are currently no minimum training or educational requirements for attempting to earn certification as a court interpreter.

administration of registers" (*TRAFUT* n.d.: 13). In more concrete terms, the report recommends that legislation be applied to specific aspects of a national register including admission to the register, contexts in which the interpreter can practice, and day-to-day management of the register (*TRAFUT* n.d.: 14). *Aequitas* authors Grollmann, Martinsen and Rasmussen argue that

> [i]t should be made obligatory for the police and the other legal services to use only interpreters and translators from the Register, except in those circumstances in which an interpreter or translator is needed in languages or situations for which there is demonstrably no qualified interpreter or translator available. In these circumstances, interpreters or translators may be selected from whatever source available but with as many guarantees as possible built in (Grollmann, Martinsen & Rasmussen 2001).

Moreover, an enforceable roster lends a backbone to the codes of ethics by imbibing it with a mechanism for monitoring practitioner compliance, including an accessible grievance procedure (Witter-Merithew & Johnson 2004: 14; Blasco Mayor, del Pozo Triviño, Giambruno, Martin, Ortega Arjonilla, Rodríguez Ortega & Valero Garcés 2013: 4).

5. Conclusions

Although the *LIT Search* work group findings are not yet available and the national register of remote interpreters in the United States is not yet completed, policy-level mentions of national registers figure rather prominently among recommendations made by a variety of researchers. The US can and should use this work to inform its own beginning forays into building a national register, and the same wisdom could also be of service to healthcare interpreters as well as other types of community/public service interpreters.

As LITs move away from an unregulated industry to a regulated profession, a national register can acknowledge the importance of and lead to compliance with a series of minimum standards to which all practitioners must adhere, including mandatory training (before legitimately offering the service), official recognition of academic qualifications in translation or interpreting, and documented areas of competence. The question remains: can a national register realistically regulate a profession to this extent?

Corsellis reminds us of the vital role that national registers play in the regulation of the profession when she states that:

> Part of the role of a regulated profession is to have an appropriate measure of overall national ownership and control of their profession, while collaborating with government and other relevant bodies in the process. There is a need to know, at a basic level, how many qualified practitioners exist, in what language combinations and where, against how many are needed, now and in

> the future. In addition, there is a need to know, disseminate and monitor the types of skills and good practice protocols required, and to keep them up to date. The basic data is needed to inform who and how many are brought into the profession; how they are trained, assessed and accredited; what support systems they need (Corsellis 2011: 151).

As the title of this volume suggests, it is, indeed, a turning point for legal interpreting: a time in which practitioners must make a stand for themselves. If they do not, especially by insisting on the creation and use of a register which makes their objective competences transparent, their working conditions, standards and practices are likely to continue to be decided by others.

Bibliography

BELL, Roger. (2000) "Pseudo-, Para- or Proto-: What Kind of a Professional is the Translator or Interpreter?" *The Linguist: Journal of the Institute of Linguists* 39:5, pp. 147-150.

BLASCO MAYOR, María Jesús; Maribel del Pozo Triviño; Cynthia Giambruno; Anne Martin; Emilio Ortega Arjonilla; Nadia Rodriguez Ortega, & Carmen Valero Garcés. (2013, July 22). *Informe sobre la transposición de la directiva 2010/64/UE del Parlamento Europeo y del Consejo relativa al derecho a interpretación y traducción en los procesos penales*. Electronic version available at: <https://www.academia.edu/8755014/Informe_sobre_la_transposici%C3%B3n_de_la_Directiva_2010_64_UE_del_Parlamento_Europeo_y_del_Consejo_relativa_al_derecho_a_interpretaci%C3%B3n_y_traducci%C3%B3n_en_los_procesos_penales>

BLASCO MAYOR, María Jesús. (2013) "Quality of Interpreting in Criminal Proceedings in Spain under European Directive 2010/64/EU." *Cuadernos De ALDEEU*, 25, pp. 165-190. Electronic version available at: <http://repositori.uji.es/xmlui/bitstream/handle/10234/89189/58951.pdf?sequence=4>

CAPATI, Capati. (2014, June 24) Question about your Work Group on Roster Parameters [E-mail to the author].

CORSELLIS, Ann. (2000) "Turning Good Intentions into Good Practice: Enabling the Public Services to Fulfil their Responsibilities." In: Roberts, Roda P.; Silvana E. Carr; Diana Abraham & Aideen Dufour (eds.) 2000. *The Critical Link 2: Interpreters in the Community. Selected Papers from the Second International Conference on Interpreting in Legal, Health and Social Service Settings, Vancouver, BC, Canada, 19–23 May 1998*. Vancouver, BC: John Benjamins, pp 89-99. DOI: 10.1075/btl.31.11cor

CORSELLIS, Ann. (2004) "Inter disciplinary Conventions & Toolkits for Legal Services." In: Keijzer-Lambooy, Heleen & Willem Jan Gasille (eds.) 2004. *Aequilibrium. Instruments for Lifting Language Barriers in Intercultural Legal*

Proceedings EU Project JAI/2003/AGIS/048. Utrecht: ITV Hogeschool voor Tolken en Vertalen, pp. 121-134. Electronic version available at: <http://www.eulita.eu/sites/default/files/Aequilibrium_Instruments%20for%20Lifting%20Language%20Barriers%20in%20Intercultural%20Legal%20Proceedings_0.pdf >

CORSELLIS, Ann; Jan Cambridge; Nicky Glegg & Sarah Robson. (2007) "Establishment, Maintenance and Development of a National Register." In: Wadensjö, Cecilia; Birgitta Englund Dimitrova & Anna-Lena Nilsson (eds.) 2007. *The Critical Link 4: Professionalisation of Interpreting in the Community. Selected Papers from the 4th International Conference on Interpreting in Legal, Health and Social Service Settings, Stockholm, Sweden, 20-23 May 2004*. Amsterdam; John Benjamins, pp. 139-150.

CORSELLIS, Ann. (2008) *Public Service Interpreting: The First Steps*. New York: Palgrave Macmillan.

CORSELLIS, Ann. (2011) "Seven EU Projects - A Journey Towards a Regulated Language Profession." In: Blasco Mayor, María Jesús & María Amparo Jiménez Ivars. (eds.) 2011. *Interpreting Naturally: A Tribute to Brian Harris*. Bern, Berlin, Bruxelles, Frankfurt am Main, New York, Oxford, Wien: Peter Lang, pp. 143-160.

FRANCO AIXELÁ, Javier. (2012) "A Critical Overview of the Translation Studies Journals Published in Spain." In: García Izquierdo, Isabel & Esther Monzó Nebot (eds.) 2012. *Iberian Sudies on Translation and Interpreting*. Bern: Peter Lang, pp. 339-344.

GROLLMANN, Doris; Bodil Martinsen & Kirsten W. Rasmussen. (2001) "Professional Working Arrangements." In: Hertog, Eric (ed.) 2001. *Aequitas. Access to Justice across Language and Culture in the EU*. 2001. Antwerp: Departement Vertaaler-Tolk - Lessius Hogeschool, pp. 88-92. Electronic version available at: <http://www.eulita.eu/sites/default/files/Aequitas_Acces%20to%20Justice%20across%20Language%20and%20Culture%20in%20the%20EU.pdf>

HALE, Sandra Beatriz. (2007) *Community Interpreting*. New York: Palgrave Macmillan.

HELMERICHS, Cristina (2004) "Court Interpreting: The U.S. v. EU A Brief Comparison of our Realities." In: Keijzer-Lambooy, Heleen & Willem Jan Gasille (eds.) 2004. *Aequilibrium. Instruments for Lifting Language Barriers in Intercultural Legal Proceedings EU Project JAI/2003/AGIS/048*. Utrecht: ITV Hogeschool voor Tolken en Vertalen, pp. 185-189. Electronic version available at: <http://www.eulita.eu/sites/default/files/Aequilibrium_Instruments%20for%20Lifting%20Language%20Barriers%20in%20Intercultural%20Legal%20Proceedings_0.pdf >

HERTOG, Erik & Jan Van Gucht. (2008) *Status Quaestionis: Questionnaire on the Provision of Legal Interpreting and Translation in the EU*. Antwerp: Intersentia.

HESSMANN, Jens; Eeva Salmi; Graham H. Turner & Svenja Wurm. (2011) "Developing and Transmitting a Shared Interpreting Research Ethos. EUMASLI - A Case Study." In: Nicodemus, Brenda & Laurie Swabey (eds.) 2011. *Advances in Interpreting Research. Inquiry in Action*. Amsterdam / Philadelphia: John Benjamins, pp. 177-198.

MIKKELSON, Holly. (2013) "Universities and Interpreter Certification." *Translation and Interpreting* 5:1, pp. 66-78. DOI: 10.12807/ti.105201.2013.a03

MONZÓ, Esther. (2005) "Being ACTIVE in Legal Translation and Interpreting: Researching and Acting on the Spanish Field." *Meta: Journal Des Traducteurs / Meta: Translators' Journal* 50:4, n.p. DOI: 10.7202/019922ar Electronic version available at: http://id.erudit.org/revue/meta/2005/v50/n4/019922ar.pdf

MONZÓ, Esther. (2009) "Legal and Translational Occupations in Spain." *Translation and Interpreting Studies* 4:2, pp. 135-154. DOI: 10.1075/tis.4.2.07mon

MORGAN, Caroline. (2011) "The New European Directive on the Rights to Interpretation and Translation in Criminal Proceedings." In: Braun, Sabine & Judith L. Taylor (eds.) 2011. *Videoconference and Remote Interpreting in Criminal Proceedings*. Guildford: University of Surrey, pp. 5-10.

ORTEGA HERRÁEZ, Juan Miguel; Cynthia Giambruno & Erik Hertog. (2013) "Translating for Domestic Courts in Multicultural Regions: Issues and New Developments in Europe and the United States of America." In: Borja Albi, Anabel & Fernando Prieto Ramos (eds.) 2013. *Legal Translation in Context: Professional Issues and Prospects*. Bern, Berlin, Bruxelles, Frankfurt am Main, New York, Oxford, Wien: Peter Lang, pp. 89-121.

PEREZ, Thomas E. (2010, August 16) "Letter written August 16, 2010 to All US state Chief Justices and State Court Administrators." In: *Limited English Proficiency (LEP): An Interagency Website*. Electronic version available at: http://www.lep.gov/final_courts_ltr_081610.pdf

PYM, Anthony. (2014) "Translation Studies in Europe - Reasons for it, and Problems to Work On." *Twenty Years EST: Same Place, Different Times*. Special Issue of *Target* 26:2, pp. 185-205.

PYM, Anthony; François Grin; Claudio Sfreddo & Andy L. J. Chan. (2012, July 24) *The Status of the Translation Profession in the European Union*. Electronic version available at: <http://ec.europa.eu/dgs/translation/publications/studies/translation_profession_en.pdf>

RUDVIN, Mette. (2014) "Improving the Quality of Legal Interpreter Training and the Recruitment of Interpreters through Intensive Orientation Courses and the Implementation of a Register: The LEGAII Project at the University of Bologna." In: Falbo, Caterina & Maurizio Viezzi (eds.) 2014. *Traduzione e interpretazione per la società e le istituzioni*. Trieste: EUT Edizioni Università di Trieste, pp. 73-82.

SALAETS, Heidi. (2012) "The Next Step in the CBI Professionalization Process: Training the Public Service Providers." *The Interpreters' Newsletter* 17, pp. 191-203. Electronic version available at: <http://hdl.handle.net/10077/8628>

SCHWEDA Nicholson, Nancy (2004) "The European Commission's Proposal for a Council Framework Decision: The United States' Perspective." In: Keijzer-Lambooy, Heleen & Willem Jan Gasille (eds.) 2004. *Aequilibrium. Instruments for Lifting Language Barriers in Intercultural Legal Proceedings EU Project JAI/2003/AGIS/048*. Utrecht: ITV Hogeschool voor Tolken en Vertalen, pp. 35-50. Electronic version available at: <http://www.eulita.eu/sites/default/files/Aequilibrium_Instruments%20for%20Lifting%20Language%20Barriers%20in%20Intercultural%20Legal%20Proceedings_0.pdf >

TSENG, Joseph. (1992) *Interpreting as an Emerging Profession in Taiwan - A Sociological Model*. New Taipei City: Fu Jen Catholic University. Unpublished master's thesis.

VARIOUS AUTHORS (Conference of State Court Administrators - COSCA). (n.d.) *Council of Language Access Coordinators (CLAC) Charter*. Electronic version available at: <http://www.ncsc.org/services-and-experts/areas-of-expertise/language-access/~/media/files/pdf/services%20and%20experts/areas%20of%20expertise/language%20access/resources%20for%20program%20managers/charter%20for%20clac%203212.ashx>

VARIOUS AUTHORS (European Union). (2010) *Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the Right to Interpretation and Translation in Criminal Proceedings* OJ L 280 1-7. Electronic version available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:280:0001:0007:en:PDF>

VARIOUS AUTHORS. (n.d.) *ImPLI Improving Police and Legal Interpreting 2011-2012 Final Report*. Electronic version available at <http://eulita.eu/impli-improving-police-and-legal-interpreting>

VARIOUS AUTHORS. (n.d.) *LIT Search – Pilot Project for an EU Database of Legal Interpreters and Translators*. Electronic version available at: <http://www.eulita.eu/lit-search-%E2%80%93-pilot-project-eu-database-legal-interpreters-and-translators>

VARIOUS AUTHORS. (TRAFUT - Training for the Future). (n.d.) *Final Report. Directive 2010/64/EU of the European Parliament and the Council of 20 October 2010 on the Right to Interpretation and Translation in Criminal Proceedings*. Electronic version available at: <http://www.eulita.eu/sites/default/files/TRAFUT%20-%20final%20report.pdf>

WALLACE, Melissa. (Forthcoming: March 2015) "A Further Call to Action: Prioritizing Quality in Court Interpreting through Research-Driven Recommendations which Link Training and Policy." In: Monzó Nebot, Esther & L. Cheng (eds.) 2015. Special issue of *The Interpreter and Translator Trainer* 9:1.

WINTER, Michael F. (1988) *The Culture and Control of Expertise: Toward a Sociological Understanding of Librarianship*. Westport, Connecticut: Praeger Publishing.

WITTER-MERITHEW, Anna & Leilani Johnson. (2004) "Market Disorder within the Field of Sign Language Interpreting: Professionalization Implications." *Journal of Interpretation* 1-35. Electronic version available at: <http://www.unco.edu/doit/resources/Publication_PDFs/JOI%20Market%20Disorder%20article.pdf>

BIONOTE / NOTA BIOGRÁFICA

Melissa Wallace received her Ph.D. in translation and interpreting studies from the Universidad de Alicante, Spain. A certified court interpreter and certified healthcare interpreter, Wallace served two terms as an appointed member of the state Supreme Court Committee to Improve Translation and Interpreting in Wisconsin Courts. She is an active appointed member of the Standards and Training Committee of the National Council on Interpreting in Health Care, a member of the Executive Council of the American Translation and Interpreting Studies Association, and the Chair of the Advisory Council of Voice of Love, a U.S.-based nonprofit that develops training and resources to support interpreting for survivors of torture, war trauma and sexual violence. Her research focuses on indicators of aptitude on court interpreter certification exams, interpreter and translator training, and policy innovations as language access activism. Currently Wallace is an Assistant Professor of TI Studies at the University of Texas at San Antonio where she directs the graduate certificate program in translation studies.

Melissa Wallace obtuvo su doctorado en estudios de traducción e interpretación en la Universidad de Alicante, España. Actualmente es profesora de estudios de traducción e interpretación en la Universidad de Texas en San Antonio, donde dirige el programa de posgrado en estudios de traducción. Es intérprete judicial certificada desde el año 2005 por el estado de Wisconsin, donde ha sido miembro del Comité de la Corte Suprema para mejorar la traducción e interpretación en los tribunales estatales. Es miembro del Comité sobre Normas y Capacitación (*Standards and Training Committee*) del *National Council on Interpreting in Health Care*), y también codirige el grupo de trabajo dedicado a la producción de webinarios para capacitadores. Wallace ha sido recientemente invitada a participar en el Consejo Asesor de *The Voice of Love*, organización estadounidense sin ánimo de lucro que desarrolla programas

y recursos para apoyar la interpretación para los supervivientes de tortura, trauma de guerra y violencia sexual. Sus investigaciones y publicaciones se centran en los indicadores de aptitud en los exámenes de certificación para los intérpretes jurídicos y en la política lingüística como forma de activismo para eliminar barreras.

INTERPRÉTATION JUDICIAIRE AU MONTÉNÉGRO DANS L'OPTIQUE DE L'ADHÉSION EUROPÉENNE : DIAGNOSTIC ET PROPOSITIONS DES MODIFICATIONS INDISPENSABLES

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Résumé

Nous nous proposons d'étudier la position actuelle de l'interprétation judiciaire au Monténégro du point de vue législatif et pratique, dans une optique de l'adhésion européenne du pays. Suite à l'identification d'un besoin croissant des prestations de qualité et à la présentation du profil idéal de l'interprète judiciaire, nous avons procédé à un diagnostic de la situation nationale, en nous appuyant sur des textes législatifs en vigueur. Nous avons pu constater que la législation monténégrine est généralement conforme à la Directive 2010/64/UE, tout en indiquant les problèmes terminologiques, à savoir l'absence d'une distinction claire entre la traduction et l'interprétation. Nous avons également tenté de proposer quelques solutions relatives à la précision des critères de sélection des interprètes, la forme et du contenu de l'épreuve, la nécessité d'organiser les formations adaptées, l'établissement d'un système fiable du contrôle de qualité et la création d'une association professionnelle représentative.

Abstract

"Legal interpreting in Montenegro in view of its EU accession: diagnosis and proposals of necessary modifications"

The aim of this paper is to analyze the current situation in the field of court interpreting in Montenegro, from both a normative and a practical point of view, in the light of future EU accession. Following the assertion that there is an increasing need for quality interpretation and the description of an ideal court interpreter, this paper presents the situation at the national level, relying upon the existing legislation in force.

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It is noted that Montenegrin legislation is generally harmonized with the EU Directive 2010/64/EU, but there is an issue of terminology that results in an unclear distinction between interpretation and translation. This paper proposes several solutions in order to define more detailed criteria for the selection of interpreters, form and content of the exam, necessity of organizing specialized training, introduction of a reliable system of quality control and establishment of a representative professional association.

Mots-clés : Interprétation juridique. Interprétation judiciaire. Traduction. Adhésion européenne. Compétences de l'interprète.

Keywords: Legal interpretation. Court interpreting. Translation. EU accession. Interpreting skills.

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1. Introduction

Le Monténégro souhaite devenir membre de l'Union européenne et, à l'instar des autres pays du Sud-Est de l'Europe qui l'ont précédé sur cette voie (la Slovénie et la Croatie) et qui le suivent dans la dynamique de l'élargissement (la Macédoine, la Serbie, la Bosnie-Herzégovine et le Kosovo), il est censé intensifier la communication et la coopération officielle à plusieurs niveaux, non seulement avec les institutions européennes, mais également avec les États membres. En raison de la barrière linguistique, cette communication passe nécessairement par la traduction/interprétation. Il nous semble que dans ce cadre d'échanges riches et multiples, la célèbre déclaration d'Umberto Eco : « La langue de l'Europe, c'est la traduction » (« La lingua dell'Europa è la traduzione ») trouve sa meilleure confirmation et qu'elle ne concerne pas moins l'interprétation ayant en vue le nombre des rencontres et la durée des négociations. Les expériences des élargissements précédents démontrent que, dans un premier temps, les échanges entre le pays candidat à l'adhésion et les institutions européennes ou les pays membres de l'Union reposent surtout sur la traduction des textes législatifs, notamment l'acquis communautaire, en vue de leur transposition dans la législation nationale. Dans cette phase de rapprochement, l'interprétation est réservée aux rencontres des hauts fonctionnaires politiques, les conférences d'experts et les visites d'études. Or, la coopération entre les pouvoirs judiciaires et de police n'est pas encore au centre d'intérêt : elle est souvent citée comme un élément important, mais sa mise en pratique n'est pas encore effective. Cependant, plus un pays candidat avance sur le chemin de rapprochement institutionnel de l'UE, plus il a besoin d'interprétation judiciaire de qualité, à savoir d'interprètes capables d'offrir des prestations dont le niveau correspond à de hautes exigences internationales, aussi bien dans la forme que dans le contenu. Notre position d'enseignante universitaire combinée avec celle d'interprète judiciaire assermentée et interprète accréditée auprès des institutions européennes nous a incité à réfléchir sur l'importance de la formation et le manque de sensibilisation des institutions nationales à ce sujet. Nous nous proposons d'examiner la situation des interprètes et de l'interprétation judiciaire du Monténégro, pays candidat à l'adhésion européenne

à l'heure actuelle, d'en identifier les problèmes majeures dans l'optique de la future adoption de la Directive 2010/64/UE du Parlement européen et du Conseil du 20 octobre 2010 relative au droit à l'interprétation et à la traduction dans le cadre des procédures pénales et de la participation croissante du Monténégro dans les coopérations judiciaires et policières régionales, européennes et internationales. L'objectif final de notre analyse est de proposer des solutions permettant aux institutions compétentes de réfléchir et d'agir en vue d'une clarification du rôle de l'interprète judiciaire, de son importance ainsi que de sa formation et des critères de sélection.

2. Besoin croissant de l'interprétation judiciaire dans le processus de l'adhésion à l'UE

Nous avons choisi de présenter la problématique de l'interprétation judiciaire au Monténégro du point de vue des critères de sélection, de la formation et du contrôle de qualité parce que, d'une part, nous avons personnellement trouvé de nombreux points faibles dans ce domaine et que, d'autre part, nous trouvons que nos observations coïncident avec les besoins croissants de l'interprétation judiciaire de qualité au niveau national. Le Monténégro a ouvert les négociations d'adhésion avec l'Union européenne en juin 2012. Non seulement ce processus renforcera la coopération judiciaire internationale dont l'entraide pénale internationale, la coopération des administrations dans le domaine de la justice et de la police, mais aussi le Monténégro est le premier pays candidat qui a commencé la négociation par l'ouverture des chapitres 23 et 24 de l'acquis communautaire qui concernent respectivement l'appareil judiciaire et les droits fondamentaux et la justice, la liberté et la sécurité. Ces chapitres resteront ouverts tout au long du processus de négociation et c'est dans ces domaines que l'administration européenne trouve le plus grand nombre de reproches au pays. Or, la volonté de faire des progrès sur le chemin européen devra être accompagnée de l'ouverture des procès judiciaires qui exigent la coopération internationale, notamment par l'intermédiaire des commissions rogatoires et les demandes d'extradition.

De plus, depuis l'adhésion de la Croatie à l'Union européenne en juin 2013, le Monténégro possède une frontière terrestre avec l'Union européenne (la frontière maritime existait déjà, avec l'Italie) et il devient de plus en plus un pays de transit pour l'immigration clandestine et les demandeurs d'asile.[1]

1. Cela est confirmé par la récente ouverture d'un Centre d'Accueil des demandeurs d'asile dans les environs de Podgorica, pour répondre au flux des migrants venus majoritairement de l'Afrique, en passant par la Grèce et l'Albanie.

Le Monténégro sera également amené à remplir les standards professionnels et de qualité dans le domaine de la traduction/interprétation judiciaire, comme il était obligé de le faire dans le domaine de l'interprétation de conférence avec le test d'accréditation pour l'interprétation de conférence organisé pour la langue monténégrine en février 2012 à Bruxelles par la DG Interprétation (l'ancien SCIC).

Pour les raisons indiquées ci-dessus, un pays qui aspire à adhérer pleinement aux standards et critères professionnels européens devra se préparer à réagir en amont : dans le cas de l'interprétation judiciaire, cette préparation se reflète dans la nécessité de revoir le système de recrutement et de sélection et à constituer un système de formation et de contrôle de qualité de l'interprétation judiciaire.

3. Profil idéal de l'interprète judiciaire

Pour pouvoir bien décrire le profil idéal de l'interprète judiciaire, nous tenons tout d'abord à souligner la distinction traducteur/interprète, deux facettes d'une profession qui exigent certaines compétences communes, mais qui présentent également des différences non négligeables. Un bon traducteur ne doit pas systématiquement être un bon interprète et vice-versa et cela s'explique notamment par les aptitudes propres à l'une ou à l'autre activité. Dans la description des compétences de l'interprète judiciaire, nous allons citer les définitions publiés dans le *Rapport final du Forum de réflexion sur le multilinguisme et la formation d'interprètes* (ci-après : *le Forum*) publié par la Direction Générale de l'Interprétation (2009) qui recommande le terme interprète juridique au lieu de l'interprète judiciaire :

> Le forum de réflexion a opté pour le terme « interprète/interprétation juridique », plus inclusif que celui « d'interprète judiciaire », par exemple, désignant une situation ou un contexte restreint, ou celui « d'interprète assermenté », renvoyant à une caractéristique spécifique de la profession. Pour autant, ce terme est moins général que celui «d'interprète auprès des services publics », englobant d'autres secteurs tels que médicaux ou sociaux. L'interprétation juridique couvre les prestations effectuées dans tous services présentant des composantes juridiques, depuis les enquêtes policières et douanières, jusqu'aux commissions rogatoires, en passant par la phase pré-procédurale, les entretiens entre avocat et client, le procès, la phase post-procédurale, l'immigration, les procédures relevant du mandat d'arrêt européen, etc. La maîtrise de deux langues, même au niveau de subtilité et de précision requis de la part des professionnels des services judiciaires, ne garantit nullement que l'on soit en mesure d'interpréter dans ces langues. En outre, un traducteur n'est pas nécessairement bon interprète, ni inversement !

En conséquence, un « interprète juridique » est un professionnel formé et qualifié, interprétant pour les justiciables confrontés à un système dont ils ne maîtrisent pas la langue. (2009: 10)

Notre présentation des compétences de l'interprète judiciaire s'appuie sur les compétences énoncées dans la publication précitée, mais dans l'objectif de les adapter aux besoins de notre analyse, nous allons les diviser en deux groupes : celles qui valent aussi bien pour les traducteurs que pour les interprètes et celles qui sont spécifiques pour les interprètes et que les traducteurs judiciaires ne doivent pas obligatoirement posséder.

3.1. Compétences communes de l'interprète et du traducteur judiciaire

3.1.1. Compétences linguistiques

Il est évident qu'un interprète judiciaire doit posséder des compétences langagières égales à un interprète de conférence. La connaissance de sa langue maternelle est primordiale : avec la richesse du vocabulaire et l'éloquence, elle comprend la maîtrise de la langue standard et de tous ses registres langagiers.

Quant à la maîtrise de la langue B, nous pouvons affirmer sans exagération qu'elle est au moins également importante pour un interprète judiciaire que pour un interprète de conférence, même si l'interprétation judiciaire a été souvent sous-estimée par le passé par les interprètes de conférence souvent accusés d'une approche élitiste (Driesen, 2011: 142). *Le Forum* indique la nécessité d'une « parfaite connaissance de la langue courante du pays étranger concerné » et recommande le niveau C1 ou C2 du « Cadre européen commun de référence pour les langues » (2009: 10). Cet aspect est d'autant plus important qu'un interprète de conférence sera souvent amené à interpréter depuis une langue C vers la langue A et B, à la différence de l'interprète judiciaire qui sera surtout en situation d'utiliser bidirectionnellement sa langue A et sa langue B. Nous ajouterions que les traducteurs judiciaires ont besoin des mêmes compétences langagières valables pour les textes et qu'à la différence des interprètes judiciaires, ils peuvent toujours estimer à l'avance leurs capacités à rendre un travail de qualité. Les interprètes sont généralement « mis en situation » et incapables de faire ce choix une fois engagés dans le cadre d'une procédure judiciaire.

3.1.2. Connaissance des systèmes juridiques

Il est sous-entendu que les traducteurs et les interprètes judiciaires connaissent les systèmes juridiques de leur pays (ou les pays ou leur langue maternelle est langue officielle) ainsi que les systèmes juridiques des pays où leur langue B

est la langue officielle. Comme nous envisageons d'examiner la situation du Monténégro, il est à souligner que la langue monténégrine, contrairement à ce que les différences dans les dénominations officielles puissent indiquer, est du point de vue linguistique presque identique aux langues bosniaque, croate et serbe. Or, les allophones de ces quatre langues officielles n'ont pas besoin de traduction/interprétation pour comprendre ou se faire comprendre dans le cadre des procédures juridiques et administratives et un interprète judiciaire monténégrin sera sûrement amené à travailler pour les ressortissants bosniaques, croates ou serbes. Dans la Constitution du Monténégro, les langues bosniaque, croate ou serbe sont en utilisation officielle, avec le monténégrin. De plus, un traducteur/interprète est censé connaître le système juridique du pays où sa langue B est langue officielle. Dans d'autres termes, un interprète judiciaire pour le français devrait connaître non seulement le système juridique de la France, mais aussi celui de la Belgique et du Luxembourg (éventuellement de la Suisse, important partenaire commercial des pays de l'UE). *Le Forum* indique l'importance de la connaissance de « la structure, procédures, professions judiciaires et juridiques, administration, etc. Terminologie juridique générale ou spécifique à une mission (tels que droit de la famille, asile, fraude, etc.) » (2009: 10).

3.2. Compétences spécifiques de l'interprète judiciaire

3.2.1. Compétences interpersonnelles et interculturelles

À la différence des traducteurs, les interprètes judiciaires sont immergés dans une situation de communication. Pour une prestation de qualité, ils doivent posséder des compétences interculturelles qui leur permettent de faire le pont entre les cultures et les expériences différentes : celles du personnel judiciaire ou administratif d'un côté et celles des justiciables de l'autre. Il s'agit très souvent des ambiances de stress, difficiles à gérer : dans ces situations les compétences linguistiques et les connaissances juridiques théoriques ne suffisent pas. En même temps, les interprètes judiciaires sont confrontés à des personnes de différents niveaux de formation et avec des expériences diverses et leurs compétences interpersonnelles peuvent jouer un rôle décisif pour un bon déroulement de la communication. Cela s'avère particulièrement important dans le cadre des auditions ou entretiens avec les immigrants et les demandeurs d'asile venus des réalités lointaines.

3.2.2. Maîtrise de l'interprétation

Finalement, les interprètes judiciaires, comme les interprètes de conférence, doivent pratiquer les différentes formes d'interprétation (liaison, consécutive, simultanée, traduction à vue) et posséder des compétences et des techniques nécessaires, à savoir la mémoire, la prise de notes, la gestion du stress, etc. Pour ce faire, ils doivent avoir suivi des formations universitaires destinés aux interprètes de conférence ou posséder des preuves d'expérience suffisantes avec les différentes formes de l'interprétation indiquées.

3.3. Code déontologique

Dans l'objectif de bien cerner le profil idéal de l'interprète judiciaire nous ne pouvons pas négliger l'importance des normes déontologiques pour l'exercice de cette fonction. À ce titre, le *Forum* recommande l'élaboration des codes de conduite et des guides de bonne pratique au niveau national et son respect par les interprètes (2009: 17). Nous tenons également à faire référence au Code de conduite de l'EULITA, Association européenne des traducteurs et interprètes juridiques, qui peut servir d'exemple aux associations nationales en vue d'une meilleure harmonisation entre les États membres de l'UE. Ce texte aborde en grandes lignes les principaux critères de la bonne pratique professionnelle, à savoir la précision, la qualité de prestation, l'impartialité, la confidentialité, l'étiquette et la conduite, la solidarité et la loyauté.

4. État des lieux – identification des problèmes majeurs

Nous nous proposons de passer en revue la situation de l'interprétation et des interprètes judiciaires au Monténégro en vue de faire un diagnostic, à commencer par le cadre normatif en vigueur, en passant par les critères de sélection et les modalités d'organisation des épreuves.

4.1. Cadre législatif et organisationnel

Suite à la récupération de son indépendance en 2006, le Monténégro est devenu le 47e membre du Conseil de l'Europe en 2007 et il adhère pleinement aux valeurs consacrées par la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales (CEDH). L'article six de la Convention concerne le droit au procès équitable et c'est la base même du droit à l'interprétation dans le cadre des procédures judiciaires.

Parmi les textes législatifs nationaux, nous citerons le Code de la procédure pénale du Monténégro qui ratifie le droit d'utilisation de sa langue dans le cadre de la procédure pénale :

> Article 8
> (1) La procédure pénale est conduite en langue monténégrine.
> (2) Les parties, les témoins et les autres participants dans la procédure ont droit de se servir de leur langue ou de la langue qu'ils comprennent. Si la procédure n'est pas conduite dans la langue d'une de ces personnes, il sera garanti l'interprétation des déclarations, la traduction des documents et d'autres pièces à conviction en forme écrite.
> (3) Les personnes de l'alinéa 2 du présent article seront informées du droit à la traduction/interprétation et elles peuvent y renoncer si elles connaissent la langue de la procédure. L'information et la déclaration des participants de la procédure feront l'objet du procès-verbal.
> (4) La traduction/interprétation sera confiée à l'interprète.[2]

L'article 101 de la Loi sur les Tribunaux classe les affaires relatives à l'engagement des traducteurs/interprètes judiciaires permanents dans le domaine de compétence de l'administration judiciaire. L'article 109, alinéa 2 du même texte stipule que le ministère de la Justice du Monténégro prescrit les conditions de la désignation et de l'activité des traducteurs/interprètes judiciaires.

Le Ministère de la Justice du Monténégro a adopté en 2008 le Règlement sur les traducteurs/interprètes judiciaires permanents[3] régissant les conditions de la désignation/ révocation des traducteurs/interprètes ainsi que les questions du registre, des tarifs et les autres sujets relatifs.

Dans la Position de négociation[4] relative au Chapitre 24 de l'Acquis communautaire rendue publique en décembre 2013, il est clairement indiqué que le cadre législatif monténégrin est conforme à la Directive 2010/64/UE du

2. Član 8
(1) Krivični postupak vodi se na crnogorskom jeziku.
(2) Stranke, svjedoci i druga lica koja učestvuju u postupku imaju pravo da u postupku upotrebljavaju svoj jezik ili jezik koji razumiju. Ako se postupak ne vodi na jeziku nekog od tih lica, obezbijediće se prevođenje iskaza, isprava i drugog pisanog dokaznog materijala.
(3) O pravu na prevođenje poučiće se lice iz stava 2 ovog člana, koje se može odreći tog prava ako zna jezik na kojem se vodi postupak. U zapisniku će se zabilježiti da je data pouka i izjava učesnika u postupku.
(4) Prevođenje se povjerava tumaču
Zakonik o krivičnom postupku („Službeni list Crne Gore", broj 57/09)
Traduction faite par l'auteur.
3. Pravilnik o stalnim sudskim tumačima (Službeni list Crne Gore broj 80/08).
4. Pregovaračka pozicija Crne Gore za Međuvladinu konferenciju u pristupanju Crne Gore Evropskoj uniji za pregovaračko poglavlje 24 – Pravda, Sloboda i Bezbjednost.

Parlement européen et du Conseil du 20 octobre 2010 relative au droit à l'interprétation et à la traduction dans le cadre des procédures pénales.

Au Monténégro, il n'existe pas, à ce jour, d'association professionnelle des traducteurs/interprètes judiciaires ni de code de conduite ou de code de bonne pratique relatif à leur activité. C'est pourquoi l'EULITA, Association europénne des traducteurs et interprètes juridiques n'a pas d'interlocuteur au niveau national.

Nous pourrions conclure que le cadre normatif national régissant le droit à l'interprétation judiciaire est plutôt satisfaisant et conforme aux normes internationales. Nous allons essayer par la suite d'identifier les problèmes majeurs de sa mise en oeuvre sur le terrain.

4.2. Manque de distinction claire entre la traduction et l'interprétation

La première observation importante, basée aussi bien sur l'analyse des textes normatifs concernés que sur notre propre expérience de traductrice/interprète et l'échange avec les collègues est qu'il n'y a pas de distinction claire entre la traduction et l'interprétation. Ces deux activités sont souvent confondues par le public, mais il est d'une grande importance que les structures administratives et surtout le législateur en fassent la différence. Ce problème ne concerne pas exclusivement la traduction et l'interprétation judiciaire : il est confronté par tous nos collègues, mais ayant en vue la responsabilité et les limites législatives de l'interprétation judiciaire, ses conséquences sont les plus graves dans le domaine judiciaire.

Cela s'explique, d'une part, par un manque d'activité d'information effectuée par les traducteurs/interprètes et dirigée aussi bien au public qu'aux clients (l'inexistence d'une association professionnelle représentative) et d'autre part, par un piège terminologique de la langue monténégrine. En effet, dans la langue monténégrine, le terme interprétation est habituellement traduit comme *usmeno prevođenje* (littéralement « traduction orale ») et le terme « traduction » comme *pismeno prevođenje* (littéralement « traduction écrite »). Cependant, un traducteur et un interprète sont tous les deux habituellement désignés par le terme *prevodilac* (traducteur), très rarement accompagné d'adjectifs « écrit » et « oral » qui permettraient de distinguer le traducteur de l'interprète. Il est à noter que la langue monténégrine dispose des termes *tumač* et *tumačenje* qui correspondent précisement aux termes « interpréte » et « interprétation », mais leur utilisation est bien plus restreinte. Ces deux termes sont présents dans les textes législatifs que nous avons cités ainsi que dans le Règlement adopté par le Ministère de la Justice du Monténégro. Cependant, cette pratique ne règle pas le problème : le

législateur utilise le terme *tumač* pour désigner aussi bien les traducteurs que les interprètes !

Le manque de distinction terminologique et par conséquent de distinction entre les deux notions par le public général ne devrait pas être transposé dans les textes législatifs ou dans l'activité judiciaire. Dans la description du profil de l'interprète, nous avons démontré que l'activité de l'interprétation demandait des compétences spécifiques et que le manque de ces compétences pourrait avoir un impact important sur la qualité de la prestation.

