Aequilibrium

Instruments for Lifting Language Barriers in Intercultural Legal Proceedings

EU project JAI/2003/AGIS/048

Heleen Keijzer-Lambooy
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Editors
ITV Hogeschool voor Tolken en Vertalen
2004

This book contains viewpoints and practical ideas for members of the judiciary working with interpreters and translators. It builds on the European Commission's Proposal for a Framework Decision on certain procedural rights applying in proceedings in criminal matters throughout the European Union, published in 2004. The authors of the articles in this book presented their opinion on several articles of the Proposal and put them in the perspective of their own practice and country.

This publication is an outcome of a EU-wide conference held in The Hague, at which members of the judiciary, police, ministries, universities and professional interpreters and translators shared ideas, best practices and criticism on the topic of legal interpreting and translating. Together they formed a network that created awareness of each other's position in legal proceedings, paving the way for equal treatment of suspects, irrespective of language barriers.

Topics discussed include ethics, practical and technical limitations, political standpoints and dreams for the future. The articles in this book reflect the discussions and range from in-depth analysis of the pros and cons of the Proposal to case law illustrating what working with interpreters and translators entails.
Special attention is given to working with sign language interpreters.

The editors hope that this book will contain practical suggestions for all actors in the legal process and that the articles will give food for thought and discussion on how multi-language legal proceedings can best take place on an effective an fair basis.

This AGIS project is a follow-up of two Grotius projects with the same topic. The first Grotius project explored the foundations of legal interpreting and translation; in the second project recommendations were made for improvement in the deployment of interpreters and translators. This third project combines the knowledge and experience of those using and of those offering interpreting and translations services.

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Preface

This book contains the proceedings of the AGIS project JAI/2003/AGIS/048: *Instruments for lifting language barriers in intercultural legal proceedings*. The project was carried out by ITV Hogeschool voor Tolken en Vertalen, Utrecht (University of Professional Education for Interpreting and Translating) in cooperation with Stichting Instituut van Gerechtstolken en -vertalers, Amsterdam (Foundation Institute of Court Interpreters and Court Translators, in short SIGV).

It contains viewpoints and practical ideas for members of the judiciary working with interpreters and translators. It builds on the European Commission's Proposal for a Framework Decision on certain procedural rights applying in proceedings in criminal matters throughout the European Union, published in 2004. The authors of the articles in this book presented their opinion on several articles of the Proposal and put them in the perspective of their own practice and country.

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The aims of AGIS project JAI/2003/AGIS/048 are:

– dissemination of the ideas developed in Grotius I and II. The programme in The Hague focuses on the positioning and mechanisms of the use of interpreting/translations in court. Key words are policy making and change of attitude in the legal profession
– creating awareness of all actors in the judicial field: judges, lawyers, police, court employees et cetera, about the role and importance of the interpreters and translators in court proceedings, legal interpreters and translators (LITs) as well as sign language interpreters (SLIs)
– providing those working in the legal profession with the practical tools to co-operate with interpreters and translators as efficiently as possible

We would like to express a special word of thanks to the members of the International Steering Committee:
from Belgium: Erik Hertog and Yolanda Vanden Bosch; the Czech Republic: Zuzana Jettmarova, Jiri Janaçek and Vera Prochazkova; Denmark: Bodil Martinsen and Kirsten Woelch Rasmussen; Greece: Maria Cannelopoulou Bottis; Spain: Cynthia Giambruno; the Netherlands: Rob Blekxtoon, Evert-Jan van der Vlis and Hans Warendorf; United Kingdom: Amanda Clement and Ann Corsellis; Poland: Danuta Kierzkowska en Jacek Labuda, who were all and each of them very helpful in carrying out this project.

Finally, a very special thank you to Hans Warendorf for his continuous and invaluable support in editing this publication and we could not have managed so many practical details when organising the conference without the relentless assistance of Monique Olivier.

Heleen Keijzer-Lambooy
Willem Jan Gasille

From Aequitas to Aequalitas to Aequilibrium: Lifting Language Barriers in Intercultural Legal Proceedings (AGIS project JAI/2003/AGIS/048)

Heleen Keijzer-Lambooy
Willem Jan Gasille

The project "Instruments for lifting Language Barriers in Intercultural Legal proceedings" is financed by the AGIS I programme 2003, named after a king of ancient Sparta. It is a framework programme for assisting police, judiciary and professionals from the EU member states and candidate countries in their cooperation in criminal matters. The project is a follow-up of the two Grotius projects 98/GR131 and 2001/GPR/015.

Previous projects

Grotius Project 98/GR/131[1]

The Treaty of Amsterdam on the European Union (EU) which came into force on 1 May 1999 states that the EU:

- must be maintained and developed as an area of freedom, security and justice;
- (an area) in which the free movement of persons is assured
- in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.

In October 1999, the European Council (Heads of State or Government of the EU Member States) met in Tampere (Finland) to draw operational conclusions from the Treaty. Meanwhile the EC had set funding aside for projects which could affect the results envisaged with the Amsterdam Treaty.

The first Grotius project (1998-2000) set up a collaborative action proposal between five institutes in four EU member-states on standards of LIT and sought to establish EU-equivalencies on:

– standards of selection, training and assessment of LIT
– standards of ethics, codes of conduct and good practice
– and inter-disciplinary working arrangements between LIT and the legal systems.

The five institutes that participated in the project were:

– from Belgium: the Lessius Hogeschool in Antwerp, the Institut Libre Marie Haps in Brussels as well as the Chambre Belge des Traducteurs, Interprètes et Philologues
– from Denmark: the Handelshøjskolen i Århus
– from Spain: the University of Malaga, and
– from the United Kingdom: the Institute of Linguists.

The aim was to bring together existing systems as a nucleus, with a view to establishing internationally consistent best practice and then to expand those findings and experiences into other EU countries, though national differences in needs and existing practices arising from the common core were taken into account. These recommendations are to be disseminated to the present and future member states of the EU, so that the intended outcomes can be achieved, i.e. that citizens and legal practitioners can assume specific standards of competence and practice in LIT, so that non-native speakers in all EU member countries are provided with equal access to the legal system and that better judicial co-operation between the EU member countries can be effected.

These recommendations included guidelines and supporting materials on:

– Standards of LIT
– Criteria for selection of candidates for training
– Training, at initial, advanced and continuous professional level
– Codes of conduct and good practice guides

– Professional working arrangements
– Interdisciplinary conventions with the legal services.

The leading body was the Institute of Linguists in the United Kingdom, and the coordinator was Ann Corsellis, OBE, Magistrate and Board Member of the Institute of Linguists in the United Kingdom.

Grotius project 2001/GRP/015
This dissemination project was the core objective of Grotius II project 2001/GRP/015 and carried out by a core team of four multi-disciplinary groups from five countries: Belgium, Denmark and the UK (who had formed part of the first project team), the Netherlands (Ministry of Justice) and one of the EU accession countries, the Czech Republic (Charles University). The Grotius II-project of 2001-2002, was led by the Lessius Hogeschool (University of Professional Education) in Antwerp, and coordinated by Erik Hertog, professor at the Lessius Hogeschool.

The aims of this Grotius II project were defined as follows:
– To consult with, and gain insights from selected LIT representatives of each EU member state on the developments which have been made on establishing equivalent standards in LIT
– To disseminate the achievements of Grotius project 98/GR/131 to all member and candidate states
– To hold a conference in Antwerp, Belgium, in November 2002, on inter-disciplinary working arrangements between the legal services and LITs, including codes of ethics and good practice, and on the implementation of a quality trajectory to safeguard equal access to justice across language and culture in the member states
– To work together on the development of a quality trajectory (as exemplified in Appendix 1 to *Aequitas*) to take the process forward, in ways which achieve common standards while responding to national needs and conventions
– To disseminate the outcomes of the conference in print and on a website and to build on those achievements by working with others to

develop practical tools, guidelines and skills through which they could be implemented successfully.

The anticipated outcomes of both Grotius projects included:

- a consensus on the basic principles of and approaches to equal access to justice across language and culture, particularly concerning equivalent standards in LIT
- enhancement of the recommendations
- an understanding on the part of each member state on what could be done to take matters forward in their own countries
- establishing potential collaborations for mutual support in practical development.
- dissemination of conference outcomes in book form and on the web-site
- development of the web-site, in the light of comments and advice received from conference participants and website users and with the agreement of the participants and starting to process towards developing the website into a comprehensive European information resource on LIT, including teaching materials, terminology, codes, working arrangements, legal procedures et cetera, possibly becoming the nucleus of materials for a European M.A. in Legal Translation and/or Interpreting
- and sharing forward planning by each member state to promote mutual support and collaborations.

The outcomes of both Grotius I and II were intended to apply to any branch of the legal services, to judges, lawyers, police and probation officers, immigration and asylum services, as well as to legal interpreters and translators and their trainers, given that the legal process is made up of a series of processes carried out by different legal agencies. The integrity of each process affects the integrity of the whole. The chain is but as strong as its weakest link.

In conclusion to both Grotius-projects, it was decided that a follow-up should deal with implementation in member states and dissemination in candidate countries of the recommendations of Grotius I and II.

AGIS I

By accepting the recommendations of both Grotius I and II, the EU Commission made clear that the cause of legal interpretation and translation was still not finished. The work done so far by the DG Justice and Home Affairs could be continued within a new framework programme that has been launched to replace Grotius: AGIS. The purpose of the AGIS I programme is to provide European citizens with a high level of protection in a context of freedom, security and justice.

In 2003 the EU published a Green Paper on 'Procedural Safeguards for Suspects and Defendants in Criminal Proceedings throughout the European Union' (Brussels, 19-2-2003) to develop strategies to implement fair justice to defendants. One of the issues in the Green Paper concerns the use of interpreters and translators in judicial proceedings. The recommendations of the Grotius projects are reflected in the Green Paper, in particular chapters 5 and 6.

During a hearing of the Commission on 16 June 2003 it emerged that the responses to the Green Paper differed greatly.[2] Organisations that work to protect human rights were mainly positive. The same applies to professional associations for solicitors, interpreters and translators. However, the reactions of the government departments of the member states were mostly negative. The general feeling was that the plan was too broad and ambitious.

In April 2004 the European Commission presented a Proposal for a Council Framework Decision on Procedural Guarantees for Suspects throughout the entire EU[3]. This Proposal for a Framework Decision[4] constitutes the follow-up to the Green Paper on Procedural Guarantees for Suspects throughout the entire EU, presented by the Commission in February 2003. The proposal aims to set common minimum standards as

regards certain procedural rights applying in criminal proceedings throughout the European Union.
It is clear that the Commission has considerably adjusted the high level of ambition of the Green Paper. It appears the Commission has been sensitive to the criticism expressed by many member states to the effect that the Green Paper was formulated too hastily and that the guarantees dealt with in the Green Paper do not specifically provide for situations requiring collaboration with respect to criminal law in cross-border criminality. According to a number of member states the European Convention for the Protection of Human Rights and Fundamental Freedoms already provides sufficient guarantees so that it is not necessary to convert the rules of this Convention into detailed European legislation. Another criticism related to the financial consequences of implementation of the Green Paper. According to many member states, a correct balance between legal protection of the individual on the one hand and justifiable deployment of financial means on the other is required.

The proposal focuses on five areas:
- the right to legal assistance and representation by a solicitor
- the right to an interpreter and/or translator, so that the suspect is aware of the charges made against him and understands the procedure
- suitable protection of suspects who are unable to hear or follow the criminal proceedings as a result of a disability or impairment
- the right to Consular support for foreign detainees
- the written notification to the suspect of his/her rights.

With regard to interpreters and translators, articles 6, 7, 8, 9 and 16 are especially relevant. Article 6 instructs the member states to guarantee that a suspect who does not master the language of the proceedings is assisted throughout the entire proceedings by an interpreter or translator, free of charge. According to the Commission this is a pre-requisite for fair legal proceedings. The proposal also underlines the fact that this is not limited to foreign language situations but also to suspects with hearing or speech impairments (art. 6, par. 3).

Pursuant to article 7 member states must take measures that guarantee that the foreign suspect is provided with a free translation of all relevant documents relating to his case. The defence counsel of a foreign suspect can also request translation of documents.
Article 8 relates to the accuracy of the translation and interpretation: the member states must guarantee that the interpreters and translators deployed are sufficiently qualified to provide an accurate translation or interpretation. In addition, the member states must make provisions to ensure that an interpreter or translator who does not carry out his work accurately is replaced. In order to guarantee the quality of the interpretation the member states must record the interpretation on audio or videotape (article 9).
The Commission strongly recommends some form of monitoring to determine to what extent the member states comply with the norms.
To this effect article 16 contains a number of detailed obligations relating to collecting information concerning foreign suspects who do not understand the language of the proceedings[5].

In October 2004, the heads of state and government of the EU member states signed a constitutional treaty which provides that one of the fundamental objectives of the EU is to offer its citizens an area of freedom, security and justice without internal borders, and an internal market where competition is free and undistorted.

Themes AGIS I
The first theme is **the right to a competent, qualified (or certified) interpreter and/or translator** so that the accused knows the charges against him and understands the procedures, as laid down in the European Convention of Human Rights (ECHR), which was ratified by the member states of the European Union when signing the Maastricht Treaty in 1992.
In chapter 5 of the Green Paper from the Commission: 'Procedural Safeguards for Suspects and Defendants in Criminal Proceedings throughout the European Union' (Brussels, 19-2-2003) special attention is given to this right. It states that the two Grotius-projects sought to establish what requirements a juridical system should meet

The Green Paper highlights the following topics:

- enlarging the pool of court interpreters and legal translators by stimulating education, by qualification/certification and by adjusting fees to be in line with market prices
- setting up a system for accreditation or certification, in combination with refresher courses
- drawing up a code of conduct
- training of actors in the judicial system (lawyers, judges, court members) in how to use and deal with court interpreters and legal translators (including sign language interpreters)
- interdisciplinary approach of the ministries involved (Justice, Home Affairs) of the member states leading to implementation of the aforementioned topics.