Le titre du Règlement sur les traducteurs/inteprètes contient le mot *tumač* pour désigner les deux termes. Ce texte précise même le modèle du timbre qu'un traducteur judiciaire doit poser sur les documents traduits en utilisant le terme *tumač* (interprète) pour le « traducteur ».

Nous trouvons que ce manque de précision, voire la confusion entre les deux termes de la langue monténégrine entraîne de nombreux malentendus qui ont pour conséquence d'autres problèmes pesant sur la qualité du recrutement et des prestations des interprètes.

4.3. Lacunes des critères de sélection

Nous avons analysé les critères de sélection des interprètes judiciaires définis par le Règlement des traducteurs/interprètes judiciaires (ci-après : le Règlement). Pour pouvoir se présenter au test des connaissances juridiques, les candidats doivent être citoyens monténégrins, avoir une formation universitaire du niveau maîtrise (BAC+4) et le casier judiciaire vierge, présenter une attestation sur l'état de santé et présenter des preuves de l'expérience de cinq ans acquise suite au diplôme universitaire. La dernière condition est peu claire, parce qu'elle ne définit pas quelles expériences sont considérées comme relevantes pour la traduction/interprétation judiciaire. En conséquence, il s'agit d'une condition purement formelle consistant dans la vérification de l'écoulement de cinq ans depuis la date de l'obtention du diplôme universitaire. Les candidats doivent également « maîtriser totalement la langue source ou la langue cible aussi bien pour le discours oralisé que pour le texte écrit ».[5] Cette citation est l'unique endroit dans le texte du Règlement où l'on fait une différence claire et nette entre l'interprétation et la traduction et où l'on souligne l'importance du même niveau de connaissance des deux langues. Nous pouvons conclure que ces critères prennent en compte les compétences linguistiques que nous avons identifiées comme communes aux traducteurs et aux

5. "da potpuno vlada jezikom sa kojeg ili na koga prevodi govor ili pisani tekst", član 2 Pravilnika o stalnim sudskim tumačima (Službeni list Crne Gore broj 80/08)

interprètes, sachant que les connaissances juridiques devraient faire l'objet de l'épreuve prévue par le Règlement. Nous avons comparé le Règlement des traducteurs/interprètes judiciaires du Monténégro avec les textes similaires des autres pays des Balkans occidentaux, membres, candidats ou aspirants à l'adhésion européenne. Sur ce point concret, les textes des règlements croate, bosniaque, serbe et macédonien sont presque identiques. L'unique différence consiste en ce que le règlement croate ne limite pas le recrutement aux citoyens croates, mais permet également aux citoyens étrangers, notamment ceux des pays de l'Union européenne, de se porter candidats à la fonction des traducteurs/interprètes judiciaires.

En ce qui concerne les compétences spécifiques pour les interprètes faisant partie de notre profil idéal (ainsi que celui du *Forum*) elles ne figurent pas parmi les critères de sélection. Le Règlement monténégrin ne mentionne aucune compétence interculturelle, interpersonnelle ou maîtrise de la technique de l'interprétation comme critère de sélection et il en est de même pour les règlements des pays mentionnés. Dans d'autres termes, aucune preuve de l'expérience d'interprétation proprement dite n'est demandée au préalable, en dépit de son importance pour la qualité de prestation d'un interprète judiciaire.

4.4. Lacunes dans la forme et le contenu de l'épreuve

Le Règlement indique que les candidats qui ont satisfait aux critères relatés dans le sous-chapitre précédent sont soumis à un test de connaissance de la Constitution et de l'organisation judiciaire.

4.4.1. Vérification insuffisante des connaissances juridiques

L'épreuve concernée devrait correspondre à une vérification des connaissances juridiques indiquées dans le profil de l'interprète judiciaire, mais elle ne l'est que partiellement. Tout d'abord, elle fait référence seulement à une partie des textes législatifs et il est bien connu qu'un traducteur/interprète judiciaire est souvent conduit à travailler en dehors du contexte de la procédure judiciaire proprement dite. Or, le test proposé par les autorités monténégrines ne couvre pas les exigences indiquées par le *Forum* cités dans 3.1.2. Le test proposé ne sous-entend aucune vérification de la connaissance des systèmes juridiques des pays voisins dont les langues sont similaires, voire linguistiquement identiques au monténégrin (la Bosnie-Herzégovine, la Croatie, la Serbie). Finalement le test des connaissances juridiques est partiel parce qu'il ne permet pas

de vérifier la connaissance des systèmes juridiques des pays de la langue B de l'interprète.

4.4.2. Absence de l'épreuve linguistique

Qui plus est, le test que les candidats pour les traducteurs/interprètes judiciaires doivent réussir ne contient aucune vérification des compétences langagières. Cela se reflète dans la composition du jury de trois membres, désigné par le ministre de la Justice : le Règlement ne définit pas que les membres du jury doivent être des traducteurs/interprètes judiciaires ou des universitaires qualifiées. Dans les compositions des jurys équivalents en Macédoine et en Bosnie-Herzégovine, la présence des professeurs universitaires des langues étrangères concernées est obligatoire. La conclusion qui s'impose est que les seules preuves de compétences langagières demandés sont le diplôme universitaire et l'attestation sur les cinq ans écoulées depuis son obtention.

4.4.3. Absence de l'épreuve écrite

Le test des connaissances juridiques est exclusivement oral et en langue monténégrine. Le manque de l'examen écrit, essentiel pour les traducteurs, mais important également pour les interprètes qui sont censés traduire à vue, compte parmi les plus grands défauts de l'épreuve organisée au Monténégro. À titre d'exemple, le règlement macédonien et le décret bosniaque relatifs aux traducteurs/interprètes judiciaires prévoient une épreuve écrite qui précède à l'épreuve orale et qui consiste dans la traduction des différents documents juridiques et administratifs.

4.5. Manque de formation professionnelle et de contrôle de qualité

4.5.1. Formation professionnelle

Les textes normatifs monténégrins ne prévoient pas de formation professionnelle destinée aux traducteurs/interprètes judiciaires, que ce soit la formation initiale, précédant à la désignation ou la formation continue permettant le suivi des modifications législatives fréquentes dans la période de la préparation à l'adhésion européenne. Le règlement croate est le seul des cinq textes similaires examinés qui prévoit une formation professionnelle de deux mois maximum organisée par les associations professionnelles et agréée par le ministère de la Justice (article 4 du Règlement croate).

4.5.2. Durée du mandat, contrôle de qualité

La durée du mandat des traducteurs/interprètes judiciaires n'est pas limitée ce qui réduit en grande partie la possibilité du contrôle de qualité des prestations.

Le règlement croate stipule que les traducteurs/interprètes judiciaires sont nommées pour une durée de quatre ans et qu'ils peuvent renouveler la candidature après l'écoulement de cette période (articles 10 et 12 du Règlement croate). Le décret bosniaque limite également la période de désignation à quatre ans (article 10 du Décret bosniaque).

Le contrôle de qualité est mentionné dans le cadre du Règlement parmi les critères de révocation du traducteur/interprète judiciaire : en dehors de critères concernant sa moralité, respect de la législation ou état de santé, une des raisons de la révocation peut être une prestation incorrecte ou peu professionnelle.

En conclusion de cette tentative de faire un état des lieux, nous tenons à souligner que, si nous avons tenté d'être critiques et objectifs, c'était dans l'objectif d'attirer attention du public professionnel au fort besoin d'action dans le domaine des modifications de la position et du statut professionnel des interprètes judiciaires dans de nombreux aspects. Bien évidemment, leur position est loin d'être idéale dans la grande majorité des pays membres de l'UE et dans ce sens nous citerons encore le constat du *Forum* :

> Une récente enquête sur l'interprétation judiciaire au sein l'UE conclut que la majorité des États membres ne dispose pas encore des capacités et structures suffisantes dans ce domaine. Certes, certains efforts se dessinent au sein de l'UE pour pallier cette situation regrettable, mais leur cohérence, leur niveau de qualité et leur nombre laissent encore à désirer. Si certains États membres se sont déjà inspirés d'excellentes pratiques existantes, les résultats de l'enquête montrent que d'autres demeurent mal préparés face aux inévitables barrières et défis linguistiques risquant d'affecter le bon fonctionnement de leur système judiciaire. À titre d'exemple, ils ne disposent pas d'un nombre suffisant d'interprètes juridiques dûment formés, ceux-ci respectant des normes de qualité, souvent vagues, pour tant est qu'elles existent. Dans nombre de ces États, on ne trouve ni code de déontologie obligatoire, ni registre national fiable, ni guides interdisciplinaires de bonnes pratiques au sein des services judiciaires, ni politique cohérente, ni bien sûr aucune ligne budgétaire pour les financements afférents. (2009: 7)

5. Solutions proposées

Notre analyse de la situation normative et réelle de l'interprétation judiciaire au Monténégro nous a conduit à constater un grand besoin des modifications normatives dans le sens terminologique, des critères de sélection, de

la forme et du contenu de l'épreuve ainsi que la formation d'une association professionnelle, l'introduction des formations obligatoires et d'un système de contrôle de la qualité. Ceci dit, nous sommes bien conscients des contraintes budgétaires nationales à l'heure actuelle, mais également des besoins du meilleur fonctionnement du système judiciaire national en vue de la future adhésion européenne.

5.1. Modification des textes normatifs

5.1.1. La distinction terminologique

Comme nous avons constaté dans le chapitre précédent, le cadre normatif national régissant le droit à l'interprétation judiciaire est satisfaisant au vu du respect des normes internationales et européennes. Il serait souhaitable que la distinction terminologique entre la traduction et l'interprétation judiciaire soit nettement expliquée dans les textes législatifs régissant ce droit. A ce titre, et conformément à nos explications relatives à cette question, nous proposons que l'interprétation soit désignée par le terme *tumačenje* et l'interprète par le terme *tumač* par opposition aux termes *prevođenje* pour la traduction et *prevodilac* pour le traducteur/traductrice.

5.1.2. Les critères de sélection

Nous avons déjà identifié quelques lacunes dans les critères de sélection définis par le Règlement monténégrin ce qui nous permet de proposer des solutions plus adaptées au recrutement des interprètes judiciaires de qualité. À supposer que la clarification terminologique et par conséquent conceptuelle entre la traduction et l'interprétation soit introduite dans les lois qui représentent la base du Règlement, nous proposerions quelques modifications des critères existants.

Il serait envisageable de garder un certain nombre de critères communs, à savoir les preuves de probité morale, le niveau de formation obligatoire, ainsi que des critères relatifs aux compétences linguistiques. Dans ce sens, nous proposerons des précisions concernant le contenu des documents acceptables comme preuves d'expérience préalable et la durée obligatoire de cette expérience respectivement en nombre de jours de l'interprétation et de pages/feuillets traduits.

Seraient acceptées comme preuves d'expériences les attestations des employeurs indiquant le nombre de jours de l'interprétation, le titre et la date des évènements en question ainsi que le nombre de pages et le titre/le sujet du document traduit.

En même temps, toute preuve de formation professionnelle au niveau national et international relative aux techniques de l'interprétation sera également bienvenue et évaluée positivement. De plus, l'absence des preuves d'expérience dans le domaine l'interprétation pourrait être compensée par les attestations de formations aux différentes techniques de l'interprétation (consécutive, simultanée, traduction à vue, etc.) par les établissements agréés.

5.1.3. Modifications de la forme et du contenu de l'épreuve

Nous soutenons l'idée que les candidats passent un test de connaissances judiciaires après le tri des dossiers de candidature présentés. Cependant, comme nous l'avons constaté, l'épreuve prévue par le Règlement en vigueur ne permet pas de vérifier les compétences nécessaires pour la traduction/interprétation judiciaire de qualité. Or, l'épreuve orale doit être précédée d'une épreuve écrite qui permettrait de vérifier les capacités de traduction des documents judiciaires depuis et vers la langue monténégrine et elle serait éliminatoire, à l'image de l'épreuve prévue par le ministère de la Justice macédonien.

L'épreuve devrait également être complétée d'une vérification de la connaissance du ou des systèmes juridiques des pays où la langue B est langue officielle. Cette vérification peut être organisée en forme écrite ou orale.

Les modifications proposées ne pourraient pas s'appliquer sans la modification de la composition du jury désigné par le ministère de la Justice : en dehors des représentants des administrations judiciaire et exécutive, le jury doit être complété par les traducteurs/interprètes professionnels et des universitaires qui enseignent les langues étrangères concernés, de préférence connaisseurs de la terminologie juridique.[6]

5.2. Organisation des formations

Nous avons évoqué dans 4.5.1 que le Règlement ne prévoyait pas des formations obligatoires ou facultatives destinées aux interprètes judiciaires. Ayant en vue l'importance fondamentale de la formation adéquate pour la qualité de l'interprétation, nous proposerions l'introduction aussi bien des formations initiales que des formations continues pour les interprètes judiciaires. Ces formations devraient être mentionnées dans la réglementation, soit comme

6. Nous sommes parfaitement conscients que le Monténégro, du fait de sa taille et du nombre d'habitants, ne peut disposer des interprètes professionnelles pour toutes les langues, mais il est évident que cela est facile à organiser pour les langues les plus utilisées et, par conséquent, les plus demandées dans le cadre de l'adhésion européenne, à savoir l'anglais, le français et l'allemand.

obligation, soit comme recommandation et organisées en commun par le ministère de la Justice, les pouvoirs judiciaires, les établissements de l'éducation supérieure et les représentants des interprètes professionnels.

La formation initiale comporterait une partie théorique qui permettrait aux futurs candidats de comprendre le système juridique national et d'une partie pratique – l'entraînement aux techniques de l'interprétation (consécutive, simultanée, chuchotage, traduction à vue) sur des sujets juridiques. Cette formation précéderait le concours et l'épreuve des traducteurs/interprètes judiciaires et servirait de soutien à leur préparation.

Dans le cadre de la programmation de la formation initiale des interprètes judiciaires, le Diplôme d'université « Traducteur – Interprète judiciaire » proposé par l'École supérieure d'interprètes et de traducteurs (ESIT) de Paris pourrait représenter un excellent exemple à suivre.

Nous considérons également que les traducteurs/interprètes judiciaires ont besoin des formations continues qui leur permettraient de mettre à jour leur connaissances juridiques. Cela est d'autant plus important que le Monténégro est en train de négocier son adhésion à l'Union européenne ce qui entraîne une intensification des réformes et la modification fréquente de textes législatifs. Cette formation serait conduite par des représentants des administrations judiciaires ou du ministère de tutelle et appuyé par une association professionnelle des interprètes. Les interprètes judiciaires ont également besoin des formations et échanges relatives à la pratique professionnelle, mais cela rejoint les besoins des interprètes de conférence et pourrait faire partie des activités de leurs associations, syndicats, organisations professionnelles.

Nous avons identifié plusieurs problèmes qui concernent l'interprétation judiciaire au Monténégro et qui proviennent des malentendus terminologiques ou des lacunes de la réglementation en vigueur. Convaincus qu'une grande majorité de ces problèmes pourraient être résolus par l'information et la formation adéquate du personnel judiciaire et juridique au sens large, nous proposerons l'organisation des sessions de formations d'une journée organisées par les interprètes professionnelles et leurs associations et destiné au ministère public et aux juridictions locales et nationales. Ces sessions comporteraient les informations sur le travail des traducteurs/interprètes judiciaires, leurs compétences obligatoires, leur code de conduite et les modalités d'engagement. Elles auront pour objectif de faciliter la communication et d'élargir les connaissances des administrations judiciaires et des magistrats sur le sujet. Les sessions identiques pourront être organisées à destination de la Chambre des notaires, l'Ordre des avocats, administrations locales et d'autres organisations professionnelles ou structures intéressées.

En vue de réglementer les différentes formations proposées, il serait souhaitable qu'elles fassent l'objet d'une accréditation par des autorités officielles (Centre pour la formation professionnelle au sein du Ministère de l'Éducation) et d'établir des échanges avec la Direction Générale Interprétation de la Commission européenne. À ce titre, les recommandations du *Forum* appuient et complètent nos propositions :

> Le forum de réflexion recommande aux États membres de proposer une formation appropriée préparant à l'interprétation juridique, tant aux nouveaux interprètes qu'aux interprètes déjà en exercice.
> Cette formation déboucherait sur une certification professionnelle reconnue sur tout le territoire national et devrait être accréditée par une autorité officielle reconnue.
> Les formations proposées devraient être équivalentes dans toute l'UE, ce qui permettrait la définition d'un seul label de qualité pour les organismes de formation ainsi que des échanges de formateurs, de matériels didactiques et de meilleures pratiques et la création d'un registre officiel compatible entre États membres.
> La DG Interprétation pourrait contribuer très utilement à l'amélioration de la qualité des interprètes juridiques grâce à son expertise en matière d'interprétation, de formation de formateurs et de création de réseaux. (2009: 14)

5.3. Introduction d'un système du contrôle de qualité

Le Règlement monténégrin ne prévoit pas un système de contrôle de qualité pour les prestations de la traduction ou de l'interprétation judiciaire. La désignation des interprètes n'étant pas limitée dans le temps, il est assez difficile d'organiser des contrôles périodiques. De plus, l'inexistence d'un code de conduite ou de bonne pratique rend impossible une procédure disciplinaire qui pourrait examiner la conduite de l'interprète en situation de transgression professionnelle présumée. Dans ce sens, la future adoption d'un Code de conduite conforme au Code d'éthique professionnelle de l'EULITA par une structure professionnelle équivalente serait plus que bienvenue.

En ce qui concerne la contrôle de qualité proprement dit, nous proposerions aux autorités compétentes d'introduire un système de désignation des traducteurs/interprètes judicaires à temps déterminée suivi d'un système de candidature renouvelées : à l'image de leur collègues croates, les traducteurs/interprètes pourraient, dans ce cas, renouveler leurs mandats à condition de pouvoir prouver la qualité de leurs prestations. Elle pourrait, à titre d'exemple, découler d'un système de notation par les administrations judicaires et autres clients compétents.

5.4. Association professionnelle

Avant de conclure notre réflexion sur les possibilités d'améliorer les conditions de recrutement et la qualité des prestations des interprètes judiciaires, nous tenons à souligner l'importance de la création d'une association professionnelle et cela pour plusieurs raisons. Cette association permettra aux traducteurs et aux interprètes d'échanger les informations, elle représentera leurs intérêts, assistera l'organisation des formations nécessaires à ses membres, à leurs interlocuteurs et clients, contribuera à la sensibilisation du large public sur l'importance du travail de ses membres, adoptera un code de conduite et pourra adhérer à l'EULITA pour établir les coopérations et les échanges au niveau européen.

6. Conclusion

Le présent article a pour objectif d'analyser la position actuelle de l'interprétation judiciaire au Monténégro du point de vue législatif et pratique, dans l'optique de l'adhésion européenne du pays. Nous avons identifié un besoin croissant des prestations de qualité dans le domaine de l'interprétation judiciaire au fur et à mesure que le pays s'approche à l'Union européenne et avance dans le processus des négociations. Suite à la présentation d'un profil idéal de l'interprète judiciaire à l'heure actuelle qui nous a servi de repère, nous avons procédé à un diagnostic de la situation nationale, en nous appuyant sur des textes législatifs en vigueur et le Règlement sur les traducteurs/interprètes judiciaires permanents. Nous avons pu constater que la législation monténégrine est généralement conforme à la Directive 2010/64/UE du Parlement européen et du Conseil du 20 octobre 2010 relative au droit à l'interprétation et à la traduction dans le cadre des procédures pénales, mais que les textes que nous avons pu analyser ne font pas une différence claire entre l'activité de traduction et celle d'interprétation ce qui entraînait de nombreuses lacunes dans les modalités concrètes du recrutement, de vérification des compétences, de la formation, et du contrôle de qualité des prestations. En d'autres termes, non seulement les distinctions terminologiques doivent être introduites dans les textes concernés, mais le Règlement national qui détermine les critères du recrutement et les modalités de l'épreuve devrait subir des modifications importantes. C'est pourquoi nous avons tenté de proposer quelques solutions portant notamment sur la précision des critères de sélection des interprètes, la forme et le contenu de l'épreuve, la nécessité d'organiser les formations adaptées et d'établir un système fiable du contrôle de qualité. Pour vérifier le caractère objectif de nos observations, nous avons également étudié les règlements et les textes similaires qui régissent les conditions du recrutement des interprètes judiciaires

dans les pays des Balkans occidentaux, à savoir la Bosnie-Herzégovine, la Croatie, la Macédoine et la Serbie. En même temps, la création d'une association nationale professionnelle des traducteurs et des interprètes judiciaires interlocutrice des autorités judiciaires et administratives permettrait aux collègues de mieux présenter leurs besoins et d'exercer leur fonction dans un cadre mieux règlementé et plus concurrent et favorable à la qualité, dans l'intérêt de nos citoyens et dans le respect des droits fondamentaux.

Bibliographie sommaire

Textes législatifs et règlements

DIRECTIVE 2010/64/UE du Parlement européen et du Conseil du 20 octobre 2010 relative au droit à l'interprétation et à la traduction dans le cadre des procédures pénales, *Journal officiel de l'Union européenne* du 26 octobre 2010, version française L280/1. Version électronique : <http://eur-lex.europa.eu/legal-content/FR/TXT/?uri=OJ:L:2010:280:TOC>. Page consultée le 20 juin 2014.

PRAVILNIK O STALNIM SUDSKIM TUMAČIMA, *Službeni list Crne Gore* 31/80, 26. decembar 2008. str. 31.

Правилник о сталним судским тумачима, Службени гласник РС, бр. 35/2010 од 23. 5. 2010. Version électronique : <http://www.puma.vojvodina.gov.rs/dokumenti/zakoni/pravilnik_o_tumacima.pdf>. Page consultée le 26 juin 2014.

PRAVILNIK O STALNIM SUDSKIM TUMAČIMA. Version électronique : <http://www.usst.hr/hr/1421/pravilnik-o-stalnim-sudskim-tumacima/>. Page consultée le 24 juin 2014.

ПРОГРАМА за проверка на знаењето на странски јазик за поставување на постојаните судски преведувачи. Version électronique : <http://www.pravda.gov.mk/documents/sudskidelzaprevd.pdf>. Page consultée le 24 juin 2014.

Упатството за начинот и условите за поставување, проверката на знаењето и разрешувањето на постојаните судски преведувачи, Службен весник на РМ: бр. 28/08. Version électronique : <http://www.pravda.gov.mk/documents/SP_programa-2011.pdf>. Page consultée le 24 juin 2014.

UREDBA O STALNIM SUDSKIM TUMAČIMA. Version électronique : <http://www.fbihvlada.gov.ba/bosanski/zakoni/2006/uredbe/18.htm>. Page consultée le 25 juin 2014.

ZAKONIK O KRIVIČNOM POSTUPKU, *Službeni list Crne Gore* : br. 57/09 od 18. avgusta 2009. Version électronique : <http://www.sluzbenilist.me/PravniAktDetalji.aspx?tag=%7BFBB96471-2C3B-4B18-91EB-F3AC7E5B6C2F%7D>. Page consultée le 21 juin 2014.

ZAKON O SUDOVIMA, *Službeni list RCG*, br. 05/02 od 06. 02. 2002, 49/04 od 22. 07. 2004, 22/08 od 02. 04. 2008, 39/11 od 04. 08. 2011. Version électronique : <http://poslodavci.org/doc/Zakoni/sudovi/Zakon%20o%20sudovima.pdf>. Page consultée le 22 juin 2014.

Autres documents consultés

DIVERS AUTEURS (Direction générale de l'interprétation, Commission des communautés européennes). (2009) *Forum de réflexion sur le multilinguisme et la formation d'interprètes - Rapport final*. Version électronique : <http://www.eulita.eu/sites/default/files/Reflection%20Forum%20Final%20Report-f.pdf>. Page consultée le 18 juin 2014.

DIVERS AUTEURS (Ministère des Affaires étrangères du Monténégro). (2013) *Pregovaračka pozicija Crne Gore za međuvladinu konferenciju o pristupanju Crne Gore Evropskoj uniji za pregovaračko poglavlje 24 – pravda, sloboda i bezbjednost*. Podgorica. Version électronique: <www.mvpei.gov.me/ResourceManager/FileDownload.aspx?rId>. Page consultée le 23 juin 2014.

DIVERS AUTEURS (Université Sorbonne Nouvelle - Paris 3). Diplôme d'université « Traducteur-Interprète judiciaire », Contenu des enseignements, École supérieure d'interprètes et de traducteurs. Version électronique : <http://www.univ-paris3.fr/du-traducteur-interprete-judiciaire-127462.kjsp?RH=1257522045619>.

DRIESEN, Christiane J. & George DRUMMOND. (2011) "The 'Tandem' method training interpreters to work at national courts", *Forum* 9:2, pp. 139-156. Version électronique : <http://www.eulita.eu/sites/default/files/file/TandemForumEn2011_eulita.pdf>.

DRIESEN, Christiane J. (2014) *Intervention de Christiane Driesen, lauréate du Prix Danica Seleskovitch 2014, à l'occasion de la remise du Prix le 8 mars 2014 à Paris*. Version électronique : <http://aiic.net/page/6876/prix-danica-seleskovitch-2014-christiane-driesen/lang/2>.

EULITA (2013) *Code d'éthique professionnelle de l'EULITA*. Version électronique: <http://www.eulita.eu/sites/default/files/EULITA-Code-London-fr.pdf>.

SELESKOVITCH, Claire. (2008) "L'interprétation judiciaire internationale, une nouvelle pratique professionnelle". Version électronique : <http://aiic.net/page/3036/l-interpretation-judiciaire-internationale-une-nouvelle-pratique professionnelle/lang/2>.

BIONOTE / BIOGRAPHIE

Jasmina Tatar Andjelic has a PhD in linguistics from the University of Strasbourg, France and a MA from the University of Novi Sad, Serbia. She has been has been teaching modern French and translation for 10 years at the Department of French language and literature at the Faculty of Philosophy in Nikšić, University of Montenegro. She is also teaching French syntax, translation and consecutive interpretation at the Institute for Foreign Languages in Podgorica, University of Montenegro. She has participated in several international seminars and published articles on French syntax and translation. She is a court interpreter and translator of French, translator for the French website "Le Courrier des Balkans" as well as active conference interpreter accredited to the EU intitutions for Montenegrin, French and Italian. Her research interests include syntax, contrastive linguistics studies, theory of translation and interpretation, and historical linguistics.

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APPROACHING THE BENCH: TEACHING MAGISTRATES AND JUDGES HOW TO WORK EFFECTIVELY WITH INTERPRETERS

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Abstract

Reports about judicial misunderstandings of the interpreting process are common (Berk-Seligson 2008; Morris 2010; Hale 2011a). The misconception that interpreters 'just translate' from one language to another by swapping individual words from language A to language B in a mechanical, uncomplicated way, is still prevalent among some legal professionals. Research into court interpreting, however, has highlighted the complexities involved in attempting to achieve a pragmatically accurate rendition in conditions that are usually less than adequate (Hale 2004; Mikkelson 2008; Hale & Stern 2011). In order for court interpreting to be successful, all parties must be aware of its challenges and share the responsibility for effective communication (Ozolins & Hale 2009). This chapter will describe the contents and structure of a workshop designed and delivered by the author to Australian magistrates, judges and tribunal members on how to work effectively with interpreters, for over ten years. It will further discuss the positive concrete outcomes achieved through the raising of awareness among the judiciary about the importance of interpreters in the legal system.

Resumen

Varios autores han escrito sobre la falta de entendimiento del personal judicial en cuanto al proceso de la interpretación en diferentes países del mundo (Berk-Seligson 2008; Morris 2010; Hale 2011a). El concepto erróneo de que los intérpretes 'sólo traducen' de un idioma a otro mediante el canje de palabras individuales de la lengua A a la lengua B de una manera mecánica y sin complicaciones aún prevalece entre algunos. La investigación sobre la interpretación judicial, sin embargo, ha puesto de

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relieve las complejidades que se manifiestan al tratar de lograr que una interpretación sea pragmáticamente fiel al original, en condiciones laborales que, por lo general, dejan mucho que desear (Hale 2004; Mikkelson 2008; Hale & Stern 2011). A fin de lograr una comunicación eficaz por medio del intérprete, todas las partes deben ser conscientes de los retos que esto supone y han de aceptar la asunción de parte de la responsabilidad que dicha interacción implica (Ozolins & Hale 2009). Este capítulo describirá el contenido y la estructura de un taller diseñado e impartido por la autora durante más de diez años a jueces, magistrados y demás personal judicial de Australia sobre cómo trabajar con intérpretes de un modo eficaz. Se discutirán, además, los resultados positivos logrados a través de la toma de conciencia en el poder judicial de la importancia de los intérpretes en el sistema jurídico.

Keywords: Working with interpreters. Judges. Magistrates. Tribunal members. Raising awareness of interpreting issues.

Palabras clave: Trabajo con intérpretes. Jueces. Magistrados. Miembros del tribunal. Toma de conciencia del papel de la interpretación.

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1. Introduction

Reports about judicial misunderstandings of the interpreting process are common (Morris 2010; Berk-Seligson 2008; Hale 2011a). The misconception that interpreters 'just translate' from one language to another by swapping individual words from language A to language B in a mechanical, uncomplicated way, is still prevalent among some legal practitioners. A recent Australian survey (Hale 2011b) of 148 magistrates, judges and tribunal members on issues surrounding legal interpreting found mixed levels of understanding about the interpreting process and the interpreter's role. While some were supportive of interpreters and demonstrated a good understanding of their role, others were adamant that all interpreters do is "…simply translate what is said literally…" (quote 34 in Hale 2011b: 42). This simplification of the interpreter's task has implications for the status of the profession, the levels of training and types of qualifications required, the working conditions provided and the remuneration attached to their work. If the work of interpreters is seen as a 'simple task' by those who use their services, stringent training and certification requirements will not be considered necessary, which will in turn justify levels of remuneration that are adequate only for unskilled occupations. Similarly, interpreters will not be treated as equal professionals nor provided with adequate working conditions to help them perform to the best of their "skill and ability", which is what they are required to swear under oath or affirm to do at the start of every case in Australia. Indeed one of the prevalent areas of disagreement between the judiciary and interpreters is the need for any briefing or preparation materials (Hale 2013). Interpreters want as much information as possible in order to be well prepared to do their job, while many of the judiciary argue that there is "… generally no need. They just have to interpret for the person" (quote 24, in Hale 2011b: 30).

Research into court interpreting has highlighted the complexities involved in attempting to achieve a rendition that is pragmatically accurate from the source to the target language in conditions that are, for the most part, less than adequate (Hale 2004; Mikkelson 2008; Hale & Stern 2011). In addition to the inherent complexities of interpreting in general, court settings present

special linguistic challenges for interpreters. The archaic use of language, the ritualistic discourse practices, the strategic use of questions and the significance of the discourse practices of the witnesses in establishing their credibility, all impinge on the interpreter's ability to produce an adequate target language version of the original. In order for court interpreting to be successful, all parties must be aware of these special characteristics and they all must share some of the responsibility for successful communication (Ozolins & Hale 2009). Interpreters must be educated on the discourse of the courtroom and on the requirements of the setting, and lawyers and the judiciary must be educated on the intricacies of interpreting and on what interpreters need in order to fulfill their court appointed role. This paper will describe the contents and structure of a presentation the author has designed and delivered to Australian magistrates, judges and tribunal members on how to work effectively with interpreters, for over ten years. The paper will also discuss the positive concrete outcomes achieved through the raising of awareness among the judiciary about the importance of interpreters in the legal system.

2. Approaching the Bench

The misconception held by legal professionals about the interpreting process is understandable given they are not linguists or language professionals. Depending on the geographical area or the particular jurisdiction, legal professionals will have varying degrees of contact with interpreters in their everyday work. To some, interpreted cases may be a very rare occurrence; to others they may be more frequent. For this reason, many will see interpreting issues as peripheral to their work, and will not go out of their way to learn more about it. While interpreters, especially trained ones, see the value of acquiring knowledge about the goals and requirements of those other professionals with whom they work because they understand that adequate background knowledge will help improve their interpreting performance, other professionals who at times need to use interpreting services, may not be aware that their own ability to perform their duties will be affected by the quality of the interpretation. Quality of interpretation depends on a number of factors, which include the performance of all participants. Interpreting scholars and practitioners therefore need to reach out to other professions to raise awareness about the importance of mutual understanding about each other's needs, but also about the nature of interpreting and how all speakers and participants in an interpreted event can significantly affect the quality of the interpretation. Legal professionals cannot be expected to attend interpreters' conferences or to read their journals, albeit some do. Therefore, interpreting scholars need to

write articles for legal professionals and publish in the journals, newsletters or magazines they are likely to read. In this descriptive paper I[1] will share my experience in teaching magistrates, judges and tribunal members on how to work with interpreters. Due to the descriptive nature of the paper, I have decided to write it in the first person. The same presentation can be adapted for lawyers. The aim of this paper is to provide a framework that others can use to present similar workshops to legal practitioners in their own countries or regions. Indeed, the same presentation has already been adapted and presented to medical students (see Friedman-Rhodes & Hale 2010), as part of a small-scale study which indicated concrete positive outcomes.

My first approach was the publication of the article "The complexities of the bilingual courtroom" (Hale 2001) in *The Law Society Journal*, which is the journal of the lawyers' professional association. Very soon after the article was published I received a telephone call from the Law Society asking me to do a presentation for their members. As a result of that presentation, I was subsequently recommended to other organisations to give the same presentation to different legal audiences. This led to regular annual workshops for different organisations, including the Bar Association, the National Judicial College of Australia, the Australasian Institute of Judicial Administration, the different state Judicial Commissions, and the different tribunals (e.g. Refugee and Migration Review Tribunal, Compensation Commission of NSW). The audiences range from twenty to fifty participants. In addition to these, I have also approached the law schools of the two universities in which I have worked and have given similar presentations to Law students. However, the majority of the workshops since 2001 have been addressed to new magistrates and judges. The awareness raised by the workshops has also contributed to interpreter issues being included in subsequent legal practitioners' conferences, which usually dedicate at least one session to cross linguistic and cross cultural communication issues.

3. Workshop structure

Legal audiences are often skeptical about the usefulness of a session on interpreting issues. This was made manifest in a number of comments in the workshop evaluations such as:

1. The author has over twenty years' experience as an interpreter and educator of interpreters. She has conducted research into interpreting quality and interpreting pedagogy. There are no published resources in Australia for teaching legal professionals on how to work with interpreters.

"I learnt a great deal I didn't know that I didn't know until this session"
"A real eye-opener"
"I was happily surprised"

It is crucial that the workshop be pitched at the correct level to maintain the interest of a very demanding audience. A number of the participants expressed to me that previous presentations on interpreter issues delivered by other people had been very basic, dealing only with the mechanical protocols of how to work with an interpreter, and that they had not gained much from them. Teaching very basic content to a very sophisticated audience will only reinforce the misconception that interpreting is a simple task, which only requires simple instructions.

My workshop has a ninety-minute duration and it is divided into five sections. The first section aims to establish the audience's expectations of interpreters and to elicit their experiences with interpreters in the past. In the second section I present an excerpt from a hearing where a magistrate instructs an interpreter, and I ask the audience to give their evaluation of the magistrate's instructions. The third section discusses the language hierarchy (from the word to the discourse) (see Hale 2007) and highlights linguistic and cultural differences across languages. The fourth section discusses the meaning of accuracy of interpreting in legal settings and the fifth section explains the interpreting process and highlights the complexities of interpreting accurately in light of what they heard in the previous four sections, and provides practical guidance on how to work effectively with interpreters. Depending on the dynamics of the group, I sometimes add a role-play and a video presentation. I will explain each of these sections in detail below.

3.1. Workshop section 1: Introduction

The introduction to the workshop is crucial. It is important to engage the audience from the very beginning. For this reason, I start by asking them two questions: 1. What do you expect of interpreters? and 2. How have those expectations been met in your experience? The answers I usually receive to the first question are: to translate everything literally, to translate everything word for word, to be accurate, to just translate and not add or give opinions or coach the witness, to be ethical and professional. There are at times participants in the audience who have read about interpreting issues, have attended previous workshops or are bilingual themselves, who will give more nuanced answers, or who will speak of cross cultural issues and the need to go beyond the literal. However, for the most part, I elicit the expected response, which feeds into the rest of my presentation. In response to question 2, the

participants say that they have experienced a wide range of different levels of professionalism and competence in interpreters with whom they have worked. After acknowledging their answers and writing the main ones on the board, I tell them that we will discuss these expectations and why they are sometimes met and sometimes not met, throughout the workshop. I then present them with the following statement and ask them to tell me what they think it means:

> (1) "By God went-I to house brother-me and hit-I sister-me telephone"[2] (Hale 2007)

The types of answers I receive include different variations of the concept: "My God! I went to my brother's house and hit my sister with the telephone". After receiving a few suggestions, I tell them to remember the phrase because we will come back to it later to discuss it after I have given them further information. This intrigues them and maintains their interest.

3.2. Workshop section 2: Evaluation of a quote from a magistrate

At this point I put up on the screen the excerpt that appears below, which is a quote from a magistrate presiding over a Local Court hearing:

> (2) "Just translate what I'm saying to the defendant. You can sit down for a moment, just tell him what I'm saying. I'm now giving reasons for the decision I'm about to come to. The defendant was initially charged with knowingly contravening a prohibition or a restriction specified in an Apprehended Domestic Violence Order… Did he understand all that"

After reading the statement aloud, I open the floor for comments from the audience, leading the discussion to cover the points below. Most participants state that they would not instruct the interpreter in this way for the following reasons: it is unclear when the magistrate stops addressing the interpreter and starts addressing the defendant, it is too long and it is too technical. I then highlight the first directive "Just translate" and ask them to tell me what this implies. Some comment that it means, "translate and do nothing else", but some identify the connotation of the word "just" as implying that it is a simple task. Some object to the magistrate telling the interpreter what to do, when the interpreter should already know what their role is. I then explain the difference between translating and interpreting. This distinction comes to many of them as a surprise, as they are accustomed to using the term "interpret"

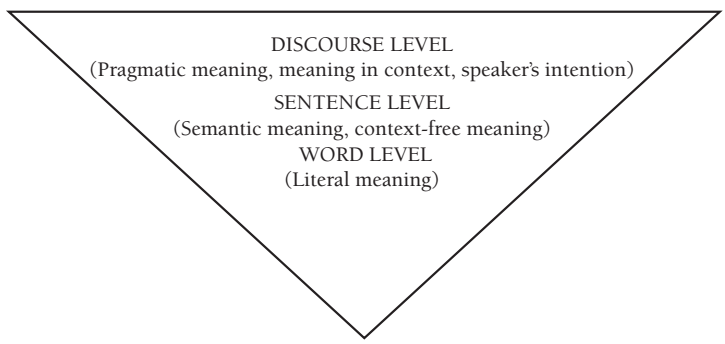
2. I acknowledge Stuart Campbell for providing the literal translation of the original phrase in Arabic.

as something that only lawyers can do. When it is explained to them that it is the technical term for oral translation, they feel much more comfortable with the term. The phrase "just tell him what I'm saying" elicits the same responses as the first phrase. We then discuss the basic interpreting protocol of using the direct approach by speaking in the first and second grammatical persons rather than in indirect speech using the third person. The final discussion on this excerpt surrounds the question to the interpreter about whether the defendant understood everything, highlighting that it is impossible for the interpreter to know whether someone else understood something or not. This in turn leads to a discussion of how to ensure intelligibility and what strategies to use, such as asking the question directly to the defendant, asking checking question or requesting the defendant to tell the court what s/he understood in their own words.

3.3. Workshop section 3: The hierarchy of language

Following what is generally a very lively discussion, I move on to linguistic theory, after which I reveal the meaning of the odd statement I showed them in the introduction (see example 1 above). At this point I present them with a slide entitled "The hierarchy of language" which contains the upside down pyramid shown in Figure 1:

Figure 1: The hierarchy of language (Hale 2007)



I explain that language can be divided into three main components – the word, the sentence and the discourse – where words are put together to form sentences and sentences are put together to form larger chunks of discourse. I then ask if anyone has studied a second language, and whether they have ever had the experience where they understood every word but they still did not understand what the person meant by it (Cook 1989). This leads to a

discussion about producing meaning in context, taking into account the interlocutors' background or shared knowledge, relationship to each other and cultural conventions. This is followed by a discussion of pragmatic speech act theory (Austin 1962), the cooperative principle (Grice 1975) and cross-cultural pragmatics (Wierzbicka 2003/2009), complemented by many examples. I then present the following statement and ask them to tell me what it means:

(3) "You son of a bitch!"[3]

Firstly I ask them to tell me what it means literally, at the word level, to which I receive answers such as: "you are a male offspring of a female dog". I then ask them to tell me what they would understand by it, beyond its literal meaning and the answer I receive is "an insult". I then put the utterance in the context of two old friends who have not seen each other for a while and when they meet, one says this to the other. When asked about its meaning in this context, they all agree that it could in fact be a term of endearment. In other words, the context can change the meaning to mean the opposite of what they had expressed earlier. We continue in this manner, discussing a number of different examples to illustrate the complexity of language, even when we are dealing with one language in monolingual contexts.

I then explain that different languages differ at all the levels of the language hierarchy and present examples of lexical gaps, grammatical differences across languages, gaps in semantic fields and different ways of producing speech acts across languages. I also discuss cross-cultural differences, which can lead to different understandings of utterances. One example presented here to generate discussion is one I provide in a previous publication (Hale 2007), where a witness states that his wife and he were undecided whether they should spend a considerable amount of money they won on the lottery on paying off their mortgage or on their daughter's fifteenth birthday celebration. I ask if they consider such a proposition off in any way, to which most reply in the positive. I then explain the cultural implications of a daughter's fifteenth birthday in some Latin American countries, which makes the utterance culturally appropriate. Other examples of cross cultural differences are presented (see Hale 2014) and we discuss how all of these complexities present real challenges for interpreters, using examples from research data (see Berk-Seligson 1990 and Hale 2004 for examples from authentic data).

3. Note that this is not a very offensive remark in Australia.

3.4. Workshop section 4: The meaning of accuracy

I start this section with the odd phrase in the introduction and with its accurate pragmatic translation:

(4) "By God went-I to house brother-me and hit-I sister-me telephone"
(Literal translation from Arabic)
"I'm telling you, I went to my brother's place and phoned my sister"[4]

I ask them to now surmise why the first version is different from the second and why they were able to understand every word in the first version but misunderstood the meaning completely. Generally they can now clearly see that the original was a literal translation and the last one is a pragmatic translation. I ask them which one they would expect a good interpreter to produce, and invariably they all say the second one. However, they question why the words 'God' and 'hit' do not appear in the second translation. This leads to a discussion of the differences between English and Arabic at all the levels of the language hierarchy. I highlight the morpho-syntactic differences, the lexical differences, which include the collocation of the verb 'hit' with 'telephone' similar to the English 'made' with 'a call' or 'dialed' with 'a number', all of which carry metaphorical meanings. The discussion surrounding the use of the term 'God' leads to cross cultural pragmatic differences and what is considered to be appropriate or inappropriate in different speech events.

This discussion is followed by what constitutes accuracy of interpreting in a legal setting. By this stage they are convinced that it does not mean a literal, word-for-word translation as some of them had stated at the beginning of the workshop. I then present them with the theory I use to train interpreters about how to aim for accuracy. This is based on dividing each utterance into a locutionary, an illocutionary and a perlocutionary act (see Hale 2007 for a full discussion on the application of this theory to interpreting accuracy). The locutionary act equates to the literal level, as it refers to the words that form the utterance. The most important of the three is the illocutionary act, which indicates what the speaker wants to convey with those words. The perlocutionary act is also crucial for interpreters, as it refers to how listeners would react to the utterance. Although speakers cannot control the perlocutionary act, they can aim at producing certain reactions in their listeners. Interpreters, therefore, would undergo a mental analysis of what they hear. The more the interpreter knows about the speaker and his/her culture, professional needs,

4. I acknowledge Stuart Campbell for providing the pragmatic translation of the original phrase in Arabic.

goals of the interaction and subject matter, the better equipped s/he will be to understand the illocutionary point and force of the utterance. In deciding on the best way to render such illocutionary act, the interpreter will also consider his/her own reaction to the utterance, which constitutes the perlocutionary act. For example, the mental question an interpreter would normally ask him/herself is "How would this be expressed in the target language to achieve the reaction it achieved in the source language?" The resultant interpreted utterance may be very distant in words and structure from the original, but still be the most accurate rendition. This discussion is the most complex and controversial. Many examples from authentic interpreted data are shown to illustrate the different points (see Hale 2004 for examples). At this stage I also address the fact that interpreting is not an exact science, that interpreters are subjective human beings and that different interpreters will produce different renditions. I invoke the linguistic actor metaphor, where interpreters, not unlike actors, act out the parts of the different interlocutors, attempting to be as faithful as possible to the 'author' or the 'script' but still maintaining their individual style.

3.5. Workshop section 5: Practical guidance on working with interpreters effectively

The aim of this section is to raise the awareness that interpreters do not work in isolation and that they cannot be held fully responsible for the quality of the interpretation. The different factors that can affect interpreting quality are then outlined. These include 'discourse-internal' factors and 'discourse-external' factors (Hale 2007). Discourse internal factors relate to all the issues I have already outlined above and for the most part fall within the interpreter's competence or responsibility, except for the discourse behaviours of the other interlocutors. Here I highlight the other speakers' responsibility towards ensuring accurate interpreting by speaking clearly and coherently and avoiding overlapping speech. I then present to them a number of examples of poorly expressed utterances from research data that interpreters are typically confronted with. One such example appears below.

> (5) "So why if you have been threatened by as you say said terrorists because of your brother's election in the council and your car has been broken, why didn't you have any fear of persecution before you travelled to Australia?" (Szldy & Ors vs Minister for Immigration & Anor [2008] FMCA 1684:16)

I show them the above question on the screen, give them time to read it and take it off the screen. I then ask them to repeat the same question back to me

verbatim in English. To this date no one has been able to repeat the question accurately.

Another exercise I conduct involves inviting three volunteers to come to the front. I provide them with a script in English based on a court transcript which two of the volunteers read out to each other, acting out the roles of questioner and answerer. The third volunteer 'simply' needs to listen and repeat everything verbatim in English. As they are attempting this exercise, the rest of the audience follows the script to assess accuracy. As in the previous exercise, as soon as the utterances become long or complex, the volunteer acting as monolingual interpreter can no longer follow. These exercises highlight the unrealistic expectations placed on interpreters, especially by those who believe that all interpreters need to do is "just translate" everything word for word. Ways they can help avoid these types of questions from lawyers in their court are then proposed.

Discourse external factors include the availability of briefing and background materials, physical working conditions, and remuneration. This section emphasizes the fact that the very best interpreter cannot be expected to perform adequately under poor working conditions and that the best interpreters usually do not last in the profession due to the low levels of remuneration. Results of research into current working conditions are then presented and discussed, with a discussion on how judicial officers can help improve the situation (see Hale 2011b).

The next section deals with practical issues surrounding interpreter education and training, availability, accreditation/certification and recruitment, as well as with basic guidelines on how to work with interpreters. At this stage I alert them to the one-page set of guidelines I prepared which has been incorporated in a number of Bench books around Australia (see Appendix 1).

4. Workshop evaluations

The organizers of the programs routinely ask the participants to assess each of the sessions by providing open comments and some by asking for a rating. A letter with a sample list of open comments, and some with a numerical result (ratings of 97.06% and 98.91%)[5] is then sent to the presenters. The presenters have no input into these evaluations. The evaluations for my session are consistently very positive. Some of the open comments worth noting include:

5. Ratings for the workshops delivered as part of the annual judicial orientation for the Judicial College of Victoria (in 2013 and 2014)

> "Very relevant to know how the interpreters feel about their treatment by magistrates"
> "Enlightening"
> "Very important issues…will definitely take these issues away with me long term"
> "Very worthwhile – topic needs to be heavily exposed"
> "I found this a fascinating and useful discussion"
> "The BEST session on interpreting I have seen"
> "Great session. New-found respect for interpreters. Without it, I suppose I would have been very thoughtless in this area"
> "I will be much kinder to interpreters"
> "I learnt a great deal I didn't know that I didn't know until this session"
> "Terrific insight into problems for interpreters – did not suspect the difficulties they faced"
> "Best 'non-legal' session"
> "Much more interesting and useful than I had expected"
> "Excellent, thought provoking, extremely useful"
> "I have worked with interpreters many times and almost all of this was news to me! I wish I had known all this years ago".[6]

The only negative comment ever received was that the session was not long enough, as there was too much to cover and discuss. This in itself further highlights the interest generated by the presentation.

The evaluations reveal a number of important issues: 1) that misconceptions held by judicial officers can be easily dispelled when a convincing argument is presented to them; 2) that judicial officers are genuinely concerned with achieving communication in their courtroom and are willing to help interpreters perform to their best of their skill and ability; 3) that they can become allies and can help educate their colleagues; and 4) that raising their awareness of the difficulties and complexities involved in interpreting leads to an appreciation of and respect for interpreters.

5. Conclusion

Teaching the judiciary about how to work with interpreters has been not only very rewarding but also very productive. As a result of the higher level of awareness achieved through these workshops, the different organisations that represent magistrates, judges and tribunal members have included sessions on interpreters in their respective annual conferences. Such fora have

6. Comments from evaluations for workshops delivered to the National Judicial College of Australia, Judicial College of Victoria, NSW Judicial College, and the Annual South Australian Magistrates Conference.

contributed to a greater dialogue between judicial officers, practising interpreters and interpreter educators and researchers. Another important outcome has been the participation of bodies such as the Australasian Institute of Judicial Administration (AIJA) and the different state departments of Justice as industry partners in research projects about interpreting, with both in-kind and monetary contributions.[7] Interpreters have also commented on the difference these workshops have made on the way some judicial officers who have received the training treat them (see Hale and Napier, forthcoming). Such an overwhelming positive response points to the fact that it is possible to break down barriers and to work together with the legal profession in order to achieve better outcomes. Nevertheless, it takes much more than raising awareness among the legal profession to ensure quality of interpreting services. The quality of practising interpreters must be the first priority, which can only be achieved through adequate pre-service education and training and needs to be compensated through appropriate levels of remuneration. Only then will interpreters be able to interpret the evidence truly and faithfully.

References

AUSTIN, John. (1962) *How to do things with words*. Oxford: Oxford University Press.

BERK-SELIGSON, Susan. (2008) "Judicial systems in contact. Access to justice and the right to interpreting/translating services among the Quichua of Ecuador." *Interpreting* 10:1, pp. 9-33.

BERK-SELIGSON, Susan. (1990) *The Bilingual Courtroom. Court interpreters in the judicial process*. Chicago: The University of Chicago Press.

FRIEDMAN-RHODES, Elizabeth & Sandra Hale. (2010) "Teaching Medical Students to work with Interpreters." *The Journal of Specialised Translation* 14, pp. 121-144.

COOK, Guy. (1989) *Discourse*. Oxford: Oxford University Press.

GRICE, Paul. (1975) "Logic and Conversation." In: Cole, Peter & Jerry L. Morgan (eds.) 1975. *Syntax and semantics*. New York: Academic Press, vol. 3, pp. 41-58.

HALE, Sandra. (2014) "Interpreting culture. Dealing with cross-cultural issues in court interpreting." *Perspectives* 22:3, pp. 321-331.

7. For example, the project reported in Hale (2011b) was funded by the Australasian Institute of Judicial Administration. The author is also currently undertaking two other major research projects into court interpreting which have the participation of the NSW, Victorian and Queensland departments of Justice.

HALE, Sandra. (2013) "Helping interpreters to truly and faithfully interpret the evidence: The importance of briefing and preparation materials." *Australian Bar Review* 37:3, pp. 307-320.

HALE, Sandra. (2011a) "The need to raise the bar: court interpreters as specialised experts." *The Judicial Review* 10:2, pp. 237-258.

HALE, Sandra. (2011b) *Interpreter policies, practices and protocols in Australian Courts and Tribunals. A national survey*. Melbourne: Australian Institute of Judicial Administration.

HALE, Sandra. (2007) "The challenges of court interpreting: intricacies, responsibilities and ramifications." *Alternative Law Journal,* 32:4, pp. 198-202.

HALE, Sandra. (2004) *The discourse of court interpreting. Discourse practices of the law, the witness and the interpreter*. Amsterdam & Philadelphia: John Benjamins.

HALE, Sandra. (2001) "The complexities of the bilingual courtroom." *Law Society Journal (July 2001)*, pp. 68-72.

HALE, Sandra & Ludimila Stern. (2011) "Interpreter quality and working conditions: comparing Australian and international courts of justice." *Judicial Officers' Bulletin* 23:9, pp. 75-81.

HALE, Sandra & Jemina Napier (forthcoming). "'We're just kind of there': Working conditions and perceptions of appreciation and status in court interpreting" (Submitted, awaiting response).

MIKKELSON, Holly. (2008) "Evolving views of the court interpreter's role. Between Scylla and Charybdis." In: Valero Garcés, Carmen & Anne Martin (eds.) 2008. *Crossing borders in community interpreting. Definitions and dilemmas*. Amsterdam & Philadelphia: John Benjamins, pp. 81-97.

MORRIS, Ruth. (2010) "Court Interpreting 2009: an undervalued and misunderstood profession? Or: will justice speak?" *MonTI. Monografías de Traducción e Interpretación* 2, pp. 47-79. Electronic version: http://rua.ua.es/dspace/bitstream/10045/16435/1/MonTI_2_04.pdf

SZLDY & ORS vs Minister for Immigration & Anor [2008] FMCA 1684:16.

WIERZBICKA, Anna. (2003/2009) *Cross-Cultural Pragmatics. The Semantics of Human Interaction*. Berlin & New York: De Gruyter Mouton.

Appendix I

GUIDELINES FOR MAGISTRATES AND JUDGES ON
WORKING WITH INTERPRETERS IN COURT
Professor Sandra Hale
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- Ask interpreters to introduce themselves and state their level of NAATI accreditation and their formal qualifications (e.g. Degree or TAFE qualification in Interpreting)
- Ask them if they have worked in court before. If not, explain their role: "To interpret everything faithfully and impartially in the first/second grammatical person"
- Remember that interpreting faithfully does not mean interpreting 'literally' – word-for-word translations normally produce nonsensical renditions
- Ask them what resources they will be accessing in court (e.g. on-line glossaries and dictionaries can now be accessed on smart phones and tablets. Interpreters may need to consult them at different stages of the hearing or trial)
- Tell the interpreter to feel free to seek clarification when needed, seek leave to consult a dictionary or to ask for repetitions. (NB: It is a sign of a good interpreter to take such actions when needed, to ensure accuracy of interpretation)
- Explain the interpreter's role to the witness/defendant/accused/jury
- Ask the interpreter when s/he would like to take their breaks – ideally breaks should be provided at least every 45 minutes (Interpreting requires a very high cognitive load and is mentally very taxing)
- Ensure that the interpreter is comfortable and is provided with a chair, a jug of water & glass, a table to lean on to take notes and a place to put their belongings (such as a bag and umbrella)
- Instruct lawyers and witnesses to speak clearly and at a reasonable pace, and to pause after each complete concept to allow the interpreter to interpret (NB. If you cannot remember the question in full or understand its full meaning, it is very likely the interpreter will not either)
- If there is anything to be read out, provide the interpreter with a copy of it so s/he can follow. If it is a difficult text, give him or her time to read through it first

- Stop any overlapping speech or any attempts from lawyers or witnesses to interrupt the interpreter while s/he is interpreting
- Do not assume that the witness will understand legal jargon when interpreted into their language. Interpreters must interpret accurately, and cannot simplify the text or explain legal concepts. If there are no direct equivalents, the interpreter may ask for an explanation which can then be interpreted
- Interpreters are required to interpret vulgar language, including expletives
- Interpreters are required to interpret everything for the defendant or accused, to make them linguistically present. This includes the questions and answers during evidence, any objections, legal arguments and other witness testimonies. The consecutive mode will be used when interpreting questions and answers. The whispering simultaneous mode (AKA *chuchotage*) will be used for all other instances (if the interpreter is trained in this mode of interpreting)
- If anyone questions the interpreter's rendition, do not take their criticism at face value. Bilinguals who are not trained interpreters often overestimate their competence. Compare qualifications and give the interpreter the opportunity to respond to the criticism

For more information on interpreting issues, refer to: Hale, S. (2011). *Interpreter policies, practices and protocols in Australian courts and tribunals. A national survey.* Melbourne: AIJA. http://www.aija.org.au/online/Pub%20no89.pdf

BIONOTE / NOTA BIOGRÁFICA

Sandra Beatriz Hale is Professor of Interpreting and Translation at the University of New South Wales, where she teaches interpreting in the Master of Interpreting and Translation Studies. She has over twenty years' experience as an interpreter and translator educator and has designed curricula at undergraduate and post graduate levels. She has lectured in the areas of forensic linguistics, legal, community and conference interpreting, and research methods. She is a NAATI Spanish-English interpreter and translator and has many years of experience interpreting in the community and in legal and international conference settings. Her qualifications include a Bachelor of Arts in Interpreting and Translation, a Diploma of Education (Spanish and Italian), a Master of Applied Linguistics and Doctorate of Philosophy in court

interpreting. She has recently been awarded a Doctorate Honoris Causa from the University of Antwerp for her contributions to research in Interpreting. She has researched many aspects of interpreting, including issues relating to accuracy, rapport, training and working conditions. She is the sole author of the books *The Discourse of Court Interpreting,* published by John Benjamins in 2004, and *Community Interpreting,* published by Palgrave Macmillan in 2007, translated into Spanish in 2010 and into Japanese in 2014, and co-author of *Research Methods in Interpreting* (2013) with Jemina Napier. She has also written numerous journal articles and book chapters. She is regularly invited to deliver plenary addresses and workshops on interpreting to lawyers, judicial officers and tribunal members as well as to interpreters and academics locally and internationally. She is the co-founder and editor of the international refereed research journal *Translation & Interpreting. The international journal on translation and interpreting research.*

Sandra Beatriz Hale es catedrática de Interpretación y Traducción en la Universidad de Nueva Gales del Sur, donde imparte clases de interpretación en el Máster de Estudios de Traducción e Interpretación. Cuenta con más de veinte años de experiencia como profesora en las áreas de lingüística forense, interpretación judicial, en los servicios públicos y de conferencias y en métodos de investigación. Ha diseñado cursos de interpretación y traducción de grado y postgrado para diferentes universidades, al igual que cursillos y talleres para jueces, magistrados, abogados y médicos sobre cómo trabajar con intérpretes. Es intérprete y traductora acreditada por NAATI, con más de veinte años de experiencia. Sus títulos incluyen una Licenciatura en Interpretación y Traducción, un diploma de Educación (español e italiano), una Maestría en Lingüística Aplicada y un Doctorado en Interpretación Judicial. Recientemente ha sido galardonada con un Doctorado Honoris Causa de la Universidad de Amberes por su contribución a la investigación en el campo de la Interpretación. Sus proyectos de investigación han explorado diferentes aspectos de la interpretación, entre los que se encuentran la fidelidad, el rapport, la formación y las condiciones de trabajo. Es autora de los libros *The discourse of court interpreting,* editado por John Benjamins en 2004, y *Community Interpreting,* editado por Palgrave Macmillan en 2007 y traducido al español en 2010 y al japonés en 2014. Es co-autora de *Research Methods in Interpreting* (2013) con Jemina Napier. También ha publicado numerosos artículos y capítulos de libros. Es invitada frecuentemente a dictar conferencias plenarias y talleres sobre interpretación a juristas, así como a intérpretes y académicos en diferentes países. Es la cofundadora y editora de la revista *Translation & Interpreting. The international journal on translation and interpreting research.*

JUSTICE FOR ALL? ISSUES FACED BY LINGUISTIC MINORITIES AND BORDER PATROL AGENTS DURING INTERPRETED ARRAIGNMENT INTERVIEWS

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Abstract

The Tijuana (Mexico) - San Ysidro (San Diego County, CA) international border is the world's busiest port of entry. The US Customs and Border Protection Agency hires over 60,000 employees, 21,000 of whom are agents in the US Border Patrol. Several steps must be taken to become a border patrol agent, but being bilingual is not a pre-requisite.

In order to communicate with detainees, and interrogate them, the US Border Patrol Agency hires the services of Telephone Interpreting Companies. In this study I present segments of a 2 hour and fifty minute transcript that captures a typical border patrol agent /detainee interaction facilitated by an *ad-hoc* interpreter. I examine the power differentials between the interlocutors and the role played by the telephone interpreter in mitigating or reinforcing such power. After analyzing the interpreter's credentials and the border patrol linguistic needs, I specifically look at interpreter's linguistic behaviors that lead to a detention reversed during the trial. This study calls into question the construct of justice when serving the needs of culturally and linguistically diverse populations.

Resumen

La frontera internacional entre Tijuana (México) y San Ysidro (Condado de San Diego, California) es el puerto de entrada más activo del mundo. La agencia de Aduanas y Protección Fronteriza de los Estados Unidos (US Customs and Border Protection Agency) emplea a más de 60.000 personas, 21.000 de las cuales son agentes de la Patrulla Fronteriza de los Estados Unidos (US Border Patrol). Entre los diversos

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requisitos para el ejercicio de la función de patrulla fronteriza no se encuentra el ser bilingüe.

A la hora de comunicarse con las personas detenidas e interrogarlas, la Patrulla Fronteriza de los Estados Unidos contrata los servicios de empresas de interpretación telefónica. En este estudio se presentan varios segmentos de una transcripción de 2 horas y 50 minutos de duración que capta una interacción típica entre una persona detenida y un agente de la patrulla fronteriza, facilitada por una intérprete *(ad-hoc)* a través del teléfono. Se muestran las diferencias de poder entre los interlocutores y el papel del intérprete telefónico a la hora de mitigar o reforzar ese poder. Tras analizar las credenciales del intérprete y las necesidades lingüísticas de la patrulla fronteriza, este trabajo se centra específicamente en los comportamientos lingüísticos del intérprete, los cuales conducen a una detención posteriormente anulada en juicio. Este estudio cuestiona el constructo de la justicia a la hora de servir a las necesidades de poblaciones cultural y lingüísticamente diversas.

Keywords: Remote interpreting. Language access. Official transcript. Interpreter's performance. Interpreting quality.

Palabras clave: Interpretación remota, Derechos lingüísticos. Transcripción oficial. Actuación del intérprete. Calidad de la interpretación.

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1. Introduction

In the United States, as in many other countries of the world, the goal of the judicial system is to administer and serve justice. This lofty goal is stated in the Pledge of Allegiance ending with the phrase "… liberty and justice for all". Equality under the law is represented by *Justitia,* the Goddess of justice. She is blindfolded. In her left hand she holds the scales of justice and in her right hand the sword representing the force of law. In diverse societies such as the United States, justice for all is achieved across social differences (e.g., cultural, linguistic or racial). In this article, I present a case that illustrates the many challenges of reaching (or not reaching) the lofty goal of justice for all.

On July 6, 2012, two Border Patrol officers at a Southern border crossing in California apprehended an individual driving a commercial vehicle. While attempting to enter the United States, the vehicle was pulled aside for inspection and officers discovered methamphetamine inside. The driver and sole occupant of the vehicle was a monolingual Spanish-speaking male. He was charged with attempted smuggling of an illegal substance into the US. Because the two officers were monolingual English speakers, the linguistic barrier between the agents and the detainee hindered questioning and the use of an interpreter was required. With no interpreter available on site, the agents utilized a telephone interpreting service to conduct the arraignment interview. As a result of this interview, the detainee was sent to jail. The decision was appealed by the Public Defender. The sentence was reversed in the appeal. After two months in prison and after losing his right to work as a driver across the border, the detainee was set free. In this article we will look at examples of construction of evidence and assumptions of guilt that lead to a conviction based on the performance of the two monolingual border agents and the appointed "qualified interpreter". Examples come from a content analysis of the official transcription of the DVD captured during the arraignment interview and a comparative and contrastive analysis between the official transcript and the DVD itself that were given to the expert witness. This case raises important issues to be considered when administering justice for a culturally and linguistically diverse population. Among those issues are: the

right of all parties involved in an arraignment interview to access information, the right to express oneself in one's language and to be understood by the other interlocutors via interpreting and the right of linguistic minorities to a certified (or "qualified" if no certification is available) interpreter.

2. Review of the relevant literature

2.1. Language and interpreting: vehicles for accessing, blocking and constructing information

The right to use one's native language within socially relevant official contexts is included within the fundamental human rights of every individual (Hamel 1995). According to van Dijk (2000), linguicism occurs when an individual is prohibited from communicating via his or her mother tongue, resulting in discrimination and marginalization. By denying an individual his or her right to communicate, he/she is excluded from public discourse. In this way, speakers of the dominant language control access to public discourse, processes, and services, while speakers of minority languages remain powerless. This power differential relegates non-speakers of the dominant language to an unequal, inferior status. During an arrest at the border, the Border Patrol agents control the discourse via use of the dominant language and thus hold the power. The Spanish-speaking detainee, by not speaking the societal language, is at a disadvantage. When he is not given the opportunity to represent himself in his native language and is unable to communicate adequately, he becomes a victim of linguistic discrimination.

In many cases, when a suspect does not speak or understand English, a bilingual police officer will perform interpreting duties. The use of police officers as interpreters during interrogations is in itself problematic and it also represents a breach of interpreting norms due to a conflict of interest (Berk-Seligson 2011). Police officers are, in general, unqualified to perform the duties of interpreter and many times lack the linguistic skills required. In Berk-Seligson's (2011) study of three cases in which police officers acted as interpreters during suspect questioning, serious flaws were found which resulted in miscommunication and conveyance of incorrect information. When a suspect facing serious legal consequences is not provided adequate representation he/she is essentially denied a voice and the outcome can prove devastating.

2.2. The Miranda rights

The Miranda rights were designed to inform a suspect of the right to protect him/herself against incrimination during police interrogation (Pavlenko 2008). These rights include "(a) the right to remain silent, (b) the right to an attorney, and (c) the right to have an attorney present during questioning" (Pavlenko 2008: 3). They also inform suspects "(d) that anything they say or do can be used against them in a court of law, and (e) that if they cannot afford an attorney, an attorney will be furnished to them free of charge both prior to and during questioning" (Pavlenko 2008: 3). Various studies (Ainsworth 2008; Berk-Seligson 2000; Pavlenko 2008; Rogers, Correa, Hoersting, Shuman, Sewell, Hazelwood & Blackwood 2008) have examined the misinterpretations of the Miranda rights by non-native speakers (NNS) of English in the US. The linguistic complexity of the Miranda rights, along with the unique cultural meaning, leads to complications in comprehension by NNS. Further difficulties may arise from the use of *ad-hoc* interpreters lacking adequate skills in interpreting. If the court decides that these rights were not administered properly, due to lack of an interpreter or an inadequate translation, the entire suspect testimony may be excluded from court proceedings.

Pavlenko (2008) argues for the need for a standardized translation of the Miranda rights. Similarly, Rogers et al. (2008), in their study of Miranda warning translations from different counties, found discrepancies in meaning between English and versions of the warnings translated into Spanish. These discrepancies ranged from small misinterpretations to large errors and in some cases included the outright omission of entire rights. This study also takes into account comprehension levels of suspects, both native speakers (NS) and NNS of English as well as the complexity of the translation. The findings showed that comprehension level varied considerably not only between translations but also within a single translation. Close to fifty percent of warnings contained at least one section that required a college reading level. In order to provide fairness in legal proceedings, NNS of English must be afforded Miranda warnings and other information equivalent to that provided to NS.

2.3. Problematizing Access

Language and cultural barriers adversely affect legal proceedings (Kahaner 2009). They lead to misinterpretations, deter non-speakers of the societal language from participating in the justice system and inhibit minority language speakers from acting as jurors. While minority speakers reserve the

right to obtain access to interpreter services during legal proceedings, the scarcity of qualified interpreters greatly impedes the judicial process. In the United States, guidelines on court interpreting were established in 1995 by the National Center for State Courts. These guidelines recommend that all court interpreters be as highly qualified as possible and that judges should establish screening and assessment to determine qualification. It should be noted that judges' technical knowledge and expertise is on the law, not on screening interpreters or measuring interpreter's qualifications. Deciding whether an interpreter is competent or not on the basis of possessing the level of language proficiency required to interpret as well as the necessary skills to interpret requires a different type of technical expertise not possessed by the judges or the judicial system. Expertise in applied linguistics in general (for understanding language and interpreting as situated practices), on legal interpreting, and on testing and assessment is required. This expertise is found among applied linguists, not in judges.

While interpreter competency is certainly important, it is not the only concern when utilizing interpreting services within a legal setting. Limits of interpreters should be also taken into consideration. Kahaner (2009) mentions that although interpreting may not seem demanding when performed by a professional, the process is, in fact, mentally taxing. After only thirty minutes of simultaneous interpreting, even an experienced interpreter may suffer from mental fatigue (Liu 2004). This results in a decrease in quality of the interpreting performed (Moser-Mercer 2000). The Professional Standards and Ethics for California Court Interpreters recommend that two interpreters be used for any proceeding longer than thirty minutes (2013: 33).

Traditional perceptions of the interpreter's role claim that he/she should remain neutral and invisible. These perceptions simplify a reality that is complex. They imply that the interpreter is nothing more than a conduit through which information may pass (Reddy 1979, Angelelli 2004). However, this theoretical conceptualization of interpreting does not portray what professional interpreters do in practice (Rosenberg, Seller & Leanza 2008). In reality, the interpreter is always aware of his/her presence and consequent impact in interactions. Just as any other interlocutor, interpreters also bring their own "social baggage (their beliefs, attitudes, and cultural norms)" into the encounter (Angelelli 2004) and their professional role requires them to manage those in a way that supports the achievement of communicative goals in interactions.

While discussing the challenges of administering justice across languages and cultures, in his article "Recordings, Transcripts and Translations

as Evidence", Fishman (2006) argues that translation and interpreting (often used in courtroom in cases involving languages other than the one used by the court) are subjective activities and compares them to an art rather than a science. In translating, a statement or an utterance can have various renderings, various interpretations depending on the context in which it is used and the background of the speaker using it. Furthermore, in the issue of translating jargon used by defendants (e.g. to describe weapons or types of illegal substance) Fishman argues that no translation equivalent may exist for some colloquial expressions. Thus literal translations of them may be completely unintelligible. Fishman (2006) states that "[p]eople who engage in specialized fields tend to develop 'terms of art' and informal jargon with meanings that are a mystery to the uninitiated" (p. 498). He maintains that the proper procedure to deal with translations/interpreting of jargon involves a direct translation of these "terms of art" and then calling an expert witness to decipher the meaning. The same procedure applies for both criminal and non-criminal use of "terms of art".

2.4. Remote Interpreting and Recorded Evidence

Driven by recent innovations in technology and lowered costs, many government agencies increasingly resort to telephone interpreting as a means to facilitate communication between two monolingual speakers when a face-to-face interpreter is not available (Ozolins 2011). While many advances have been made in recent years, the use of telephone interpreting still poses challenges. Technical issues may affect sound quality as a result of fixed line or mobile connections and background noise. Other problems arise due to higher frequency of the use of third person by interpreters as well as confusion experienced by the minority language speaker due to a lack of information about the procedure. When the two monolingual individuals are face-to-face with the third party interpreting via speakerphone, the issue of turn taking may become a problem (Ozolins 2011, Besson et al. 2005). And perhaps, the most critical issue of all related to telephone interpreting is the fact that among companies offering telephone interpreting, contracting *ad-hoc* interpreters rather than professionals is the norm rather than the exception.

The use of recorded evidence in a legal setting is commonplace in US courts. Fishman (2006) offers a critique of the use of recordings, transcripts and translations as official testimony in a legal setting. The nature of recorded evidence presents many challenges, among them the quality of the recording and confirming identity of the speakers involved. In addition, unintelligibility as the result of interference by other speakers, background noise or speakers'

accents or use of regionalisms/dialects may present an obstacle to jurors' comprehension of recorded evidence. These complications are further compounded when one or more interlocutors speak in a non-societal language.

A foreign language transcript should involve first transcribing the recording directly into the original language, followed by a translation into the societal language. Fishman (2006) posits that such a transcript falls under the classification of "expert opinion testimony". The translator must possess high proficiency in both languages in order to qualify as an expert. Inadequate translations/interpreter renditions may distort or completely change meaning and thus jeopardize the entire legal proceedings. For this reason it is of utmost importance to employ high quality, certified translators and interpreters when legal issues involve foreign language evidence and/or testimony.

3. The Case[1]

3.1. The Site

The US-Mexico border totals 1,954 miles and extends across the North American continent from the Gulf of Mexico in the East to the Pacific Ocean in the West. The border defines the southern boundary of the United States of America and the northern limit of Mexico. Rugged mountains and arid desert dominate the terrain that includes parts of the Rio Grande and Colorado River (International Boundary and Water Commission 2014). The busiest international land border crossing in the Western Hemisphere bisects the twin cities of San Diego, California and Tijuana, Baja California. An average of 25,000 pedestrians and 50,000 vehicles cross from Tijuana into San Diego each day (U.S. General Services Administration 2013). According to the 2010 United States Census, over 32% of the population of San Diego County is Hispanic or Latino and 36% of the population speaks a language other than English at home (US Census Bureau 2010). This bi-national, multicultural region creates a unique environment in which speakers of English and Spanish must interact on a daily basis as part of their normal lives.

3.2. The Unit: Customs and Border Protection

Policing of this bustling port of entry is the job of U.S. Customs and Border Protection (CBP). The agency's website claims that the goal of Border Security is to prevent "the entry of terrorists and their weapons", to stop "narcotics,

1. The author was appointed expert witness in this case. Permission to discuss the case publicly preserving the anonymity of parties involved was obtained.

agricultural pests and smuggled goods from entering the country" and "identify and arrest travelers with outstanding criminal warrants".[2] In fiscal year 2013, the San Diego Border Patrol employed over 2,500 agents and recorded more than 27,000 apprehensions. Of these apprehended individuals, more than 95% held Mexican citizenship (U.S. Department of Homeland Security 2014a).

Due to the high number of Spanish speakers that agents encounter, it is important that they possess the ability to communicate in Spanish if they are not using professional and qualified interpreting services. In fact, according to the Preparation Manual for the U.S. Border Patrol Entrance Examination, "[a]ll Border Patrol Agents are required to know the Spanish language" (U.S. Department of Homeland Security 2014b: 19). Currently, the CBP requires all new recruits who are proficient in Spanish to take the Spanish Language Proficiency Test. The test consists of a vocabulary section and a grammar section. The grammar portion is further subdivided into three sections containing different types of grammar questions. At the time of writing this article, no specific information was available as to the reliability and validity of this test. Those not proficient in Spanish must take the Artificial Language Test and attend a specialized eight-week Spanish training course (U.S. Department of Homeland Security 2014a; U.S. Department of Homeland Security 2014b). No information was available as to the proficiency level required for a border patrol agent to work in a language other than English.

The Spanish Language Training course for new CBP recruits consists of an occupation-based full immersion experience. It has a six-month duration. The classroom training utilizes modern task-based language teaching techniques and advanced language acquisition software. In addition to immersion within the classroom, students are housed, transported and fed in separated facilities where they are constantly exposed to the Spanish language. Recruits are only allowed to access Spanish language television programs in their dormitories and are provided with laptops equipped with Spanish training materials. Additional Spanish language books, magazines and videos are provided via a Spanish resource library (White 2006). It should be noted that research in second language acquisition has established that over four years of study are required to achieve an intermediate level of proficiency – equivalent to B1 in the Common European Framework of Reference for Languages (CEFRL) – in any language other than English. With a six-month intensive study, a person can achieve intermediate level which will allow for asking and

2. http://www.cbp.gov/xp/cgov/border_security/bs/ 2014

answering simple questions. Furthermore, in the field of applied linguistics, it has been established that a person requires superior language proficiency (American Teachers of Foreign Language) in order to work and interact with near natives/native speakers in a variety of settings using regional varieties of language (in this specific case Mexican and US Spanish plus code switching) and a diversity of registers (low level of education and rural norm of language). The equivalent of a superior level on the ACTFL scale would be a C2 in the European framework (Degueldre 2005).