The second theme of AGIS is **integrity**.
The professional group of interpreters and translators is characterized by a relatively large number of migrants, of which many have not yet been able to establish themselves properly in the new society. This fact, in combination with an insufficient knowledge of the moral values of that society, makes them especially prone to breaches of integrity and loyalty. A striking example of this is the interpreter who is pressurized by his fellow countrymen to pass information on to criminal circles. Judicial authorities should have the disposal of a means to safeguard integrity, for instance a legal basis for screening. However, proper safeguarding should not be based on rules only, but also on communication on the issues concerning integrity. This calls for maintaining the professional conduct of the interpreters and translators working in the judicial domain (precision, impartiality and incorruptibility), and for the development of tools to prevent breaches of integrity. The aim is to develop instruments for the discussion of those integrity issues specific to interpreters and translators in the judicial domain.

The third theme is the **proper protection for especially vulnerable categories**, as discussed in chapter 6 of the Green Paper. Extra attention is given to the position of sign language interpreters in court proceedings. Sign language has its own specific problems, one of them being the lack of a uniform standard. On many occasions a sign language interpreter is called in together with a court interpreter. This is an additional chain in the communication. Equipping sign language interpreters with legal knowledge is desirable. Joining this professional group to the developments in court interpreting and legal translating is one of the themes of this project.

The AGIS-project 'Instruments for lifting language barriers in intercultural legal proceedings' intended to give these plans concrete form. This was done in a working conference of experts from the member states, by exchanging experiences and ideas, and by developing training courses, teaching materials and other tools to achieve the abovementioned aims.

Project JAI/2003/AGIS/048
ITV Hogeschool voor Tolken en Vertalen (University of Professional Education in Interpreting and Translating) in Utrecht was asked, together with Stichting Instituut voor Gerechtstolken en –vertalers (Foundation Institute of Court Interpreters and Court Translators, in short SIGV), a foundation, to act as successor of Grotius I and II and to apply for a grant for the AGIS I project. The project was coordinated by Heleen Keijzer-Lambooy, director of ITV Hogeschool, and Willem Jan Gasille, translator and policy advisor with ITV.
This (first) AGIS-project was carried out by an International Steering Committee formed by representatives from Belgium, Denmark, Greece, Poland, Spain, United Kingdom, the Czech Republic and the Netherlands, see Appendix C.

The main event of the project was a conference in The Hague in November 2004. Prior to that two limited preparatory conferences with the members of the international steering committee were held in Alicante (November 2003) and Warsaw (May 2004). It was decided that the results of the main

conference would be published in bookform. A publication with tools and trainings materials would be provided. A study into the position of sign language interpreters is another topic of the publication. The Aequitas website, maintained in Denmark, was to be be expanded and updated to include new background documents and practical materials.

Schedule of events

October/November 2003	Dutch steering committee consultations
November 2003	First preparatory seminar at Alicante (Spain) defining the substance and the envisaged outcome of the conference, conference organisation, venue and dates, delegates to be invited to the conference from the judiciary professions, subjects to be discussed during the final conference, formation of working groups, invitations to the conference for representatives from all member and candidate member states, starting the adaption of the website.
January/February 2004	Dutch and international steering committee consultations
May 2004	Second preparatory seminar in Warsaw (Poland). Decision on the contents of the final conference, keynote-speakers, adaption of the website to make it accessible for the delegates to the conference, discussions in working groups responsible for the several sessions
May/October 2004	Preparations of the conference and website development
November 2004	Conference in the Hague (the Netherlands). The conference had to be a working conference with sessions based on several articles of the Proposal for a

	Framework Decision on Procedural Guarantees for Suspects throughout the entire EU. Delegates from all twenty-five EU-countries to be invited, representing the legal services, ministries of justice, police and researchers. For each session one key-note speaker and two respondents should be invited.
Spring 2005	Publication of the Report

During the preparatory seminars in Alicante and Warsaw, is was decided that:

- the sessions of the final conference should be based on articles 6 – 10 and 16 of the Proposal for a Framework Decision
- experts of different countries would be invited as a key-note speaker and two respondents who would give their point of view regarding the subject from their own expertise
- the participants to be invited should be representatives of the legal services, legal experts of the European court, representatives of the ministeries of justice, police officers, policymakers, members of the EU Parliament, researchers and the respondents to the Green Paper
- the programme was interesting enough for these professionals to come to the Hague and to discuss the themes of AGIS I
- apart from representatives of international organisations for LIT´s, no interpreters and translators were invited.

Over a hundred participants from twenty-two member states of the European Union, from Norway and the United States of America gathered during three days in the Hague, the judicial capital of the world. The Great Hall of Justice of the Peace Palace was the location of the first conference day. For more information about the conference programme see Appendix B.

The anticipated outcomes of AGIS I include:

- permanent change in attitude towards interpreters and translators
- formalisation of the position of interpreters and translators in judicial settings
- standardization of procedures regarding the use of interpreters and translators in legal proceedings
- publication of the outcome of the conference in bookform and on the website
- publication of a handbook with training materials
- update and expansion of the website http://www.legalinttrans.info directed at interactive use and frequent updates, based on the idea that the website belongs to everyone in the community to create a forum for important and interesting developments in the field
- data-study on the position of sign language interpreters in the EU
- the development of inter-disciplinary conventions between legal services and interpreters and translators to promote complementary good practice.

The AGIS-project *Instruments for lifting language barriers in intercultural legal proceedings* was carried in 2003/2004. The grant application was based on the Green Paper on 'Procedural Safeguards for Suspects and Defendants in Criminal Proceedings throughout the European Union' (Brussels 2003). During the consultations on the Green Paper it became clear that the Commission had to adjust the high level of the ambition of the Green Paper as many member states made clear. While preparing the final conference the EU Commssion presented the proposal for a Framework Decision (PCFD) on Procedural Guarantees for Suspects throughout the entire EU[6] as a follow-up to the Green Paper. As several articles of the proposal focus on the role of the interpreter and translator in legal proceedings, the International Steering Committee of AGIS I decided in May 2004 to base the entire conference on those articles.

Recommendations

On the whole there is consensus on the relevant articles of the Proposal with both the legal services and the translation services. Of course not every word of each indivual article is met with the same enthusiasm, but all could agree to the spirit with which the articles were developed.

Three days of discussion resulted in a pan-European network of persons with various professional backgrounds (judges, prosecutors, attorneys, police officers, policy advisors, translators, interpreters, sign language interpreters, representatives of professional organisations, lecturers, teachers to name but a few) who aim for the same objective – how to ensure the conditions of a fair trial by deploying language services as effectively as possible.

Two themes emerged from the conference:

– creating awareness: with the users of translation/interpreting services
– expanding professionalism: of the suppliers of translation/interpreting services.

This calls for the development of training materials – for the legal professions and for the linguists. For the legal professions how to deal with the linguists and for the linguists how to deal with the legal professions. The legal professions could benefit from training based on 'best practice', while the translators, interpreters and sign language interpreters could work on their visibility. They should not only rely on the training that the judiciary receive, but they should really 'advocate' their own positions. In that respect, the word 'visibility' has a double meaning – to be seen in court and to be recognised.

Interpreters and translators should be aware that they – as the legal professions – occupy positions that involve confidentiality. Professional ethics benefit from strong professional organisations. The user of linguistic services should have guarantees that what is said and done stays within the confines of the relationship with their suppliers. It should be clear that ethical issues are dealt with in a sound manner. This could be achieved by

setting up well-organised professional bodies with respresentatives that find their way to publish in the legal journals.
What applies to ethical issues, applies to quality demands. When the profession sets up solid measures for quality control, this will undoubtedly reflect in the way interpreters and translators are positioned in legal proceedings. Because of their quality, they should be indispensible in multi-lingual proceedings. It is hoped that the profession should come to that realization and take the necessary steps to achieve this.

Strengthening the European Union as an area of freedom, security and justice without internal borders is one of the fundamental objectives of the European Union.

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Erik Hertog, ed. 2003. Aequilitas: Equal Access to Justice Across Language and Culture in the EU. Antwerp: Lessius Hogeschool. ISBN 90-806979-2-3

Notes

[1] We kindly acknowledge Professor Erik Hertog from the Lessius Hogeschool in Antwerp for the use of his texts on Grotius I and II from which appears that this AGIS-project is the third project in a series of programmes on Equal Access to Justice across Language and Culture in the EU. The recommendations resulting from the two Grotius projects are published in book form. The texts of both publications is accessible on the website: www.legalinttrans.info.

[2] http://www.europa.eu.int/comm/justice home/fsj/criminal/procedural/fsj criminal responses en.htm

[3] http://europa.eu.int/smartapi/cgi/sga doc?smartapi!celexplus!prod!CELEXnumdoc&numdoc=52004PC0328&lg=EN

[4] The Framework Decision instrument is used for the mutual adaptation of the statutory and administrative stipulations of the member states. It may be proposed at the initiative of the Commission or a Member State and must be unanimously approved. The Framework Decision is binding to the member states with regard to the result to be achieved, but the international authorities have the freedom to select their own format and methods.

[5] Yolanda Vanden Bosch, attorney, member of the Antwerp Bar, visiting professor Lessius Hogeschool Antwerp & Evert-Jan van der Vlis, senior policy advisor in the Legal Aid Department of the Ministry of Justice, the Hague. From Aequitas to Aequilitas: Establishing Standards in Legal Interpreting and Translation in the European Union (Critical Link 2004)

[6] http://europa.eu.int/smartapi/cgi/sga doc?smartapi!celexplus!prod!CELEXnumdoc&numdoc=52004PC0328&lg=EN

Part I The Commission's Proposal for a Framework Decision

In the first article of this section Caroline Morgan presents an overview of the draft Proposal for a Framework Decision. As a member of the Criminal Justice Unit of the European Commission, Caroline Morgan has been involved in all stages that led to the Proposal. She briefly summarizes the historical background of the Proposal and puts it in perspective of the so-called third pillar aspects of the Treaty on the European Union. She then discusses the articles of the Proposal which are relevant for translation services.
Researcher Nancy Schweda Nicholson reacts on the Proposal from the American point of view. She gives an overview of the relevant US laws and the current challenges and issues in the US.
Tobias Mästle, legal adviser with the German Federal Ministry of Justice, comments on the use of recordings during court proceedings. His opinion is that the costs and efforts do not balance the desired goals.

CHAPTER ONE

The Commission's draft proposal for a Framework Decision on certain procedural rights applying in proceedings in criminal matters throughout the European Union

Caroline Morgan

1 HISTORICAL BACKGROUND

The European Commission's DG- Justice, Security and Freedom has responsibility for EU policy on combating crime, managing borders, immigration and asylum and the judicial implications of rising cross-border movement. It is also responsible for fundamental rights within the EU which is a recent development. When the EU, or rather the EEC as it then was, was established in the 1950s, the Council of Europe already existed and it was decided that the EEC would look after economic and social areas whereas human rights could be left to Strasbourg, so there was a deliberate policy of having no fundamental or human rights responsibility. However, the EU's competence in this area has evolved over time, out of necessity, as we shall see.

What I will cover in this article is how and why the EU can claim to have responsibility for fair trial rights and, more specifically, for the provision of interpreters and translators in criminal proceedings.

1993 was in certain respects a key year as far as EU involvement in the area of fundamental rights. At the 1993 Copenhagen European Council, the EU Member States laid down the accession criteria[1] for candidate countries, including a guarantee that human rights would be respected. Accordingly, it was appropriate to consider what was meant by *human rights* in this context and to try to ensure that they were respected within the existing EU Member States beforehand. The Maastricht Treaty, which first introduced Justice and Home Affairs as "matters of common interest" for the Union, also came into force in 1993, on 1 November, – so EU involvement in this area is about 10 years old. The next landmark year was 1999 when the Amsterdam Treaty came into force, amending the Maastricht Treaty – so

that those treaties are collectively known as the Treaty on European Union or TEU, and laid down the creation of an "area of freedom, security and justice" (Art 2). The TEU provides specifically for prevention and combating of crime – the "security" side of the equation – so that, by implication, the EU has conferred on itself the power, and one might say the obligation, to consider the "justice side".

The third pillar aspect

Criminal matters come under Title VI of the TEU, the last remaining so-called "third pillar" area, which has some consequences for what can be done and how it can be done. The characteristics of the third pillar are:

- a shared right of initiative (between the Commission and Member States)
- specific instruments (the important one here is the Framework Decision)
- adoption by unanimous vote, and
- a limited role for the European Parliament (Art. 39 – consultation) and the European Court of Justice (Art. 35 – questions of interpretation in some Member States only).

We need not concern ourselves here with these characteristics, except the requirement of unanimity which will become important as we move on to consider the adoption of EU measures, where a single Member State can block a measure that it opposes, owing to this requirement of a unanimous vote.

The powers to act are conferred, *inter alia*, by two articles of the TEU.

Art 29 TEU, which provides:

"Without prejudice to the powers of the European Community, the Union's objective shall be to provide citizens with a high level of safety within an area of freedom, security and justice by developing common action among the Member States in the fields of police and judicial cooperation in criminal matters and by preventing and combating racism and xenophobia.