In 2008, Hispanics composed approximately 52% of the more than 18,000 U.S. border agents (U.S. Department of Homeland Security 2014b). After conducting research on US Border Agent language proficiency, no information was found on actual officer proficiency levels (U.S. Department of Homeland Security 2014a; U.S. Department of Homeland Security 2014b; U.S. General Services Administration 2013; White 2006). Thus, the number of current border patrol officers who speak Spanish and at what proficiency level is unknown. However, the data provided by the U.S. Department of Homeland Security and the U.S. General Services Administration does reveal much more information about Spanish language proficiency among new recruits. According to a 2007 testimony by the U.S. Department of Homeland Security, approximately half of all new Border Patrol recruits are Spanish speakers (Stana 2007), although no reference is made to either their degree of education in Spanish or their English proficiency. This means that half of all agents recruited to serve as border agents do not speak Spanish and must complete the mandatory Spanish-language training course in order to achieve proficiency.

Over thirty years ago, a report from the National Commission for Excellence in Education states that "achieving proficiency in a foreign language ordinarily requires from 4-6 years of study" (1983: 124). According to the American Council on the Teaching of Foreign Languages (ACTFL), 240 hours of full-time immersion training in Spanish results in Intermediate Low proficiency (Language Testing International 2014). At this level, speakers are able to communicate using simple language "to complete uncomplicated communicative tasks" (Swender et al 2012: 8) with some hesitation and frequent inaccuracies and misunderstandings. Even interlocutors who frequently interact with non-native speakers may experience difficulties in comprehension when interacting with Intermediate Low Spanish speakers. In his testimony before the US House of Representatives Committee on Homeland Security, Stana (2007) states that the Border Patrol requires only 214 hours in the Spanish language classroom. Applying ACTFL's proficiency estimates,

officers do not reach the Intermediate Low (B1 in the Common European Framework) rating after completion of training. Thus, when interacting primarily with Spanish-speaking suspects, communication is limited and frequent misunderstandings occur.

3.3. The Participants

The interpreted communicative event, which is the focus of this research, includes four participants. Two agents of the US Customs and Border Patrol – Special Agent 1 and Special Agent 2 – conducted the questioning. Both were American middle-aged monolingual English speakers. The Detainee (José[3]) was a younger monolingual Spanish-speaking male from Mexico. He has worked as driver over the US/Mexico border for the last four years. The fourth participant was the bilingual interpreter, Marina, a female born in Mexico who participated via speakerphone and interpreted between the English- and Spanish-speaking monolingual parties. Her credentials[4] included a personal statement about her years of experience (8) in working for the telephone company as an interpreter. Marina works for the largest provider of telephone interpreting services in the world. It is utilized by US Customs and Border Protection in situations where no interpreter is available on site.

3.4. The Data

The interrogation interview of the Detainee by the Special Agents and the official transcription/translation performed by the court constitutes the data for analysis. The Spanish/English interpreter-mediated interview was video recorded, put onto DVD and the audio was transcribed not verbatim (see comment on transcript between lines 4 and 5 below in Section 3.4.2). The Spanish used during the interview both by the detainee and the interpreter was translated into English by a translator/transcriber appointed by the court.[5] Thus, the official transcription (and the only one used for the trial) is entirely in English.

3. All names used are pseudonyms to protect participants' identity.
4. As part of the appeal process the interpreter's qualifications and renditions were studied. The interpreter was summoned to produce evidence of her qualifications. At the time no degree or certification was produced. Only a personal statement stating her name and last name and the years of experience in working for the telephone company.
5. Given the space constraints, a discussion on the complete discourse analysis of the whole transcription based on the DVD and a comparative and contrastive analysis between the transcript and the official case transcript is beyond the scope of this article.

3.4.1. The Story as told by the DVD

The officers are in a trailer trying to conference in the interpreter (Marina) before the detainee (José) arrives. They experience technical difficulties when trying to reach the interpreter via telephone and put her on speakerphone. Eventually, they are able to connect and the interpreter enters the interaction via speakerphone. The officers and the interpreter are ready waiting for José. As José enters the room he is asked to sit by the phone but he is not explained that there is an interpreter who will facilitate communication remotely. The special agents want to explain the detainee his rights. In English they tell the interpreter to instruct him to read off a list of rights and to write his initials next to each one to indicate he has understood. Because José did not know that there would be interpreting rendered over the speakerphone and because the agents do not introduce the interpreter and start speaking English, José waives his hands and states "*no entiendo, no hablo inglés*" (I do not understand. I do not speak English) assuming that they would continue to communicate face-to-face in English. Further confusion occurs because the interpreter did not explain to the detainee what he needed to do (write his initials by each line of the Miranda rights). So José signs his name instead of simply writing his initials. The special agents notice his mistakes (which undermines José's credibility) and call the attention of the interpreter. The interpreter never explained that she had not conveyed the procedure to the detainee, therefore José did not know that he was supposed to initialize after each line was read to him. This, however, is rectified through the interpreter. Once José has finished reading each of his rights, he is asked to sign a waiver.

Next, the agents ask the detainee to explain his version of the events. José explains that he had spoken with a customs officer named Rodrigo, right at the border, the week prior, after learning that his employers were planning to have him transport illegal substance across the international border. Rodrigo had informed José that upon entering customs with the vehicle containing narcotics, customs agents would assist him. The detainee explains that he had not been in communication with his employers or had access to the truck, the "tunkie", throughout the previous week. A major breakdown in communication occurs when the interpreter fails to understand the meaning of "tunkie". After much back and forth trying to ascertain what tunkie is, who tunkie is, the officers assume that "Tunkie" or "Tookie" is the name of one of the detainee's employers and the meaning is never clarified. José repeats "the tunkee", "tunkee", as he pretends he is holding the wheel of a truck

and driving. The interpreter who is on the other end of the speakerphone cannot see the gesture and the special agents pay no attention to José's body language. They continue to ask about Tunkee, where he lives, how many trucks he owns, etc. In their minds, Tunkee is Jose's handler. José continues by explaining that he received a call via radio from Mario (not Tunkee!), the owner of the truck (and handler), in the morning instructing him to meet them at a convenience store in order to be transported to the truck waiting in line at the border crossing. José states that he waited in line for half an hour before he passed through customs and was sent to the ramp. Another communication breakdown occurs when the interpreter fails to understand the meaning of "rampa" (ramp). The agents assert that the detainee did not declare he was transporting drugs when he crossed the border. They ask why he did not contact Rodrigo, the border patrol officer, before arriving to customs. They ask him if he had a phone with him. José replies that he had already contacted Rodrigo the week before when he learnt his employer was going to ask him to transport substance and he came asking for protection. Rodrigo told José to come straight to him when he crossed. Because José was sent to ramp for inspection immediately, José believed Rodrigo was acting according to what they had discussed the week before. This message was never interpreted for the special agents. When asked why José had not communicated with Rodrigo that same day, José says he did not have a balance ("saldo") on his mobile phone. The interpreter does not understand the term "saldo" (balance on the mobile phone pre-paid card) and misinterprets this as not having enough money to call from his phone (this, once again, undermines the credibility of the detainee as he had a twenty-dollar note which was put with his belongings as he started the interview). José explains that he arrived at the line for border crossing at approximately 10:00 a.m. and upon entering, waited approximately two hours for the customs officers to check the truck. The Agents ask what happened during this time and state that the narcotics were found when a police canine unit detected the scent of drugs in the truck. The Agents ask if the Detainee knew he was transporting illegal drugs. The interpreter interprets the question: "*Did you know, when you were driving to the United States, that you were going to cross the international border with illegal substance?"* as a statement: but, you did know you were transporting illegal drugs *("usted sí sabía que estaba cruzando droga"*). The detainee asked a clarification question to that statement: if I knew…? ("*Si sabía?*") (Note that in Spanish *si* [without accent] means if and *sí* [with accent] means yes. José's utterance had a rising tone. He was asking a question: "if I knew?" *("si sabía?*). The interpreter conveyed a statement instead

of a question and stated: *"sí, sabía"* (yes, I knew) with the intonation of an affirmative statement.

The agents proceed to ask how much the Detainee was to be paid, where he was to take the truck after crossing the border and where his handler lives. The Detainee informs the Agents that he was to be paid three thousand US dollars after returning to Mexico, the truck was to be driven to just outside of Los Angeles and gives them the street name where his handler lives in Mexico. Special Agent 2 asks how the detainee was going to drive from the border to Los Angeles as the truck was missing half of its gears and Special Agent 1 asks how fast he could go on the highway. The interpreter ignores the first question about gears and only asks how fast could he drive and if he did drive on the highway. José states that he never drove on the highway because he went straight to customs. The agents declare that they have finished questioning and inform the detainee that he is to be photographed, fingerprinted and booked into the local jail to await a court date with the judge.

3.4.2. The story as told by the transcript (based only on interpreter's renditions[6])

The next few segments are only a few examples selected from the official translation/transcription. They illustrate instances in which what transpired in the actual interview is not reflected in the transcript. Segment 1 is the beginning of the interpreted communicative event (Angelelli 2000) in a trailer on the San Diego/Tijuana Border. The three parties present are the two special agents (Special Agent 1 and 2) and the detainee (José). The interpreter, Marina, is accessing the communicative event remotely via a speakerphone.

The participants' names are abbreviated as follows: SA1 (Special Agent 1); SA2 (Special Agent 2); INT (Interpreter) and DTE (Detainee).

6. In the US Court system English is the official language of the court. Therefore transcribers record only utterances in English. There is thus no written record of the original utterances of speakers in their native languages. The record only shows the utterances of the interpreter into English. In this specific case, the video/audio was sent to a translator/transcriber who decided not to transcribe the interaction between the two special agents and the interpreter when they were getting ready for the call (see page 11-12). The segments presented in this article are copied from the official transcript.

Segment 1

1	SA1	Can you hear me? Can you hear me? Ok, we're trying to figure out why this thing doesn't want to work. Are you there? Hang on; we're trying to make the speaker part work. Can you hear me now? Ok, can you hear me again? Can you hear me? Ok, let's see.
2	SA2	Hold it and hang up for a sec.
3	SA1	This button?
4	SA2	I don't know.
		(TRANSLATOR'S NOTE: This goes on for several minutes while the agents prepare for the interview; will resume transcription/translation when interview of client begins).
5	SA2	Ok, have a seat.
6	SA1	Ok, Marina?
7	INT	Yes, I'm here.
8	SA1	Ok, we are here with José Leiva Marquez and we want to talk with him about a couple of things; but first, can you just explain to him that we want to advise him of his rights?
9	INT	The thing is, we are going to indicate to you your rights.
10	SA1	What did you say?
11	DTE	I don't understand English.
12	SA1	Say it out loud, louder so she can hear.
13	DTE	What?
14	SA1	Tell him to speak louder into the phone.
15	INT	Speak louder so I can hear you sir; can you hear me?
16	DTE	I can hear you now, I'm listening now.

The technological challenges faced by the special agents when they conference in the interpreter are noted by the transcriber between turns 4 and 5 (Translator's note). On the DVD this goes on for over 3 minutes during which the special agents and the interpreter have the opportunity to interact, discuss the quality of sound, etc. as well as the interview they are about to conduct. This positions the interpreter as part of a team, hired by the Border Patrol to help them communicate with José, the detainee. During the time they are waiting for the detainee (José) to be brought in, the agents ask the interpreter if she knows the Miranda rights that she will be interpreting. She replied that she is familiar with them and is looking for them. She does not have the official translation of them. All of this is captured on the DVD but, as evident above, is not part of the official transcript.

Segment 2

The following segment of the transcript illustrates the communication on the Miranda rights. The segment starts when José comes in and wants to explain his story. He is told to follow procedure.

21	SA2	Ok, tell them that we'll get to that in a second but right now we want to make sure that he understands his rights.
22	INT	Ok, we're going to get to that point later on but right now we want you to understand your rights because this is an official action we have to do prior.
23	SA2	Ok, ask him to read each one of these out loud and if he understands it to go ahead and initial next to the one he just read and if he doesn't understand something to just ask questions.
24	INT	Ok, read each one of your things out loud and if there is any one you don't understand say so, and at the end sign it when you understand everything.
25	DTE	You have the right[
26	INT	[Do you know how to read?
27	DTE	Yes, you have…[
28	INT	[Ok, read it
29	DTE	The right to remain silent, number one.
30	INT	Uh huh
31	SA2	Do you understand that?
32	DTE	Yes.
33	INT	(Unintelligible)
34	SA2	Ok, put your initials right here.
35	INT	Initials there.
36	DTE	One, number two says.
37	SA2	No, no, no, your initials.
38	SA1	Initials.
39	INT	Initials.
40	DTE	Oh, my initials.

On turn 23 Special Agent 2 explains to Marina, the interpreter, that José needs to read each one of the Miranda rights and write his initials at the end of each as he reads them out loud to show he understands them (or he should ask questions if he does not understand them), and to sign his name at the end. The interpreter conveys this information differently on turn 24, as she directs José to read each one of the Miranda rights, state what he does not understand and sign. This difference causes misunderstandings and undermines the credibility of José. His behavior is portrayed as unable to follow instructions and

comply (initialize at the end of each rather than only signing at the end) or understand Spanish (initials should be translated as "sus iniciales"). José starts reading on turn 25. Marina interrupts him to ask if he knows how to read and directs him to continue. This interruption was unnecessary. Had the interpreter been actively listening to José's readings, turns 25-28 would have been about each of the Miranda right rather than about José's reading ability.

Segment 3

In this segment José begins to tell his story. He states how he voluntarily crossed the border as soon as he became aware that his handler was going to have the truck "cargado" (loaded). He has learnt that his handler was going to place illegal substance into the truck without telling José when that would happen or where in the truck the substance would be placed.

71	DTE	Last week I came and commented to the officers about what they wanted me to cross, with them here and they called someone from Customs whose name is, I don't remember.
72	INT	Last week I made a comment to an officer, what was happening and I talked with somebody from Customs; the name.
73	SA2	Ok what, who did he talk to?
74	INT	With whom did you talk to?
75	DTE	I gave the paper with the name to the officers that detained me because he told me when, because last week I asked them to search my truck because they were thinking of crossing that and they told me that when I crossed again and they found whatever I had, to call him, the one I had spoken with.
76	INT	I told them that this would happen and they told me if I was going to cross again and they would find something I would have to talk with them.
77	SA2	Ok, who did he talk to though?
78	INT	With whom did you talk?
79	DTE	The officer who helped me is named Denaldo Chys, something like that.
80	INT	What is his name?
81	DTE	Denaldo Chys, Chys, his last name was something like that.
82	INT	Reinaldo Chys?
83	DTE	Yes, something like that, a Customs officer.
84	SA2	Ok.
85	INT	He's a Customs officer.
86	SA2	Yeah, ok, I talked to him.

José came to the Border Patrol agents to alert them of his situation, and to seek help and protection. He spoke to an agent (a customs officer) whose name he could not remember exactly but had written down on a piece of paper that was taken from him with his belongings as he was arrested. José explains this in turn 71. This information is not conveyed to the special agents. The special agents need to know exactly to whom José talked. This information is important to them. It is asked on turn 72 and answered on turn 75 a second time, but is not interpreted. It is important to note that the interpreter misses several segments of key information undermining, once again, the detainee's credibility. The detainee tried to answer the question on the agent's name on turns 71, 75, 79, 81 and 83. The interpreter conveyed a similar name on turn 82 and clarified that he was a customs officer on turn 85.

Segment 4

The misunderstandings magnify as the interpreter does not hear what José states and, if she does, at times she appears not to understand what José is explaining.

101	SA2	Ok, so if you do something and you don't let us know ahead of time and we're not a part of what's going on, then you're on your own.
102	INT	If you do something and you don't tell us before hand what you're going to do, then you are on your own.
103	SA2	Ok.
104	DTE	Yes but I had spoken with him and I had commented that they had taken the truck away from me and I hadn't worked all week and I left the truck parked at their home and they didn't ask me to cross until today and that was what I…
105	INT	Speak slower because I don't understand you. (Unintelligible) Repeat what you said because I didn't understand anything for the translation; I'm translating. He's going to repeat what he's trying to say.
106	SA2	Ok.
107	DTE	I'm telling you that last week when I spoke with him.
108	INT	Last week I talked with him. And?
109	DTE	And I'm telling you that I hadn't worked all that week, since I had told him, until today. I had left everything at their home; everything.
110	INT	I had left everything in his house, till then.
111	SA2	You left every, what did you leave at whose house?
112	INT	What did you leave and at whose house?
113	DTE	The person in charge of the truck; I left it with him. He stayed at his house with the truck. And then…[

114	INT	[The one that is in charge of the truck; everything was left at his house with the truck.
115	SA2	I don't understand what he's saying; I don't understand.
116	INT	I don't understand what he is saying either; let's see, explain it to me again.
117	DTE	The "Tunkee", the tractor, or "Tunkee".
118	INT	The how much?
119	DTE	The truck, the big car, the "Tunkee" "Tookie".
120	SA1	Tookie?
121	DTE	Yes, Tookie, the car, the tractor, the tractor.
122	SA1	Is that a person?
123	SA2	What is Tookie; do you know what that is Marina?
124	INT	No, what is Tookie?
125	SA1	Name of Tookie?
126	DTE	Yes, the car, the big one, I left it at his house.
127	SA2	Tookie's house.
128	INT	The big car that is at his house.
129	SA1	Tookie is the name, is the man that owns the truck.
130	SA2	Ok, so Tookie owns the truck you were driving today? Ok, let's start with today; what did you do today?
131	INT	What did you do today? Let's start with today; what did you do?
132	DTE	Nothing, I spent the day at home; that's where I spent all week. In fact, I didn't cross because everything had remained there and I just stayed at home.

Marina misses several key pieces of information. José's frustration for not being understood is evident since turn 104. Marina cannot keep up with José's speed or accent (105). Because the interpreter cannot access body language, she cannot see José's gestures when he is pretending to drive a truck, moving his arms from left to right in a semi-circle as if he were holding a wheel. The special agents pay no attention to his body language as he repeats el tunkee, el tookie. Marina follows the special agents' understanding of the situation. Together with Marina, the agents construed tunki as the name of the owner of the truck. More than twenty turns were used to create more confusion. José could not get his message across and the agents could not get a straight answer. Marina was unable to interpret or facilitate communication. Instead her intervention contributed to the confusion and misunderstanding.

Segment 5

Almost thirty minutes into the interview and over a hundred and fifty turns of talk the special agents are still seeking the answer to a yes/no question: did Jose know he was carrying narcotics when he was crossing the international border? For the same amount of time José has been trying to explain that he had arranged with the customs officer that he would come directly to see him as custom officers were going to handle the issue. During all this time the interpreter, who supposedly was hired to help the parties communicate with each other, hindered understanding resulting in frustration, loss of time and unsound decisions. In this last segment, which precedes the conclusion of the interview, we see one more example of how, in a linguistically diverse encounter, the lofty dream of justice for all is severely challenged.

151	SA2	Ok, so you knew what you were doing today, that you were driving a truck filled with narcotics and you were attempting to come into the United States.
152	INT	You knew you were driving the truck and it had drugs and you were attempting to cross the border into the United States.
153	DTE	Yes, we had commented that; I with the officer last week, that if[
154	INT	[What?
155	DTE	[that if I knew something, to let them know but I wasn't told anything all week. In fact, I was at my home all week and today was when they told me and I came straight here so they could check it here and he told me that when they caught it here they would take charge of that.
156	INT	Ok, they didn't call me the whole week; they called me today to pick up the truck and that's when I came and I knew that I was coming with it and that's when I thought that they were going to be in charge of that.

On turn 151 Special Agent 2 tries, once again, to ascertain that José was aware of his actions: that he was driving a truck carrying narcotics while attempting to enter the United States. The special agents need to establish intention. The interpreter repeats Special Agent 2's statement and José starts to repeat the story he has been telling from the beginning of the interview. As soon as he learnt the handler would try to load the truck, he came to report it. Then he was home all week and the day he was asked to cross he went directly as previously discussed with Rodrigo (the custom agent). José claims not to have known anything about carrying narcotics until he was pulled and asked to go to ramp for inspection. He finishes stating this again on turn 155. He is interrupted by the interpreter (turn 154), who, once again, does not hear well.

4. Conclusion

The case discussed in this article is one example of the many interpreted communicative events that occur daily in the United States Customs Office on the international border. This border crossing point, while extremely busy, is only one among many crossings between the United States and Mexico. The situation described here is not an exception. There are monolingual agents that need to communicate with monolingual speakers of languages other than English (mostly Spanish). There are no dedicated professional interpreters to serve the communicative needs of this federal office. The agents are told that when they need interpreting services they have to call a company that provides this service remotely. When recruiting interpreters, companies providing over-the-phone interpreting services seem to focus more on the bottom line than on the quality of the service offered. The interpreter used by the telephone company in this case is not a certified legal/court interpreter. The interpreter's experience (language proficiency and years of experience in interpreting) are taken at face value. The law establishes that the judges are responsible for appointing and screening legal/court interpreters. As previously established, judges do not have expertise to do this. Given the limitations that current judicial systems have in serving the needs of their linguistically-diverse populations, cases like this one call into question the very nature of the goals of "access to Justice" and ultimately "justice for all".

This preliminary exploratory study aims to call attention to the many challenges faced while trying (or not trying) to reach this goal. Although one official transcript and one observation of an encounter may not be representative of the way the US Custom Office conducts business, and although deeper analysis of the official transcript and the DVD (which are beyond the scope of the article but were conducted at the time the author was appointed to offer expert witness testimony) reveal further issues, one fact cannot be denied: access to justice was hindered. This situation is not uncommon not just in border areas and not only in the United States. In contemporary societies (beyond border areas), multilingualism is the norm rather than the exception. And, unfortunately, challenges in providing access to justice to linguistic minorities are not unfrequent. From quality to availability, from cost of provision to matching language combinations, judicial systems are not always in a position to meet the communicative needs of all people, so that access to justice becomes real. This is especially true for those unable to speak the language of the court. If our goal as a society is "justice for all", more attention needs to be paid to the ways in which all human beings have (or do not have) access to it. Linguistic diversity and quality interpreting cannot be ignored.

Bibliography

AINSWORTH, Janet. (2008) "'You have the right to remain silent...' but only if you ask for it just so: the role of linguistic ideology in American police interrogation law." *The International Journal of Speech, Language and the Law* 15:1, pp. 1-23.

ANGELELLI, Claudia. (2000) "Interpretation as a communicative event: A look through Hymes' lenses." *Meta* 45:4, pp. 580-592. Electronic version available at: <http://erudit.org/revue/meta/2000/v45/n4/001891ar.pdf>

ANGELELLI, Claudia. (2004) *Revisiting the interpreter's role: A study of conference, court and medical interpreters in Canada, Mexico, and in the United States.* Amsterdam/Philadelphia: John Benjamins.

BERK-SELIGSON, Susan. (2000) "Interpreting for the police: Issues in pre-trial phases of the judicial process." *Forensic Linguistics* 7:2, pp. 212-237.

BERK-SELIGSON, Susan. (2011) "Negotiation and communicative accommodation in bilingual police interrogations: a critical interactional sociolinguistic perspective." *International Journal of the Sociology of Language* 207, pp. 29-58.

BESSON, Chantal; Daria Graf; Insa Hartung; Barbara Kropfhäusser & Séverine Voisard. (2005) "The importance of non-verbal communication in professional interpretation." *International Association of Conference Interpreters*. Electronic version available at: <http://aiic.net/page/1662/the-importance-of-non-verbal-communication-in-professional-interpretation/lang/1>

DEGUELDRE, Christian. (2005) "Determining language proficiency levels for language professionals: issues and challenges for translators and interpreters in the United States." *Forum* 3:1, pp. 67-93.

FISHMAN, Clifford S. (2006) "Recordings, transcripts, and translations as evidence." *Washington Law Review* 81:3, pp. 437-523.

HAMEL, Rainer Enrique. (1995) "Derechos lingüísticos como derechos humanos: debates y perspectivas." *Alteridades* 5:10, pp. 11-23.

HYMES, Dell H. (1974) *Foundations in sociolinguistics: An ethnographic approach.* Philadelphia: University of Pennsylvania Press.

KAHANER, Steven M. (2009) "The administration of justice in a multilingual society - open to interpretation or lost in translation?" *Judicature* 92:5, pp. 224-231.

LIU, Minhua. (2004) "Working Memory and Expertise in Simultaneous Interpreting." *Interpreting* 6:1, pp. 19-42.

MOSER-MERCER, Barbara. (2000) "Simultaneous Interpreting: Cognitive Potential and Limitations." *Interpreting* 5:2, pp. 83-94.

OZOLINS, Uldis. (2001) "Telephone interpreting: Understanding practice and identifying research needs." *The International Journal for Translation & Interpreting Research* 3:1, pp. 33-47.

PAVLENKO, Aneta. (2008). "'I'm very not about the law part': Nonnative speakers of English and the Miranda warnings." *TESOL Quarterly* 42:1, pp. 1-30.

REDDY, Michael J. (1979) "The Conduit Metaphor: A Case of Frame Conflict in our Language about Language." In: Ortony, Andrew. (ed.) 1979. *Metaphor and Thought*. Cambridge: Cambridge University Press, pp. 284-324.

ROGERS, R.; A. Correa; R. Hoersting; D. Shuman; K. Sewell; L. Hazelwood & H. Blackwood. (2008) "Spanish Translations of Miranda Warnings and the Totality of the Circumstances." *Law and Human Behavior* 33, pp. 61-69.

ROSENBERG, Ellen; Robbyn Seller & Yvan Leanza. (2008) "Through interpreters' eyes: comparing roles of professional and family interpreters." *Patient Education and Counseling* 80: 87-93. DOI: 10.1016/j.pec.2007.09.015

STANA, Richard M. (2007) *Border Patrol: Costs and Challenges Related to Training New Agents. Testimony Before the Subcommittee on Management, Investigations, and Oversight, Committee on Homeland Security, House of Representatives*. Washington: U.S. Govt. Accountability Office.

SWENDER, E.; D. J. Conrad & R. Vicars. (2012) *ACTFL Proficiency Guidelines*. Alexandria: ACTFL, Inc.

VAN DIJK, Teun. (2000) "Discourse and access." In: Phillipson, R. (ed.) 2000. *Rights to language: equity, power and education*. New York: Lawrence Earlbaum Associates, pp. 73-78.

VARIOUS AUTHORS (Language Testing International). (2014) *Understanding Proficiency with LTI*. Electronic version available at: <http://www.languagetesting.com/how-long-does-it-take>

VARIOUS AUTHORS (National Commission on Excellence in Education). (1983) "A Nation at Risk: The Imperative for Educational Reform." *The Elementary School Journal* 84:2, pp. 112-130.

VARIOUS AUTHORS. (2013) *Professional Standards and Ethics for California Court Interpreters* (Fifth Edition). Electronic version available at: <http://www.courts.ca.gov/documents/CIP-Ethics-Manual.pdf>

VARIOUS AUTHORS (United States Census Bureau). (2010) *State & county quickfacts*. Electronic version available at: <http://quickfacts.census.gov/qfd/states/06000.html>

VARIOUS AUTHORS (U.S. Department of Homeland Security). (2014a) *U.S. Border Patrol Fiscal Year 2013 Statistics*. Electronic version available at: <http://www.cbp.gov/xp/cgov/border_security/border_patrol/usbp_statistics/usbp_fy13_stats/>

VARIOUS AUTHORS (U.S. Department of Homeland Security). (2014b) *Preparation Manual for the U.S. Border Patrol Entrance Examination*. Electronic version

available at: <http://www.cbp.gov/linkhandler/cgov/careers/study_guides/guides_bp/entry_guide/bp_entrance_exam.ctt/prep1896.pdf>

VARIOUS AUTHORS (U.S. General Services Administration). (2013) *San Ysidro Land Port of Entry Fact Sheet*. Electronic version available at: <http://www.gsa.gov/portal/category/105703>

WHITE, R. (2006) *Aqui se habla Espanol: Officers learn basics of Spanish catered to job*. Electronic version available at: <http://www.cbp.gov/xp/CustomsToday/2006/april/officers_learn_spanish.xml>

BIONOTE / NOTA BIOGRÁFICA

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LA IMPARCIALIDAD EN LA INTERPRETACIÓN POLICIAL

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Resumen

Los diferentes códigos éticos aplicables a la interpretación en el ámbito policial señalan principios como la confidencialidad, la fidelidad y la imparcialidad, que todo intérprete debería respetar. El contexto de la comisaría de policía, sin embargo, plantea en muchas ocasiones situaciones en las que el mantenimiento de estos principios no es posible. Con esta contradicción como punto de partida, y centrados en el principio de imparcialidad, este estudio tiene como objetivos determinar si efectivamente hay un divorcio entre la teoría y la práctica y establecer cuáles son los condicionantes que pueden generar divergencias entre ellos. Para validar esta hipótesis, el estudio describe cinco interpretaciones entre francés y español realizadas en comisarías de la ciudad de Valencia a partir de la observación y del análisis de los datos obtenidos a través de un cuestionario rellenado por la intérprete-investigadora. Los datos muestran que, efectivamente, se da ese divorcio entre teoría y práctica y el análisis sugiere posibles causas de las tensiones que encuentra el intérprete a la hora de mantener el principio de imparcialidad en la interpretación policial.

Abstract

"Impartiality in police interpreting"

The different codes of ethics applicable to interpreting in police settings include principles – confidentiality, fidelity, impartiality – that every interpreter should obey. The police setting, however, creates situations in which it is not possible to follow these principles. Taking this contradiction as a starting point, and focusing on the principle of impartiality, the aim of this study is to verify if there is, indeed, a divorce between theory and practice and to establish what determines the eventual divergence. In order to validate the hypothesis, the study describes five interpreting sessions between

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French and Spanish that took place at different police stations in Valencia. The data were collected by means of a questionnaire filled in by the interpreter-researcher. The results show that there is in fact a divorce between theory and practice and the analysis suggests the possible causes behind the tensions that the interpreter encounters when trying to keep the principle of impartiality in police interpreting.

Palabras clave: Papel del intérprete. Interpretación policial. Imparcialidad. Invisibilidad. Códigos éticos.

Keywords: Interpreter's role. Police interpreting. Impartiality. Invisibility. Codes of ethics.

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1. Introducción

La intensificación de los movimientos migratorios hacia España desde los años 80 ha supuesto una mayor demanda de servicios de interpretación en los servicios públicos (ISP) en los últimos años. En el ámbito legal, abogados, jueces, policía, detenidos, víctimas, demandantes de asilo, entre otros, necesitan recurrir a la figura del intérprete para superar las barreras comunicativas derivadas de la diversidad lingüística y cultural.

Esta necesidad ha estado presente a lo largo de la historia en ámbitos equivalentes a lo que hoy llamamos servicios públicos. Como señala Josep Peñarroja (cit. en Sherr 1999: s.p.), "the Indians living in the Americas had the right to be judged and have a translator, an interpreter. In the early 1500s, the law stipulated that there be an interpreter who would interpret under oath". Incluso, refiriéndose a un ámbito cercano al que nos ocupa, Moeketsi (1999: s.p.) apunta que: "court interpreting in South Africa […] dates back to the 17th century when the colonialists first set foot on our shores".

La ISP como ámbito de estudio, sin embargo, es bastante reciente y poco uniforme. Reciente porque, como apunta Abril Martí (2006: 4), "en las décadas de 1960 y 1970 solo un número reducido de países receptores de inmigración (Australia, Canadá, Estados Unidos, Reino Unido, Suecia) reconocía la ISP". Poco uniforme porque el reconocimiento de la actividad y la atención como objeto de estudio llega mucho más tarde a otros países, en particular a partir de los 80 y 90 con la intensificación de los movimientos migratorios hacia países diferentes a los mencionados en el primer grupo. A partir de este momento, y derivado de las necesidades de superar las barreras de comunicación, empieza a plantearse la profesionalización de la actividad en otros países y, como consecuencia, la ISP como ámbito de estudio empieza a cobrar fuerza y a despertar mayor interés.

Desde el inicio de los estudios sobre ISP, que podemos situar en el primer congreso de *Critical Link* de 1995, la cuestión del papel del intérprete ha estado presente, como podemos ver en las actas de este encuentro (Carr, Roberts, Dufour & Steyn 1997), y es una cuestión que sigue generando debate. Muchos de los trabajos realizados hasta el momento hacen referencia

de alguna manera a las cuestiones éticas relacionadas con el papel del intérprete y con su (in)visibilidad (Angelelli 2004; Hale 2008; Jacobsen 2009; Pöchhacker 2008).

En cuanto al papel del intérprete, una de las herramientas fundamentales para definirlo, para el buen desarrollo de la profesión, para establecer pautas y límites, o responsabilidades, son los códigos éticos, pero no podemos dejar de señalar que la complejidad de las situaciones comunicativas que se dan en ISP en general hace que no siempre los códigos y la práctica vayan de la mano. Pese al continuo debate sobre el papel del intérprete en ISP, los códigos éticos son imprescindibles como referencia y también nos sirven como línea de salida para acercarnos al tema de nuestro estudio: la imparcialidad.

2. La imparcialidad en ISP

Antes de observar qué dicen algunos códigos sobre la imparcialidad, veamos una de las definiciones del concepto más completas que hemos encontrado y que sirve de base en este estudio. Según Cambridge (2002), los intérpretes que siguen el modelo de imparcialidad:

- No dan consejos personales u opiniones;
- No añaden ni omiten partes del mensaje;
- Se esfuerzan por transmitir la información completa y fiel;
- Mantienen estricta confidencialidad;
- Utilizan la primera persona y no adoptan un papel de interlocutor completo con el objetivo de ser el *alter ego* de cada participante, de poner a cada uno de ellos en el mismo lugar donde estaría si compartiera la lengua o para generar en el receptor el mismo efecto que pretendía el emisor.

Siempre según Cambridge, este modelo permite al intérprete intervenir en determinadas ocasiones, pese a que estas deberían limitarse al máximo:

- Cuando no oye qué se ha dicho;
- Cuando necesita alguna aclaración;
- Para señalar posibles malentendidos surgidos pese a una buena interpretación;
- Para señalar posibles interferencias culturales que podrían derivar en un malentendido.

En los códigos éticos de diferentes países del mundo la cuestión de la imparcialidad está siempre presente y se reconoce como uno de los valores

fundamentales que todo intérprete debe mantener, junto con la objetividad y la fidelidad, entre otros. Es el caso, por citar algunos de ellos, del Instituto de Traducción e Interpretación (ITI, Insitute of Translation & Interpreting), en Reino Unido; de la Asociación Nacional de Intérpretes y Traductores Judiciales (NAJIT, National Association of Judiciary Interpreters and Translators), en Estados Unidos; de la Asociación Europea de Intérpretes y Traductores Legales (EULITA, European Legal Interpreters and Translators Association), en Europa; del Instituto Australiano de Intérpretes y Traductores (AUSIT, Australian Institute of Interpreters and Translators), en Australia; o de la Asociación Profesional de Traductores e Intérpretes Judiciales y Jurados (APTIJ), en España. A continuación se expone con más detalle qué dicen los dos últimos sobre la cuestión de la imparcialidad.

En España, la Asociación Profesional de Traductores e Intérpretes Judiciales y Jurados (APTIJ) establece en su código deontológico que:

> El intérprete o traductor permanecerá en todo momento imparcial y neutral y será independiente, preservando su independencia frente a toda clase de injerencias, exigencias o intereses ajenos que pudieran menoscabar su labor profesional y que provengan de los poderes públicos, económicos o fácticos, de los tribunales, de su cliente o de sus propios compañeros o colaboradores.

El código del Instituto Australiano de Intérpretes y Traductores (AUSIT) es más descriptivo:

> Interpreters and translators play an important role in facilitating parties who do not share a common language to communicate effectively with each other. They aim to ensure that the full intent of the communication is conveyed. Interpreters and translators are not responsible for what the parties communicate, only for complete and accurate transfer of the message. They do not allow bias to influence their performance; likewise they do not soften, strengthen or alter the messages being conveyed.

Pese a los matices en cuanto a la flexibilidad del modelo, en general los estudios sobre el papel del intérprete defienden la imparcialidad como característica imprescindible en una buena interpretación. Garber (2000) reconoce la imparcialidad como un rasgo esencial en *community interpreting*, ya que considera que es la forma de que los participantes hablen entre ellos y de que el que está en la posición más débil cobre más poder dirigiéndose a la otra parte directamente. Hale (2008: 119), por su parte, tras analizar diferentes fragmentos de interpretaciones en los ámbitos legal y médico, llega a la conclusión de que "the only adequate role for court interpreters [...] is that of faithful renderer of others' utterances". Sus argumentos podrían aplicarse también en el caso de la interpretación policial.

Sin embargo, la realidad es que, incluso en los países más avanzados en ISP, no siempre el intérprete es imparcial. Numerosos estudios (Angelelli 2003; Berk-Seligson 2002; Hale 2004; Nakane 2009; Ortega Herráez & Foulquié 2008; Pöchhacker 2000; Wadensjö 1998) demuestran que la actuación real de los intérpretes no siempre resulta fiel al modelo de imparcialidad. Todos ellos han identificado situaciones que podríamos situar en algún punto entre los siguientes extremos:

Intérprete fiel al modelo de imparcialidad	**Intérprete parcial**
No adopta la responsabilidad de la comunicación entre los actores principales	Intenta ayudar a una de las partes

¿Qué sucede para que el intérprete no se mantenga en ese papel ideal? Podemos establecer dos grandes grupos de aspectos que pueden generar contradicciones: por un lado, los propios del ámbito y por el otro, los circunstanciales.

Los propios del ámbito son aquellos que vienen determinados por las características del contexto: interacción dialógica, proximidad de los participantes, exposición a situaciones emocionales, diferencias de poder, diferencias culturales, entre otros. Son aspectos con los que debemos contar a la hora de definir cualquier código de actuación porque son inherentes a la situación comunicativa.

Wadensjö (1998) se fija en el carácter dialógico de la ISP e inicia una nueva línea de investigación a partir de su análisis de interpretaciones en los servicios de inmigración y médicos de Suecia. La autora observa cómo el carácter dialógico de las interpretaciones en estos ámbitos condiciona que, además de ejercer de conducto lingüístico, el intérprete adopte el papel de coordinador de la comunicación. Pese a que su estudio no se centra en el ámbito judicial o policial, que es el que nos interesa ahora, es relevante señalar su análisis por el cambio de planteamiento que supone en el estudio de las interpretaciones dialógicas. De hecho, también se podría aplicar a cualquier tipo de interpretación de enlace.

Hace años que se superó el ideal del intérprete invisible (Angelelli 2004; Rosenberg 2002; Wadensjö 1998). También está obsoleta la idea de que el intérprete es una máquina de traducir literalmente, en el sentido más estricto. Sin embargo, la proximidad entre participantes y la presencia física del intérprete también son aspectos que, aunque inherentes a esta actividad, condicionan la actuación del intérprete y de los demás participantes de la interacción.

Mikkelson (1998: 43), por ejemplo, admite que es necesaria cierta flexibilidad para conseguir que el objetivo de la interacción se cumpla y afirma que "the ideal of verbatim interpretation does not hold up when confronted with real-life interpreted interactions between human beings".

Por otra parte, los aspectos circunstanciales son aquellos que dependen de cómo se gestiona la interpretación: la normativa, las expectativas de las partes, las condiciones laborales, la formación, y demás. La gran diferencia con los anteriores es que estos sí que se pueden establecer o determinar para que, en lugar de restar, sumen.

Los países con una trayectoria más extensa en ISP, como Estados Unidos, Australia, Reino Unido o Suecia, cuentan con sistemas de acreditación y de contratación que hacen posible reconocer y desarrollar la actividad, así como establecer estándares de calidad. En el caso español, como veremos más adelante (ver 2.3), nos encontramos en un momento de cambios en la normativa que rige el acceso a la actividad.

Por lo que respecta a la formación, en el caso de la ISP, la formación del personal que trabaja con intérpretes cobra especial importancia. Es necesario que conozcan las pautas de conducta que permitan al intérprete mantenerse en el papel que garantice una correcta interpretación. Así lo recomienda el proyecto ImPLI, *Improving Police and Legal Interpreting* de la Red Universitaria de Insitutos de Formación de Intérpretes (UNITI, University Network of Interpreter Training Institutes), que en las conclusiones de su informe final (UNITI 2012: 60) apunta a la necesidad de formación específica para las personas a cargo de los interrogatorios.

En la misma línea, pero desde la perspectiva específica de la policía, encontramos el caso de la Policía Metropolitana de Londres, que tiene establecido un procedimiento de actuación (Metropolitan Police 2010) para trabajar con intérpretes y traductores en el que está excepcionalmente definido el papel del intérprete, y con el que quedan claros cuáles son los límites que no se deben pasar. En este procedimiento de actuación aparecen los puntos que expone Cambridge en la definición de imparcialidad que apuntábamos más arriba (primera persona, aclaraciones, no pedir que no se interprete algún fragmento, etc.) e incluye muchos otros en sesenta páginas en las que se detalla cómo actuar en situaciones en las que se podría ver comprometida la calidad. En el mismo documento encontramos un punto que consideramos especialmente relevante en cuanto a las dificultades encontradas para mantener la imparcialidad en los casos estudiados: "The police officer will always retain responsibility for the exchange" (Metropolitan Police 2010: 9), pues otorga al policía el papel activo frente al intérprete. Más adelante, en el mismo

sentido, recuerda que "an interpreter should NEVER be left alone with the witness to take the statement. An interpreter is an impartial and independent professional practitioner and should not be asked to perform the role of a police officer" (Metropolitan Police 2010: 24).

No menos importante es la formación de los intérpretes y la creación de algún sistema de acreditación que asegure que los intérpretes que trabajan en el ámbito policial, y en el judicial, puedan ofrecer la calidad suficiente para garantizar el derecho a la defensa, pues, como señala Hale (2008: 119), "the better trained, the better prepared, and the better equipped the interpreter is, the better chance s/he has of producing a faithful rendition". En este sentido, el proyecto ImPLI da un paso más allá y propone la realización de formaciones conjuntas entre policías e intérpretes para concienciarse mutuamente de las necesidades y problemáticas que cada colectivo encuentra en estas situaciones. Dicha formación se podría incluir en los planes de formación de ambas profesiones (UNITI 2012: 60).

3. El estudio

El presente trabajo es producto de la experiencia profesional de la autora durante dos años como intérprete en comisarías de Valencia y nace motivado por los conflictos profesionales, éticos y morales encontrados durante este tiempo. En este caso nos hemos centrado en aquellos conflictos relacionados con el papel de actor imparcial del intérprete, en la dificultad encontrada por la autora para mantener el modelo de imparcialidad y los códigos éticos expuestos más arriba. Desde las primeras asistencias en comisaría la autora tuvo la sensación de estar sobrepasando los límites adecuados para su función en lo que se refiere a la imparcialidad: utilización de la tercera persona, adiciones u omisiones. A partir de esta sensación, y de la voluntad de mejorar (individual y colectivamente), surgió la necesidad de observar con más atención qué pasaba en cada asistencia para así entender mejor qué era lo que impedía ser imparcial y cómo poder solucionarlo.

El objetivo de este estudio es, por tanto, observar y describir el comportamiento de la intérprete en la práctica real para, a partir de esa observación, establecer si, efectivamente, existe un divorcio entre la teoría y la práctica en la interpretación en el ámbito policial (en concreto en comisaría) en relación con la imparcialidad, así como establecer qué aspectos (situacionales, sociales, etc.) propios de los contextos en los que se desarrolla son más susceptibles de generar contradicciones entre las propuestas teóricas (modelo de imparcialidad y códigos éticos) y la práctica profesional.

Esta es solo una modestísima y limitada aportación que intenta ayudar a definir la complejidad de la situación comunicativa que supone la interpretación policial para así trabajar lo más acertadamente posible en la elaboración de una hoja de ruta que garantice que la tutela judicial efectiva de los detenidos no se vea afectada por la actuación de un intérprete. Así pues, identificar, analizar, entender todos los aspectos que pueden afectar a la producción del intérprete ayudará a establecer las estrategias comunicativas que se podrían seguir para que se enfrente al encargo con seguridad y para que sea capaz de ofrecer las máximas garantías de calidad.

En las próximas páginas se expone con detalle en qué ha consistido el estudio realizado. En primer lugar se presenta la metodología (apartado 4); a continuación, los resultados (apartado 5); y por último se reflejan las conclusiones (apartado 6). En el anexo se incluye la ficha utilizada para recopilar los datos durante y después de las sesiones.

4. Metodología

En línea con el objetivo, este estudio es fundamentalmente descriptivo. Para poder hacer una aproximación al papel que desempeña el intérprete en comisaría en relación con la imparcialidad, se estudiaron cinco servicios interpretados con detenidos de diferentes procedencias.

4.1. Datos

Para elaborar este trabajo se siguieron diferentes fases, que condujeron al análisis que aquí se presenta: elaboración de la ficha, recopilación de datos, organización y sistematización de la información y análisis de datos.

Para elaborar la ficha (véase anexo), la autora, intérprete autónoma (véase apartado 4.2.2.1.), interpretó en varias sesiones previas, poniendo especial atención con el fin de detectar posibles puntos de interés para la investigación. Esta observación, sumada a la reflexión surgida a partir de las lecturas (Hale 2007, Raga Gimeno 2005, Wadensjö 1998), dio forma a los diferentes puntos de la ficha, a partir de la cual se recopilaron los datos. La ficha está dividida en cuatro grandes bloques. En el primero aparece la información básica de la sesión en cuanto a las características de los diferentes participantes en la misma. En el segundo constan los aspectos espaciales y temporales que contextualizan las intervenciones. En el tercero y principal se plantean una serie de preguntas sobre la actuación de la intérprete, como por ejemplo:

– ¿La intérprete detecta posible perjuicio legal para el detenido?
– ¿La intérprete omite, añade o modifica alguna información?

– ¿La intérprete utiliza la primera o la tercera persona?
– ¿Hay alguna conversación casual que excluya al detenido?

Por último, el cuarto bloque es un campo abierto de descripción donde poder explicar de una forma más amplia las características de cada sesión.

Debido al carácter confidencial de las entrevistas y la imposibilidad de grabar las sesiones, se optó por tomar notas puntualmente durante las sesiones; y por completar la información más detallada y las observaciones justo después de la sesión. El número de casos observados y analizados, cinco, es inferior al previsto en un principio; antes de recopilar todos los casos deseados, un cambio en la empresa proveedora del servicio de interpretación en comisarías provocó que la intérprete dejase de ejercer como intérprete para la policía.

Para analizar los datos obtenidos, se seleccionaron aquellas preguntas que más datos aportaban para describir y entender situaciones en las que la intérprete no estaba siendo imparcial. A través de cada una de las preguntas se creó un diálogo entre el modelo de imparcialidad descrito más arriba y lo que la autora ha podido detectar en su propia actuación en las diferentes sesiones. En este diálogo surgieron discrepancias, acuerdos, posibles consecuencias, y otros aspectos, que se intentaron reflejar en cada uno de los apartados de forma más o menos independiente, dado que cada pregunta está inevitablemente interrelacionada con las demás. La exposición de los resultados se ha estructurado en tres subapartados para cada una de las preguntas: datos obtenidos, posibles razones y posibles consecuencias. En datos obtenidos se señalan las situaciones en las que se ha detectado que se violaba de alguna manera la imparcialidad; en posibles razones se apunta a cuáles se cree que pueden ser las causas de esa violación; y por último, en posibles consecuencias, se reflexiona sobre los efectos que puede tener el no ser imparcial en la evolución de la situación interpretada.

4.2 . Corpus

4.2.1. Justificación del corpus

El corpus de este estudio está formado por cinco sesiones interpretadas. Todas ellas tienen como denominadores comunes la intérprete (la autora de este estudio), el espacio (comisaría), el ámbito geográfico de las comisarías (ciudad de Valencia y sus alrededores), y la combinación lingüística solicitada (francés-español). La procedencia de los detenidos, los policías que participan y los motivos de las detenciones, en cambio, varían.

La elección de la propia autora como intérprete-investigadora, pese al riesgo de sesgo durante todo el trabajo, se ve justificada por múltiples razones. Desde el punto de vista legal, asistir a interpretaciones de compañeros como observadora habría sido complicado, por lo que se descartó desde un primer momento. Desde el punto de vista práctico, en la mayoría de ocasiones en que se convoca a un intérprete a comisaría se le da un tiempo reducido para acudir a ella (treinta minutos, generalmente). El intérprete puede aceptar el encargo o no, según su disponibilidad. Hacer cuadrar las disponibilidades del intérprete observado y de la investigadora habría sido complicado con tan escaso margen de tiempo. Teniendo en cuenta estas dificultades, la autora valoró que el auto-análisis aportaba información que no habría conseguido de otra forma, pues es quien mejor sabe en qué estaba pensando para tomar una u otra decisión interpretativa en un momento dado. El posible sesgo se ve superado, en la medida de lo posible, por la motivación que generó el estudio: la autora sabía que no estaba siendo imparcial, pero quería entender el porqué y en qué ocasiones. Se trata, por tanto, de un ejercicio de autocrítica, en el que no se intenta justificar o minimizar el impacto de la propia actuación.

El espacio y el ámbito geográfico estuvieron determinados por ser el lugar donde la autora ejercía la actividad habitualmente.

La combinación lingüística es la misma para todos los casos, algo que, en principio minimizaría los problemas culturales asociados a la comunicación interlingüística. Decimos en principio porque el francés no era la lengua materna de todos, y la proveniencia cultural de los detenidos era variada. Pese a ello, en este caso no es determinante debido al escaso conocimiento sobre las culturas de cuatro de los cinco detenidos (véase apartado 4.2.2.2.).

4.2.2. Perfil de los participantes

En las situaciones analizadas participan siempre un mínimo de cuatro personas: el detenido, el policía, el abogado y la intérprete. Generalmente un policía conduce el procedimiento y es el encargado de explicárselo al detenido y de conducir el interrogatorio; aunque es habitual, como sucede en los casos observados, que en algún momento aparezca otro agente y que participe en la interacción, tanto por cuestiones relacionadas con el detenido como por cuestiones ajenas a éste.

4.2.2.1. Intérprete

La intérprete encargada de todas las asistencias fue la propia autora de este artículo:[1] licenciada en Filología Catalana y en Traducción e Interpretación, y especializada en interpretación de conferencias a través del Máster en Interpretación de Conferencias de la Universidad de La Laguna (European Masters in Conference Interpreting, EMCI). Desde entonces ha combinado la interpretación y la traducción como autónoma con la docencia en diferentes universidades (University of Westminster, Università degli Studi di Pavia, Universidad Europea de Madrid y Universitat Jaume I).

Formada en interpretación de conferencias, no es hasta 2010 cuando entra en contacto con la ISP. En ese año, la necesidad de programar un curso sobre mediación cultural para traductores e intérpretes en una universidad hace que se interese por este ámbito de interpretación y que empiece a documentarse.

Un año después, a través de un currículum enviado tiempo atrás, la agencia subcontratada por el Ministerio del Interior en ese momento para proporcionar intérpretes a las comisarías de Valencia la contactó para ofrecerle una colaboración que duraría dos años (el tiempo que duró la subcontrata). Esto le permitió aportar conocimientos prácticos a las clases en la universidad.

La experiencia la condujo a impartir otros cursos sobre interpretación en el ámbito judicial en la Universitat Jaume I. La doble perspectiva (teórica y práctica) por la que accedió al ámbito de la interpretación policial es la semilla de la que nace este trabajo, del conflicto entre lo que había leído que se debía hacer y lo que efectivamente era capaz de interpretar.

Así, con una formación autodidacta y con mucha reflexión y lectura, pero con falta de recursos para superar los conflictos éticos y profesionales que se presentan en casos concretos y reales, es como se enfrenta a este autoanálisis o autocrítica.

4.2.2.2. Detenidos

En el caso de los detenidos, cuatro de ellos son inmigrantes procedentes de África (Camerún, Togo y dos de Senegal). El otro es ciudadano francés de origen africano. Todos ellos llevan en España menos de dos años. Todos son hombres y tienen edades comprendidas entre los 20 y los 40 años.

A continuación se presentan, de forma esquemática, las características principales de cada detenido (donde S1, S2, S3, S4, S5 corresponde al número de sesión analizada):

1. En adelante, y para los propósitos de descripción del estudio, "la intérprete".

S1	
País de procedencia	Camerún
Edad	30-40
Sexo	Hombre
Nivel idioma solicitado	Bueno-nativo (francés)
Nivel de español	Entiende un poco/no lo habla
Idioma materno	Ns
Motivo detención	Estancia irregular en el país
Tiempo de residencia en España	0-2 años (1 año y dos meses)
Familiares residentes en España	No
OTROS	Se muestra preocupado pero relajado. Postura pasiva.

S2	
País de procedencia	Togo
Edad	30-40 (30)
Sexo	Hombre
Nivel idioma solicitado	Entiende/habla bastante bien (dificultades con el acento) (francés)
Nivel de español	Nulo
Idioma materno	Ns
Motivo detención	Apropiación indebida
Tiempo de residencia en España	0-2 años
Familiares residentes en España	Sí
OTROS	Se muestra muy nervioso. Habla y gesticula mucho. Interrumpe. Insistente. Se niega inicialmente a la toma de huellas digitales.

S3	
País de procedencia	Francia
Edad	20-30
Sexo	Hombre
Nivel idioma solicitado	Nativo (francés)
Nivel de español	Nulo
Idioma materno	Ns
Motivo detención	Desacato a la autoridad
Tiempo de residencia en España	0-2 años (1 año)
Familiares residentes en España	Ns (pero probablemente sí)
OTROS	Se muestra enfadado. Ignora al abogado. Insiste en que le han detenido por ser negro. Responde generalmente con el mínimo de información. Vive en un hotel de lujo de la ciudad.

S4 y S5	
País de procedencia	Senegal
Edad	30-40 (30)
Sexo	Hombre
Nivel idioma solicitado	Bueno-nativo (francés)
Nivel de español	Entiende un poco/no lo habla
Idioma materno	Wolof (si no es materno, también lo habla)
Motivo detención	S4, falsedad documental S5, estancia irregular en el país
Tiempo de residencia en España	0-2 años (2 años)
Familiares residentes en España	Sí (padre)
OTROS	Se muestra formal. Relativamente tranquilo en S4; más nervioso en S5.

4.2.2.3. Policía

En total intervienen cinco policías: cuatro policías nacionales y un policía local. Tres de ellos suelen trabajar con intérpretes porque trabajan en la

comisaría a la que se envían los detenidos que pasarán a disposición judicial. Los otros dos están menos acostumbrados a hacerlo porque se trata de una comisaría de una localidad más pequeña. Además de los cinco policías principales que gestionan el procedimiento, hay otros policías secundarios que participan en mayor o menor medida en algún momento de la interacción, que están en la sala todo el tiempo o que entran y salen. Pese a que unos están más acostumbrados a trabajar con intérprete que otros, ninguno parece haber recibido formación específica para trabajar con la asistencia de un intérprete.

En la S1, el agente es un hombre de unos 30-40 años, policía nacional de un grupo de extranjeros. Se muestra relajado y generalmente se dirige directamente al detenido y no a la intérprete. En la S2, el agente es un hombre de unos 20-30 años, policía nacional de la Inspección Central de Guardia. Se muestra enfadado con el detenido y poco paciente. En la S3, el agente es un hombre de unos 50-60 años, policía local. En la S4, el agente es un hombre de unos 30-40 años, policía nacional de la Policía Judicial. Se muestra tranquilo, sin prisas, cercano. En la S5, el agente es un hombre de unos 20-30 años, policía nacional del grupo de extranjeros. Se muestra duro y verbalmente agresivo.

4.2.2.4. Abogado

En los cinco casos se trata de abogados de oficio. En la S1, el abogado es un hombre de unos 30-40 años que se muestra distante y profesional. En la S2 es una mujer de unos 30-40 años que muestra interés por el caso, que tiene gestos de acercamiento y que solicita poder entrevistarse en privado con el detenido. En la S3 es un hombre, también de unos 30-50 años, distante y callado. En la S4, el abogado, hombre de unos 30-40 años, se muestra distante y callado durante la entrevista pero aconseja al detenido siempre que puede. En la S5, la abogada es una mujer de unos 20-30 años que muestra mucho interés por el caso, que se implica y que llega a enfrentarse con el policía cuando considera que está vulnerando los derechos del detenido.

4.3. Contextualización

4.3.1. Contexto legal

El sistema legal español reconoce la necesidad de un servicio de interpretación como garantía de una adecuada representación frente a la ley. Numerosas

normativas,[2] tanto a nivel estatal como europeo, hacen alusión al derecho del detenido a contar con la asistencia de un intérprete. Veamos algunos de los artículos al respecto. El Consejo de Europa aprobó el 4 de noviembre de 1950 el Convenio para la Protección de los Derechos Humanos y de las Libertades Fundamentales, que en el artículo 6 apunta que:

> 1. Toda persona tiene derecho a que su causa sea oída equitativa, públicamente y dentro de un plazo razonable, por un Tribunal independiente. […]
> 3. Todo acusado tiene, como mínimo, los siguientes derechos:
> a. ser informado, en el más breve plazo, en una lengua que comprenda y detalladamente, de la naturaleza y de la causa de la acusación formulada contra él; […]
> e. a ser asistido gratuitamente de un intérprete, si no comprende o no habla la lengua empleada en la audiencia.

La Constitución Española, por su parte, en el artículo 17.3 señala que:

> Todo detenido tiene derecho a ser informado, de manera que le sea comprensible, de sus derechos y de las razones de su detención, no pudiendo ser obligado a declarar. Se garantiza la asistencia de abogado al detenido en las diligencias policiales y judiciales, en los términos que la Ley establezca.

La Ley de Enjuiciamiento Criminal, en su artículo 520.2.e, reconoce el derecho a un intérprete y a que sea gratuito: "Derecho a ser asistido gratuitamente por un intérprete, cuando se trate de extranjero que no comprenda o no hable el castellano".

Más reciente es la Directiva 2010/64/UE del Parlamento Europeo y del Consejo (en adelante, la Directiva) relativa al derecho a interpretación y a traducción en los procesos penales. La Directiva recoge las normas mínimas para garantizar un juicio equitativo y el derecho a la defensa establecidos por el convenio europeo que mencionábamos más arriba. En la Directiva se emplaza a los Estados a velar por la calidad de la interpretación, a tomar las medidas necesarias para que prevalezca el derecho a la defensa, entre las cuales se insta a crear registros de intérpretes y traductores que sean independientes y cualificados.

Aprobada el 20 de octubre de 2010, la Directiva establece un plazo para ser incorporada en el ordenamiento jurídico de cada país: 27 de octubre de 2013. Aunque con un poco de retraso, el Boletín Oficial del Estado publicó el

2. Artículo 17.3 de la Constitución Española. Artículo 520.2.e de la Ley de Enjuiciamiento Criminal. Artículo 22 de la Ley Orgánica 8/2000 de 22 de diciembre. Artículo 6 del Convenio para la Protección de los Derechos Humanos y de las Libertades Fundamentales. Artículo 231.5 de la Ley Orgánica del Poder Judicial, etc.

5 de septiembre de 2014 el proyecto de Ley Orgánica por la que se modifica la Ley de Enjuiciamiento Criminal para transponer la Directiva.

En esta propuesta de modificación de la Ley se recogen algunas de las propuestas que organizaciones profesionales[3] y universidades[4] han hecho llegar al Ministerio de Justicia (Red Vértice, 2014), y que pasan por la creación de un registro profesional de traductores e intérpretes directo, sin intermediarios, al que se pueda acceder a través de una prueba de certificación que verifique la competencia profesional.

Nos encontramos, por tanto, en un momento de cambios significativos en el marco legal en el que se ejerce la ISP en el ámbito legal. Este estudio se realizó, sin embargo, antes de la publicación del proyecto de ley para la transposición de la Directiva en el sistema español.

4.3.2. Contexto laboral

Con la transposición de la Directiva se deberían establecer unas condiciones que garanticen un sistema de interpretación de calidad, en la línea de lo que ya existe en países más avanzados en ISP (Estados Unidos, Reino Unido, Australia o Suecia, entre otros).

En el contexto español, la falta de una estructura profesional reconocida, y de un sistema de formación, contratación, evaluación de la calidad en la interpretación en sede judicial y policial, nos aleja de un sistema que respete las garantías procesales. Si bien, como hemos visto anteriormente, el derecho a un intérprete es una garantía básica recogida en diversas leyes estatales e internacionales, no se establece cuáles son los requisitos que una persona debe cumplir para ejercer esa función. En este sentido, el artículo 441 de la Ley de Enjuiciamiento Criminal establece que:

> El intérprete será elegido entre los que tengan títulos de tales, si los hubiere en el pueblo. En su defecto será nombrado un maestro del correspondiente idioma, y si tampoco lo hubiere, cualquier persona que lo sepa.

La transposición de la Directiva y las medidas que se tomen para aplicarla han iniciado el camino para cambiar la situación con la propuesta de elaborar un registro profesional. Se establece que el Gobierno presentará, en el plazo

3. Entre ellas, la ya citada APTIJ; la Asociación Española de Traductores, Correctores e Intérpretes, Asetrad; la Asociación Galega de Profesionais da Traducción e da Interpretación, AGPTI; la Associació Professional de Traductors i Intèrprets de Catalunya, APTIC; Asociación Aragonesa de Traductores e Intérpretes, ASATI; y la Xarxa de Traductors i Intèrprets de la Comunitat Valenciana (Xarxa).

4. Conferencia de Centros y Departamentos Universitarios de Traducción e Interpretación de España (CCDUTI).

máximo de un año desde la publicación de la Ley, un Proyecto de ley de creación de un Registro Oficial de Traductores e Intérpretes judiciales (Disposición adicional única). Hasta entonces, y durante el tiempo que duró este trabajo, la contratación de intérpretes en comisarías de Valencia se realiza a través de empresas subcontratadas.

Así, durante los dos años de interpretación en comisaría y durante las sesiones analizadas en este trabajo, la intérprete trabajó como autónoma a través de una empresa subcontratada. Pese a la formación como intérprete de conferencias, en ningún momento se me requirieron los títulos para comprobar la veracidad de los datos del currículum, ni se realizó ningún tipo de entrevista o de prueba para acceder al servicio. Tampoco se proporcionaron pautas o indicaciones.

Las condiciones laborales y económicas (20€ por hora; la primera hora completa y las siguientes por minutos según esa base; es decir, 15 minutos, 5€) están lejos de las de interpretación de conferencias y no favorecen que intérpretes bien formados accedan o se mantengan durante mucho tiempo en este ámbito de interpretación.

4.3.3. Contexto inmediato

Las sesiones que se analizan más adelante (apartado 5) tuvieron lugar en diferentes comisarías de la ciudad de Valencia y sus alrededores. En todos los casos se trata de la primera declaración del detenido ante la policía en presencia de su abogado, todos ellos de oficio. Como ya se ha descrito en las fichas de los detenidos, las acusaciones son diversas: estancia irregular en el país, apropiación indebida, desacato a la autoridad y falsedad documental. En estas situaciones, el procedimiento que se debería seguir es el siguiente: el policía informa al detenido de sus derechos y de la razón de la detención; a continuación le pregunta si quiere declarar en comisaría o en el juzgado. Según la ley, hasta que el detenido no haya decidido si declara en ese momento o no, el abogado no puede aconsejar a su cliente. En la práctica es habitual que se permita a los abogados aconsejar que se declare en dependencias judiciales.

Las características fundamentales que encontramos en estas interpretaciones, y que en algunos casos serán determinantes para explicar algunos de los resultados de este estudio, son comunes a la gran mayoría de interpretaciones en el ámbito policial. Veamos algunas de ellas:

– Modo dialógico: La situación comunicativa se produce en forma de entrevista. Policía y abogado preguntan al detenido y este responde.

Es parcialmente improvisada, pues las intervenciones de la policía y del abogado suelen seguir un procedimiento más o menos rígido.
- Bidireccionalidad de idioma: El intérprete trabaja hacia las dos lenguas implicadas.
- Proxémica: El intérprete se encuentra físicamente cerca de las partes.
- Registro: Mezcla de registros muy formales (documentación legal escrita, léxico legal...) y muy informales (narración de los hechos, nerviosismo...).
- Estatus de los participantes: Gran asimetría de poder entre autoridad y detenido.
- Voluntariedad: Una de las partes está en esta situación en contra de su voluntad.
- Emociones: Una de las partes se encuentra en un momento crítico de su vida, donde puede cobrar relevancia el estrés, el miedo, la ansiedad, etc.
- Lengua materna: La lengua interpretada puede no ser la lengua materna del detenido sino su segunda o tercera lengua. El intérprete en esta situación dialógica también puede estar interpretando desde y hacia su tercera lengua.
- Cultura: El intérprete no siempre está familiarizado con la cultura origen del detenido.

5. Resultados

En este apartado se repasan los datos del estudio a partir del modelo de imparcialidad en el que se ha basado la investigación. Señalaremos qué es lo que propone el modelo; qué datos se han obtenido, de forma resumida; las posibles razones que han conducido a no ser imparcial y las posibles consecuencias que puede tener esto en la situación comunicativa.

En algunos casos se marcarán en cursiva ejemplos de conversaciones que, pese a no ser citas textuales, son intentos de reproducir conversaciones que se han dado en estas sesiones.

5.1. Modelo de imparcialidad: Hay ocasiones en las que el intérprete puede y debe intervenir activamente (para evitar malentendidos, porque necesita alguna aclaración, etc.)

Interceder en casos en los que detecta algún perjuicio legal no está en esta lista, pues el intérprete no tiene la formación adecuada para determinar hasta qué punto eso es así. Aunque si la tuviera, no es esta su función, sino la del

abogado, que está presente para garantizar que se respetan los derechos del detenido, por lo que el intérprete no debe intervenir.

Pese a la escasa formación legal de la intérprete, gracias a la documentación para interpretar en este contexto, las conversaciones con abogados y la experiencia previa durante casi dos años, pudo detectar situaciones en las que el detenido no contaba con todas las garantías para defenderse.

- Datos obtenidos:
  - En dos de los cinco casos, el policía no lee los derechos al detenido. En uno de ellos directamente se los salta; en el segundo, espera que los lea la intérprete (que los pronuncie de memoria, porque no le facilita el documento para hacer una traducción a la vista). Pese a hacerlo saber, al final la intérprete opta por añadir los derechos.
  - En otro de los casos, un caso de expulsión por aplicación de la Ley de Extranjería en el que el detenido ha cometido la falta de no tener documentación legal y se enfrenta al ingreso en un centro de internamiento o a la expulsión del país, es el abogado quien no refiere la lista completa de documentos que puede aportar para evitar la expulsión del país con el pago de una multa. También en este caso la intérprete amplía la lista de documentos que por experiencia sabe que pueden beneficiar al detenido en el proceso.
  - En otro caso, también de extranjería, el policía no sigue el procedimiento habitual y se dirige al detenido de forma verbalmente agresiva. En consecuencia, automáticamente la abogada invita con énfasis al detenido a no declarar/decir nada. Ante la superposición de enunciados, la intérprete decide interpretar a la abogada y omitir las intervenciones del policía.
- Posibles razones: Falsa concepción sobre el papel del intérprete que tiene la policía, posicionamiento junto al más débil.
- Posibles consecuencias: Perjudicar a la parte que se cree estar ayudando, excluir de la interacción a alguna de las partes, aumentar la posibilidad de preguntas directas al intérprete.

5.2. Modelo de imparcialidad: El intérprete debe utilizar la primera persona

- Datos obtenidos: La intérprete adapta el discurso a las circunstancias para favorecer la comunicación. Generalmente utiliza la tercera persona o impersonaliza. Puntualmente utiliza la primera persona.

  - En general, ha tendido hacia la impersonalización (Policía: "Dile que vamos a iniciar un expediente de expulsión". Intérprete: "Se va a iniciar un expediente de expulsión".).
  - En las preguntas cortas y directas ha mantenido el discurso directo aunque se dirigieran a la intérprete ("Dile que si quiere declarar aquí o en el juzgado"; "¿Tiene x documentos?"; "Pregúntale desde cuándo vive en España").
  - Hay momentos en que alguna situación de tensión o las características propias de un diálogo hacen que los participantes se interrumpan o que hablen todos a la vez. En estos casos opta por resumir en discurso indirecto ("La abogada dice que..."; "El policía dice que...").
  - En algún momento, injustificadamente, ha utilizado el discurso indirecto en situaciones que se podrían haber resuelto con el discurso directo ("El policía pregunta…"; "La abogada quiere saber si…").
- Posibles razones: expectativas de los participantes. Los participantes se dirigen directamente al intérprete. Inconsistencia del discurso original (a veces directamente, a veces, indirectamente). Superposición de enunciados.
- Posibles consecuencias: Malentendidos. Retrasos en la comunicación. Perjuicio para la comunicación directa entre los participantes principales. El intérprete ha de hacer modificaciones sintácticas. Los enunciados pierden fuerza. Se potencia el protagonismo del intérprete. Se aumentan las probabilidades de consultas directas al intérprete.

Tras no ser capaz de interpretar utilizando la primera persona, la intérprete intenta mantener el equilibrio, evitar malentendidos y facilitar la comunicación. En todas las sesiones analizadas se mezclan enunciados dirigidos directamente al detenido con enunciados dirigidos a la intérprete, mediante "Dile que…".

Los intentos iniciales por evitar la tercera persona de la intérprete terminaron por perjudicar más que facilitar la comunicación. Era imposible mantener la primera persona cuando continuamente el policía se dirigía a la intérprete en lugar de dirigirse al detenido.

5.3. Modelo de imparcialidad: La conversación debe ser entre los participantes activos (detenido, policía, abogado) y no con el intérprete

Según el modelo de imparcialidad, no deberían llegar a producirse situaciones en las que alguna de las partes se dirija directamente al intérprete o en las que el intérprete se dirija directamente a una de las partes. En caso de ser necesario para resolver posibles malentendidos o para aclarar alguna cuestión, el intérprete y las partes deben dejar claro que en ese momento el intérprete cobra un papel excepcionalmente activo. Para ello, debería informarse al resto de partes con expresiones del tipo: "El intérprete querría preguntar".

No se incluyen aquí los casos en los que se pide interpretar una información dirigiéndose a la intérprete. En este apartado se incluyen aquellas situaciones en las que las diferentes partes se dirigen a ella como si fuera un participante más, dotándolo de un papel más activo del esperable. En los casos documentados, todas las partes han interactuado con la intérprete en alguna ocasión. La policía (tanto el agente principal como los secundarios), el abogado y el detenido se han dirigido directamente a la intérprete esperando una respuesta como parte activa.

- Datos obtenidos:
  - En algunos casos, la policía se dirigió a la intérprete para que ésta resolviera cuestiones administrativas ajenas al caso o para completar sus datos en la documentación. En los dos casos documentados, no interpretó la conversación pero sí que explicó de qué estaban hablando.
  - En uno de los casos la intérprete coincidió con el abogado en la sala de espera. Allí le pide que, si tiene ocasión, recomiende al detenido que no declare en comisaría, que a él no se lo permitirán. Aunque la intérprete cree que no lo habría hecho, el posible conflicto se resolvió enseguida ya que sí que le permitieron aconsejar.
  - En todos los casos la intérprete percibe que el detenido la ve como un participante activo. Pese a que en la presentación explica que su única función es ayudarle a entenderse, la ve como un participante más y como la única persona que le puede ayudar. En uno de los casos, el detenido le narra los hechos directamente a ella. Le paró y le pidió que lo contara al policía y que ella lo traduciría. Su respuesta: "Yo te lo tengo que contar a ti, que eres la única que me entiende". En otro de los casos, dejan a la intérprete a solas con el detenido en un garaje (es la única vez en dos años de experiencia en que esto sucede). Este aprovecha para preguntarle

qué le pasaría, dónde dormiría, dónde le llevarían, y demás. La intérprete debería haber contestado que no podía responder a eso, que no tenía la información, pero algunas de sus dudas se habían contestado unos minutos antes en la sala. La intérprete repitió la información que el policía había dejado clara (y que quizás no había acabado de entender por nervios o porque el francés, la lengua interpretada, no era ni siquiera su lengua materna) consciente de que probablemente no era la mejor opción.

- Posibles razones: Concepción del papel del intérprete de cada una de las partes.
- Posibles consecuencias: Exclusión de una de las partes de la comunicación. Se puede dar información errónea.

5.4. Modelo de imparcialidad: El intérprete debe interpretar todo lo que se diga en la sala para facilitar que la comunicación se dé como si no hubiera barreras lingüísticas

En cuatro de los casos documentados entra alguna persona más en la sala, policías que siguen con otros casos o que intervienen en el que se está atendiendo.

- Datos obtenidos: Hay conversaciones que excluyen al detenido. Si no es sobre él, la intérprete se lo hace saber sin interpretar el contenido. Si es sobre él, lo explica o lo resume. En algún caso no interpretó esas conversaciones paralelas.
  - Hay varias situaciones en las que explica el contenido de una conversación: En tres de los casos documentados el abogado solicita permiso al policía para aconsejar al detenido o es directamente el policía quien se dirige al abogado para ofrecerle esta posibilidad; en otro, el policía solicita a un compañero que compruebe unos datos. En estos casos, explica de lo que se está hablando sin interpretar completamente el contenido ("El abogado está pidiendo permiso para hablar contigo").
  - En un momento dado, el policía principal y el secundario hablan sobre la localización de unos documentos y del hecho de que han conseguido hablar con el denunciante. En esta situación hace un resumen de la conversación, lo que parece no gustar a los policías.
  - En otro de los casos no interpreta una conversación paralela. Mientras el policía principal rellena el acta de declaración, un policía que está trabajando en otras cosas en la misma sala intenta mantener una conversación paralela con el abogado. Pese a que

este no responde e intenta evitarla, el agente comenta cuestiones sobre la identidad del detenido y sobre la posibilidad de que sea familiar de un personaje famoso. Quizá la intérprete debería haber hecho al menos un resumen al detenido para que no quedara excluido de la conversación, pero no lo hace.

- Posibles razones: Poca consideración por parte de la policía. El hecho de que en cada interacción intervienen al menos cuatro personas –normalmente más– hace que a veces hablen entre ellas.
- Posibles consecuencias: Exclusión de la interacción. Pérdida de confianza en el intérprete. Sensación de inseguridad por parte del detenido.

5.5. Modelo de imparcialidad: El intérprete debe producir un mensaje completo, sin omisiones, añadidos o modificaciones

La forma en que se ha recopilado la información no permite hacer un análisis detallado sobre estos puntos. La grabación y la transcripción de las diferentes sesiones habrían dado lugar a una serie de datos más exactos y a un estudio diferente. Estas circunstancias determinan que este apartado no se haya podido estudiar como realmente merecería. Imagínese una situación en la que el detenido dice "Creo que eran las 7". Si en la interpretación se omite "creo que", estamos perdiendo el carácter de duda que puede ser determinante en una investigación policial. La más pequeña omisión o modificación y el más pequeño añadido pueden alterar el desarrollo del proceso. Con estas limitaciones en mente, la intérprete intenta detectar situaciones en las que, conscientemente, cae en estas "faltas". Sin una grabación es imposible detectar todas las inconsistencias en este sentido.