That objective shall be achieved by preventing and combating crime, organised or otherwise, in particular terrorism, trafficking in persons and offences against children, illicit drug trafficking and illicit arms trafficking, corruption and fraud, through:

- closer cooperation between police forces, customs authorities and other competent authorities in the Member States, both directly and through the European Police Office (Europol), in accordance with the provisions of Articles 30 and 32
- closer cooperation between judicial and other competent authorities of the Member States in accordance with the provisions of Articles 31 (a) to (d) and 32
- approximation, where necessary, of rules on criminal matters in the Member States, in accordance with the provisions of Article 31 (e)."

and

Art 31 which provides:

"Common action on judicial cooperation in criminal matters shall include:

a. facilitating and accelerating cooperation between competent ministries and judicial or equivalent authorities of the Member States in relation to proceedings and the enforcement of decisions
b. facilitating extradition between Member States
c. ensuring compatibility in rules applicable in the Member States, as may be necessary to improve such cooperation
d. preventing conflicts of jurisdiction between Member States
e. progressively adopting measures establishing minimum rules relating to the constituent elements of criminal acts and to penalties in the fields of organised crime, terrorism and illicit drug trafficking."

Mutual Recognition

In the field of criminal matters, the EU operates more and more by mutual recognition. JHA has borrowed the concept from the internal market, where it is an economic concept: if a good is suitable for sale in one Member State, then all the Member States should accept it for sale without further enquiry. That notion has been adapted to judicial decisions. Mutual recognition has been named the "cornerstone" of the Area of Freedom, Security and Justice, and this is because Member States have decided to move towards that, rather than to go for the more radical approach of harmonising legislation, although in a few, restricted areas, harmonisation is the better course of action. The Mutual Recognition Programme[2] has 24 measures ranked in priorities from 1 to 6. Mutual recognition will gradually replace more traditional mutual legal assistance measures. European

measures such as the Framework Decision on the European Arrest Warrant (a mutual recognition measure) or the Framework Decision on Combating Terrorism (an example of harmonisation) have been adopted, and they in turn have generated a demand for the EU to consider fundamental rights, especially the rights of the defence, in a rather more concrete way.

2 THE COMMISSION'S PROPOSALS

On 28 April 2004, the European Commission adopted a proposal for a Framework Decision on certain procedural rights applying in proceedings in criminal matters throughout the European Union[3]. This is a landmark measure and represents a first step on the part of the European Commission in its commitment to cover the rights of the defence, which have always been seen as an integral part of the proposed JHA agenda.

The history of the proposal is complicated and will be set out briefly here. It is of course important that action is taken at the EU level since, if Member States retain the discretion to set their own standards, discrepancies are inevitable. Discrepancies cause the lack of mutual trust that has undermined the principle of Mutual Recognition to date.

The Consultation and Impact Assessment stage

The initial consultation process, carried out prior to publication of a Green Paper, consisted of a Consultation Paper posted on DG-JHA's website in January 2002 to which about 100 responses were received, a questionnaire which was sent to the Ministries of Justice of the Member States and of an experts' meeting held in October 2002. At that meeting, the topic was introduced by Mrs Liese Katschinka of the Committee for Legal Translators and Court Interpreters of the International Federation of Translators (FIT) and Mr Erik Hertog of Lessius Hogeschool. They set out the "vision" of the FIT and of the AIIC (Association of Conference Interpreters). Certain minimum requirements for court translators and interpreters would be:

– that these professionals should have a good broad educational background and a knowledge of as many subjects as possible, including cultural specificities as well as linguistic skills

– that linguistic training be as full as possible (for example for interpreters learning not just conference interpreting but also whispered, consecutive and simultaneous interpreting)
– that there be a system of training specialist interpreters and translators, with training in the legal systems of the countries that they use the languages of, with visits to courts police stations and prisons, leading to a recognised qualification
– that Member States have a system of accreditation or certification for these translators and interpreters, and that the accrediting body work in collaboration with the Ministry of Justice of the country in question
– that accreditation be by way of a scheme of registration that is not unlimited so as to encourage professionals to keep their language skills and knowledge of court procedures up to date,
– that there be a system of Continuous Professional Development (CPD), a Code of Ethics and Guidelines for Good Practice
– that Member States undertake to train lawyers and judges to work with translators and interpreters.

Mr Erik Hertog, whose institution was carrying out research at the time with the aid of a European Commission "Grotius" subsidy, added his views. A training system was essential. Member States which currently do not have any training system should be made to offer one. In some Member States, translators and interpreters work under very poor conditions, whereby even a prisoner's cellmate can be used as an interpreter. Mr Hertog thought that there should be accreditation to guarantee the quality of the training, and this should be governed by an independent body, with only slight variations from one Member State to the next. Accreditation should not be granted once and then be valid forever but it should be renewable so that skills were maintained and CPD was necessary, together with life-long learning. He thought that there should be a register of accredited translators and interpreters, easily accessible for courts and legal practitioners and including the relevant characteristics of the translators and interpreters. Courts should use translators and interpreters listed in the register as a first port of call and would have to prove that none was available if they used other translators

and interpreters. There was a 1998-2000 Code of Ethics and Code of Good Practice that could be used as a starting point. Then maybe the next step should be a European register of exotic languages or intermediate languages (i.e. from exotic language to target language via English, French or German if no direct interpreter can be found). Another point was that although they are often considered as one group, interpreters and translators, having different skills and different roles to play in criminal proceedings, should be treated as two distinct professional groups. Finally, cost was often mentioned as a reason why Member States do not fulfil their ECHR obligations in this respect. Member States should make funds available for this purpose. Court interpreters and translators should be offered competitive rates of pay so as to make this career option more attractive to language graduates. This should not be seen simply as a question of salary. Better rates of pay would attract more people into the profession, but there are other factors too, such as treating language professionals with more respect, consulting them about court procedures and involving them in such a way as to ensure that their specialist skills are acknowledged and valued.

All these comments were useful in order to build up a picture of the needs of the profession.

A Green Paper, adopted by the Commission on 19 February 2003[4], covers proposals in five areas:

– access to legal representation, both before the trial and at trial
– access to interpretation and translation
– ensuring that vulnerable suspects and defendants in particular are properly protected
– consular assistance to foreign detainees, and
– notifying suspects and defendants of their rights (the "Letter of Rights").

After adoption of the Green Paper, all interested parties were invited not only to submit their comments in writing, but also to attend a public hearing held on 16 June 2003. Over 100 people attended, and there were 40 oral presentations, from practising lawyers, academics, representatives of NGOs and delegates from government departments. Representing the

linguistic professions, we had presentations from Ms Katschinka, Ms De La Fuenta, Chairperson of the LTCI (Legal Translators and Court Interpreters in France), Ms Corsellis who is Vice-chairman of the Institute of Linguists in the UK and Ms Ferriz of the Catalonian Association of Court interpreters.

The Commission then followed up the Green Paper with its proposal for a Framework Decision covering more or less the same areas as the Green Paper. These are:

a. Access to legal advice, both before the trial and at trial. The proposal is to agree a common minimum standard of applying Article 6 of the ECHR (a provision with which all Member States and acceding countries are already bound to comply since they are all parties to it), by devising ways of ensuring that lawyers are available to suspects from the earliest practical point. The Commission recommends that, notwithstanding the right to defend oneself, in certain situations, where the defendant is at a clear disadvantage, Member States be under an obligation to make legal advice available. That legal advice should be free where paying for it would cause hardship to the defendant or to his dependants. It should also be noted that a suspect who has a lawyer present but in respect of whom no interpreter has been called is in a position to have that right also respected since a lawyer will ensure that the suspect understands the proceedings.
b. Access to interpretation and translation for non-native defendants.
c. I will return to this right, which is the most relevant for today's audience, in a moment so will not say more at this stage.
d. Ensuring that persons who cannot understand or follow the content or the meaning of the proceedings owing to age, mental, physical or emotional condition are given specific attention in order to safeguard the fairness of the proceedings. There should be an obligation on Member States to implement a mechanism for identifying these vulnerable suspects as soon as possible after arrest. This obligation would operate in tandem with a further obligation to take whatever

steps were necessary in order to offer them a high duty of protection and care.

e. Communication with the outside world including providing access to consular assistance to foreign detainees. The Commission's proposal would be to oblige Member States to ensure that, in appropriate circumstances, the detained person may contact his family, dependants or employer, and, if he is a foreigner, that use be made of any assistance provided by his consular authorities.

f. Notifying suspects and defendants of their rights by way of a standard document to be translated and distributed on arrest to all persons arrested throughout the European Union (the "Letter of Rights") in a language that they understand. This Commission proposal should make it easier for suspects to enforce their rights since they would be made aware of them in an accessible and understandable form, even if not nationals of the State of arrest.

The draft Framework Decision also includes a section on proposals for evaluation and monitoring of compliance. This evaluation should be carried out under the supervision of the Commission with the help (for analysis of statistics and research) of an independent body.

3 THE COMMISSION'S PROPOSAL ON THE PROVISION OF INTERPRETERS AND TRANSLATORS

Article 6 (3) of the ECHR lays down the right for a defendant to have the free assistance of an interpreter if he cannot understand or speak the language used in court. The case-law of the EctHR[5] also makes it clear that the obligation towards the defendant extends to ensuring he has translations of all the relevant documents in the proceedings in order to have a fair trial. The Commission's research showed that whilst Member States were conscious of this obligation in theory, it was not complied with in full in reality. During police questioning, a qualified interpreter was not always present, with defendants sometimes being offered the services of lay persons who had some knowledge of the defendant's language. There were limitations on the documents translated for defendants. At trial, interpreters were sometimes provided for the benefit of the judge and/or prosecutor,

rather than for the defendant. In some instances, the judge's or prosecutor's statements were not interpreted for defendants and the role of the interpreter was limited to interpreting the judge's direct questions to the defendant and his replies back to the judge, rather than ensuring that the defendant could understand the proceedings.

The Commission also noted that Member States had difficulty in recruiting sufficient legal/court translators and interpreters. In some Member States, the profession of public service interpreter/translator has official status, with training organised at national level, registration, accreditation and continuous professional development. This is not the case in all Member States. The Commission found 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.

This Commission wants Member States to be required to ensure that the arrangements they offer to legal translators and interpreters in terms of training, registration, accreditation and continuous professional development, as well as remuneration and social benefits, are such as to make this an attractive career choice. It is essential that there are enough translators and interpreters in each Member State to cover the needs of foreign defendants. However, this is a question of regulating a profession which can only be done by the DG regulating the internal market, and by way of a Directive, not a Framework Decision. This is something that the Commission will carry on working on in the hope of being able to propose a directive at some point. In the first instance, we have to assess the reception given to the Framework Decision. The provision as regards interpreters and translators are Article 6, 7, 8 and 9 (see Appendix A – the relevant articles of the Proposal)

4 WHAT WILL HAPPEN NOW?

The Commission does not know whether the Member States will agree to this measure since some have doubts about its legality and its usefulness. In view of the unanimity rule which applies to third pillar measures, any

Member State opposing the measure in Council would succeed in defeating it. It is currently being discussed in a working group of the Council. Each Member State, the Commission and the Council send representatives, the Member State representatives being generally from the Ministries of Justice. Some Member States probably feel a little threatened by the proposal and insist that it has to respect the principle of subsidiarity ("Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty") in each and every Article.

To date, Member States have complied on a national basis with their fair trial obligations, deriving principally from the ECHR, and this has led to discrepancies in the levels of safeguards in operation in the different Member States. It has also led to speculation about standards in other Member States and on occasion, there have been accusations of deficiencies in the criminal justice system of one Member State in the press and media of another. The adoption of common minimum standards will remedy this. By definition, the standards can only be *common* if they are set, at EU level, by the Member States acting in concert. Subsidiarity cannot apply here without leading to disparities and a lack of equivalence between Member States.

5 CONCLUSION

To conclude, the Commission sees this measure as necessary in order to ensure the mutual trust which forms the basis of the measures set out in the Mutual Recognition Programme, of which the European Arrest Warrant was the first to be implemented in the Member States. A common set of minimum standards on safeguards will be necessary for all the Mutual Recognition measures, to allay anxieties about the justice systems of other Member States and of the new Member States. Whilst the Commission understands the arguments relating to the legal basis or that subsidiarity preclude such a step, it does not agree with them. Furthermore, the proposals do not go beyond what is in the ECHR and therefore Member States should have been implementing these standards already.

Notes

[1] "Membership requires that the candidate country has achieved *stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and, protection of minorities*, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union. Membership presupposes the candidate's ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union."

[2] OJ C12-15.01.2001

[3] COM (2004) 328 F of 28.04.04

[4] COM (2003) 75 final of 19.02.2003

[5] *Kamasinski v. Austria* (judgment of 19 December 1989 A Series N° 168) para74

CHAPTER TWO

The European Commission's Proposal for a Council Framework Decision: The United States' Perspective

Nancy Schweda Nicholson

1 THE AMERICAN PERSPECTIVE

The purpose of this contribution is to provide the reader with information about interpreters in the American judicial system. It offers a response to Caroline Morgan's paper and furnishes an examination of how matters addressed by the Proposal for a Council Framework Decision (PCFD) are handled in the US.

Background

The United States (US) is a nation of almost 300 million people (www.census.gov). Although Americans reside in one, large country, there is much diversity within its borders. Each state is radically different in terms of its need for interpreter services. This fact is related to the unequal distribution of non-English-speakers (NES) and/or limited-English-proficient (LEP) individuals across the 50 states. In the US, states like California, New York, New Jersey, Florida, Arizona, Texas and New Mexico rank among those with the highest percentages of people who have difficulty with the English language. Recently, the US has witnessed some changes in migration and settlement patterns. Many new arrivals (as well as those who have been established in the US for a while) are now relocating to regions that have traditionally had small immigrant populations, such as the Midwest – Indiana and Minnesota – for example (Champion of Mexico 2003; Mexican consulate to open in St. Paul 2004). Some participants at the AGIS Conference spoke about changes in migration trends within the EU. People are moving from one EU Member State (MS) to another in search of an improved quality of life, a better-paying job and/or more educational opportunities. One must not lose sight of the fact that working toward greater cooperation within the EU presents a greater challenge than does

striving for agreement across the 50 United States. The EU is composed of 25 distinct countries with their own languages, customs, and histories. Although the US is much larger from a land mass perspective, the EU is "divided" into sovereign nations, each with its own political and economic agenda. Make no mistake that the US is diverse, but it is a *single*, diverse country.

The American Judicial System

The US legal system is composed of courts on various levels. To be more specific, there are the Federal Courts. The primary federal trial court is the District Court (DC). There are 94 DCs in the US system. Federal Court rulings are valid throughout the United States, and they take precedence over state court decisions (www.uscourts.gov).

On the state level, one finds trial courts, appeals courts and each state has its own highest court, which is often referred to as the Supreme Court. Court systems can vary widely from state to state; however, the basic levels outlined here exist in all states (www.uscourts.gov; Lexis Nexis State Capital Database).

US Constitutional Rights: Basis for the Appointment of an Interpreter

Due process rights (contained in the Sixth and Fourteenth Amendments to the US Constitution) provide the basis for the appointment of an interpreter in the US. These rights are among the most fundamental that Americans enjoy. Constitutional provisions take precedence over any and all laws.

In terms of criminal prosecutions, the Sixth Amendment requires that the accused: (1) receive a "speedy and public trial by impartial jury"; (2) know the charges as well as the potential penalties; (3) have the opportunity to confront witnesses against him/her and have subpoena power to call witnesses to testify on his/her behalf; as well as (4) have an attorney to aid in his/her defense and, extrapolated from this entitlement, the right to communicate with the attorney. Essentially, a defendant in a criminal case has the right to be present (both physically and cognitively) at his/her own trial and to participate in his/her defense.

The PCFD discusses a Letter of Rights in Article 14. The parallel in the US is commonly referred to as the "Miranda Warning." At the time that the police make an arrest, a suspect is advised of his/her rights. Miranda is so named because a US Supreme Court decision (*Miranda v. Arizona* 384 U.S. 436 (1966)) discusses the need for a suspect to understand his/her rights.

Although more than 150 variations of the Miranda Rights exist across all levels of law enforcement (Ramirez 2004), a basic version follows:

1. You have the right to remain silent.
2. Anything you say can and will be used against you in a court of law.
3. You have the right to talk to a lawyer and have him present with you while you are being questioned.
4. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning if you wish.
5. You can decide at any time to exercise these rights and not answer any questions or make any statements.

WAIVER
Do you understand each of these rights I have explained to you?
Having these tights in mind, do you wish to talk to us now?

(For more information on the Miranda case, see
www.usconstitution.net/miranda.html as well as
www.thecapras.org/mcapra/miranda/rights/html.)

Laws

Federal

The Court Interpreters Act (Public Law 95-539) (hereinafter "the Act") was passed by the US Congress in 1978. Among other things, it stipulates that the Director of the Administrative Office of the US Courts (AOUSC) "shall establish a program to facilitate the use of interpreters in courts of the United States" (§ 1827 (a)). Related to this charge, there is a provision for creating a certification program for court interpreters. This law remains a benchmark statute at the federal level and has been cited numerous times as precedent in multiple cases.

As a follow-up to the Act, the Court Interpreter Amendments Act of 1988 (hereinafter, "the Amendments Act") was passed. This statute deals with additional court interpreter issues. For example, the 1988 law gives the Director of the AOUSC the power to order certification tests for any language that he/she deems to be needed. It also states that a judge may grant an attorney's motion to make an "electronic sound recording" of a proceeding during which interpretation services are provided (§ 705 (2)). (See Section II. G for more discussion of recording of proceedings.)

State

The 50 United States have significant governing power within their borders. Some states have enacted laws that regulate interpreter use within their jurisdictions. Good examples are Oregon and Washington. Such laws are often modeled on the Court Interpreters Act and contain many of the same provisions and requirements. Some state judiciaries (including Delaware and Indiana) have issued directives regarding the use of interpreters. These, like Delaware's Administrative Directive #107, originate within the judiciary itself. Directives are different from statutes, as they do not go through the legislative process.

Payment of Translators and Interpreters

Articles 6 and 7 of the PCFD discuss a suspected person's right to free translation and interpretation services. The question — "Who pays?"— generated many comments from the audience members. In the United States, typically, on both the federal and state levels, it is the responsibility of the court to pay. In essence, the court (or some government entity like the prosecutor's office) bears the burden of interpreter costs. This general rule is followed in all criminal prosecutions and also in civil matters *when the Government brings the charges*.

Neither the Act nor the Amendments Act specifically addresses payments for document translation services. After consulting with language professionals working in the courts, it appears that these arrangements are handled on a case-by-case basis. On the state level, Oregon and Washington

statutes also discuss payment of interpreters (Lexis Nexis State Capital Database).

The preceding paragraphs discuss which entity is responsible for payment of interpreters. However, in terms of pay scales, federal courts and states vary widely. To offer an example, as of January, 2005, Federally-Certified (FC) interpreters (in Spanish, Haitian Creole or Navajo) earn $329/day, $178/half-day and $49/hour for overtime work beyond 8 hours (van der Heide 2004).

Some states employ staff interpreters; however, most states compensate court interpreters based on an established hourly rate. As an example, the Delaware State Courts pay Federally- and Consortium-certified interpreters $35/hour. "Delaware-certified" interpreters earn $25/hour, and all others earn $20/hour (Administrative Office of the Delaware Courts 2004).

To offer another example of a completely different pay structure for contract, freelance court interpreters, New Jersey has several categories. For example, the highest level is "Master". As of August 1, 2004, these individuals are paid $312/day, $183/half-day, $32.50/hour for preparation and $54/hour for overtime. The lowest level is "Eligible Unapproved". These interpreters earn $87/day, $57/half-day, $9.50/hour for preparation and $16/hour for overtime (Administrative Office of the New Jersey Courts 2004).

Accuracy: The Use of "Qualified" Interpreters and Translators

With the addition of ten countries in May, 2004, the EU has grown to 25 Member States. Even before this 67% increase in membership, methods for training, testing and certifying translators and interpreters across the EU were quite uneven, with some countries having well-developed systems in place and others offering very little in this regard. Moreover, many of the new Member States hail from the former Soviet Union. As a result, their economies may not be as strong as they might be. The effect of implementing the PCFD Articles may be a strain on already thinly-spread financial resources. If there is no standardized, across-the-board EU system for training, testing and certifying language professionals, then how could one guarantee parity in terms of qualifications and competence? In this way,

the word "quality" could be difficult to define. In order to effectively test translators and interpreters, performance-based examinations (that clearly represent the type of work they do) must be developed, pilot-tested, refined and implemented. Replacement of an incompetent interpreter is also a concern. How would the inaccuracies be determined? Does the EU envision a group of "check interpreters", whose job it will be to monitor the performance of others and report problems? Once again, cost could be an important factor in the creation and maintenance of such a system (Article 8).

The State of Oregon defines a "qualified interpreter" as one "who is readily able to communicate with the non-English-speaking person, translate the proceedings and accurately repeat and translate the statements of the non-English-speaking person into oral English, and the statements of other persons into the language spoken by the non-English-speaking person. 'Qualified interpreter' does not include any person who is unable to interpret or translate fluently the dialect, slang or specialized vocabulary used by the party or witness" (Oregon Revised Statutes 45.275 (8) (b)). Washington State's definition is similar to Oregon's.

Article 8 of the PCFD does not address how the Member States are to go about locating, training, and certifying "qualified" interpreters. Of course, this wording is a step in the right direction, but "qualified" will have to be defined in very specific terms in the future.

Court Interpreter Training in the US

Training opportunities for court interpreters in the US have expanded greatly over the past 20 years. It is important to note, however, that these educational programs are not consistently available in all states nor are the existing programs standardized in the states that have them. For example, the Delaware Court has discussed implementing a continuing education requirement for its certified Spanish interpreters. Such a requirement, however, has not been instituted because there are no spoken-language court interpreting courses in the state.

In those states which do provide interpreter education, the courses are offered at different levels and for varying durations. For example, some

universities and community colleges offer classes/academic degrees. Various private organizations are also involved in interpreter training. It seems logical that some form of standardized training for court interpreters should be available in each of the States. Although the programs may not be absolutely identical, it would be desirable for a working group to devise a basic curriculum, which includes the most critical components. Training courses/workshops would be welcome to cover more than just the basics, but they would be obligated to incorporate certain specific elements as a minimum. In the *Extended Impact Statement*, court interpreter education is suggested on two levels: (1) initial, specialized training for legal translators and interpreters; and (2) continuing education and on-the-job training for current professionals (2004). A third possibility would be to offer short orientation courses to conference interpreters who wish to pursue work in the courtroom.

Court Interpreter Testing and Certification in the US

Federal Examinations

There are several ways in which a court interpreter can become certified in the US. To begin, at the federal level, there is a Federal Court Interpreter Certification Examination (FCICE), which first appeared on the scene in 1979-80 (Gonzalez et al 1991; Herman and Hewitt 2001; Schweda Nicholson Forthcoming; 1995; 1986; van der Heide 2003). The FCICE is the most prestigious testing instrument for American court interpreters. Spanish, the language for which there is the greatest need in the US, was the first test developed and administered. In order to give the reader an idea of the overwhelming dominance of Spanish, 212,223 events required the use of Spanish interpreters during Fiscal Year (FY) 2004. There were 223,996 total events in all languages during that FY. The language with the next greatest need was Mandarin, with only 1,114 events (*Annual Report of the Director of the AOUSC* 2004). About 10 years after the Spanish test was launched, federal exams were created in Haitian Creole and Navajo (Schweda Nicholson 1992). Since that time, the AOUSC has not certified any other languages. Additional certification instruments may be developed in the future based on needs analyses carried out by the AOUSC (van der

Heide 2003). Potential federal certification test-takers are not required to have any specific training or other educational background; however, the test is very demanding. In fact, AOUSC statistics show that, from 1980-1999, only 4.5% of the people who took the exam were successful (van der Heide 2004). This is a very small number, and it is testament to the difficulty of the FCICE. In brief, the exam has both written and oral components. The written test has a multiple choice format, contains sections in both Spanish and English (Hewitt et al 2003). This exam is eliminatory. In other words, if a candidate fails the written test, he/she may not move forward to take the oral test. About 20% of those who take the written portion achieve a passing score of 75% or better. The oral exam is essentially a performance-based instrument. It accurately reflects the types of interpreting activities that court interpreters must perform: consecutive interpretation (CI), simultaneous interpretation (SI) and sight translation (ST). The passing score on the oral component is 80%. At the end of FY 2003, there were 896 Federally-certified interpreters, and 877 of those were Spanish (*Annual Report* 2003).

State Examinations

As mentioned earlier, each state has its own judicial system. Much power is based in state courts. Interpreters are needed all over the US on a daily basis. It is important to have competent people working at the state level as well. In order to obviate the need for each state to invest significant funds in the creation of testing and certification instruments, the Consortium for State Court Interpreter Certification Program (hereinafter, "the Consortium") was established in 1995 at the National Center for State Courts (NCSC) (Hewitt 1995; Herman and Hewitt 2001; Schweda Nicholson Forthcoming). The founding states (Minnesota, New Jersey, Oregon and Washington) were already quite advanced in certifying interpreters. The concept was for states to share the costs of test development and then to use those tests to certify interpreters in their own judicial systems. Each state pays a fee to join. There are 32 Consortium member states as of January, 2005. Pennsylvania and Alaska both joined most recently, in 2004. As with the FCICE, there are no educational or

other prerequisites for taking the test. The Consortium has a written test, which is primarily about ethics and procedures and includes some legal terminology, but not many states use it. It is their decision – the NCSC does not impose it on them. The oral test is similar to the Federal Exam in structure and includes SI, CI and ST. The Consortium currently tests in 11 languages. There are multiple versions of the most requested languages: Spanish (4); Haitian Creole (2); Vietnamese (2) and Russian (2). Other exams exist in Arabic, Cantonese, Hmong, Korean, Laotian, Mandarin, Polish and Somali. The most recent addition is Somali. Tests are in development in both Portuguese and Serbian. (See www.ncsconline.org for additional information and many relevant links.)

Professional Organizations' Examinations

Finally, another way to become certified in the US is by taking an exam that is offered by a professional organization. The National Association of Judiciary Interpreters and Translators (NAJIT) and the Society for the Study of Translation and Interpretation (SSTI) have jointly created their own court interpreter test in Spanish, the National Judiciary Interpreter and Translator Certification (NJITC) (www.najit.org). (The reader is directed to Cristina Helmerichs' paper in the current volume, which contains much information on NAJIT and the NJITC.) Inasmuch as the NJITC is very new, it will be interesting to follow its progress during the coming years in terms of the pass rate, its acceptability as a credential within the profession, and its popularity/reputation among court interpreters.

Founded in 1959, the American Translators Association (ATA) boasts more than 8,500 members in 60 countries. The ATA is the largest association of translators and interpreters in the US, offering certification tests (into and from English) in 13 languages. The ATA, however, only certifies translators. (For additional information on the ATA, go to www.atanet.org).