- Datos obtenidos:
  OMISIONES
  - Como ya se apunta en el apartado anterior, la intérprete omite toda una conversación paralela.
  - En uno de los casos se da una conversación similar a esta:
    Policía: ¿Ha estado detenido con anterioridad?
    Intérprete: ¿Ha estado detenido antes?
    Detenido: *explica su versión de los hechos*.
    Intérprete: Ø
    Policía (interrumpe): Conteste a lo que le pregunto.
    Intérprete: Conteste a lo que se le pregunta.

Detenido (que parece no escuchar): *continúa explicando su versión de los hechos y añade que la policía le ha agredido.*
Intérprete: *Resume la versión y dice que la policía le ha agredido y que tiene señales que lo demuestran.*
Abogada: Ahora contesta a lo que se te pregunta y después podrás denunciar por agresiones.
Intérprete: Ahora contesta a lo que se te pregunta y después podrás denunciar por agresiones.

En esta situación la intérprete omite partes del discurso (cuando el policía interrumpe al detenido) y resume otras (de otra forma, las probables interrupciones no le habrían permitido transmitir parte del mensaje).

AMPLIACIÓN
La intérprete amplía la información en las situaciones que creía podían llevar a malentendidos. Cuando el policía pregunta "¿Quiere declarar aquí o en el juzgado?" no está dando la opción a elegir entre comisaría o juzgado. En realidad, aunque declaren en comisaría deberán volver a declarar ante la autoridad judicial. Para evitar ese malentendido en varios casos en que la pregunta se había planteado así, añade una explicación que dejara muy claro el procedimiento.

MODIFICACIONES
No se incluyen aquí las modificaciones sintácticas para cambiar el discurso directo-indirecto, primera-tercera persona por la dificultad de documentarlas.

Se detecta modificación en algún caso por desconocimiento del término. La intérprete desconocía el término para "desacato a la autoridad" en francés y explicó el significado.

– Posibles razones: Interrupciones. Enunciados percibidos como irrelevantes o repetitivos. Delegación de la policía en el intérprete. Desconocimiento de algún término por parte del intérprete.
– Posibles consecuencias: Exclusión de alguna de las partes. Pérdida de información relevante que el intérprete puede no haber identificado como tal. Creación de un perfil erróneo sobre el detenido. Creencia de que el detenido entiende ciertos términos.

5.6. Modelo de imparcialidad: El intérprete puede intervenir para explicar diferencias culturales si estas pueden conducir a un malentendido

El modelo de imparcialidad permite explicar diferencias culturales cuando pueden suponer un malentendido. Sin embargo, no se han detectado esos posibles malentendidos por razones culturales. El hecho de que la procedencia de los detenidos sea dispar (en los casos estudiados, Senegal, Togo, Camerún y Francia) dificulta el conocimiento profundo de cada una de las culturas. Además, la lengua interpretada suele no ser su lengua materna. El desconocimiento de la intérprete sobre las culturas africanas ha dificultado también la detección de posibles fuentes de malentendido. La única explicación en este sentido que ha realizado en comisaría, y que no forma parte del corpus analizado, ha sido en algún caso de solicitud de autorización para realizar la prueba de ADN y en el que ha detectado que, bien por nivel cultural, bien por otras razones, el detenido no entendía de qué se le hablaba. En esos casos ha expuesto al policía sus dudas y este le ha explicado mejor en qué consistía y para qué se le pedía.

- Datos obtenidos: No observo explicación de diferencias culturales.
- Posibles razones: Desconocimiento sobre las diferentes culturas interpretadas. Pertenencia del intérprete a la cultura de acogida. Multiplicidad de orígenes.
- Posibles consecuencias: Malentendidos.

6. Conclusiones

Este estudio tenía por objetivo determinar si hay un divorcio entre la teoría y la práctica en el ejercicio de la interpretación en comisaría en relación con la imparcialidad. Pretendía también establecer qué aspectos de la práctica profesional son susceptibles de generar contradicciones con las propuestas teóricas para así poder mejorar las pautas de actuación que impiden que la calidad de las interpretaciones en comisaría sea la adecuada para garantizar un proceso justo.

La exposición de la teoría y el análisis y la descripción de los datos obtenidos a partir de la observación de cinco casos reales demuestran que en estos casos existe tal divorcio. Los resultados no sorprenden, pues ya existen estudios en los que el intérprete no siempre se mantiene en su papel imparcial (Angelelli 2003, Berk-Seligson 2002, Hale 2004, Nakane 2009, Ortega Herráez & Foulquié Rubio 2008, Pöchhacker 2000, Wadensjö 1998).

Al analizar en detalle los datos obtenidos a partir del estudio, se observa que un denominador común es la falta de formación del intérprete y los

policías. Pese a la formación autodidacta con que contaba la autora a nivel teórico, la falta de preparación sobre cuestiones legales ha llevado a reformulaciones. Por otro lado, el desconocimiento sobre las culturas de los detenidos ha hecho imposible detectar si en algún momento se estaba produciendo algún malentendido de base cultural. La falta de formación específica de los policías para trabajar con intérpretes comporta un desconocimiento por parte de estos del papel que debe adoptar cada uno en estas situaciones. En todos los casos se observa que esta falta de formación está en el origen de los retos con los que se encuentra la intérprete. Es así en los casos en los que se habla directamente a la intérprete o en los que se delegan determinadas funciones, como leer los derechos o explicar el procedimiento.

Pese a que no se ha estudiado ningún caso de petición de asilo en este trabajo, la autora tiene la percepción de que en estos casos le ha resultado más sencillo mantenerse imparcial. Ello es debido a que los policías encargados de estos procedimientos parecen estar preparados para trabajar con intérpretes ya que, además de seguir el formulario punto por punto, parecen prestar especial atención en dirigirse directamente al demandante (verbal y no verbalmente). Si, efectivamente, estos policías tienen algún tipo de formación, sería interesante comparar la interpretación en demandas de asilo con las de este trabajo.

Por el momento, la falta de formación de ambos actores, junto con un insuficiente sistema de acceso a la profesión y unas débiles condiciones laborales dificultan que la interpretación en el ámbito legal se ejerza con las mayores garantías de calidad. La futura transposición de la Directiva tiene como objetivo superar estas limitaciones, pero todavía quedan puntos por resolver. Uno de los más importantes es el acceso al Registro Oficial que se creará, ya que en el Proyecto de Ley no se concretan las condiciones de acceso a este. Es necesario que se incluya una prueba de certificación con la que se demuestren los conocimientos de los intérpretes en técnicas de interpretación judicial y policial, en códigos deontológicos y en temas legales y culturales. Coincidimos con la Red Vértice (2014a) en la importancia de la gestión directa del servicio para evitar la mercantilización de un servicio público esencial y en la necesidad de suprimir la Disposición final segunda del proyecto de Ley Orgánica, por la que el nuevo sistema de gestión de la interpretación no estaría dotado de presupuesto (Red Vértice 2014b). Resulta inverosímil crear un sistema (formación, certificación, registro, control de calidad) sin que ello suponga un gasto para la administración.

Si se establece cómo y quién debe estructurar los planes de formación, pruebas de certificación profesionales, condiciones laborales adecuadas y

sistemas de control de la calidad, el intérprete sabrá cómo actuar cuando un detenido se dirija a él personalmente, o el policía sabrá que el intérprete no es quien debe leer los derechos.

Este estudio no ha resuelto los dilemas éticos que lo generaron, pero sí ha contribuido a poner en perspectiva y a entender por qué la imparcialidad propuesta por los códigos éticos y a la que se aspiraba en las primeras semanas de interpretación en comisaría es un enorme reto para el que hay que prepararse. La valoración de las consecuencias que puede tener implicarse en la interacción confirma que la calidad en interpretación policial pasa por la imparcialidad. Por otro lado, el estudio ha servido para plantear otras preguntas que han quedado sin respuesta y que podrían ser el germen de futuras investigaciones.

Bibliografía

ABRIL MARTÍ, María Isabel. (2006) *La Interpretación en los Servicios Públicos: Caracterización como género, contextualización y modelos de formación. Hacia unas bases para el diseño curricular*. Granada: Universidad de Granada. Tesis doctoral. Versión electronica: <http://hera.ugr.es/tesisugr/16235320.pdf>

ANGELELLI, Claudia. (2003) "The Interpersonal Role of the Interpreter in Cross-Cultural Communication. A Survey of Conference, Court, and Medical Interpreters in the US, Canada, and Mexico." En: Brunette, Louise; Georges Bastin; Isabelle Hemlin & Heather Clarke (eds.) 2003. *The Critical Link 3: Interpreters in the Community*. Amsterdam & Philadelphia: John Benjamins, pp. 15–26.

ANGELELLI, Claudia. (2004) *Revisiting the Interpreter's Role: A Study of Conference, Court, and Medical Interpreters in Canada, Mexico, and the United States*. Amsterdam & Philadelphia: John Benjamins.

BERK-SELIGSON, Susan. (2002) *The Bilingual Courtroom*. Chicago: University of Chicago Press.

CAMBRIDGE, Jan. (2002) "Interlocutor roles and the pressures on interpreters." En: Valero-Garcés, Carmen & Guzmán Mancho Barés (eds.) 2002. *Traducción e interpretación en los servicios públicos: nuevas necesidades para nuevas realidades*. Alcalá de Henares: Universidad de Alcalá, pp. 119–124.

CARR, Silvana E.; Roda P. Roberts; Aideen Dufour & Dini Steyn (eds.) (1997) *The Critical Link: Interpreters in the Community. Papers from the First International Conference on Interpreting in Legal, Health and Social Service Settings*. Amsterdam & Philadelphia: John Benjamins.

GARBER, Nathan. (2000) "Community interpretation: A personal view." En: Roberts, Roda P.; Silvana E. Carr; Diana Abraham & Aideen Dufour (eds.) 2000. *The Critical Link 2: Interpreters in the Community.* Amsterdam & Philadelphia: John Benjamins, pp. 9–20.

HALE, Sandra. (2004) *The Discourse of court interpreting: discourse practices of the law, the witness, and the interpreter*. Amsterdam & Philadelphia: John Benjamins.

HALE, Sandra. (2008) "Controversies over the role of the court interpreter." En: Valero-Garcés, Carmen & Anne Martin (eds.) 2008. *Crossing Borders in Community Interpreting: Definitions and Dilemmas*. Amsterdam & Philadelphia: John Benjamins, pp. 99–121.

JACOBSEN, Bente. (2009) "The Community Interpreter: A Question of Role." *Hermes. Journal of Language and Communication Studies* 42, pp. 155–166. Versión electrónica: <http://pure.au.dk/portal/files/9692/Hermes-42-8-jacobsen_net.pdf>

MIKKELSON, Holly. (1998) "Towards a Redefinition of the Role of the Court Interpreter." *Interpreting* 3:1, pp. 21–45. Versión electrónica: <http://www.acebo.com/pages/towards-a-redefinition-of-the-role-of-the-court-interpreter>

MOEKETSI, Rosemary. (1999) "Discourse in a multilingual and multicultural courtroom: a court interpreter's guide." *Proteus* 8, s.p. Versión electrónica: <http://www.najit.org/membersonly/library/Proteus/HTML%20Versions/v8n3-4/moekesti_v8n3-4.htm>

NAKANE, Ikuko. (2009) "The Myth of an 'Invisible Mediator': An Australian Case Study of English-Japanese Police Interpreting." *Portal* 6:1, pp. 1–16.

ORTEGA HERRÁEZ, Juan Miguel & Ana Isabel Foulquié Rubio. (2008) "Interpreting in police settings in Spain: Service providers' and interpreters' perspectives." En: Valero-Garcés, Carmen & Anne Martin (eds.) 2008. *Crossing Borders in Community Interpreting: Definitions and Dilemmas*. Amsterdam: John Benjamins, pp. 123–156.

PÖCHHACKER, Franz. (2000) "The community interpreter's task: Self-perception and provider views." En: Roberts, Roda P.; Silvana E. Carr; Diana Abraham & Aideen Dufour (eds.) 2000. *The Critical Link 2: Interpreters in the Community*. Amsterdam: John Benjamins, pp. 49–66.

PÖCHHACKER, Franz. (2008) "Interpreting as mediation." En: Valero-Garcés, Carmen & Anne Martin (eds.) 2008. *Crossing Borders in Community Interpreting: Definitions and Dilemmas*. Amsterdam & Philadelphia: John Benjamins, pp. 9–26.

RAGA GIMENO, Francisco. (2005) *Comunicación y cultura. Propuestas para el análisis transcultural de las interacciones comunicativas cara a cara*. Madrid & Frankfurt am Main: Iberoamericana & Vervuert.

ROSENBERG, Brett Allen. (2002) "A Quantitative Analysis of Community Interpreting." En: Valero-Garcés, Carmen & Guzmán Mancho Barés (eds.) 2002. *Traducción e Interpretación en los servicios públicos. Contextualización, actualidad y futuro*. Alcalá: Universidad de Alcalá, pp. 113-140.

SHERR, Daniel. (1999) "Interpreting in Spain and Colombia: Two Perspectives." *Proteus*, 8:3-4, s.p. Versión electrónica: <http://www.najit.org/membersonly/library/Proteus/HTML%20Versions/v8n3-4/sherr_v8n3-4.htm>

VARIOS AUTORES (NAJIT - National Association of Judiciary Interpreters and Translators). (s.d.) *Code of Ethics and Professional Responsibilities*. Washington. Versión electrónica: <http://www.najit.org/about/NAJIT%20Code%20of%20Ethics%202014NEW.pdf>

VARIOS AUTORES (España). (1882) *Ley de Enjuiciamiento Criminal*. *Boletín Oficial del Estado,* 17 de septiembre de 1882, núm. 260. Versión electrónica: <http://www.boe.es/buscar/pdf/1882/BOE-A-1882-6036-consolidado.pdf>

VARIOS AUTORES (Unión Europea). (1950) *Convenio para la Protección de los Derechos Humanos y de las Libertades Fundamentales. Firmado en Roma,* 4 de noviembre de 1950.

VARIOS AUTORES (España). (1978) *Constitución Española*. *Boletín Oficial del Estado,* núm. 311, de 29 de diciembre de 1978, pp. 29313-29424. Versión electrónica: <https://www.boe.es/boe/dias/1978/12/29/pdfs/A29313-29424.pdf>

VARIOS AUTORES (APTIJ - Asociación Profesional de Traductores e Intérpretes Judiciales y Jurados). (2010) *Código deontológico*. Versión electrónica: <http://www.aptij.es/img/web/docs/codigo-d-aptij.pdf>

VARIOS AUTORES (España). (2010) *Proyecto de Ley Orgánica por la que se modifica la Ley de Enjuiciamiento Criminal para transponer la Directiva 2010/64/UE*, de 20 de octubre de 2010, relativa al derecho a interpretación y a traducción en los procesos penales y la Directiva 2012/13/UE, de 22 de mayo de 2012, relativa al derecho a la información en los procesos penales. *Boletín Oficial de las Cortes Generales*, 5 de septiembre de 2014 núm. 114-1. Versión electrónica: http://www.congreso.es/public_oficiales/L10/CONG/BOCG/A/BOCG-10-A-114-1.PDF

VARIOS AUTORES (Metropolitan Police. London – Human Resources Board). (2010) *Working with interpreters & Translators – Standard Operating Procedures*. London. Versión electrónica: <http://www.met.police.uk/foi/pdfs/policies/interpreters_and_translators_sop.pdf>

VARIOS AUTORES (Unión Europea). (2010) *Directiva 2010/64/UE del Parlamento Europeo y del Consejo, 20 de octubre de 2010, relativa al derecho a interpretación y a traducción en los procesos penales. Diario Oficial de la Unión Europea L 280 de 26.10.2010*. Versión electrónica: <http://eur-lex.europa.eu/legal-content/ES/TXT/PDF/?uri=CELEX:32010L0064&from=es>

VARIOS AUTORES (AUSIT - Australian Institute of Interpreters and Translators). (2012) *Code of Ethics and Code of Conduct*. Versión electrónica: <http://ausit.org/ausit/documents/code_of_ethics_full.pdf>

VARIOS AUTORES (UNITI - University Network of Interpreter Training Institutes). (2012) *ImPLI Improving Police and Legal Interpreting 2011-2012. Final*

Report. Versión electrónica: <http://www.isit-paris.fr/documents/ImPLI/Final_Report.pdf>

VARIOS AUTORES (EULITA - European Legal Interpreters and Translators Association). (2013) *Code of Professional Ethics*. Versión electrónica: <http://www.eulita.eu/sites/default/files/EULITA-code-London-e.pdf>

VARIOS AUTORES (Red Vértice). (2014a) *Nota de prensa: Intérpretes alertan sobre el peligro de transponer incorrectamente la Directiva/2010/64/UE sobre interpretación y traducción en los procesos penales*. Madrid. Versión electrónica: <http://www.agpti.org/web/uploads/novas/Nota-prensa_Red-Vertice-CCDUTI_09-04-14.pdf>

VARIOS AUTORES (Red Vértice). (2014b) *Comunicado: Red Vértice se reúne con los ponentes del Proyecto de Ley Orgánica por la que se modifica la Ley de Enjuiciamiento Criminal*. Madrid. Versión electrónica: https://lourdesderioja.files.wordpress.com/2014/10/reuniocc81n_pp_comunicado.pdf

WADENSJÖ, Cecilia. (1998) *Interpreting as Interaction*. London & New York: Longman.

Anexo

Ficha descriptiva de las sesiones de interpretación

Ficha nº:
Lenguas de trabajo:

1. INFORMACIÓN BÁSICA

DETENIDO	
País procedencia	
Edad	0-20, 20-30, 30-40, 40-50, 50-60, 60-70
Sexo	Hombre - Mujer
Nivelde idioma solicitado	nulo – entiende un poco / no lo habla – entiende/ habla un poco – entiende/habla bastante bien – bueno – nativo
Nivel de español	nulo – entiende un poco / no lo habla – entiende/ habla un poco – entiende/habla bastante bien – bueno
Idioma materno (si diferente del solicitado)	
Motivo detención	extranjería – agresión – robo – violencia de género – salud pública – _____
Tiempo de residencia en España	0-2, 2-5, más de 5
Familiares residentes en España	Sí - No
OTROS	

POLICÍA	
Departamento / cargo	
Edad	0-20, 20-30, 30-40, 40-50, 50-60, 60-70
Sexo	Hombre - Mujer
OTROS	

ABOGADO/A	
De oficio – Particular (en caso de particular, ¿quien lo solicita? ¿Familiares, amigos, asociación?)	
Edad	0-20, 20-30, 30-40, 40-50, 50-60, 60-70
Sexo	Hombre - Mujer
OTROS	

2. CONTEXTO

ASPECTOS ESPACIALES	
Entorno físico	
Ubicación participantes	

ASPECTOS TEMPORALES	
Duración	0 a 30m – 31 a 60m – 60 a 90m – 90 a 120m – _____
Gestión de los turnos	

3. IMPARCIALIDAD

Conflictos de interés	Real – Potencial
¿Se interpreta a la parte contraria de un caso en el que ya se ha interpretado (agresor-víctima)?	
¿La I detecta posible perjuicio legal para el detenido?	
¿La I detecta posible trato denigrante?	
¿Alguna de las partes se dirige directamente a la I?	
¿Como responde la I?	
¿Hay alguna conversación casual delante de las otras partes? ¿Cuál es la respuesta de la I?	
¿Hay contacto innecesario con alguna de las partes?	
¿La I omite alguna información?	
¿La I añade alguna información?	
¿La I modifica alguna información?	
¿La I da su opinión de alguna manera (gestos, voz, verbalmente, etc.)?	
¿La I hace algún juicio de valor?	
¿Hay algún momento de impacto emocional?¿Cuál es la respuesta?	
¿Cuál es el papel que el detenido otorga a la I?	
¿Cuál es el papel que el policía otorga a la I?	
¿Cuál es el papel que el abogado otorga a la I?	

4. DESCRIPCIÓN DE LA SESIÓN

NOTA BIOGRÁFICA / BIONOTE

Adela Ortiz (Valencia, 1978). Licenciada en Filología Catalana (Universidad de Valencia) y en Traducción e Interpretación (Universitat Jaume I), se especializa en interpretación en el Máster de Interpretación de Conferencias (EMCI Universidad de La Laguna). Desde entonces ha compaginado el trabajo como traductora e intérprete autónoma con la docencia en diversas universidades: University of Westminster, Università degli Studi di Pavia, Universidad Europea de Valencia y Universitat Jaume I. Más recientemente se ha iniciado en la investigación cursando el Máster en Investigación en Traducción e Interpretación de la Universitat Jaume I.

Adela Ortiz (Valencia, 1978) graduated in Catalan Philology (Universidad de Valencia) and in Translation and Interpreting (Universitat Jaume I), and she specialized in interpreting thanks to the Master's Degree in Conference Interpreting (EMCI Universidad de La Laguna). Since then, she has combined her job as a freelance translator and interpreter and teaching at different universities: University of Westminster, Università degli Studi di Pavia, Universidad Europea de Valencia and Universitat Jaume I. More recently, she has started her research efforts completing a Master's Degree in Research in Translation and Interpreting (Universitat Jaume I).

TEACHING AND RESEARCH ON LEGAL INTERPRETING: A HONG KONG PERSPECTIVE

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Abstract

Court interpreters have long been a fixture in the bilingual Hong Kong courtroom, where English was once the only official court language and remains dominant to this day especially in the High Court, although litigants appearing in court as witnesses and defendants mostly speak Cantonese. The installation of the Digital Audio Recording and Transcription System (DARTS) in the courts from the mid-1990's gave birth to a bilingual reporting system, which provides not only verification ensuring a better administration of justice, but also a valuable source of data for the teaching and research of legal interpreting. Based on the recorded court proceedings of nine interpreter-mediated trials in the Hong Kong courtroom, this paper discusses the benefits of using audio courtroom data for pedagogical and scholarly purposes. While the use of real courtroom data as training material helps enhance students' learning experience, research findings of this data-driven study further shed light on the training needs for interpreter education in the legal setting. This paper investigates the Hong Kong courtroom as an atypical bilingual setting and in the light of the findings makes recommendations for best practice in the courtroom and for institutional and administrative practice.

Résumé

Les interprètes judiciaires sont depuis longtemps des acteurs incontournables dans les salles d'audience bilingues de Hong Kong. L'anglais, autrefois la seule langue officielle du tribunal, reste à ce jour la langue dominante du tribunal, notamment dans la Haute Cour de Justice, et ce alors même que les plaideurs, témoins ou accusés qui comparaissent devant le tribunal, parlent principalement le cantonais. L'installation d'un système d'enregistrement –Digital Audio Recording and Transcription System (DARTS)– dans les tribunaux à partir du milieu des années 1990 a donné naissance à

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un système d'information bilingue. Celui-ci ne fournit pas seulement un dispositif de vérification pour assurer une meilleure justice, il constitue aussi une source précieuse de données pour la recherche sur l'interprétation judiciaire et son enseignement. En s'appuyant sur des données judiciaires de neuf procès médiés par des interprètes au sein des salles d'audience de Hong Kong, cet article montre les avantages d'utiliser ces données pour la recherche sur l'interprétariat judiciaire et son enseignement. En montrant que l'utilisation des données authentiques pour l'enseignement améliore l'expérience d'apprentissage des étudiants, cette étude contribue à préciser les besoins de formation dans l'éducation de l'interprétariat judiciaire. L'étude détaille le contexte bilingue atypique dans lequel se déroulent les audiences et en souligne la spécificité. Cet article conclut par des recommandations pour une meilleure pratique de l'interprétariat tant au sein de la salle d'audience qu'aux niveaux institutionnels et administratifs.

Key words: Atypical bilingual courtroom. Non-English speaking court actors. Court interpreter. Participant role. Participation status.

Mots clés: Salle d'audience bilingue atypique. Non-anglophones du tribunal. Interprète judiciaire. Le rôle de participant. Participation.

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1. Introduction: The atypical bilingual Hong Kong courtroom

1.1. Ubiquity of court interpreters

For well over a century in Hong Kong, English was the only official language in which laws were enacted and trials conducted despite the predominantly Cantonese[1]-speaking population in the territory. Court interpreters, known as "the mouth and ears of the court" (Sin & Djung 1994: 138), have thus long played an indispensable role in bridging the communication gap between English-speaking (ES) legal professionals and the Cantonese-speaking lay participants who appear in court as witnesses or defendants. Due to the ubiquitous presence of interpreters in the Hong Kong courtroom, the common law system of Hong Kong, inherited from Britain, is described as "one of the most 'interpreted' legal systems in the world" (Ng 2009: 120). The changeover of Hong Kong's sovereignty in 1997 has resulted in an increasing use of Chinese (Cantonese) as the trial language in the lower courts. In the High Court, however, a relatively large percentage of criminal cases are still heard in English on a daily basis due to the presence of expatriate judges and/or counsel. Due to the wide use of interpreting in the courts of Hong Kong, all the court interpreters working between Cantonese and English are full-time interpreters appointed by the Court Language Section of the Judiciary of Hong Kong and are civil servants, similar to the resident interpreters in Malaysia (Ibraham 2007) or staff interpreters in some of the US Federal courts (Berk-Seligson 1990, 2002). In the past decade, the Court Interpreter Grade of the Court Language Section has maintained a strength of around 150 full-time court interpreters at four different ranks (namely, Court Interpreter II, Court Interpreter I, Senior Court Interpreter and Chief Court Interpreter) deployed to different levels of courts (Ng 2013a).

1. A dialect spoken by about 90% of the local population in Hong Kong.

1.2. Interpreting for the linguistic majority

Unlike in many jurisdictions where court interpreters are hired on demand for the benefit of linguistic minorities who do not speak the language of the court, non-English speaking (NES) litigants in the Hong Kong courtroom are mostly the Cantonese-speaking linguistic majority. This accounts for the widespread use of interpreting services in court as most of the lay participants in court proceedings are not able to testify in English or access trial talk in English without the mediation of the court interpreter. It must be pointed out, however, that trials in the Hong Kong courts from time to time also involve litigants speaking other Chinese dialects or foreign languages other than English, giving rise to the need for minority language interpreting. This paper focuses on interpreting between Cantonese and English, which is provided in court on a day-to-day basis since the interpreting service in a trial heard in English in Hong Kong is a *sine qua non* for reasons explained above.

1.3. Modes of interpretation used in court

In most jurisdictions where interpretation is provided for the benefit of a minority language speaker such as the defendant, interpretation is conducted for much of the trial in the simultaneous *chuchotage* mode, without the speaker having to pause at regular intervals to allow his/her utterance to be interpreted. This mode of interpreting enables the interpreter to remain less visible throughout the trial, but it makes ascertaining the quality of the interpretation difficult if not impossible. When a defendant or witness who does not speak the language of the court takes the stand and is examined by counsel and consecutive interpretation (CI) is provided, the interpreter is brought into the foreground, and ostensibly assumes a participant role in the interaction. In a case where the defendant is the only one who does not speak the language of the court, CI is usually provided during the arraignment, the examination of the defendant, the judge's delivery of the verdict and sentencing, in which the defendant has a speaker role and/or a role as the direct addressee. For the rest of the trial where the defendant is simply an auditor, interpretation is usually provided to him/her in the *chuchotage* mode with the interpreter standing/sitting next to him/her. With the interpreter working in the background in a relatively unobtrusive mode, the trial is conducted in very much the same way as one without the assistance of an interpreter.

In a trial heard in English in the Hong Kong courtroom, however, due to the linguistic dichotomy between ES legal professionals and NES lay participants, legal-lay interactions are interpreted most of the time in the consecutive mode. This mode of interpreting enables both the defendant and the

testifying witness (and all the other NES court actors) to access the utterances made in English. This is probably why the interpreter in the Hong Kong courtroom has a designated seat next to the witness box (see Appendix 1 for a High Court courtroom layout in Hong Kong). If by any chance a witness should choose to testify in English, then the court functions like a typical bilingual court for a while with interpretation provided in *chuchotage* for the Cantonese-speaking defendant. For interactions between the court personnel such as counsel's opening/closing speeches and the judge's summing-up or instructions to the jury, interpretation is also provided in *chuchotage* for the Cantonese-speaking defendant only. *Chuchotage* in Hong Kong is also known as dockside interpreting, as it is performed with the interpreter standing or sitting by the side of the dock in which the defendant sits.

1.4. The court interpreter as one of the bilinguals in court

In the early colonial days of Hong Kong, the court interpreter was usually the only person speaking both the language of the lay participants and that of the court. Any interpreting mistakes, which might have subsequently led to a miscarriage of justice, would have simply gone unnoticed because few would have been able to challenge the accuracy of the interpretation (Eitel 1877). Today, while interpreters continue to play their part in trials conducted in English, they are no longer the only bilingual individuals in the courts, which are often dominated by legal professionals proficient in both English and Cantonese. The presence of these other bilinguals inevitably puts pressure on interpreters and can be presumed to have an impact on the dynamics of interaction in court. For instance, it is not uncommon for bilingual counsel or judges to criticise an interpreter's rendition. On one occasion, a magistrate fluent in both Cantonese and English said in open court that his interpreter's poor interpretation "could rob the defendant of a fair trial". The magistrate's remarks reduced the court interpreter to tears and as a result the magistrate had to order a five-minute break for the interpreter to "collect herself", but she was too upset to continue and had to be replaced (Chow & Chin 1997). It can thus be argued that the presence of the other bilinguals in court makes the process of interpreting in the courtroom more transparent and thus the job of court interpreting more demanding.

1.5. The introduction of the bilingual reporting system

The installation of the Digital Audio Recording and Transcription System (DARTS) in the courts in the late 1990's is a milestone in the history of court interpreting in Hong Kong as it enables a bilingual court reporting system.

Before that, only utterances made in English and the English interpretation of witnesses' testimony appeared in the court record. What was said by the witnesses/defendants in Cantonese and the Cantonese interpretation of English utterances vanished into thin air once spoken. Even if an appeal should ensue at a later stage on the grounds of an alleged interpreting error, verification was impossible in the absence of any record of the original testimony in Cantonese (or any other language used by the witness). What the court relied on for its verdict was the English version of the trial talk. With the introduction of DARTS, any mistake allegedly made by the interpreter can be checked against the record. Interested parties can apply for access to the bilingual record in case of an appeal. While this inevitably further intensifies the pressure on the court interpreter, it at the same time "holds out the promise that justice will be better safeguarded" (Sin & Djung 1994: 144).[2] The bilingual recordings of court proceedings provide not only a verification system to ensure better administration of justice, but also a valuable source of data for the teaching and research of legal interpreting.

2. The study

2.1. Access to data

As a former court interpreter, I have long lamented the lack of pre-service training for court interpreters; the Judiciary of Hong Kong has adopted a learning-by-doing approach for new recruits. The recruits do not need to have any previous experience in interpreting or hold a degree in Translation or Interpreting. All they have to do for an appointment is to pass a written translation and an oral interpretation test (Lee 1994; Ng 2013a). As I later started teaching Interpretation at university level, I tried to introduce court interpreting into the interpreting syllabus and felt an acute need for legal interpreting to become an independent academic subject in order to prepare aspiring students for the challenge of the job. In view of a lack of legal interpreting courses in local tertiary institutes, I offered to teach a new course in legal interpreting and hoped to be able to use some of the recorded court proceedings as the teaching material. Subsequent to the approval of my new course, I

2. The appeal of a murder case between the Hong Kong Special Administrative Region (HKSAR) and Ng Pak Lun (CACC153/2010) is an example of DARTS serving as evidence of misinterpretation by the interpreter. In this appeal, the utterance "some really serious bodily harm" had been mistakenly rendered as "a degree of bodily harm". A review of the transcript necessitated by an appeal against the guilty verdict by the defence uncovered the mistake and eventually led to a retrial of the case.

applied to the High Court Registrar to be allowed to access the recorded court proceedings for academic purposes. Permission was subsequently granted by the High Court Registrar for me to use the recordings of the nine criminal trials I had requested, including a murder and a rape case, on condition that I undertook to use the data only for teaching and research purposes and to guarantee anonymity of the personal information in the data.

2.2. Funding and data transcription

To turn the courtroom audio data into usable research data and material for classroom teaching, transcription of the data amounting to over 100 hours of recording time was deemed necessary. The transcription of the data was funded by two grants from my university[3] which enabled me to hire research assistants (RAs) to help with the transcription and to develop a glossary of bilingual terms from the transcripts produced. The recordings have been transcribed verbatim, using transcription symbols and conventions typical of conversation analysis (Silverman 2006). The transcription is intended to represent the speech in as detailed and multifaceted a manner as possible so as to provide readers with an accurate representation of the interaction. It includes such non-verbal elements as pauses, emphases and overlapping speech. We were however concerned about the readability of the transcripts as too many details and information could make them difficult to read. Efforts have thus been made to strike a balance between an accurate representation of the speech and readability of the transcripts (See a list of transcription keys and abbreviations used in this paper in Appendix 2). The recordings and the resulting transcripts have become the primary source of data for my teaching and research on legal interpreting.

3. Use of the data for teaching purposes

The use of authentic audio data as the teaching and practice material in the classroom aims primarily to enhance students' learning experience by allowing them to tackle real court cases in the classroom. Students listen to utterances made by judges, counsel, witnesses and defendants and practise interpreting before they listen to the interpreter's rendition, which is used as a counter reference and a resource for discussion. This effectively turns the classroom

3. I am indebted to the Leung Kau Kui Research and Teaching Endowment Fund and the Teaching and Development Grants, The University of Hong Kong, for funding my projects "Teaching Legal Interpreting with Authentic Court Data" and "Legal Interpreting – from Courtroom to Classroom" in 2009 and 2014 respectively.

into a virtual courtroom. The transcripts developed from the audio data make it easier for the teacher to play the recordings, to explain and exemplify the intricacies of the legal language used by judges and counsel and the rhetorical linguistic devices adopted in courtroom advocacy. Additionally, they serve as a yardstick against which comments on the rendition of the interpreter and on that of the students in the classroom can be made. To connect what students are learning in the classroom with real world experience, I take the students out of the classroom to the law courts to observe court interpreters at work and to see for themselves what court interpreting is. This is followed by a mock trial in a moot court where students take turns to play the role of the judge, of counsel, of the witness and of the interpreter by using the scripts developed from the recorded proceedings.

4. Objectives of data-driven research

Another use of the data, as was stated in my letter to the High Court Registrar, is for conducting research on court interpreting. While the past two decades have witnessed a significant increase in the literature on court interpreting, research has largely focused on a courtroom setting where interpretation is provided for the linguistic minority; an atypical bilingual courtroom setting like that of Hong Kong remains hitherto unexplored. This study aims to fill this gap in the literature on court interpreting. My investigation into the Hong Kong courtroom was motivated firstly by my background as a former full-time court interpreter and now a researcher and interpreter trainer, and by my conviction that this special courtroom setting merits a full-scale data-driven study.[4] It is my hope that the findings will shed light on the training needs for court interpreters and on the best way to work with them. The recommendations to be made will apply not only to the Hong Kong courtroom, but also to other courtroom settings that share similar features.

5. Research findings

5.1. The complexity of recipientship in the bilingual Hong Kong courtroom

As was noted in Section 1.4, one of the special features of the Hong Kong courtroom is that interpreters nowadays often have to work with participants who are also bilinguals. Research findings of the data show that the notion of recipientship or audienceship is complicated due to the presence of other

4. This paper reports some of the findings of my PhD research project – *The Atypical Bilingual Courtroom: An Explanatory Study of the Interactional Dynamics* (see Ng 2013a).

bilingual court actors in the Hong Kong courtroom. An interpreter working in a courtroom as the only bilingual has two different audiences who do not speak each other's language. One audience, usually the linguistic majority in court, would be listening only to the interpreter's rendition into the court language. The interpreter's other audience, often the minority language speaker(s), listen only to his/her rendition into the minority language. In the Hong Kong courtroom, however, Cantonese-speaking litigants are not the exclusive audience of the interpreter's Cantonese rendition of utterances produced in English. The Cantonese rendition is also accessible to bilingual counsel and judges, who, if monolingual, would be listening only to the interpreter's English rendition of utterances made in Cantonese. These bilinguals also have access to witnesses' testimony given in Cantonese. For the purpose of this study, I have borrowed the notion of audience roles from Bell's (1984) model of audience design, which has a taxonomy of four audience members, namely addressee, auditor, overhearer and eavesdropper. According to Bell, an addressee is a listener who is known, ratified and directly addressed and an auditor is also a known and ratified listener but not directly addressed. Bell (1984) differentiates overhearers from eavesdroppers depending on whether or not these non-ratified listeners' presence is known to the speaker.

With Bell's model of audience roles as a point of reference, I have redefined some of the roles with special reference to participants in the courtroom. An addressee is one who is being addressed, with or without the mediation of the interpreter (as long as the speaker is addressing him/her directly, not the interpreter). For example, in a witness examination, the examining counsel and the witness are, by default, each other's addressee; the defendant, the judge and the jury (as close followers of the talk) have the role of auditors; those in the public gallery can be categorised as overhearers as they may or may not be following the talk closely and do not normally assume a speaker role at any stage of the trial, unlike other court actors. In the Hong Kong courtroom, if the examination of a witness is mediated by an interpreter, a bilingual counsel does not listen only to the interpreter's rendition into English, but can also overhear the interpreter's rendition of counsel's question into Cantonese. S/he may also react to a witness's Cantonese utterance without waiting for the interpreter to render it into English, or comment on the interpreter's rendition into and out of Cantonese. The bilingual counsel can thus be described to have taken on also the role of overhearer of the Cantonese version of the talk, which is not intended for him/her as an English speaker in court, but for the Cantonese-speaking participants. Likewise, a bilingual judge can also overhear the witness's testimony in Cantonese and the interpreter's Cantonese

rendition of counsel's question, thus assuming also the role of overhearer in addition to his/her default role as auditor of the English version of the talk. Since a trial takes place in a closed courtroom and the presence of all the participants in court is noticeable to the speaker, there is no category of eavesdroppers in a courtroom trial.