Keeping the Record

How is the record of proceedings kept in the US? Do all courts keep a verbatim record of what transpires in the courtroom? As indicated in other sections of this paper, there are many court levels in the US. Just as there are

many types of courts, there is also a wide variation in the record-keeping procedure. The most basic division is between federal and state courts. Within the federal system, all courts are "courts of record." This term means that a verbatim transcript of all proceedings is the rule (not only in the courtroom, but also for witness depositions, for example). At the state level, Circuit, Superior and Probate Courts (or their local equivalents) are all courts of record. More specifically, there is always a verbatim record in a criminal trial, no matter what the level. There are also "minor" or "lesser" courts in state systems, such as Justice of the Peace Courts (which deal with traffic, noise and littering violations, for example). Lesser courts do not keep a verbatim record of the proceedings. As a result, if a decision is appealed at this level, the proceeding must start from the beginning, as no record exists upon which to base that appeal (Lexis Nexis State Capital database).

How is the verbatim record taken down? This transcript may be audio-recorded, video-recorded, or recorded by a court reporter. Some courts use a combination of two of the three options; namely, they have a court reporter present, but they also make an audio-recording as a back-up. In fact, many federal courts use exactly this procedure (Pérez-Chambers 2004). Videotape is sometimes used, but it is not as common.

What do federal and state laws stipulate about recording when interpreters are used? At the federal level, there is no mention of audio- or video-recording in the Act. The 1988 Amendments Act, however, does address this issue in § 705, "Sound Recordings". If one of the parties to a case requests it, the Presiding Judicial Officer (PJO) may (at his/her discretion) order "the electronic sound recording of a judicial proceeding in which an interpreter is used…."

In Oregon, there are no state statutes that specifically deal with the issue of sound recordings. However, at his/her discretion, a judge may make arrangements for such a procedure if a party to a case requests it (Crooker 1996). In Washington State, there is no mention of special recording provisions in RCW Chapter 2.43 (Interpreters for Non-English Speaking Persons). Chapter 2.42 (Interpreters in Legal Proceedings) deals with interpreters for the deaf, hearing- and/or speech-impaired. In this chapter,

however, a section entitled "Visual recording of testimony" is included. It states that the judge "may order that the testimony of the hearing impaired person and the interpretation of the proceeding by the qualified interpreter be visually recorded for use in verification of the official transcript of the proceeding" (2.42.180). If it is a capital case (one in which severe penalties are potentially involved), then the judge must order such a visual recording. (Also see 1985 c.389 §18.)

Also in the context of record-keeping, it is very common for police interrogation rooms to be equipped with video-recording capabilities in the US. One additional point about record-keeping in the US is in order. When a witness testifies in a language other than English in a court that employs a court reporter, it is only the interpreter's English rendition of the witness's responses that is taken down. In this situation, a record of the original language testimony (given in Spanish, for example) is not preserved. As a result, it is not possible in such cases to verify the accuracy of the interpretation after the fact.

Returning to the PCFD, Article 9 states that, if there is a "dispute", a (written) transcript of the recording would be made available to those involved. Some questions arise: When would the transcript preparation and review take place? During the trial? After the trial has been completed? Will both the source language (SL) and the target language (TL) be transcribed? Related to Article 8, who will evaluate the transcript for interpretation accuracy? Will there be a Quality Control section to deal with such matters? And, how will an impartial assessment of the problematic material be guaranteed? What safeguards will be put in place to ensure that such a transcript will solely be used for accuracy verification and not to raise other unrelated issues? Will such a policy open the door for convicted defendants to claim after the fact that the interpreter did a poor job? In other words, will the potential availability of a transcript to settle a challenge to the interpreter's rendition engender a rash of frivolous claims in the hope of finding a problem even when none may have been noticed/present?

The Need for Professionalization

Most court interpreters agree that the users of their services generally understand neither their role, the level of difficulty nor the special interpreting skills required (Schweda Nicholson 2004a; 2003; 1987a). In the US, at least, most attorneys, judges and courtroom personnel are monolingual English-speakers. As a result, they do not/cannot appreciate the linguistic challenges faced by court interpreters. Many non-interpreters believe that interpreting is a mechanical, robotic operation. They often view interpreters as machines, who proceed through the process without thinking. Although monolingual English-speakers are prevalent in the US judicial system, these same problems might not be faced by European court interpreters because so many people there speak more than one language. It is a tradition in most of Europe for children to begin studying other languages at a relatively early age. As a result, there are many more bi- and trilinguals in Europe than there are in the US. This reality may help in the public's and legal personnel's general understanding of the challenges inherent in the process.

In addition to attaining the recognition they deserve for the challenging work they do, widespread availability of quality training opportunities is another brick in the building of interpreter professionalization.

Professional interpreter and translator associations have codes of ethics that guide their members' behavior (Schweda Nicholson 1994). There is also a Federal Model Code of Interpreter Ethics (Crooker 1996) and a code for Consortium-certified interpreters. On the state level, Oregon has an Interpreter's Code of Professional Responsibility (Crooker 1996). The codes' canons generally include: accuracy and completeness; corrections of errors, impartiality, impediments to performance, avoidance of conflicts of interest, confidentiality, compensation, professional demeanor, restriction of public comment, and scope of practice.

Related to the preceding discussion of a generalized misunderstanding among monolinguals of the interpreter's role and work, steps have been taken in the US to educate judges and attorneys through Continuing Legal Education (CLE) courses. In April of 2004, the author was invited to be an

instructor at a CLE sponsored by the Delaware State Bar Association in Wilmington. This half-day seminar brought together approximately 100 judges, attorneys and other courtroom personnel/administrators. Among the other instructors were a Justice of the Peace Court Magistrate, a representative of the Administrative Office of the Delaware Courts, an American Sign Language (ASL) interpreter instructor, and a Federally- and Consortium-certified Spanish/English interpreter. In addition to the instructors' focus on the interpreter's role and the delineation of guidelines about how best to work with a court interpreter, audience members raised many questions about their past experience with interpreters and asked about how other states handle some of the challenges they face. This CLE was the first of its kind in Delaware and was very positively received by all of the participants (Schweda Nicholson Forthcoming). In this same vein, the EU's *Extended Impact Assessment* calls for training programs to educate judicial personnel about court interpreters (2004).

Professionalization is clearly an issue to be dealt with in the EU as well. Court interpreters need to become active themselves and raise awareness among judges, attorneys, legal administrators and the public at large regarding the importance of having a professional, competent interpreter in the courtroom. Court Interpreters also need to become a united force by creating associations and, ideally, an EU-wide organization. There is strength in numbers. Trained, experienced court interpreters must band together to advance their cause and recruit others to join their ranks. But how can interpreters make their profession more attractive to potential newcomers? Interpreters must strive for an EU-wide accrediting body, both a national and EU register of interpreters and translators; common standards for training, better pay, a higher status, more recognition of the challenging work they do among other legal professionals and preparation time for cases, among other things (Vanden Bosch 2003).

2 CURRENT CHALLENGES AND ISSUES IN THE US

Telephone Interpreting

Telephone interpreting (TLI) is a controversial development in the US (Divers 2003; Hegstad 2003; Lucas 2000; Mintz 1998; Vidal 1998). Just as many conference interpreters object to video-conferencing because it lacks the in-person connection to the parties involved, so, too, do many court interpreters protest the use of TLI. At the federal level, the Telephone Interpreting Program (TIP) was established in the early 1990s and continues today. Special equipment was developed for TIP, and it has saved the AOUSC hundreds of thousands of dollars over the years (Schweda Nicholson Forthcoming; van der Heide 2004; 2003).

Team Interpreting

Team interpreting (TMI) has been the conference interpretation standard for many years. Interpreters work with a boothmate and switch off every 20-30 minutes in order to give each other a break. At the federal level, rules for implementing the Amendments Act of 1988 contain a section that addresses the use of more than one interpreter: "The Presiding Judicial Officer may use the services of multiple interpreters where necessary to aid interpretation of court proceedings. Generally, two or more interpreters should be designated to work in lengthy or multi-defendant trials in order to assure that the quality of interpretation does not decrease due to interpreter fatigue" (Interim Regulations, § 14: 1989). TMI has become the rule in the federal courts, but it is far from universal at the state level (Salazar and Segal 1999).

Collective Bargaining

Some American court interpreters have been frustrated in their struggle to gain better wages and increase their professional standing. They have decided to become involved in organized labor activities, forming and/or affiliating with a union in order to strive for recognition and improve their circumstances (Bajaña 2004; Freelance court interpreters 2004; www.ttig.org).

Non-compliance

Even with federal laws and state statutes in place (as well as administrative directives issued by state judiciaries and the influence of the Consortium), the problem of non-compliance still remains in the US. Just because there are laws at various levels that regulate the use of court interpreters does not mean that they are always followed to the letter. Just because certain states are members of the Consortium does not mean that the rules are applied evenly and correctly from one member state to another.

In the American courts, one still finds many instances of uncertified interpreter use even though there are certified interpreters readily available. At times, judges and other courtroom personnel are most comfortable working with particular individuals who they have come to know. When asked about interpreter expertise, judges have been known to respond with remarks such as: "Well, Mrs. Jones is so nice and polite. She is always available, shows up on time and dresses very professionally. She appears to be bilingual and, besides, no one has ever complained about her." As stated, however, monolingual English-speaking judges are not the best "judge" of an interpreter's language skills.

3 CONCLUSION

A PCFD was created in 2004 to address the rights of persons involved in criminal matters in the EU. The goal is for this document (or a revised version) to be adopted unanimously by the 25 Member States. The AGIS Conference brought together interpreters, translators, lawyers, judges, legal administrators and other interested personnel to discuss the PCFD's strengths and weaknesses as well as to raise concerns regarding the administrative challenges of the PCFD's possible implementation. The current article has focused primarily on how matters treated by PCFD Articles 6-9 and 14 are handled in the US. The author hopes that AGIS Conference participants (and other legal professionals) will benefit from the information presented on (1) the American framework as well as (2) approaches to the provision of language services in the US judicial system. It is imperative that the EU set common minimum standards and promote consistent compliance regarding interpreter and translator policies in order

for justice to be served. The Commission is to be commended for its work to date on this complex issue. How these matters unfold over the coming years will be of great interest to all who hope for fairness, equity and mutual cooperation in the area of criminal procedure and individual rights within the EU.

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CHAPTER THREE

Some comments on the European Commission's Proposal

Tobias Mästle

The proposal for a framework decision seeks to create minimum standards in criminal proceedings throughout the European Union. Thus, it will increase confidence in other member states' legal systems and promote mutual recognition of court decisions.
I agree with the Commission and the EU legal service that article 31.1.c of the EU treaty constitutes an adequate legal basis for the framework decision.
Common minimum standards cannot be created at the member state level; the principle of subsidiarity is observed.

Article 6 of the proposed framework decision requires member states to provide free access to interpreting services when the accused person does not understand the language. This is an important and essential right. The accused person has the right to be put in a position to fully understand the proceedings. This principle is shared by most, if not all, European and other countries and is anchored in article 6.3.3 of the European Convention on Human Rights.
Under German law, a defendant is constitutionally entitled to access to interpreting services. It is well established case law of the Federal Constitutional Court that "a defendant must not be reduced to an object that is not understood. He has to be put in a position to understand the essentials of the proceedings and to articulate himself". The Code of Criminal Procedure implements this constitutional mandate by requiring the court to provide an interpreter to any person in the proceeding (defendant, witness, et cetera) who does not understand the German language. The same requirement applies if a person in the proceeding has a speech or hearing impediment. Additionally, the court appoints an interpreter for the accused at any stage of a criminal proceeding if he or she

needs an interpreter for exerting procedural rights. Victims of crimes have the same right at any stage of a criminal proceeding, for example when being questioned as witnesses.

I fully endorse article 6 of the framework decision as suggested by the Commission because it will create mutual trust and improve judicial cooperation among member states.
Its value goes beyond that of article 6 ECHR. The general notion of "fair trial" in article 6 ECHR is not as precise as the requirements set forth in the proposal. Additionally, a framework decision requires member states to set minimum standards in their legal systems whereas the European Court of Human Rights only evaluates individual cases.

I do not support, however, the obligation of member states to record proceedings in which interpreters are used as proposed in article 9. In number 69 of the explanatory memorandum the Commission justifies article 9 as a method of verification of accuracy if the defendant makes an application to European Court of Human Rights on the grounds that interpretation was inadequate and damaging to his participation in the proceedings.
The proposed recording of any questioning by the police and the entire trial would put an undue burden on member states. The costs and efforts would be too high in the light of the desired goal. The efficiency of criminal investigations and trials could be jeopardized. Therefore, most of the 25 member states reject this article.
I doubt whether there are unusually high numbers of incorrect translations that would justify such high costs. Additional problems might arise when the defendant appeals. Appellate court judges review lower courts' decisions for legal errors. Will they have to review the recordings when a defendant challenges the accuracy of the translation? Finally, it is more than doubtful that the judges of the European Court of Human Rights would be inclined to review the recordings given their overloaded dockets.

The same criticism applies to the right to specific attention for persons with special needs. I fully support article 10 which requires defendants who are in need of specific attention to be given specific attention. Nevertheless, I think article 11 goes one step too far. For the reasons given above, the recording of any questioning of persons who need specific attention is also a disproportionate measure for the framework decision. While any member state is free to record these proceedings on the basis of national legislation, the European Union should not require this as a minimum standard.

Despite my critical opinion concerning article 9 and 11, I think the proposed framework decision is a helpful and necessary step for making language barriers in legal proceedings the European Union less of an obstacle than before.

Part II Specific attention to vulnerable groups

Article 10 of the Proposal deals with specific attention to vulnerable groups. These include persons with hearing impairments. There are two key issues: the recognition of sign language as an official language, and how to work with sign language interpreters effectively. Nadine Tilbury gives some practical suggestions from the prosecutor's point of view. She uses case law to illustrate her points.

Marco Nardi, president of the European Forum of Sign Language Interpreters discusses several linguistic and logistic issues of sign language in general.

Helga Stevens, attorney and member of the Flemish Parliament, is deaf herself. In her article she talks about how deaf people are in fact strangers in their own country, and how to create awareness for their specific needs when in contact with the judiciary.

CHAPTER FOUR

Specific attention for vulnerable groups – in particular those with hearing impairments and sign language users – legislation, practical issues and training

Nadine Tilbury

INTRODUCTION

The defendant's right to a fair trial (Article 6 of the European Convention on Human Rights) explicitly includes the right to a competent interpreter appointed free of charge and, by implication, includes similar appointments for witnesses. These principles cause no difficulty in themselves and are addressed in the domestic legislation of the UK. However, problems can arise in defining competency and in the practical mechanics of criminal proceedings in which interpreters are required.

I am a prosecutor. And I have been asked to speak about the defendant's rights. Yet this is not as strange as it might appear at first sight. I am very interested in the defendant's rights. Not just because I have defended in the past, but because I am a prosecutor.
I want the defendant to have a fair trial. I want the defendant to be fairly convicted – or, fairly acquitted – particularly if the defendant is vulnerable.

In this article I will look at three issues – legislation, practical issues and training. Two thoughts to begin with: First, a reminder that I speak from a court background of an oral, adversarial tradition. What is written in statements is of course important, but what is said by witnesses in court is crucial – particularly in trials. Second, we may have legislation, the case law may be clear, and policies may be in place but compliance is the key.

Legislation – Case law – Policy and practical issues

Defendants have rights and the duty to protect those rights falls on the defence, prosecution AND the court.

In the case of Cuscani v UK in 2002[1] – no interpreter was present in court even though one had been requested. It was suggested the defendant's brother could interpret if need be. He did not in fact interpret and the defendant did not appear to be overly concerned, but it was held that the court was responsible for the overall fairness of the proceedings and it should have checked for itself whether Cuscani should have had an interpreter.

Two pieces of legislation are particularly relevant – Police and Criminal Evidence Act 1984 (concerning police station interviews) and the Human Rights Act 1998 concerning all criminal proceedings and the guarantee of a fair trial.

The deaf suspect is entitled to have an interpreter present at the police station and at court. The interpreter must be provided free of charge, be independent and competent for the task assigned. Relay interpreting is permitted. Vulnerable suspects are entitled to have an appropriate adult with them in the police station. An interpreter cannot act as appropriate adult or vice versa as each has a distinctly different role – the interpreter must be impartial and independent, the appropriate adult must, on the contrary, be partial and protect the interests of the vulnerable person.

The fact that the suspect is deaf may be relevant to the decision whether or not to prosecute. For example, a deaf person involved in a fight uses a broken bottle as a weapon – deafness not likely to be relevant. A deaf person is handcuffed and appears to be resisting arrest – deafness MIGHT be relevant if, for example the deaf person was a sign language user and handcuffing amounted to gagging him.

Deafness is relevant to how the case will be conducted. Appropriate and competent interpreter (s) will need to be appointed; the layout of the court; who sits where, can the defendant clearly see the interpreter and vice versa; timings – the proceedings will take longer; if there are documents to be

produced, what are the literacy skills of the defendant in English; cross-examination through interpreters will require a different approach etc.

A national agreement exists in England and Wales to which the principal criminal justice agencies, for example the police, prosecution, courts, defence and probation services are signatories.[2] It was first issued in 1997 and has been updated three times since. It provides minimum standards for the use of interpreters in criminal investigations and proceedings. Under that Agreement, both the police and the courts have a responsibility to provide the suspect/defendant with a competent interpreter, preferably one selected from the Registers listed as those Registers tend to provide some assurance with regard to matters such as qualifications, experience, Code of Conduct, et cetera.

Increasingly, the courts are referring to this Agreement when considering interpreter issues in the course of criminal proceedings. For example in the case of Ungvari[3] when considering whether the appointment of the interpreters complied with Article 6 and with the national agreement.

Detailed Police Guidance for both police officers and interpreters has been in existence for some years now in the Metropolitan Police (London). It sets out what is expected of each. This guidance has also been referred to in court eg Bozkurt[4] when the court looked at issues of interpreter impartiality, independence and duties of confidentiality.

It is also important to remember that even if the defendant does not require an interpreter, the defendant's right to a fair trial and necessary safeguards are affected by the competency of any interpreter appointed for any witness in the proceedings too.

Legislation exists in England and Wales to enable courts to consider a request for provision of "special measures" for witnesses who have a physical or mental impairment.[5] When the legislation was being drafted it was made clear that many deaf people did not consider deafness to be an

impairment – but a linguistic issue. In such cases, a deaf witness is entitled to have an interpreter appointed free of charge – it is not a matter of requesting, but of entitlement.

One of the special measures available to any witness is to give evidence by way of a live TV link from another room. Practical issues can arise in the positioning of sign language interpreters to ensure that the court can see everyone in the other room, in particular the witness, but the witness also needs to be properly positioned to see the interpreter clearly.

Low numbers and availability of sign language interpreters (SLIs) can cause problems in criminal proceedings. There are very few suitably qualified and experienced SLIs and it is often necessary to appoint three SLIs to work together as a team, due to the nature of sign language interpreting which can be very tiring.

So far, so good – although there are some practical difficulties, we appear to have legislation, case law and policies in place but, some protections available to hearing suspects / defendants[6] are not in fact available to deaf, sign language using suspects / defendants.

In the case of unchallengeable translation, errors could arise causing real prejudice[7]

Competency for the task – relying on professional registers of interpreters provides a degree of assurance that the interpreter is appropriate for the task, but it is not a guarantee. Indication that the interpreter is not competent tends to be provided by another interpreter, or a family member or someone in the public gallery – or, because a very strange answer appears to have been given to a question!

A fundamental safeguard for suspects/defendants is the formal recording of proceedings so that the evidence given can be checked if need be. Clearly this can also provides an opportunity to check the interpreting, if need be.

The Police and Criminal Evidence Act 1984 provides that all suspects' interviews must be audio tape-recorded. This is no use to a suspect who uses sign language, as all that will be recorded is what the police officer asked and what the interpreter replied. It cannot show what the suspect was actually asked by the interpreter, nor what he actually replied.

A recent update to The Police and Criminal Evidence Act 1984 provides that some types of interviews must be video-recorded. The technology has therefore been provided within police stations to enable this to be done. However, it has not yet been agreed that all interviews involving sign language must be video recorded. But unless such interviews are video recorded, the suspect will have no true record of his interview – a breach of his rights, it would seem.

Similarly, in our Crown Courts, many proceedings are audio taped (although not all)[8] but unless they are video recorded, there cannot be a true record of proceedings involving sign language users. Some Crown Courts have recognised the importance of this issue and installed the necessary technology to provide the formal record in particular cases – but the principle does not yet seem to have been acknowledged and addressed at national level.

To be admissible in evidence in criminal proceedings, case law[9] requires that the witness statement be the original statement (ie the one they made in their own language) not the translation. In the case of a sign language user, where is the "original" statement if there is no video recording?

FINALLY, TRAINING

Three parties need training in order to safeguard the defendant's rights. The interpreter with regard to the legal process and accommodating the advocates' needs; the criminal justice system practitioners with regard to accommodating the interpreting process; and the non-English speaking person with regard to understanding what should be happening in the court interpreting process.

All these parties need to be able to recognise when something is wrong. Ideally, formalised training programmes should be made available, but any awareness raising would help.

IN CONCLUSION

I mentioned at the beginning of my address, that legislation, case law and policies might already exist and that compliance was the key. But, as we have seen, there appears to be a fundamental gap in safeguards where sign language is involved and where there is no formal (ie video) record.

I mentioned that the prosecution, defence and courts had a duty to ensure compliance – I would add to that list, professional court interpreters. We must all know enough to recognise breaches when they occur and to take the necessary action to remedy what is, in effect, a miscarriage of justice.

The fundamental gap in safeguards, recognised in this paper, has been brought to the attention of the relevant authorities and, it is hoped, will soon be properly addressed.

Notes

[1] Application No 00032771/96

[2] Trials Issues Group: Arrangements for the attendance of interpreters in investigations and proceedings within the criminal justice system

[3] R v Ungvari [2003] EWCA Crim 2346

[4] R (Bozkurt) v Thames Magistrates' Court [2001] EWHC Admin 400

[5] Youth Justice and Criminal Evidence Act 1999

[6] Suspect is the term used in police stations, defendant is the term used in court.

[7] R v Governor of Brixton Prison and Another ex parte Saifi TLR 24/01/2001

[8] It is also right to say that where court proceedings are not audio taped, then even foreign language users will not have a formal record of their evidence – only the interpreter's version in English will have been noted by those keeping a record in court.

[9] R v Raynor TLR 19/09/2000 and R v Governor of Brixton Prison and Another ex parte Saifi TLR 24/01/2001

CHAPTER FIVE

Vulnerable groups: deaf people at official hearings A perspective of the European Forum of Sign Language Interpreters ('EFSLI')

Marco Nardi

When attending court hearings deaf people generally require the assistance of a sign language interpreter, the possibility of relying on lip reading (lipspeakers), equipment to increase amplification of sounds and/or the possibility of reading, in real time, a texted transliteration of the proceedings.

However, the foregoing will often not suffice where the deaf person is an immigrant or tourist from a country with a language differing from that in the country where the hearing is held. For, although there is an Esperanto-type of Sign Language, International Sign, this is used to establish first contact. Sign languages differ across the European Union, each country having its own sign language or languages. E.g. in Switzerland there are at least three different sign languages. In addition to regional dialects, with each having different lexical items of its own. Furthermore, there may be community specific variations for e.g. gay and ethnic minorities, and variations according to gender and school-related types of sign language.

Sign language interpreters may be referred to as 'signers ' or 'interpreters for the deaf', but the correct nomenclature is 'spoken language/sign language interpreters', who would be English/BSL interpreter where they interpret for a deaf person understanding British Sign Language and e.g. ' ltalian/LlS interpreter' where they interpret for a deaf person who understands ltalian Sign Language.

The legislation pursuant to which the presence and assistance of a sign language interpreter will be required varies greatly across the European Union. To give a few examples:

- In Denmark there are provisions of administrative law requiring the assistance by sign language interpreters (Article 159 of the Act)
- In Estonia there is a series of regulations which apply
- In Finland this is provided in administrative regulations for the disabled
- In Scotland there is a specific directive on the assistance by sign language interpreters
- In Spain Article 442 of the Spanish Code of Criminal Procedure provides for the assistance in criminal proceedings
- In other countries in the European Union the legislation governing the provision of assistance by sign language interpreters is vague so that assistance is often provided on an ad hoc basis or where there is no legislation in this respect at all it is given when required
- In the United Kingdom, Finland, France, Sweden, Spain, Estonia, Denmark and possibly other countries in Europe, sign language services for deaf tourists and immigrants are provided on an ad hoc basis. In certain cases sign language users are provided with a newly developing role, sometimes referred to as 'mediators', who are deaf people skilled in the required combination of languages. Unfortunately this term is used because they are not recognized yet as sign language interpreters. In some instances a spoken language interpreter is used as well, to interpret into the language of the deaf person's origin by supporting communication through a written translation, assuming that the deaf person has a reading ability equivalent to that of hearing person, which unfortunately is not always the case. It is important to remember that interpreters work between at least two languages.

Therefore there are always at least two parties that do not understand each other's language. Sign language interpreters not only work for the deaf person as a sign language user but also for the other hearing participants at

the event. Only in recent years have deaf people started to train as sign language interpreters, which is a developing area.

On a linguistic point of view it is important to remember that sign language is vague or specific, like any other language. Problems occur when the vagueness or specificity of sign language and the spoken language do not match. The word 'to kill' does not have a fixed corresponding equivalent in British Sign Language (BSL). Sign language interpreters would thus resort to depicting a sign of 'stabbed in the throat' until more elaborate information reveals the exact murder weapon, allowing a more appropriate sign. The same applies in Italian spoken language where the word 'to kill' corresponds to 'ammazzare' (clubbed to death) which originally described a specific act but now has a more generic connotation It is clear that all languages develop in more or less the same way, with specific usage in specific domains.

Once deaf people will be more involved as professionals in the legal system, at various levels, the language required will automatically be developed. Currently, deaf people only have a passive role and sign language interpreters find themselves in an uncomfortable position where they have to culturally mediate between the two.

In Sign Language the hands are used to create a visual medium. Handcuffing a deaf person in order to calm him down actually antagonizes a deaf person further who will then risk that he will be misconstrued as being violent This is comparable to taping over the mouth of a person using spoken language who will then be prevented from speaking out. Similarly, warnings by the police on the streets are often verbal and ignoring such a warning could be taken as an indication that aggressive intervention is required where, in fact, the original warning might have not been heard. Policies to identify multiple approaches to delivering warnings would overcome what could be a potentially fatal outcome.

Another important issue to take into consideration is that recent research has indicated that deaf people leave schools with an average reading age of a

12-year old child. Whenever a deaf person participates in the legal system, a sign language interpreter is often called in. Not all deaf people are sign language users and they may rely on lip-reading, a written form of language or on equipment to increase amplification.
Other professionals such as lip-speakers or speech to text operators would better serve these deaf people's needs. On occasion, the sign language interpreter is compelled and even put under pressure to cater for this need even though they do not have the appropriate skill or qualification. The interpreter would then reluctantly try to fill this need rather than leaving the deaf person stranded to cope on his own. Still, it should be the responsibility of the legal counsel to ask the user what his communication preferences are and what kind of support would best suit his needs.