The following is an example of a bilingual defence counsel (DC) taking on an overhearer role as he corrects an interpreter (I) during the cross-examination of a witness (W).

Example (1) Cross-examination of W, Rape, High Court

Turn	Speaker	SL utterances/ interpretation	English gloss
1.	DC	Alright. Now, when you...after the sexual intercourse, you must feel very **aggrieved**	
2.	I	噢，咁係呢，係你進行完性交之後呢，咁應該呢，就係呢，係覺得呢，好**辛苦**，係咪？	*Now, so after the sexual intercourse, you must have felt very **hard/bad**. Is that right?*
3.	W	係	*Yes*
4.	I	Yes	
5.	DC	No, "aggrieved", "aggrieved"	

In this example, the Cantonese/English bilingual defence counsel, having (over)heard the Cantonese interpretation of his question and dissatisfied with the interpreter's output, repeats it twice for the interpreter in an attempt to correct her. Example (2) below is yet another instance where the prosecution counsel (PC) in the same case, again bilingual in Cantonese and English, informs the monolingual judge (J) of a perceived discrepancy between the defendant's testimony in Cantonese and the interpreted version.

Example (2) PC addressing J, Rape, High Court

Turn	Speaker	SL utterances
1.	PC	*Saam1*, the Chinese used by the accused himself was *saam1*, and it was translated (.) as "garment"=
2.	J	=Yes, you say that the translation is incorrect. It should be "upper garment"?
3.	PC	To be er...to be exact, it should be "upper garment".

The argument concerns an ambiguous Cantonese word *saam1*[5], which can be taken to mean either "garment" (clothing in general) or "upper garment" (a top/a piece of clothing worn on the upper part of the body) depending on the context.

It is the prosecution's case that the defendant had sex with the witness against her will. According to the witness's evidence and the defendant's own evidence-in-chief, the defendant was wearing only a pair of shorts prior to the sexual intercourse, without any clothing on the upper part of his body. The defendant did not dispute having sex with the witness, but alleged that the sexual intercourse was consensual. He claimed that the witness invited him to go up to bed by pulling his *saam1*, which was then rendered by the interpreter as "garment", most probably to conform to what had been established in evidence that the defendant was not wearing any "upper garment" at the material time. When the prosecution counsel points out this discrepancy in the defendant's testimony, he is obviously not referring to the interpreted version of the evidence, but to the defendant's testimony in Cantonese. He is informing the court of a misinterpretation and arguing for a rendition of the word *saam1* as "upper garment". A rendition of *saam1* as "upper garment" would contradict the defendant's earlier evidence and presumably would render him an untruthful witness. On the other hand, an interpretation of the word as "garment" fails to show the inconsistency in the defendant's testimony that the prosecution seeks to adduce. In other words, the interpreter's rendition of the Cantonese word *saam1* as "garment" has eliminated such inconsistency. It could thus be argued that in times of semantic ambiguity, the aim of the interpreter to seek conformity to the preceding context necessarily runs counter to that of the cross-examiner whose primary goal is to identify inconsistencies or contradictions in the witness's (in this case the defendant's) testimony in order to discredit him (for details of this case, see Ng 2013a, 2013b).

5.2. Participant roles and power of court actors

Another focus of my study is to examine how the presence of other bilingual court actors in the Hong Kong courtroom may impact on the interactional dynamics and thus the participation status of individual court actors, and how the participation status of the court actors affects their power and control

5. Romanisation of Cantonese characters in this study is based on *Jutping*, a Cantonese Romanisation system developed by the Linguistic Society of Hong Kong. This system distinguishes 6 tones in Cantonese and the number at the end of a syllable is a tone marker.

in the courtroom. The above two examples show that bilingual counsel take on an extra participant role as overhearer of the Cantonese version of the trial talk in addition to their official role as addressee or auditor of the talk. As illustrated in Example 2, the multiple audience roles the bilingual prosecutor assumes empower him to act as an adjudicator or assessor of the accuracy of the interpreter's output. This suggests a more advantageous participation status for himself as a result of his bilingualism when compared with the monolingual judge, who has no access to the defendant's evidence in the Source Language (SL) and thus little linguistic power and control over the evidential phase of the trial.

The interpreter working with bilingual court actors too sees her power and control over the communicative act constrained and her monopolistic power as the only bilingual disappear in line with Anderson (2002: 214). Example (3) below illustrates the interpreter's reduced linguistic control when she submits to the suggestion of the prosecution counsel by agreeing to change her rendition of *saam1* from "garment" to "upper garment".

Example (3) Interaction between J and I, Rape, High Court

Turn	Speaker	SL utterances
1.	J	Well, I suppose insofar as the first one is concerned, the question is whether my interpreter is happy with the interpretation she's uh... she's given, or whether she wants to uh qualify that in any way.
2.	I	< in a low voice >Yeah, I am happy with that=
3.	J	=You are happy with interpretation just "garment"?
4.	I	Er with er "upper".
5.	J	"upper garment", okay. <sighing > Right.

An allegation of misinterpretation inevitably places the interpreter in a dilemma: adopting the suggestion of the prosecutor is tantamount to admission of an interpretation error, whereas insisting on her earlier rendition would certainly spark further heated discussion and would most likely attract criticism or even hostility from the prosecutor. The former would entail a loss of face on the part of the interpreter while the latter would entail a confrontation with authority, neither of which is an easy way out for the interpreter. In this case, since the judge is monolingual and does not speak Cantonese, he is not equipped to adjudicate in the matter and therefore has to leave it entirely in the hands of the interpreter as indicated in turn 1 of Example (3). The interpreter's response in turn 2 is ambiguous and has led the judge to

believe that she wishes to leave the interpretation as just "garment" (turn 3). The judge seems to be taken aback by the interpreter's decision to adopt the prosecutor's suggestion. There seems to be also a tone of resignation in the judge's utterance (turn 5), which may reflect his diminished power due to his disadvantaged participation status in an interpreted encounter where the other interlocutors are bilingual.

5.3. Judges' interruptions in interpreter-mediated trials

Another salient finding of my study is that intervention by judges in the evidential phase of a trial proves more problematic in the Hong Kong courtroom than in a typical bilingual setting where interpreting is provided for the benefit of linguistic minorities. As was noted in Section 1.2, in a trial conducted in English in the Hong Kong courtroom, lay participants appearing in court as defendants, witnesses and even spectators in the public gallery have to rely on the Cantonese interpretation in open court for their understanding of utterances made in English. When a judge interrupts to clarify with a witness or counsel or engages in a verbal exchange with counsel during the witness examination, the result is that all the NES lay participants including the testifying witness, the defendant and spectators in the public gallery will be temporarily excluded from participating in the trial. Example (4) below shows a judge interrupting counsel to clarify with a witness.

Example (4) Examination-in-chief of W, Theft, Magistrates' Court

Turn	Speaker	SL utterance/interpretation	English gloss/remarks
	PC	So, em now after she discard <sic.> the wrappings—	<no interpretation>
	J	Well, hold on, hold on. After she took that, what did she do?	
	I	佢攞咗哩一...哩一個子母袋之後，佢點呀？	*Having taken a 2-in-1 bag, what did she do?* <CI in Cantonese>

In the above example, the judge's interruption renders the prosecution counsel unable to finish her question resulting in the omission in interpretation of her question (though not of the judge's question, which is addressed to the witness and thus has to be interpreted in the consecutive mode in open court). A question or comment targeted at counsel will prove even more problematic as will be illustrated in Example (5) below.

Example (5) Examination-in-chief of W, Trafficking in Dangerous Drugs, District Court

Turn	Speaker	SL utterance/interpretation	English gloss/remarks
	PC	During the uh time, (3) during the time that (2) this video (1) interview was being conducted, Officer, did you have any contact from outside the room?	<No interpretation >
	J	Well, that's not the allegation, is it? This is, it's videoed. It's before, there's an allegation that (1) they taught her what to say.	<No interpretation >
	PC	**Yes, Your Honour, but um, I don't need to lead that or, or, or I, what I wish to establish is that during the interview, there was contact from outside, if I may just put my question.** (2) Were you given any instructions, whilst this interview was being conducted, Officer, whilst you were inside the room?	<PC's response to J's comment (in boldface) not interpreted>
	I	拿咁當時當進行緊呢個嘅er會面嘅時候呢，當你係間房裡面嘅時候啦，當時係咪有俾過指示你㗎？	*So when you were conducting the interview, when you were inside the room, were you given any instructions?* <CI of PC's question for W>
	J	There's no such allegation	<No interpretation >
	PC	I'm not… it's nothing to do with allegation, Your Honour. I'm just asking this question [if I may.	
	J	[Why?	
	PC	<sigh> Because this is what happened during the (.) the proceedings, Your Honour.	
	J	(4) Was there an interruption?	
	DC	I think that towards the end of the interview, someone (1) placed a piece of the paper underneath the door and put it into the interview room. Either this officer or the other officer (xxx), for the purpose of their enquiry.	*During the VRI, someone inserted a piece of paper into (the room) from underneath the door* <*chuchotage* of DC's comment for W in the witness box>
	J	I see. Sorry. Yes.	<no interpretation>

In this example, the prosecution counsel is asking the witness how he conducted the video recorded interview (VRI) with the defendant as the prosecution has sought to tender the video of the interview as an exhibit in court, to which the defence has objected on the grounds that the defendant was threatened, induced and taught how to answer the questions during the VRI. This presumably constitutes the judge's whole understanding of the VRI. Therefore, when the prosecution counsel asks the witness about "the contact from outside the room", this must have struck the judge as irrelevant because it was not mentioned in the defence counsel's grounds of objection. There is obviously a tension between the prosecutor and the judge as the prosecutor insists on putting the question to the witness while the judge disallows this. It is not until the defence counsel steps in by telling the court that at one point during the VRI a piece of paper was inserted into the room from outside (turn 10) that the judge realises her own problem.

To start with, as in Example (4), the judge's interruption in turn 2 has resulted in an omission in interpretation of counsel's question for the witness in turn 1. Moreover, since the judge's question is addressed to counsel, not the witness, and the judge and counsel can interact with each other without the mediation of the interpreter, both the judge's question and counsel's response to her question in turn 3 (as well as the subsequent interaction) are not interpreted in open court, unlike the case with legal-lay interaction. Note that the judge's interruption in turn 5 has also deprived the witness of the chance to answer counsel's question, which has been interpreted for him. Access to the uninterpreted interaction between counsel and the judge has been effectively denied to the witness in the witness box, the defendant in the dock as well as the spectators in the public gallery. As noted in Section 1.3, *chuchotage* is usually provided for the defendant for counsel/judge/jury interactions. Note that the interruptions take place during the testimony of the witness rather than that of the defendant, who, like the witness and other NES court actors, has to rely on the Cantonese interpretation provided in the consecutive mode in open court for access to utterances made in English. In a typical bilingual setting, where the defendant is the only person requiring interpreting services, *chuchotage* can be provided to enable his/her access to the encounter whether s/he is testifying in the witness box or is listening to the trial talk in the dock as an auditor. In this case, since the interpreter, at her designated seat by the witness box, is providing CI for the witness, *chuchotage* cannot be provided for the defendant, who is physically removed from the interpreter (see Appendix 1). The *chuchotage* provided in turn 10 is for the witness, not for the defendant. The interpreter must have made a decision about whether

or not and for whom to provide the *chuchotage* before she started interpreting in turn 10.

When a judicial intervention occurs during the examination of the defendant, the interpreter does not need to choose whether to provide *chuchotage* for the defendant or the witness as the defendant is testifying in the witness box right beside her. However, c*huchotage* by the witness box, whether for the defendant or for the witness, is not easy to perform. The proximity of the interpreter to the SL speakers and the overlapping voices of the interpreter and of the SL speaker would confuse the witness/defendant, and the unavailability of simultaneous interpretation (SI) equipment rules out an accurate rendition.

Obviously, judicial intervention in a witness examination, which is transparent in a monolingual trial and accessible to the linguistic majority in court in a typical bilingual setting, has proved more problematic in the bilingual Hong Kong courtroom. It is found that judicial intervention often results in inaccuracy and omission in interpretation and denying the defendant and all the other NES court actors access to the trial talk in its entirety. For these people, justice is seen but not *heard* to be done.

5.4. The use of chuchotage and court actors' participation status

It is found that *chuchotage*, a mode of interpreting commonly adopted in a typical bilingual setting where interpretation is provided for the linguistic minority (as was pointed out in Section 1.3) inevitably denies NES court actors' full access to the trial talk in the Hong Kong courtroom. As illustrated in Example (5), interactions between counsel and the judge in English are not interpreted in the consecutive mode in open court but in *chuchotage* (if any) audible only to the defendant (or the testifying witness). This necessarily excludes the participation of other NES court actors, such as the spectators in the public gallery, where one would expect to find friends and family members of the defendant or of the victim. As was noted also in Section 1.3, monologues such as counsel's speeches and judges' summings-up and jury instructions are all interpreted in *chuchotage*, audible only to the defendant.

An even more worrying problem associated with the provision of *chuchotage* in the Hong Kong courtroom is the participation status of the jury. In the old days when court cases were heard only in English, not many people were qualified for jury service, and those who could serve as jurors had to be well-educated with a high proficiency in English. Given that Chinese is now used as the other court language, Section 4(c) of the Jury Ordinance (1999) states that a juror must have "a sufficient knowledge of the language

in which the proceedings are to be conducted to be able to understand the proceedings". It follows that in a trial heard in English, a juror is expected to have a *sufficient* knowledge of English. Given the predominantly-Cantonese speaking local population, however, there is no knowing to what extent those jurors who are selected are able to follow the legal language used in court, which may prove difficult even for native English speakers. It has been argued for example that "jury instructions are 'mumbo jumbo' to even well-educated Americans" (O'Barr 1982: 26) and that "members of the public have long expressed frustration with legal language" (Tiersma 1999: 199). It would presumably prove even more problematic for people not native in the language. In the Rape case, one of the jurors whose name had been drawn from the ballot box told the court through the interpreter that she wished to be exempted as she expressed worries about her ability to follow the trial in English. She was however talked into accepting jury duty by the judge, who reassured her that the trial would be bilingual with the assistance of an interpreter. The judge is right as far as testimony interpreted in the consecutive mode is concerned. However, interactions between the court personnel throughout the trial including the summing-up and jury instructions are interpreted in *chuchotage* and audible only to the defendant as was noted above. That means that jurors who have a problem with their comprehension of the talk might, like the monolingual Cantonese-speaking court actors, be excluded from participation despite the fact that they are most of the time the direct addressees of these judicial and legal monologues. Besides, not all the testimony is interpreted in the consecutive mode in open court as occasionally a witness (usually an expert witness like a medical doctor or a forensic pathologist in a murder case) may choose to testify in English, without the mediation of the interpreter. This is another instance when *chuchotage* in lieu of CI would be provided for the Cantonese-speaking defendant. Again there is no knowing whether jurors will have a problem following English testimony such as technical, medical or forensic evidence without the assistance of the interpreter. Those in the public gallery are also likely to be excluded.

While some jurors ask to be exempted citing their poor standard of English as the reason for exemption, others may find this admission too embarrassing in open court, especially people whose professions require high English proficiency. This would inevitably compromise not only their participation status, but possibly the administration of justice, an issue that merits further exploration.

6. Pedagogical implications

Given the distinctiveness of the bilingual Hong Kong courtroom, in addition to sensitising interpreters to linguistic and pragmatic aspects as suggested in other studies (Berk-Seligson 1990, 2002; Hale 2004), interpreter training in Hong Kong should address the specifics of the bilingual Hong Kong courtroom and should sensitise students to the possibility of being challenged by bilingual participants in court proceedings and ways to cope with these challenges. As has been demonstrated above, interpreting in the Hong Kong courtroom is made doubly demanding due to the presence of other bilinguals, who have access to both the SL utterances and the interpreter's rendition in the TL. These bilinguals can then take on additional audience roles as overhearers to check the accuracy of the interpreter's output. This on the one hand implies that justice is better safeguarded, and on the other hand will inevitably add to the pressure on court interpreters. These other bilinguals may at times, as was illustrated in the Rape case, exploit their accessibility to both the SL and the TL versions of the testimony and challenge the interpreter by proposing an alternative interpretation that works to their advantage. While it is important that interpreters should not try to cover up or defend their mistake to save face or avoid embarrassment, it is equally important that interpreters are taught how to defend an informed decision and not meekly submit to authority and have their competence called into question. This crucial strategic professional behaviour, including the court interpreter's code of ethics and courtroom protocol, must be made known to the court interpreters by the Judiciary of Hong Kong in their Induction Programme for new recruits (see Lee 1994; Ng 2013a); and should be included in the syllabus of any training programme preparing aspiring interpreters for the challenge of court interpreting.

Interpreters should also be sensitised to the potential problems arising from the interpretation of semantic ambiguity. Where possible, interpreters should strive to reproduce ambiguity in the TL and leave the burden of clarification to the court, and should avoid resorting to guesswork. As shown in the Rape case, the interpreter's decision to opt for one meaning of the ambiguous Cantonese word *saam1* ends up being challenged by the bilingual prosecutor, who decides that the other interpretation would work better for the prosecution's case.

As was demonstrated in Example (5) and noted above, a legal debate between counsel and the judge resulting from judicial intervention with the examination of a witness creates an acoustic problem for the interpreter, making it difficult to perform *chuchotage*, which in any case cannot be provided for

both the defendant *and* the testifying witness. It is thus important for the interpreter to inform the court of such practical difficulties, or else the defendant and/or witness will be denied access to the verbal exchange between counsel and the judge.

7. Recommendations for best practice in the courtroom

In an interpreter-mediated trial, whilst ensuring that those who do not speak the language of the court will be on a comparable footing with those who do, efforts must also be made to facilitate the work of the interpreter. As Hale (2010) notes, interpreters cannot always be blamed for interpretation which is not fully accurate as there are often obstacles that are beyond their control, adequate interpretation being heavily reliant upon the physical working conditions and the behaviour of the co-present participants in the interaction. The recommendations below aim to improve the working conditions in the courtroom and the behaviour of other court actors so as to facilitate the work of the interpreter in the courtroom. Some of these recommendations are generic and apply to bilingual legal settings in general while others specifically address the interpreting phenomena present in the Hong Kong courtroom.

7.1. Team interpreting and the use of SI equipment

As has been pointed out earlier, utterances produced by the legal personnel in an English-medium trial in the Hong Kong courtroom have to be interpreted from English to Cantonese not only for the defendant, but also for witnesses and the majority of the spectators in the public gallery to enable them to participate in the proceedings. The participation of these NES court actors in the evidential phase of a trial is made possible only through the provision of CI in open court. Nonetheless, the findings of this study show that where a judge interrupts the evidential process, the interpreter either interprets the verbal exchanges between counsel and the judge in *chuchotage* for the defendant/witness in the witness box, as is the standard practice, or simply remains silent, unless the judge's question is addressed to the witness/defendant. This finding is consistent with Hale's observation in her study of English-Spanish interpretation provided in the Local Court in Australia (2004: 208). In the context of the Hong Kong courtroom, the impact of such non-interpretation or *chuchotage* is more far-reaching than in the Australian courtroom, where presumably the Spanish speaking witness/defendant is the linguistic minority. It is also found that judicial intervention occurring during the examination of

a witness is more problematic than interventions during the examination of the defendant, as *chuchotage* cannot be provided for both the witness in the witness box and the defendant in the dock.

The findings of this study thus point to the need for team interpreting. With the use of two interpreters in the same trial, it would be possible for one interpreter to provide *chuchotage* to the defendant in the dock and the other to the witness in the witness box in cases where judicial intervention occurs during the examination of a witness, rather than that of a defendant. This practice, however, would still prejudice other NES court actors such as spectators in the public gallery. Besides, *chuchotage* would create acoustic difficulty for *both* the interpreter working by the witness box *and* the interpreter providing dockside *chuchotage*. The interpreter providing *chuchotage* for the witness would have to compete with or "drown out" the voice of the SL speakers (De Jongh 1992: 50); the interpreter providing dockside interpreting often has to work behind the SL speaker's back, typically when counsel is addressing the judge or the jury (Fowler, Ng & Coulthard 2012).

The best solution would be to have one interpreter providing SI of English utterances produced by legal professionals but not interpreted in the consecutive mode in open court to all those requiring such services (including possibly jurors) with the use of SI equipment,[6] with the other interpreter concentrating on the provision of CI of the legal-lay interactions. The use of SI equipment allows the simultaneous interpreter to be physically removed from the SL speakers and the defendant (as well as other listeners requiring such services). The positioning of the simultaneous interpreter away from the defendant, as De Jongh (1992: 51) rightly notes, would also help underscore the neutral role of the interpreter as it would discourage "unnecessary communication on the part of the defendant with the interpreter" (Fowler et al. 2012). With SI provided for all those who require interpreting services in the courtroom, exemption from jury service could not then be claimed on the grounds of insufficient proficiency in English.[7]

The use of team interpreting also has the benefit of reducing interpreter fatigue, as mental fatigue might understandably lead to a decrease in the quality of interpretation (Moser-Mercer, Künzli & Korac 1998). In Hong Kong,

6. For SI equipment used by interpreters working in the US Federal Courts, see Kolm (1999).

7. At the time of writing, a high-profile corruption case (HCCC98/2013) involving a former high-ranking government official was being tried in the High Court. The court had tremendous difficulty in forming a jury of 9 members, as many of those selected asked to be exempted for various reasons, including a lack of proficiency in English.

the court interpreter has to interpret everything uttered in court, in two directions (to and from English) and in two modes besides. As was noted in Section 1.3, interpretation at different stages of a trial involves the use of different modes and directions. Jury instructions and counsel's opening/closing speeches, for example, require *chuchotage* from English to Chinese, while the evidential phase requires dual directional interpretation in the consecutive mode. The use of two interpreters would thus enable division or specialisation of work as some interpreters may work better in the simultaneous mode while others work with more ease in the consecutive mode. Team interpreting as a way to reduce interpreter fatigue and to ensure the quality of interpretation in the courtroom is recommended by scholars, practitioners and professional organisations (e.g. De Jongh 1992; Hale 2010; Kristy 2009; NAJIT 2007). Nevertheless, in a world where cost-effectiveness is considered paramount, team interpreting in the courtroom seems to be an ideal rather than a reality. In Hong Kong, a second interpreter is used only in a trial involving a witness/defendant speaking a third language other than the two usual languages (i.e. Cantonese and English). When that happens, the two interpreters will be working in different language combinations and thus cannot provide any relief for each other's workload.

7.2. Training for court personnel

The introduction of the interpreter into the courtroom necessarily alters the interactional dynamics. The need to train the court personnel on how to work effectively with the interpreter has been heavily emphasised in many studies on court interpreting (Colin & Morris 1996; Mikkelson 1999; Hussein 2011; Fowler et al. 2012). The following recommendations for the best way to work with interpreters in court apply not only to the Hong Kong courtroom, but may also be applicable to other bilingual legal settings in general.

First of all, it is important that court personnel recognise the interpreter as part of their team who, like them, needs to prepare for the trial to get his/her job done properly. As Gamal (2006: 65) points out, it is "unrealistic to expect an interpreter to walk into a courtroom without any knowledge of the topic, terminology or chronology of the case and still be able to perform efficiently". Therefore the interpreter's access to background information relating to the case to be tried is essential. As aptly noted by González, Vásquez & Mikkelson (1991: 175), attorneys do not appear in court without first reviewing their clients' cases and preparing for their cases in court. It is undoubtedly unfair to expect the interpreter to get everything right in "one-take" while counsel have days, if not weeks, to rehearse the presentation of their cases.

Lack of preparation and hence unfamiliarity with the case at trial may result in the need for the interpreter to clarify items with the speaker or otherwise to resort to guesswork. Gamal (2006) argues that while there is an understandable judicial view that the interpreter's prior knowledge of the case might affect his/her impartiality, court interpreters, like other professionals, are bound by their professional ethics, which inter alia emphasise the principles of impartiality and confidentiality. There is therefore no need to deny interpreters access to information on the nature of the case for reasons of impartiality and confidentiality. In the case of Hong Kong, since full-time court interpreters are regular court staff, there would be no technical difficulty in providing them with the relevant information prior to the day of the trial.

Secondly, since interpretation for legal-lay interactions in the Hong Kong courtroom is in the main provided in the consecutive mode as noted in Section1.3, SL speakers must pause at regular intervals to permit a CI of their utterances. It would be helpful for witnesses to be informed by the court, before taking the stand, of the need for them to pause for the interpreter while testifying. This is the reason why police officers in Hong Kong usually make better witnesses for the interpreter, as testifying through an interpreter is part of their training.

Judges should also avoid interrupting the witness examination, except to clarify ambiguity in counsel's question or a witness's answer. As was illustrated in Examples (4) and (5), when the judge interrupts the proceedings, the natural consequence is that counsel is unable to finish a question so that the interpreter might render it into Cantonese. In the case where the judicial intervention meets with resistance from counsel and matters develop into a heated debate, the rapidity and overlapping speech typical of an argument create immense difficulty for the interpreter, the result of which is an incomplete rendition or, worse still, omission in interpretation of the verbal encounter. This subsequently excludes some court actors from participating in the proceedings. Judges and counsel should make the effort to speak clearly and audibly and to avoid overlapping voices (Kristy 2009). Where a judicial intervention is unavoidable, efforts should be made on the part of the judge to allow counsel to finish his/her turn and the interpreter to complete the rendition of counsel's question before interrupting the proceedings.

8. Conclusions

This paper has demonstrated the benefits of the use of authentic courtroom data for both pedagogical and scholarly purposes. While the use of real courtroom data as training material helps enhance students' learning experience,

the findings generated from the study of the data further shed light on the training needs for court interpreters and the best practice in court. It is evident from this data-driven study that the participation status of NES court actors in an interpreter-mediated trial in the Hong Kong courtroom is inevitably compromised in one way or another. For the court actors to access an interpreter-mediated trial in its totality as do their counterparts in a monolingual trial, efforts must be made by all parties concerned. As Ozolins & Hale (2009) observe, quality in interpreting is a shared responsibility among all parties involved in the interpreted encounter, and is not the sole responsibility of the interpreter. Only when this responsibility is shared can quality in court interpreting be guaranteed so that those who do not speak the language of the court are on an equal footing with those who do.

Bibliography

ANDERSON, R. Bruce. (2002) "Perspectives on the role of interpreter." In: Pöchhacker, Franz & Miriam Shlesinger (eds.) 2002. *The Interpreting Studies Reader*. London & New York: Routledge, pp. 208-217.

BELL, Allan. (1984) "Language style as audience design." *Language in Society* 13:2, pp. 145-204.

BERK-SELIGSON, Susan. (1990) *The Bilingual Courtroom: Court Interpreters in the Judicial Process*. Chicago: University of Chicago Press.

BERK-SELIGSON, Susan. (2002) *The Bilingual Courtroom: Court Interpreters in the Judicial Process: with a New Chapter*. Chicago: University of Chicago Press.

CHOW, Magdalen & Michelle Chin. (1997) "Bad translation could undermine justice, magistrate tells weeping interpreter." *South China Morning Post* 30 May, p. 3.

COLIN, Joan & Ruth Morris. (1996) *Interpreters and the Legal Process*. Winchester: Waterside Press.

DE JONGH, Elena M. (1992) *An Introduction to Court Interpreting: Theory & Practice*. Lanham: University Press of America.

EITEL, Ernst Johann. (1877) "Chinese studies and official interpretation in the colony of Hongkong." *The China Review, or Notes & Queries on the Far East* 6:1, pp. 1-13.

FOWLER,Yvonne; Eva Ng & Malcolm Coulthard. (2012) "Legal interpreting." In: Millán, Carmen & Francesca Bartrina (eds.) 2012. *The Routledge Handbook of Translation Studies*. London: Routledge, pp. 417-430.

GAMAL, Muhammad. (2006) "Court interpreting." In: Baker, Mona (ed.) 2006. *Routledge Encyclopedia of Translation Studies*. London: Routledge, pp. 63-67.

González, Roseanne Dueñas; Victoria F. Vásquez & Holly Mikkelson. (1991) *Fundamentals of Court Interpretation: Theory, Policy, and Practice*. Durham: Carolina Academic Press.

Hale, Sandra. (2004) *The Discourse of Court interpreting: Discourse Practices of the Law, the Witness, and the Interpreter*. Amsterdam: John Benjamins.

Hale, Sandra. (2010) "The need to raise the bar: court interpreters as specialized experts." In: Coulthard, Malcolm & Alison Johnson (eds.) 2010. *Routledge Handbook of Forensic Linguistics*. Abingdon: Routledge, pp. 440-454.

Hussein, Nadia. M. A. (2011) *Legal Interpreting in the Criminal System: An Exploratory Study*. Leicester: De Montfort University. PhD thesis. Electronic version available at: <https://www.dora.dmu.ac.uk/xmlui/bitstream/handle/2086/4990/Nadia%27s%20Thesis%20%28Revised%29.pdf?sequence=1>

Ibrahim, Zubaidah. (2007) "The interpreter as advocate: Malaysian court interpreting as a case in point." In: Wadensjö, Cecilia; Birgitta Englund Dimitrova & Anna-Lena Nilsson (eds.) 2007. *The Critical Link 4: Professionalisation of Interpreting in the Community: Selected Papers from the 4th International Conference on Interpreting in Legal, Health and Social Service Settings, Stockholm, Sweden, 20–23 May 2004*. Amsterdam: John Benjamins, pp. 205-213.

Kolm, David. (1999) *Taking the Interpreter's Oath to Heart: An Introduction to the Requirements for Interpreting in Federal Courts*. Washington: Federal Judicial Television Network (FJTN).

Kristy, Judith Kenigson. (2009) "Language and Litigation: what judges and attorneys need to know about interpreters in the legal process." *Proteus Newsletter* XVIII:4, pp. 3-4.

Lee, Yuk-ming. (1994) *The Training of Court Interpreters in Hong Kong*. Hong Kong: City Polytechnic of Hong Kong. Unpublished M.A. Thesis.

Mikkelson, Holly. (1999) "Training judges and other court personnel." *The Polyglot* 29:1, pp. 3-13.

Moser-Mercer, Barbara; Alexander Künzli & Marina Korac. (1998) "Prolonged turns in interpreting: effects on quality, physiological and psychological stress." *Interpreting: International Journal of Research & Practice in Interpreting* 3:5, pp. 47-65.

NAJIT. (2007) *NAJIT Position Paper: team interpreting in the courtroom*. Electronic version available at: <http://www.najit.org/publications/Team%20Interpreting_052007.pdf>

Ng, Eva. (2013a) *The Atypical Bilingual Courtroom: An Exploratory Study of the Interactional Dynamics in Interpreter-mediated Trials in Hong Kong*. Birmingham: Aston University. PhD dissertation.

Ng, Eva. (2013b) "Garment, or upper-garment? A matter of *interpretation*?" *International Journal for the Semiotics of Law - Revue internationale de Sémiotique juridique* 26:3, pp. 597-613.

NG, Kwai Hang. (2009) *The Common Law in Two Voices: Language, Law, and the Postcolonial Dilemma in Hong Kong*. Stanford: Stanford University Press.

O'BARR, William. M. (1982) *Linguistic Evidence: Language, Power, and Strategy in the Courtroom*. New York: Academic Press.

OZOLINS, Uldis & Sandra Hale. (2009) "Quality in interpreting: A shared responsibility." In: Hale, Sandra; Uldis Ozolins & Ludmila Stern (eds.) 2009. *The Critical Link 5: Quality Interpreting – A Shared Responsibility*. Amsterdam: John Benjamins, pp. 1-10.

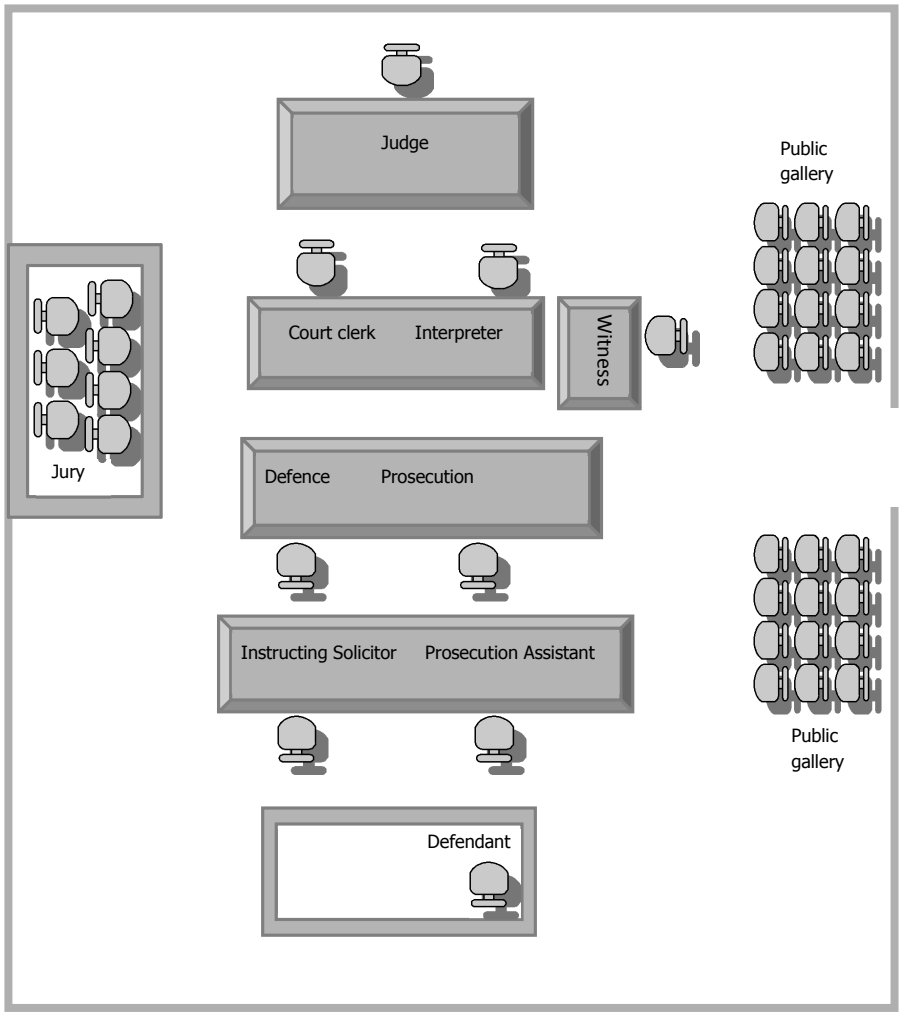
SILVERMAN, David. (2006) *Interpreting Qualitative Data: Methods for Analyzing Talk, Text, and Interaction* (3rd ed.). London: SAGE Publications.

SIN, King Kui & Joseph S. H. Djung. (1994) "The Court Interpreters' Office." In: Gaylord, Mark S. & Harold Traver (eds.) 1994. *Introduction to the Hong Kong Criminal Justice System*. Hong Kong: Hong Kong University Press, pp. 137-144.

TIERSMA, Peter Meijes. (1999) *Legal Language*. Chicago: University of Chicago Press.

VARIOUS AUTHORS. (1999) *Jury Ordinance. Laws of Hong Kong*. § 4(c) (Cap. 3).

Appendix 1: Courtroom Layout in the High Court of Hong Kong



Appendix 2: Transcription Keys and Abbreviations

Transcription keys

Symbol	Meaning	Example
= latch	latched utterances, with no pause between the end of one utterance and the start of the next (i.e. no pause between turns)	I: I'm aware of= P: =Yes. Would you confirm that?
—em-dash	an em-dashmarks a sudden cut-off of the current sound	*I said to him. I said—*
CAPITALS	words in CAPITALS indicate a louder voice relative to the adjacent talk. In Chinese, emphasis is represented by a change in the typeface of the characters.	Your…CAN YOU PLEASE LISTEN TO ME? 你的…你聽我說好不好？
boldface	words in boldface represent elements under discussion, which in Chinese are represented by BOTH boldface and a change in the typeface of the characters.	And then, she used her left hand to pull the um (.) **garment** at my eh waist area. Er佢用佢嘅左手拉我er腰度，啫係腰部份**嘅件衫**。
: colons	a colon indicates prolongation of the immediately prior sound. The length of the row of colons indicates the length of the prolongation	O::kay.
a number in parentheses, e.g. (3)	a number in parentheses indicates the length of a pause in seconds	Can you (3) can you tell the court what happened next?
a dot in parentheses, e.g. (.)	a dot in parentheses indicates a brief pause of less than a second	I (.) walked over to the suspect.
(word)	parenthesised words are indistinct possible hearings	Did you see (there) anything positive?
(xxx)	Three crosses in parentheses indicate the transcriber's inability to hear what was said	Do you mind being (xxx)?
<> angle brackets	angle brackets contain transcriber's descriptions rather than transcriptions	<whispering> I think so. <normal> Yeah, I believe so.
[	left square brackets indicate the start of an interruption and the utterance which is interrupted	I: I have already told [you DC: [Yes, you…

Abbreviations

Abbreviations	Descriptions
CI	Consecutive Interpretation/Interpreting
D	Defendant
DARTS	Digital Audio Recording and Transcription System
DC	Defence Counsel
ES	English-speaking
I	Interpreter
J	Judge/Magistrate
NES	Non-English-speaking
PC	Prosecution Counsel/Prosecutor
SI	Simultaneous Interpretation/Interpreting
SL	Source Language
TL	Target Language
VRI	Video Recorded Interview
W	Witness

BIONOTE / NOTE BIOGRAPHIQUE

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Eva Ng est professeur de traduction à l'École de chinois de l'Université de Hong Kong. Elle y a obtenu son baccalauréat en traduction en anglais et en français. Elle est diplômée d'un master en traduction et en linguistique à l'Université de Birmingham (Royaume-Uni). Elle a obtenu son doctorat en linguistique judiciaire de l'Université d'Aston (Royaume-Uni). Elle a été membre de l'équipe d'interprètes judiciaires du gouvernement de Hong Kong et y effectue actuellement un service à mi-temps. Ses domaines d'enseignement et de recherche concernent la traduction et l'interprétation, l'interprétation judiciaire et le discours bilingue dans les procédures judiciaires.