More often the sign language interpreter is booked and paid for by the legal system. As with any person involved in the legal system generally, deaf people should not be burdened with any additional expense in order to have access to the legal system.

It is important to note that the courts should have at least two interpreters, because a sign language interpreter cannot normally work effectively for more than thirty minutes. Thereafter the proficiency and accuracy of the interpretation is at risk. Two interpreters also monitor and support each other, reducing the possibility of mistakes and interruptions. The presence of two interpreters in court will enable the lawyer to communicate with the deaf person or witnesses during the proceedings or hearing.

The way in which the remuneration is paid and the time it takes for it to be paid often causes problems, especially where the work of the sign language interpreter is his only source of income. The amount of their fees varies from country to country, like the type of qualification, the levels of experience etc.

Professionals working in the legal system often find the presence of sign language interpreters frustrating. The need of having to communicate

through a third party creates an impression that they are not in control of the situation. This may be their perception when, in fact, a good interpreter should enable the participants to be in control of their interaction.

Respondents to the Questionnaire mentioned hereinafter have raised that, for their own protection, they will request the police to have the sessions video-recorded in order to avoid complaints on the interpretation. In fact, when a video recording is made,the source language (Sign Language) of the deaf person is often not recorded, only the interpretation is available which in the case of a complaint is not sufficient because it will then be impossible to compare the recorded part with what was said/signed. For the benefit of all persons involved and, in the long run, for economic reasons, it would be advisable to adapt the place where the recording is made so that the video recording will include the deaf person's sign language.

In the past use was often made of the services of members of the deaf person's family, teachers and teaching assistants and persons familiar with the sign language users to enable communication with the deaf person. From the responses to the Questionnaire to be referred to hereinafter it appears that this practice still exists in some cases:
children are sometimes asked to communicate between their deaf parent and persons who work for the judiciary or the social and administrative services. ln this age there is really no excuse for using or even abusing minors when the discussion should be conducted between adult persons, who should communicate as directly as possible or seek an independent service.

A Questionnaire, which may be found on the website of the AGlS-Conference, was sent out to professional organisations of Sign Language Interpreters in and outside the European Union in order to obtain information on the current situation of sign language interpreters working in the legal profession (see Note with details on the Questionnaire). Included below are some of the findings and considerations.

The level of qualification, the official recognition of sign languages and the status of the profession in Europe have been collated by Maya de Wit, in whose report further information related to the above matters may be found.

The required qualifications and specialist training vary from country to country across the European Union. However, sign language interpreters who are members of their national association may be considered qualified sign language interpreters who have demonstrated a proficiency in two languages and an acquired knowledge and skill in the process of interpreting.

In some EU member states there are various options for education and training to obtain the required qualifications. In some there is also a possibility to obtain a specialisation in legal interpreting while in other states such a specialisation is achieved by means of an ad hoc post-educational training programme. Where there are no such opportunities it will be necessary to resort to vocational resources on an experimental basis.

Professionals who take part in the administration of justice often state to require verbatim/literal interpretation. This concept constantly causes confusion with the sign language interpreters' professional guidelines, such as their Code of Conduct/Ethics, which include being impartial, being faithful to the source message and not interfering with the situation. As languages often do not have word equivalences in most cases, it would be impossible to 'transliterate' word by word as the result would not be comprehensible. An example can be found with the word 'swear' as a concept of pledge used in an oath which would be literally translated as 'bestemmia' in Italian (in English this would be a reverse translation of 'curse') and the concept of 'swear' would be correctly represented as 'giuro'.

This misunderstanding by the legal professionals regarding the interpreting profession is not new. It breeds from a lack of cooperation and opportunity for interaction in either the legal or interpreting arenas. The member

countries in the questionnaire also expressed a lack of formal consultation, or even a relationship, between the legal system and the national association of sign language interpreters, with very few exceptions.

SUMMARY

It is important that interpreters who work at the various levels of the legal system should realise that they must be properly qualified to act professionally. At the same time the professionals who work for the judiciary or in the legal process should be aware of deaf people communication and the need to know how to work with sign language interpreters (interpreters in general). The interpreters organisations and organisations of professionals in the legal system should cooperate in developing a proper policy, procedure and researching best practice, which could lead to regular consultation and training/education to serve each other's needs.

The interpreters, on their part, must ensure that they will become more visible so that they will be more approachable as consultants.

It is of great importance that the procedural safeguards in criminal proceedings as proposed by the European Commission, especially for vulnerable groups like the deaf, will be accepted and applied in all EU-member states.

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CHAPTER SIX

Justice must be seen to be done

Helga Stevens

INTRODUCTION

An important principle in the judicial systems in Europe and the US is that justice should not only be done, but must also be seen to be done. For deaf people this means they must have the feeling they have been treated equally and justly and that their (communication) needs have been taken into account throughout the whole procedure. This is, however, often not the case and there are various reasons for this.

These reasons have been documented very clearly in the book "Equality before the law: deaf people's access to justice" as published in 1997 by the Deaf Studies Research Unit of the University of Durham. The book reports on research carried out by the Deaf Studies Research Unit exploring, *inter alia*, the access of deaf people to justice within the courts and the role of British Sign Language/English interpreters in mediating such access. It is an excellent book and I can recommend it to you. As far as I know, the UK remains the only country in Europe where such a scientific survey has been carried out regarding access to justice for deaf people. Not surprisingly, this book has provided useful material for this article.

DEAF PEOPLE ARE "STRANGERS" IN THEIR OWN COUNTRY

When talking about access to justice for those who do not speak the languages of the country, many legal professionals only think of foreigners or immigrants. Deaf people are more often than not completely forgotten. Recently deaf people in France protested against this by organising a mock trial, where the roles were reversed: all the people involved were deaf, only the accused was hearing and he was not provided with an interpreter, because surely he could see the (sign) language, so he did not need an

interpreter! Compare this with the widely held belief that most deaf people can somehow lipread everything, so why should interpretation be provided?

In this context it is important to point out that the term "deaf" is very broad and encompasses anyone who has a hearing problem, whether from birth or acquired later in life. However, a deaf person who mainly communicates in sign language, will be faced with many barriers when he gets caught up in the legal system. They are what I call "strangers" in their own country and are, unfortunately, often treated worse than foreigners due to ignorance! In many European countries they still have less rights than foreigners… So the proposed Council Framework Decision on certain procedural rights in criminal proceedings throughout the EU, when adopted and implemented, would be a real step forward in safeguarding the interests of Deaf sign language users in Europe. However, this is not enough. More efforts need to be put into awareness raising within the whole legal system: the departments of Justice, police, social services, courts, attorneys/lawyers need to be aware that deaf people constitute a specific language group with specific communication needs.

How to protect the rights of Deaf foreigners/immigrants?
So when deaf people are strangers in their own country, then how are deaf immigrants/foreigners treated? Their situation is very complex and careful attention need to be paid to ensure that their rights are also safeguarded. One of the Flemish Sign Language interpreters I work with was called upon to interpret in a criminal court case for deaf defendants who did not know the language of the court (Dutch). They were also not familiar with Flemish Sign Language. My interpreter said that she had to interpret with her hands and feet and "make up" a lot of signs. I wonder how much the deaf defendants have understood and how accurately the Flemish Sign Language interpreters have done the translations in both directions? Their attorney could not communicate with them so how did he prepare this case? I really do wonder whether in this case justice can be done?

I think the best we can do in this case is to work with trained deaf relay interpreters who translate everything into the national sign language. National sign language interpreters then translate into spoken language what the relay interpreters have said. This has been done in some EU countries such as Denmark but more research is needed to see how we can most accurately respond to the needs of Deaf foreigners/immigrants.

The right to an interpreter and deaf people's awareness of their rights
Situations have been documented showing that interpreters are used infrequently when the suspect is initially charged. The British Deaf News of December 1999 reported that a Deaf man had been arrested and interrogated for two hours and strip searched without explanation and without being provided with a sign language interpreter. Worse still, he had been wrongly arrested. It took the Newcastle police six months to apologise for the way he had been treated.

Whether intentionally or not, deaf people are regularly denied the right to an interpreter in the police station or in court. An individual official, lawyer, or even the court clerk may make decisions without full knowledge which can adversely affect the deaf person's access. This is still happening nowadays all over Europe! Recently a Deaf couple in the UK who wanted to leave the court building because no interpreter was present at their court hearing, was threatened with arrest and their hearing daughter, who was only 10 years old, was forced to act as interpreter!

Add to this the fact that many deaf people seem not to be really aware of their rights. Often they lack the knowledge and the confidence to assess their rights. Here governments and bar associations have a responsibility to safeguard deaf people's legal interests.

Interviews and the taking of the statement
Even if interpreters are present, this situation is often problematic. In only a few cases, according to the "Equality before the law" book, interviews by police officers with Deaf suspects are video recorded. Video recording of sign

interpreted interviews are especially important because this is the only way that an accurate record can be made which would help assure all concerned that the statement later read out in court is an accurate and fair record of what was communicated in the police station. The normal safeguards of using tape recordings of interviews, and the reading and signing of statements, do not apply in the case of deaf people in custody. The tape recording will only contain the words of the interpreter, not their and the deaf person's signing. Video recordings are needed to provide a full record, and a deaf person with limited command of the written language has to rely on the interpreter's signed translation of the statement, which in the absence of a video recording, is not subsequently available in court.

Lack of awareness of interpreter's qualifications

If sign language interpreting is genuinely a profession, then there should be careful and strict monitoring of those claiming to have the qualifications to carry out such a professional role. More awareness by all concerned is needed, as well as mechanisms for interpreters to report what is, in effect, unprofessional conduct. If someone is found to be practising medicine without the appropriate qualifications, there is usually a public outcry. If justice were truly to be served, the legal authorities and professional organisations concerned should simply debar non-qualified 'interpreters' as a matter of course.

HOW TO ENSURE DEAF PEOPLE GET EQUAL ACCESS TO JUSTICE?

To see how an overall strategy could be developed so that deaf people can get equal access to justice, one only need to look at the United States where laws have been enacted to protect the rights of Deaf citizens and other people with disabilities in the U.S.

In the US two federal laws protect the rights of individuals with disabilities: Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act. The U.S. Department of Justice has issued regulations explaining the requirements of these federal Acts.

The duties placed on law enforcement agencies in the U.S.
The obligations of the law enforcement agency to Deaf or hard of hearing persons who have been arrested or held for questioning are founded in Constitutional as well as statutory law. Courts have suppressed evidence obtained from a deaf defendant where it was found that the Constitutional Rights warning was not adequately communicated to the defendant[1]. In both of the above cases, the warnings were conveyed in sign language, but were not broken down to the defendant's language level. Securing of an interpreter with an RID Legal Skills Certificate for a timely interpretation of the rights, accompanied with careful explanation and breakdown of every legal term and sign, is one way a law enforcement agency may prevent objections to the adequacy of this communication, as well as comply with the legal requirements. Presentation of a printed Advice of Rights form without an interpreter will seldom, if ever, be sufficient.

Questioning of deaf persons should also take place only with an interpreter present in order to comply with the law and to achieve reliable communication. Many law enforcement agencies videotape all communications with deaf defendants in order to be able to substantiate the effectiveness of the communication and the quality of the interpretation. All deaf persons must be informed of the law enforcement agency's obligation to have a free, qualified interpreter present during all communications.

The duties placed on the courts in the U.S.
Deaf and hard-of-hearing persons have a right to communicate effectively and to participate in proceedings and activities conducted by all federal, state and local courts. Specifically, they are entitled to have courts provide and pay for auxiliary aids to enable them to understand and be understood. This right is based on federal laws, mentioned above.

The ADA protects all persons participating in court activities, including litigants, witnesses, jurors, spectators and attorneys. It applies to any type of court proceeding in any type of state or local court, including civil, criminal, traffic, small claims, domestic relations, juvenile and other

specialized courts. It also applies to other activities conducted by court systems, such as personnel, educational activities, and communications with clerks and other court personnel. For deaf persons who use sign language, the most effective auxiliary aid which a court can provide is usually the service of qualified sign language interpreters, trained in legal procedure and terminology.

The ADA also protects deaf parents of minors who are involved in court proceedings. Parents of a minor who is the subject of a juvenile proceeding are clearly "participants" in the proceeding even though the parents are not parties or witnesses, and they are entitled to qualified interpreting services during the proceeding.

Obviously, much still remains to be done in Europe to reach the same level of access to justice which deaf people in the U.S. enjoy.

Acknowledgement

I would like to thank Sheila Conlon Mentkowski for assistance in finding US related materials for this paper.

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Note

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Part III Accuracy of the translation

The Baybasin case is used by Adèle van der Plas, attorney practising in Amsterdam, to illustrate the need for interpreters and to demonstrate the importance of investigating tapped telephone conversations both technically and linguistically. She touches in her article on the ethical side of having tap interpreters making translated summaries.
Yolanda Vanden Bosch, member of the Antwerp Bar, uses the ethical issue to set up a system of quality control. She argues that just monitoring the recordings of proceedings is not enough, but that professional ethics and well-organised and standardised organisations of interpreters and translators are essential for fair trials.
The third lawyer in this section is Paola Balbo. In her article she touches on the lack of paralinguistic information (gestures for instance) when using telephone taps. Furthermore she discussed what compensation should be granted in cases when interpreting is not available and provides information on the situation in Italy.