AUTHENTIC AUDIOVISUAL RESOURCES TO ACTUALISE LEGAL INTERPRETING EDUCATION

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Abstract

New Zealand Aotearoa is an English-medium country and a home to a high number of minority migrant groups speaking over 160 different languages. To cater to the needs of such a diverse population, the Interpreting and Translation Team at Auckland University of Technology has developed a language-neutral pedagogy using a range of innovative teaching methods. One method is the use of authentic audiovisual material incorporating extracts from murder trials to raise awareness of courtroom discourse in general, and lawyers' questions in particular. The aim of this study was to ascertain to what extent audiovisual clips are beneficial in legal interpreter education. After viewing audiovisual clips, students posted their practice on the university website. These recordings were then de-identified and formative feedback was given by language-specific markers as per standard performance based criteria. Students' evaluation and comments from pre- and post-intervention surveys were analysed and form the basis of a discussion.

Zusammenfassung

Neuseeland ist ein englischsprachiges Land, in dem jedoch mehr als 160 verschiedene Minoritätengruppen von Immigranten ihre eigene Sprache haben. Um den daraus entstehenden Bedürfnissen gerecht zu werden, hat das DozentInnen-Team für Translationswissenschaft an der Auckland University of Technology eine sprachneutrale Pädagogik entwickelt. Diese beinhaltet eine Reihe von innovativen Lehrmethoden für das Dolmetschen im juristischen Bereich. Eine dieser Methoden ist die Einbeziehung von authentischem audiovisuellem Material mit Extrakten aus Mordprozessen,

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um das Verständnis von Gerichtsdiskursen im Allgemeinen, und im Besonderen von Anwaltsfragen zu verbessern. Das Ziel unserer Studie war zu prüfen, inwieweit audiovisuelle Clips für das DolmetscherInnen-Training im juristischen Bereich hilfreich sind. Die teilnehmenden Studenten luden ihre Übersetzung dieser Clips auf eine universitätsinterne Webseite hoch. Die übersetzten Texte wurden anonymisiert und Spezialisten der verschiedenen Zielsprachen gaben den Studenten formende Revisionen und Bewertungen anhand standardisierter Kriterien. Die Bewertungen der Studenten sowie ihre Antworten auf Umfragen vor und nach der Intervention wurden analysiert und formten die Basis einer Diskussion.

Keywords: Interpreter training. Legal language. Authentic audiovisual material. Situated learning.

Schlüsselwörter: Dolmetscherausbildung. Rechtssprache. Authentisches audiovisuelles Material. Situationsgebundenes Lernen.

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1. Introduction

New Zealand Aotearoa has a small population (4.5 million) but a landmass roughly equivalent to the United Kingdom or Japan. Of the three official languages, English, Māori and New Zealand Sign Language, English is by far the most widely spoken and the vast majority of governmental, educational and legal business is conducted in English. However New Zealand has an extremely diverse population with over 160 different spoken languages and dialects, and has been classified by Spoonley and Bedford (2012) as being one of a small number of super-diverse countries (Vertovec 2007). The exponential growth in migration in recent decades has necessitated a corresponding growth in interpreter and translation services in general, and in the courts in particular.

On signing the Treaty of Waitangi in 1840, New Zealand became a British colony and adopted the British Westminster system of government. This included inheriting English common law and the adversarial system of settling disputes in criminal courts. The adversarial system involves defence and prosecution lawyers attempting to convince the fact finder (judge, or jury in more serious criminal cases) of the veracity of their version of events. This requires the prosecution or defence lawyer to 'tell the story' through a combination of physical evidence and witness testimony. The lawyer does this by using language to exert powerful situation control over the witness (Lakoff 1985, Luchjenbroers 1993). Of particular importance, the lawyer also uses a variety of carefully framed question types to elicit selective 'helpful' information which contributes to the narrative as interpreted by the lawyer. Conversely the lawyer may use carefully selected questions to discredit, or at least cast doubt on, unhelpful testamentary evidence elicited from the opposing side's witness. Thus the prosecuting lawyer strives to convince the judge or jury that the case has been proven 'beyond all reasonable doubt', whilst the defence counsel attempts to cast doubt on the prosecution version of events. Previous studies by Berk-Seligson (2012), Lee (2009), Rigney (1999) and Hale and Campbell (2002) have shown that carefully chosen questions are often not interpreted accurately in court. This may be because the interpreter

fails to divine the subtleties of the question's pragmatic intent, or simply lacks the linguistic skills to render an accurate interpretation.

At present there is no legal requirement in New Zealand for court interpreters to undergo registration or training; however, the New Zealand Society of Translators and Interpreters (NZSTI) operate a voluntary scheme of registration and publish an online directory of members' names. Ordinary members must satisfy the NZSTI requirement that they have completed an approved course of study in a New Zealand institution, or satisfy the membership criteria in another way such as long term employment within an interpreting or translation organisation that provides professional development and supervision to employees. Translators and interpreters with lesser qualifications may apply for affiliate membership. The Ministry of Justice now requires court interpreters to hold a minimum of NZSTI affiliate status, and members and affiliate members of NZSTI may command higher rates of pay for interpreting assignments. However there are still a number of non-NZSTI interpreters working in the legal field. Due to the often spontaneous nature of legal interpreting work, interpreters may be called at short notice to work in police stations, prisons, lawyers' and probation offices as well as courts and tribunals. Although the Ministry of Justice has a memorandum of understanding with NZSTI to use full members in the first instance and affiliate members where ordinary members are not available, this does not always happen in practice. The students who took part in this study were all undertaking a NZSTI approved course of study at the authors' university.

The focus of this study is to evaluate the use of authentic audiovisual material to facilitate the accurate interpreting of legal language, and in particular the genre and register of different question types during witness questioning in criminal court cases. The methodology of the study and nature of the clips will be described and student response as measured through pre- and post-intervention surveys discussed. The pedagogical principle of situated learning will be briefly examined, as it is used in interpreter education at the authors' university.

2. Background

Education delivery has changed radically following globalisation, the advent of information technology and the worldwide web. Kiraly (2000) points out that there is a lack of educators researching their student cohorts to assess the ever changing knowledge and skills needed by those students. The authors' university aims to foster professional competence in graduates based on the reality of the contexts they can expect to be working in. Interpreting professionals

need to be able to gather the information required for a task, as it occurs. In order to do that, an underlying understanding of genres and socio-pragmatic norms is essential. A social constructivist approach to interpreter education has as its key the concept of learning through authentic action.

Kiraly's (2000) six principles echo the nine of situated learning (Lave & Wenger 1991). Kiraly proposes that students should find several appropriate solutions arising from the authentic texts provided in class. He further believes that teachers should create a scaffold for learning and gradually allow students to safely construct their knowledge through practice.

Since its inception in 1998, the advanced legal interpreting course at the authors' university has included a reflective observation journal in which student interpreters describe their reflections on the performance of a court interpreter in action. Student interpreters are required to attend a court case over the course of several days, to observe the interpreter and reflect on the role of the interpreter in the courtroom. Students have relayed that they value this experience and find it very useful to gain an insight into the role of a practising court interpreter.

Although undoubtedly beneficial to students' learning outcomes, courtroom observation does not completely fulfil the students' needs. Firstly, in the language-neutral classroom there may be students with a dozen different languages and it may not be possible to find trials or other court hearings involving each interpreter for his/her language. Secondly, while students can observe authentic courtroom interactions, they are not able to use these to test their own interpreting skills. Thirdly, even if they whisper along with the professional interpreter in their own language in order to practice interpreting, they are unable to receive feedback on their interpreting.

3. Literature review

3.1 Court interpreting

Kinnunen (2011) focuses on the challenges of multilingual court work in Finland with the aim to describing, based on one interpreting event, the kind of problems occurring in the courtroom in relation to the collaboration of court interpreters and the legal professionals. Her statement that, "legal reasoning premised on translated legal texts or on interpreted oral evidence may often be a complex assignment for a judge" (2011: 2) clearly evidences the considerable responsibility weighing on interpreters' shoulders on any given day inside the courtroom.

Kinnunen (2011) suggests a number of ways for efficient collaboration between interpreters, legal professionals and facilitators, in order to better handle the complex process of courtroom interpreting. These include, for example, initial discussions about interpreting procedures before the interpreting commences inside the courtroom, and providing a contact person who can assist transfer necessary documentation to the interpreter so that they have some background material and can prepare for a case – this is especially a valid exercise in complex cases, however in the New Zealand setting current legislation prevents court contact staff from providing interpreters with any information whatsoever. Kinnunen (2011) also proposes a multi-professional team work and expertise sharing, via unofficial meetings between the two professions where problems of collaboration and learning to know each other's work would also be important for the general development in the field of interpreting. In Australia, Hale and Napier (2013) carried out a range of surveys to find out views of court staff (magistrates and others) and interpreters on court interpreting, however no research of the kind has been carried out in the New Zealand setting.

Interestingly, Kinnunen (2011) expresses what most of us seasoned interpreters have long been calling for situated learning to understand translating or interpreting as a necessary action in a larger activity system. This fits in with the Vygotskian approach to learning and development, as outlined by John-Steiner and Mann (1996) and Daniels (2008). Ideally, the trainee or apprentice is taken into the setting to practice and develop and receive feedback on his/her performance. However none of this is currently possible within the New Zealand court interpreter education setting, for a variety of reasons. The situated learning approach described in this paper has been chosen to provide trainee court interpreters with an opportunity to not only interpret authentic courtroom language, but to also have access to visual cues, and receive individualised language-specific feedback on their performance.

As the professions of interpreting and translating emerge from their infancy stage in New Zealand, legal professions are becoming more adept at utilising this much needed service in our mutli-lingual and multi-cultural society. Kinnunen (2011) notes that interpreting has certain goals in a multilingual court system, and the actions of interpreters form parts of it. Furthermore, she points out that when we become competent court interpreters, we learn to use the language in an adequate way in that context of activity, and in order to learn the discourse of the legal community, a newcomer has to be able to participate legitimately in the processes of the expert community (Lave & Wenger 1991). Lave & Wenger (1991: 110) advocate that newcomers

should "have broad access to arenas of mature practice". This again fits in with the 'legitimate peripheral participation' approach (Lave & Wenger 1991) followed in interpreter education at the authors' university.

At Auckland University of Technology, student legal interpreters have access to mature practice in that they are asked to observe a practising court interpreter in action. They are asked to reflect on the interpreter's role and performance and on where the interpreter fits in relation to the other courtroom actions.

Hale (2010) discussed challenges to court interpreters in relation to grammatical and discourse factors. Hale (2010: 247) noted that, given languages differ at all levels of the linguistic hierarchy, "interpreters need to be competent at all levels in each language, and be able to make judgments about what aspects of the original utterance to sacrifice in order to achieve a pragmatic rendition when interpreting." However, Hale acknowledges the difficulties in court interpreting, where subtle changes to utterances can lead to changes in evidence and evaluation of witness credibility. Hale (2004: 38-39) describes questions (asked by each counsel and translated by each interpreter) used in a study conducted with thirteen English-Spanish interpreted Local Court hearings in New South Wales, Australia, between 1993 to 1996. She categorises these questions into three types: interrogatives, declaratives, and imperatives.

The question categories, according to Hale (2004), are used by the Cross-Examination and Chief-in-Examination teams; however, the most commonly used type was found to be positive polar interrogative (e.g. "Was the telephone he had in his pocket his phone?"). Nevertheless, Hale notes that when interpreted to Spanish, the nature of these question types were sometimes altered, where the majority of questions were interpreted as simple declaratives with no rising intonation.

3.2. Approach to interpreter education

Based on her comparison of the performances of expert versus novice interpreters, Liu (2001) argued the importance of real world experience in gaining interpreting expertise, through the acquisition of domain specific skills. Ryu (2009: 256) suggests that "the world outside the classroom doors" might be "a better learning arena in many areas" when it comes to offering students a situated learning experience. Hale (2013) also emphasised the importance of interpreters being prepared to work in specialised settings such as healthcare and the courts. The authors agree, but would add that involving trainee interpreters in situated learning "in the real world" is not always feasible or safe for either students or the parties they might interpret for as 'trainees'.

The authors have therefore attempted to implement a situated approach to interpreter training that includes the use of innovative technologies in a language-neutral classroom.

The *master-apprentice* model referred to by Pöchhacker (2010) is very useful in interpreter education. However, in language-neutral interpreter education, the *master-lecturer* is not able to provide immediate feedback to trainee interpreters in terms of their performance, necessitating the input of individualised feedback provided by (anonymous) *master* language specialists.

4. Methodology

The aim of this study was to ascertain to what extent audiovisual clips are perceived to be beneficial in legal interpreter education. Hale & Napier (2013) provide an excellent guide to possible research methods. The methodology chosen here included both audiovisual interpreting tasks to be performed by participating student interpreters and participants' views on the use of such tasks both pre- and post-study. This paper will describe an intervention in an interpreter classroom preceded and followed by a survey to gauge student response to the intervention.

4.1. Sample

Seventeen student interpreters completed the first audiovisual interpreting practice and received feedback on their performance. All participants were enrolled in the first of two advanced interpreting papers. Students were undertaking these papers either as part of a Bachelor Degree in Interpreting or as part of a Graduate Diploma in Interpreting. This meant that all Bachelor degree students and most Graduate Diploma students had already completed two introductory interpreting papers (Theory and Practice of Interpreting and Societal Contexts) as well as Oral Discourse for Interpreters. Some of the Graduate Diploma students had opted to take all eight papers of the Graduate Diploma concurrently, and, therefore, they lacked some of the gradual development of skills enjoyed by their peers. Students were able to take the legal interpreting paper in question either online, or on site, in the classroom. Participating students were all in the classroom cohort of the legal interpreting paper, since the lecturer was able to ensure that the latter all completed the interpreting practice at the first attempt.

Only fourteen of them completed the pre-intervention survey, while only thirteen participants completed the post-intervention survey. We will therefore consider that the sample consisted of fourteen students.

Student participants represented a range of seven different languages: Mandarin, Korean, Samoan, Spanish, Farsi, Guajarati and Japanese. A majority of participants were aged 25 and over and had already completed university studies in their country of origin. This is significant as more mature student interpreters tend to be more aware of legal cases reported on in the media than students who have only just completed secondary education.

4.2. Audiovisual clips

Audiovisual clips of authentic New Zealand courtroom interactions were found on YouTube. Web references for each clip have been provided with the description of each clip, in Section 4.2.1 below. Postings contained scenes from trials which had been shown as part of news broadcasts on national television. YouTube postings had been in the public arena for at least 12 months. The researchers discussed which clips to use and in what order to show them to the students.

It was decided to provide students with clips which showed a variety of different question types from different stages of the examination and cross-examination process.The discourse used by the lawyers in the audiovisual clips conformed to that described by Hale (2004) with all cross-examination question types used for cross examination fitted in with those listed in her categories (Hale 2004: 38-39). The adversarial nature of the cross-examination samples in the audiovisual recordings was associated with highly formulaic, 'frozen' (Joos 1968) patterns of language, a high use of modal verbs and conditionals, as well as interrogative and imperative structures. Responses were elicited through the use of complex questioning modes involving the double negative or other structures, as outlined in the examples given above. Textual features of the lawyers' argumentative discourse types included endophoric references (both anaphoric and cataphoric) and lexical reiteration.

The researchers decided to only provide students with three clips, posted in weeks 3, 6 and 9 of Semester One of 2014. This was done in order to not overload the students with additional tasks in what is already considered a very time-intensive course. It was also done to allow time for feedback from language assessors to be passed back to participating students. Week 3 was specifically chosen because students were already somewhat familiar with legal language, having had three weeks of legal studies lectures and legal interpreting exercises recorded in audio mode.

A succinct description of the content of each clip will be given below.

4.2.1. Content of audiovisual clips

All three video clips related to courtroom interactions consisting of the examination and cross-examination of witnesses at murder trials. All three trials had been extensively reported on in the New Zealand media at the time, but were perhaps no longer in the public mind as much by the time the audiovisual clips were posted.

Prior to posting the clips on the learning management system, a brief discourse analysis was undertaken by one of the researchers in order to decide in what order the clips would be posted. Pedagogically it would be best to post the least challenging clip first and the most challenging last. The level of challenge was based firstly on the type of examination witnesses were subjected to, with cross-examination being considered the more challenging type of encounter for student interpreters to work with (Hale 2004). A second criterion for the level of challenge was the proportion of legal terminology that beginner student interpreters might not be immediately familiar with, such legal phrases as 'I put it to you that…' and 'he was satisfied that'. Following this analysis the order of the clips was decided upon. Clips have been described in more detail below, together with some background information and salient details.

Clip One: Examination of witness at a murder trial

Clip One revolved around a defendant referred to as "EM" who was standing trial for the murder of his brother-in-law in 2010 (retrieved from: https://www.youtube.com/watch?v=fOgZzrXA0EU). In court, EM had already admitted to vandalising his brother-in-law's house in 2008 and burning the old farm houses which were being relocated to make way for a new house that was later built on the site.

EM's wife, AG, was being questioned by the prosecution lawyer. In the course of the trial it became obvious that she was convinced of her husband's guilt, and we therefore hesitate to refer to this questioning as a cross-examination. Lexical items included mainly everyday terms, although the examining lawyer asked AG several long-winded questions full of reiterations and false starts. Some of these could be classed what Hale (2004: 38) calls positive polar interrogatives. Examples include:

(1) On the 24th of October 2008, during the evening, do you recall, erm, any noise at all that disturbed your sleep, outside the house?
(2) You are obviously aware of the fire damage, by going [...] from what you learnt?

(3) Do you recall erm do you have any recollection at all of what Mr M was doing that night?; and: What I want to know from you is, from October 2008 until his arrest in April 2011 did he conduct himself in any way that made you suspect that he'd been involved?
(4) Was there any change in his behaviour, either immediately after the arson that you can… have you since recalled or have since thought about or has since struck you?

Overall, this clip was considered to be a good introductory clip for students to work with.

Clip Two

Clip Two (https://www.youtube.com/watch?v=U128mBnirp0) involved the cross-examination of a Police detective who had accompanied the Police doctor while the latter examined the bodies on a multiple fatality crime scene to certify the deaths. This clip shows the defence lawyer taking the police officer on a tour of the house. The language used is fairly simple, with multiple references to crime scenes and bodies. Collocations and phrases included: 'from scene to scene', 'viewing the bodies', 'examining the bodies', 'not to disturb the bodies in any way','he was satisfied that x was obviously dead', and 'did he examine the pulse on each of the other victims?'

This clip contained a few questions which were neither overly long nor complex. Questions included:

(5) How careful or otherwise did he appear to be in each scene?
(6) [a]nd when he continued to film is that in the same way as you described in Scene A from the doorway or did he go into the room on this occasion?
(7) Erm, do you have any recollection of light, other than that that was being provided by Mr G?
(8) When you say light thing, was it on top of it, or part of the equipment itself?"

Conditionals were used sparingly during this cross-examination. An example was: "Oh he would certainly have had to go down that little corridor, but he would have had to push the curtain aside at the end," and "Erm, based on memory I wouldn't like to say."

Clip Three

Clip Three (https://www.youtube.com/watch?v=7vjNSZlHVyo) showed the cross-examination of the ambulance officer who found the defendant in the same murder trial shown in Clip Two. The ambulance officer testified that he thought the defendant was pretending to have fainted. This became the subject of intense adversarial questioning by one of the Defence lawyers, in an obvious attempt to undermine the credibility of the witness.

Seemingly in an attempt to catch the witness off guard, this lawyer used several very long and complex questions, such as:

(9) So if medical evidence is given by a medical specialist that all of these symptoms and what is being described is consistent with someone fainting and recovering from a faint, you wouldn't disagree with that, would you?

(10) Well, I just want to pause here. The difference between you and a medical qualified person with a degree in medicine is that you are taught to manage symptoms, and the medical people do the diagnosis, would you accept that?

Other persuasive phrases included:

(11) Well, I come back and I'm giving you an opportunity again […].

4.3 Data collection

Data collection was aimed at capturing students' opinions of the use of audiovisual interpreting practice before and after the study, as well as at collecting interpreted tasks for feedback and analysis.

Data collection included the following:

– Step 1: Identifying publicly available audiovisual clips of authentic courtroom interaction.
– Step 2: Transcribing the clips and converting them from YouTube postings into mp4 files.
– Step 3: Inserting pauses and blank screens into the resulting mp4 files to allow students to interpret in the blanks.
– Step 4: Posting audiovisual interpreting tasks on the Online Learning Management System (OLMS) prior to the session in which the purpose of the intervention was explained to students.
– Step 5: In week 2: Handing out participant information sheets, explaining the intervention and handing out consent forms.

- Step 6: In week 2: Handing out pre-intervention surveys to students who had indicated their willingness to participate. Collecting the same afterwards.
- Step 7: In week 3: Students posting their interpretations on the learning management system at the first attempt of interpreting the authentic courtroom interactions with the aid of the audiovisual practice clips.
- Step 8: De-identifying student recordings and posting them on an online page accessible only to selected language assessors.
- Step 9: Language assessors providing feedback on student interpreter performance.
- Step 10: De-identified feedback from language assessors passed back on to the students.
- Repeating steps 7 to 10 in Weeks 6 and 9.
- Step 11: Handing out post-intervention surveys to students who had indicated their willingness to participate. Collecting the same afterwards.

Steps 1, 2 and 4 were carried out by the researchers, while step 3 was carried out by the technical support person. Steps 5 to 10 and Step 11 were carried out by an independent third party who was not in a student-teacher relationship with the students.

Prior to commencing the study, approval was obtained from the University ethics committee, and suggestions from the committee were implemented in the study. It was emphasised at all stages that participation was purely voluntary and researchers-teachers would not know which of the students had participated until after all final exam results had been approved by the examination board. Thus, all tasks were posted on OLMS, and all students in the legal interpreting classroom were able to complete the tasks and post them online. However, only the participants who had consented to participate received feedback on their individual interpreting performance on the tasks.

4.4 Analysis

The analysis of both types of data collected focused on the following:

- Analysis of miscues or interpreter errors
- Pre- and post-study surveys and analysis thereof
- Comparing findings of the miscue analysis and the pre- and post-study analysis

Miscues are defined as interpreter errors and various taxonomies have been proposed (e.g. Wixson 1979). A detailed analysis of omissions and changes was still in progress at the time of writing and will be found in another paper (Crezee, Grant & Burn, in progress).

5. Findings and discussion

In the study described here, a small sample of trainee court interpreters practised interpreting with authentic courtroom interactions and received feedback on their performance. Students were asked to complete a pre-intervention survey in week 2 before undertaking interpreting practice to audiovisual clips in weeks 3, 6 and 9 and completing a post-intervention survey in week 9. Pre- and post-intervention survey responses were analysed and are presented in Section 5.1.

5.1 Pre-and post-intervention responses and comments

Students were asked to evaluate the importance of them being aware of authentic courtroom language on a scale from 1 (Not important at all) to 5 (Extremely important):

Table 1: Importance of authentic courtroom language

	Student evaluation					**Total number of students**
	Not important at all	A little bit important	Quite important	Very important	Extremely important	
Pre-				5 (36%)	9 (64%)	14
Post-			1 (8%)	4 (31%)	8 (61%)	13

Pre-intervention comments included: “If you are not aware of what actually happens, you will be at a loss when you start working as a court interpreter” (from a participant who chose “extremely important”); “We get experience of the courtroom before we actually have a chance to go there” (this participant likewise opted for “extremely important”). Another student who chose “extremely important” said: “We’re preparing ourselves for being capable of working in real courtrooms where authentic courtroom language is used”. A fourth participant stated: “Evidence of authentic courtroom language will give interpreting students necessary knowledge and confidence” (this participant also chose “extremely important”).

After the intervention, student comments included: "As a student, it's hard to experience real courtroom discourse often" (this participant opted for "very important" in their reply). While another student (who rated their response as "extremely important") wrote: "What actually means is [it is] very important and the interpretation should be done to convey the actual meaning rather than the literal meaning." Yet another student stated: "Because we don't use those languages in our daily life so it's important to know or learn beforehand" and s/he too selected "extremely important".

Students were also asked to rate their perceived awareness of the nature of authentic courtroom language on a scale from 1 to 5. Responses may be found in Table 2 below.

Table 2: Awareness of authentic courtroom language before and after interpreting the audiovisual clips

	Student evaluation					**Total number of students**
	Not aware at all	A little bit aware	Quite aware	Very aware	Extremely aware	
Pre-	2 (14%)	8 (57%)	4 (29%)			14
Post-		2 (15%)		4 (31%)	6 (46%)	12

One pre-intervention participant (who selected "not aware at all") noted, "We normally don't get the chance to be familiar with anything to do with courtrooms, unless we're related to the case somehow."

A post-intervention survey participant commented, "I have certainly got more used to the atmosphere" (and opted for "very aware"). Another, "Visual images help to guess the correct meaning according to context"; Student 8 seemed to be struggling, noting that "It is really hard, and you feel/see the pressure"; while Student 11 was more reflective: "I have seen from this material the emotions and question types, the lawyers engage."

However, one student expressed feeling more confused after interpreting the audiovisual clips. This student commented: "I became more confused… because most of the audiovisual clips have no brief at all, sometimes there are no titles. It makes it hard for students to interpret, especially the first few sentences, as there are no clues about what the clip is about" (and opted for "A little bit aware"). The cases reflected in the audiovisual clips had been widely reported by all New Zealand media, so perhaps this student had not followed them.

Students were asked to comment on the perceived benefits of the audiovisual legal interpreting practice clips both pre- and post-intervention (Hale & Napier 2013).

Table 3: Perceived helpfulness of seeing authentic courtroom language used in context, on audiovisual clips posted for interpreting practice

	Student evaluation					**Total number of students**
	Not helpful at all	A little bit helpful	Quite helpful	Very helpful	Extremely helpful	
Pre-				6 (43%)	8 (57%)	14
Post-			1 (8%)	6 (46%)	6 (46%)	13

Interestingly, some students gave conflicting answers before and after the intervention. Please refer to the discussion section in this article for further details.

Pre-intervention, one student advised: "We can get a taste of what is to be expected before going to the courtroom to interpret and find ourselves helpless" (and selected "extremely helpful"). Another participant noted that it "[w]ould be helpful to see utterances and gestures of the speaker, with court matters, people's lives are affected by the decisions made and therefore very important from my point of view" (and similarly selected "extremely helpful"). One survey taker selected "quite helpful" and qualified his reply by explaining "[a]t this point, my interpreting skills focus on note-taking, so my sight is always looking at my notes. So audiovisual practice is not quite useful; however, if I have more experience, it would be useful." He was the only post-intervention survey taker to choose "quite helpful", however his explanation contributed to our understanding of why the evaluation of the perceived helpfulness of the audiovisual clips appeared slightly less positive for participants on the whole.

Post-intervention, one survey respondent, who chose "extremely important", stated: "[r]ather than listening to the intonation of the same lecturer, various settings and speaking patterns are helpful." While another respondent wrote:

(12) [this] provides really helpful practice before going into real work […] we need to hear the actual wordings and sentences uttered by legal professionals, as they are the real deal, compared to a simply

written and recorded version. Also the pace and pronunciation seems quite different.

A third participant (who chose "very important") wrote: "Because the video clips were authentic".

Table 4 shows that following the intervention, students still felt there was a place for interpreting practice recorded in audio mode only.

Table 4: Table 4: Perceived helpfulness of practising with authentic courtroom language recorded as audio interpreting exercises only

	Student evaluation					**Total number of students**
	Not helpful at all	A little bit helpful	Quite helpful	Very helpful	Extremely helpful	
Pre-			1 (8%)	5 (42%)	6 (50%)	12*
Post-		1 (9%)	3 (27%)	4 (36%)	3 (27%)	11*

*Some pre-test and two post-test participants did not tick any options for this question

One of the final questions asked students to comment on what they believed to be the best way to increase their ability to recognise and accurately interpret authentic courtroom language.

Pre-intervention comments were largely positive and reflective of authentic courtroom practice as useful and educative, and included: "[t]o sit amongst a case/role-play scenario; our weekly terminology sheets" (referring to the sheets with terminology handed out before audio practice in the computer lab each week); "videos of the actual court sessions with an interpreter"; "watch videos about a case happening in the courtroom"; and "be exposed to the actual situation, to observe and familiarise ourselves to the real action."

Two post-intervention participants did not tick an option, but did offer an unrated opinion, with one stating: "[a]udiovisual clips on different context would be very helpful", and the other: "[a]udio exercises could be used in order for students 'to be exposed' to different types of the controversial settings".

Student participants were asked to comment on what they believe(d) to be the best way to practise interpreting in general. Replies pre- and post-intervention varied with post-intervention replies appearing to have been favourably influenced by the audiovisual interpreting practice experience.

Pre-intervention comments about best ways to practice interpreting included:

(13) Pick up conversations in real situation and interpret. Use TV and radio or similar sources to get used to the speed and accent in spoken English in action; through practice opportunity in the courtroom; just lots and lots of practice and perhaps getting some tips from an actual interpreter who is still working in the field.

Post-intervention comments included: "To be able to observe (if not physically, at least visually) and to constantly observe interpreter [sic] in action so we could be well-aware of what to be expected -> make less mistakes when working in the real field"; "get into the real situation and learn the authentic language used there; practise as often as possible"; "audiovisual clips will be most helpful at this stage" and: "Attending the courtroom as an observant (as we did in Courtroom observation) is the best way to practise interpreting."

6. Discussion and conclusion

This article has presented a classroom intervention involving the use of authentic audiovisual courtroom clips with a cohort of students in a legal interpreting course. Student participants were instructed to interpret at their first exposure to the audiovisual clips. This was done in an attempt to mimic the real courtroom interpreting situation, in which interpreters have no time to listen to utterances a second time. Students were given quite minimal information about the audiovisual clips, and this too reflects the real situation in New Zealand courtrooms, where in reality interpreters are often not given any, or receive only very basic facts about the case in which they are about to interpret.

Interestingly, in the current study, initial responses to the clips showed that some participants had no background knowledge whatsoever of these court cases which were widely reported in the New Zealand media in the years leading up to the classroom intervention. Certainly it became clear that none of the students had followed the court cases closely, although this may also have been related to the fact that these cases lasted for weeks.

The limitations of the study included the fact that it involved only a small classroom cohort, with the remainder of students taking the paper online as explained in the Methodology section. The online students were not allowed to participate as the lecturers could not be sure they would interpret the audiovisual clip at first attempt.

In addition, there was no control group. This would have consisted of a group who interpreted the same dialogues in audio mode only, without the benefit of the visual clues. This was because the authors felt it would have been unfair to deprive any of the students of the opportunity to interpret a real authentic courtroom interaction by audiovisual means.

This article has looked at pre- and post-intervention responses by students, with the analysis of interpreting performance reported on in another article (Crezee, Grant & Burn, in progress).

As expected, all student participants reported increased awareness of the nature of authentic courtroom language, although one stated that she felt more confused due to the lack of briefing. The court cases in question had been widely reported by the media, so this response partly reflected the student's lack of awareness of such cases. It must be added that while students were normally given terminology sheets prior to audio interpreting practice, they were not given any brief as to the nature of the case the audiovisual clip had been taken from. Briefing was omitted on purpose, as New Zealand court interpreters never receive any information about the case they are about to interpret for, as this is prohibited by law. Hence, while the lack of briefing added to the authentic nature of the exercise, the authors would consider giving students some background information if the intervention is repeated in future. This is because normally interpreters would become more familiar with the nature of a given case in the course of acting as an interpreter for that case.

As stated, the replies given in relation to the perceived helpfulness of seeing authentic courtroom language used in context through audiovisual interpreting practice clips posted differed pre- and post-intervention. Pre-intervention, all participants felt that audiovisual courtroom clips would either be very helpful or extremely helpful. Post-intervention, one survey taker selected "quite helpful" and qualified his reply by explaining that he partly attributed this to his own lack of experience in interpreting and taking notes at the same time. However, he qualified this reply by stating: "At this point, my interpreting skills focus on note-taking so my sight is always looking at my notes. So audiovisual practice is not quite useful; however, if I have more experience, it would be useful." His reply explains why the evaluation of the perceived helpfulness of the audiovisual clips was slightly less positive for the group as a whole. However, the participant did qualify his statement by saying that it would be useful once his own experience in interpreting/note-taking improved. Fourteen students had participated in the pre-intervention survey, but only twelve had completed the post-intervention survey. The

missing participants may well have felt that the clips were either very helpful or extremely helpful – we can only speculate.

As expected, student responses indicated an increased preference for audiovisual as opposed to audio-only interpreting clips post-intervention. Having had a taste of audiovisual interpreting, students were less enthusiastic about having audio only interpreting practice following the intervention, although one student felt there was still a place for audio practice in preparing for interpreting in 'more controversial settings'. It is unknown whether the student was referring to cases of sexual abuse, which are usually heard behind closed doors, but it is certainly possible. When asked what they perceived to be the best way to practise interpreting in general, one student made reference to being exposed to 'the speed and accent of spoken English in action'. The latter statement certainly also applies to authentic audiovisual courtroom material used for interpreting practice. Given the fact that such material is relatively easy to produce, the authors recommend that educators in other fields of interpreting replicate the study reported on here. Their students will thank them for it.

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Bibliography

BERK-SELIGSON, Susan. (2012) *The Bilingual Courtroom: Court Interpreters in the Judicial Process*. Chicago: University of Chicago Press.

CREZEE, Ineke & Lynn Grant. (2013) "Missing the Plot? Idiomatic Language in Interpreter Education." *International Journal of Interpreter Education* 5:1, pp. 17-33.

DANIELS, Harry. (2008) *Vygotsky and Research*. London: Routledge.

GONZALEZ DAVIES, Maria. (2012) "Towards Situated Translation Training: Bridging Academic and Professional Approaches." Unpublished keynote address delivered at the Translation Studies Symposium *Training Postgraduate Students*

for the Translation Profession: Didactic Implications and Research Opportunities. University of Auckland.

HALE, Sandra Beatriz. (2004) *The Discourse of Court Interpreting: Discourse Practices of the Law, the Witness, and the Interpreter*. Amsterdam: John Benjamins.

HALE, Sandra Beatriz. (2010) "Working Effectively With Interpreters in Court." In: Coultard, Malcom & Alison Johnson (eds.) 2010. *The Routledge Handbook of Forensic Linguistics*. London: Routledge, pp. 440-454.

HALE, Sandra Beatriz. (2013) Unpublished address given on the occasion of the launch of *Introduction to healthcare for interpreters and translators* by Ineke Crezee. Auckland University of Technology.

HALE, Sandra Beatriz & Jemina Napier. (2013) *Research Methods in Interpreting: A Practical Resource*. Sydney & London: Bloomsbury.

HALE, Sandra Beatriz & Stuart Campbell. (2002) "The Interaction Between Text Difficulty and Translation Accuracy." *Babel* 48:1, pp. 14-33.

JOHN-STEINER, Vera & Holbrook Mahn. (1996) "Sociocultural Approaches to Learning and Development: A Vygotskian Framework." *Educational Psychologist* 31, pp.191-206.

JOOS, Martin (1968). "The isolation of styles." In: Fishman, Joshua (ed.) 1968. *Readings in the Sociology of Language*. The Hague: Mouton De Gruyter, pp. 185-191.

KINNUNEN, Tuija. (2011) "Expertise Sharing in the Field of Court Translating and Interpreting." *Journal of Applied Language Studies* 5:1, pp.92-108.

KIRALY, Don. (2000) *A Social Constructivist Approach to Translator Education: Empowerment From Theory to Practice*. Manchester: St Jerome.

LAKOFF, Robin. (1985) "My Life in Court." In: Tannen, Deborah & James E. Alatis (eds.) 1985. *Language and Linguistics: The Interdependence of Theory, Data, and Application*. Washington, D.C.: Georgetown University, pp. 171-179.

LAVE, Jean & Eugene Wenger. (1991) *Situated Learning: Legitimate Peripheral Participation*. Cambridge: Cambridge University Press.

LEE, Jieun. (2009) "Conflicting Views on Court Interpreting Examined through Surveys of Legal Professionals and Court Interpreters." *Interpreting* 11:1, pp. 35-56.

LIU, Minhua. (2001) *Expertise in simultaneous interpreting: A working memory analysis*. Austin: University of Texas. Unpublished PhD thesis.

LUCHJENBROERS, June. (1993) *Pragmatic Inference in Language Processing*. Melbourne: La Trobe University. Unpublished PhD thesis.

PÖCHHACKER, Franz. (2010) "Why Interpreting Studies Matters." In: Gile, Daniel; Gyde Hansen & Nike K. Pokorn (eds.) 2010. *Why Translation Studies Matters*. Amsterdam: John Benjamins, pp. 3-13.

SPOONLEY, Paul & Richard Bedford. (2012) *Welcome to our World? Immigration and the Reshaping of New Zealand*. Auckland: Dunmore.

RIGNEY, Azucena C. (1999) "Questioning in Interpreted Testimony." *Forensic Linguistics* 6:1, pp. 83-108.

RYU, Hokyoung. (2009) "Designing Situated Learning Experiences." In: Ryu, Hokyoung & David Parsons (eds.) 2009. *Innovative Mobile Learning: Techniques and Technologies*. Hershey: Information Science Reference, pp. 255-272.

VERTOVEC, Steven. (2007) "Super-diversity and its Implications." *Ethnic and Racial Studies* 30:6, pp. 1024-1054. Doi: 10.1080/01419870701599465.

WIXSON, Karen. (1979) "Miscue Analysis: A Critical Review." *Journal of Literacy Research* 11:2, pp. 163-175.

BIONOTES / KURZBIOS

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