CHAPTER SEVEN

Integrity and accuracy of the translation
The Baybasin case, or how to check the quality and integrity of an anonymous translator

Adèle van der Plas

FUNDAMENTAL RIGHTS

The European Convention on Human Rights (ECHR) requires that everyone who is arrested and charged with a criminal offence be informed promptly, in a language which he understands, of the nature and cause of the accusation against him[1]. Moreover, everyone charged with a criminal offence must be provided free assistance of an interpreter if he cannot understand or speak the language used in court[2]. This right encompasses the right to a translation of all those documents or statements in the proceedings which he must understand in order to have the benefit of a fair trial[3]. In the Kamasinski case the European Court held that this right to the free assistance of an interpreter applies not only to oral statements made at the trial hearing but also to documentary material and the pre-trial proceedings; the obligation of the authorities is not limited to the appointment of an interpreter, but extends to a degree of subsequent control over the adequacy of the interpretation provided[4].

The proposed Council Framework Decision translates these requirements in a right to free interpretation during the proceedings (article 6), a right to free translation of all relevant documents (article 7) and the guarantee that the provided translations or interpretations are accurate, i.e. are made by sufficiently qualified translators or interpreters (article 8). Interestingly, the proposal adds (in article 9) a second safeguard to guarantee the implementation of these rights: it requires the member states to ensure that, where proceedings are conducted through an interpreter, an audio or video recording is made to ensure quality control and that a transcript of the recording be provided to any party in the event of a dispute.

The explanatory memorandum reiterates that the proposed safeguards are *common minimum standards* to be implemented by the member states. The Commission indicates that this draft is only a first step. Soon new safeguards will be proposed relating to fairness in obtaining, handling and the use of evidence.

This article is about the quality and integrity of translations which are used as evidence by the court. These are not only translations of statements made at hearings by suspects and by witnesses. They include, in Dutch criminal proceedings, translations of conversational material obtained by means of phone and wire-tapping. The content of tapped telephone conversations may be used in the Netherlands, without any restriction, as evidence in a criminal case. It is not even necessary to submit the original language transcripts of the tapped telephone conversations as a control mechanism, for the court's perusal. It is sufficient to present the court with translated summaries of the original conversations. The identity of the translator may even remain unknown.

There is not only a fundamental right to a translation of sufficient quality during the criminal proceedings, but it is also a fundamental right of the defence to be able to check the reliability and integrity of translations which are used in the proceedings as evidence. The European Commission will still make proposals as to fairness in obtaining, handling and the use of evidence.

TAPPING TELEPHONES AND THE ANONYMOUS INTERPRETER

Tapping telephones is one of the main means of solving crimes in criminal proceedings initiated in the Netherlands. As evidence, telephone tapped conversations ought not to be underestimated. Research conducted by the Research and Documentation Centre of the Ministry of Justice, 'WODC' shows that in the Netherlands, in 1994, 3,284 telephones were tapped. The researchers estimated at the time, on the basis of interviews, that in 55% of the cases under scrutiny, the telephone tap had been of influence on the

evidence submitted[5]. The number of tapped telephones grew explosively at the end of the 1990s. In 1999, courts had permitted the use of about 10,000 telephone taps, so that the number of taps almost tripled between 1994 and 1999. A comparative legal research study of the Max Planck Institute shows that in the Netherlands, in comparison with other European countries, by far the most citizens are being listened in on by the government. Only Italy exceeds the Netherlands with 76 taps per 100,000 of the population. In the Netherlands this figure is 62, in Germany it is 15, in France it is 5 and in non-European countries such as the United States and Canada it is 0.5, respectively 0.4 per 100,000 of the population[6].

The Netherlands is not the only country when it comes to listening in on its citizens. It is rather unique that the courts, in criminal proceedings, may also make use of the content of tapped telephone conversations as evidence. I will expand on this by a discussion of the Baybasin Case, in which a life-long prison sentence was imposed on the basis of nothing more than the interpretation of a translation into Dutch from another language, actually no more than a summary, of allegedly telephone tapped conversations. In its ruling the Court of Appeals admitted that it had based its decision for 90% on a Dutch translation of in the official records of the telephone taps, made by police interpreters who remain anonymous and consisting of written summaries in Dutch of conversations conducted in Turkish, Kurdish and English. In other European countries, such as Germany and England, this would never have been admissible as evidence. In Germany, for example, an official verbatim record of recorded telecommunications, as sole item of evidence, never led to a suspect being declared guilty. Moreover, only verbatim transcriptions of conversations which have been recorded may serve as evidence. In England and Wales, information generated by telephone taps may be entered into the proceedings as evidence at the hearing. However the content of telephone taps themselves may not be referred to during the final investigations conducted at the hearing[7].

In addition, up to this moment, interpreters and translators in the Netherlands do not meet the minimum requirements imposed under international law on interpreters in criminal proceedings. Since 1 February 1998 the right to an interpreter/translator who acts with integrity as well as independently at a court hearing is regulated by law[8]. However, during the preparatory investigation, in which stage tapped telephone conversations are translated, the activities of the interpreter/translator remain opaque and are not structured by objective and measurable requirements as to quality and integrity. The proposals of the Dutch Moons Committee in 1999 to impose standards in respect of quality for interpreters/translators during the initial investigations were never implemented because of the cost factor[9].

In the meantime, the Dutch government has acknowledged that the minimum demands laid down in the Green Paper of the European Commission need to be implemented and even expressly added:
The Dutch government wishes to state its agreement with the independent position of an interpreter or translator. Interpretation and/or translation which is coloured for one of the parties does not meet the norms which the Dutch government considers to be acceptable. Within the Dutch legal system, an interpreter or translator is expected to operate from an independent position. He is as a communications expert to remain strictly neutral as an intermediary between the police and the Ministry of Justice on the one hand and the suspect and the suspect's legal counsel on the other hand, so that not even the impression might be given that he is in league with one of the parties. An interpreter or translator can therefore never act as an advisor to any of the parties. This also forms the assumption of ethical codes of professional conduct which are currently being developed within the domain of the Netherlands Ministry of Justice[10].

The Dutch Ministry of Justice has drafted legislation which is currently reviewed regulating the position of court interpreters and sworn translators. This is an important step in ensuring the necessary quality standards. Once the new legislation has come into force, courts, police and other Justice Department services may only make use of sworn interpreters and translators registered in a national quality register who meet the quality and

integrity demands imposed by law. With new legislation, the practice of the police to use interpreters and translators who do not meet objective, measurable quality standards will hopefully end. In addition, the draft Bill also guarantees a prime principle of transparency. It provides for a right to ascertain from the quality register whether a specific interpreter/translator as registered and whether the registration was not revoked.

For the time being, the draft Bill has not been enacted so that criminal proceedings in the Netherlands lag behind the European minimum standards. This may be illustrated by the Baybasin Case, in which I acted as counsel.

The Baybasin Case

A few facts

Hüseyin Baybasin was convicted to a life sentence on 30 July 2002 by the Court of Appeal at Bois-le-Duc ('s-Hertogenbosch), the Netherlands. He appealed against this conviction, but the Supreme Court of the Netherlands dismissed the appeal on 21 October 2003. On 16 April 2004 a complaint was lodged at the European Court of Human Rights on his behalf on the grounds that his right to a fair trial was infringed, pursuant to articles 6 and 3 of the European Treaty on Human Rights.

Baybasin is a prominent Kurdish businessman from a highly regarded Kurdish family from the South East of Turkey. In his youth, Baybasin was in the service of the Turkish State. He was trained to participate in illegal activities for the then Turkish government, including the participation of Turkish government officials in drugs trafficking. After being arrested in England during one of his undercover operations in 1984 he refused, upon return to Turkey, to participate in any further illegal activities for the Turkish State. From that time on Baybasin was active in the Kurdish Movement, which resulted in his being subjected to arbitrary criminal proceedings in Turkey and subsequently tortured. Having been a victim of

assassination attempts, Baybasin fled Turkey at the beginning of 1990s. His knowledge of the involvement of the Turkish State in the drugs trade did not remain unnoticed; foreign media revealed this information in great detail. After fleeing from Turkey up to the time of his arrest in the Netherlands in March 1998, Baybasin save substantial support to the Kurdish Movement, e.g. he was one of the founders of the Kurdish Parliament in exile, established in Brussels. At the time this made him one of the most sought after *enemies of the state* being pursued by Turkey.

In 1995, Turkey requested the Dutch authorities to extradite Baybasin. He was given to understand that this request was based on a secret agreement between the Dutch and the Turkish authorities. By letter of 15 July 1997 the Netherlands Immigration Service informed the Ministry of Justice that the Baybasin Case was used by the Dutch government as a means of exerting pressure to get the Turkish authorities to take action in another case. However, the presiding judge disallowed the Minister of Justice to extradite Baybasin on the grounds that he faced the threat of possible torture after returning to Turkey[11].

From 1996, the Dutch special police criminal investigation task force alleged to have received anonymous information about Baybasin's possible involvement in large-scale heroin trade. On the basis of this information, an initial investigation was opened in September 1997 and telephone calls made by Baybasin were tapped. On 28 March 1998 Baybasin was arrested in the Netherlands on account of being suspected of involvement in heroin trade, (attempted) murder and taking hostages. From the outset Baybasin has denied all accusations.

MANIPULATED TAPPING MATERIAL?

The criminal case against Baybasin included evidence consisting primarily of the official verbatim records of mobile telephone calls, translated into Dutch. The original conversations in Turkish, Kurdish and, occasionally, in English were presented to the court as written summaries in Dutch. The translations of the phone calls were made in collaboration with members of

the investigation team of the police force, by the same anonymous interpreters who had carried out the voice recognition. One of these interpreters, was also member of the investigating police team. And besides that Baybasin's defence lawyer could prove demonstrable corrupt contacts of this man with the Turkish authorities and that he was suspected of having passed on information from (secret) Dutch police investigations to the Turkish authorities. The requests to question this interpreter as a witness before a judge were denied.

From the outset Baybasin has disputed the authenticity of the tapping material submitted in evidence. Despite this, the court considered this as the basis for the evidence against him. The legitimacy for doing so was based on a statement of an expert from the Netherlands Forensic Institute that his review of a number of recordings of telephone conversations had not led to his finding that there was any manipulation. Audible irregularities on the copy tapes of the conversations, such as repeated clicking sounds, multiple voices, abrupt termination of calls, et cetera, were aurally examined by the expert, that is, reviewed using a head set. The criticism by the defence at the Court of Appeal centered on the fact that this method falls far short of general scientific standards for such examinations. An aural investigation is only one of many possibilities to check the authenticity of audio material pertaining to telecommunications and is not considered as one of the most advanced methods for such purpose. In forensic research, it is but an initial and cautious step towards a much deeper investigation, such as signal analysis using advanced computers techniques, which is more accurate than the human ear (even of the trained ears of an investigator) to detect irregularities on the recordings. Such technical methods of analysis sometimes lead to spectacular results.

Experts in both the fields of signal-analysis and telecommunications found that the copied recordings of conversations contained the type of irregularity which in fact necessitated a signal analysis of the original data carriers. However, requests to the court for technical investigation of the original material were denied, because the expert employed by the Netherlands

Forensic Institute had indicated to having sufficient expertise and experience to exclude manipulation of the tapped conversations. Any possible errors in reliability on the part of the Dutch digital tapping centres, which had been introduced in the middle of nineteen nineties, were considered irrelevant, as long as Baybasin could not actually prove manipulation of the tapes.

THE ACCURACY OF THE TRANSLATION

The dispute as to the correctness and precision of the Dutch translations made by the anonymous police interpreters did not prevent the court from ruling that the translations could be used as evidence. Requests made by Baybasin to provide him with detailed transcripts of the conversations in the original languages were denied.

The translation work provided by the police interpreters was assessed as inadequate. The defence showed grievous errors in the translation, which seem intentional misrepresentations of the original texts, instead of common mistakes. One of the utterances, which constituted a central piece of evidence for an attempt to elicit a liquidation, was a phrase which was incorrectly translated: the words 'making a call' were mistaken for 'making cold', which translated in Dutch yields an expression for killing someone. Recent signal analysis of this conversation has shown that precisely 10.8 seconds prior to utterance of this phrase, the signal failed three times, which might indicate a cut and paste moment at these points. Is this a clue that a deliberate attempt was made to tamper with the original material? And furthermore, might this have been done by Dutch native speakers as the specific phrase only exists in Dutch? If so, then the responsibility for tampering with the evidence clearly lies with the anonymous police interpreters on whose activities the court relied. This is not the only example. Several other misrepresentations were found by the linguistic expert. Phrases were left out, or were referred to as incorrect translations at that time. However, the expert's advice was ignored by the Court of Appeal and the tapes were considered sufficient evidence to sustain the count of attempted murder.

To the amazement of the defence the Court of Appeal called upon the same expert from the Netherlands Forensic Institute to substantiate the use of these translations as evidence. He stated that in critically reviewing 30 conversations the (Dutch) versions of those conversations (in the verbatim records of the telephone tapping) did not significantly diverge from the spoken texts. The fact that that expert had no knowledge whatsoever of either the Turkish or the Kurdish language and hence relied on his feelings and on the work of a completely anonymous third party, appeared to be irrelevant as the court relied on the expertise of the Netherlands Forensic Institute! The opinion of an acknowledged expert on Kurdish in the Netherlands, based on careful research of the translations and the summaries made by the interpreters which questioned the accuracy of the translations, failed to make an impression on the court, which considered it not important whether or not the translations were error-free and complete as long as the translation reflected the essence of the original speech.

TECHNICAL FLAWS

In the meantime, the Dutch Minister for Internal Affairs was forced to change his position in respect of the reliability of Dutch telephone tapping centres. In an official statement on 5 December 2003, he informed the Dutch house of representatives on the results of an investigation into the security and vulnerability of Dutch telephone tapping centres[12]. One of the main conclusions of the investigation was there are lapses in both the management of the interception system and in the technical security of the interception system itself, resulting in risks that the information might be used or manipulated by unauthorised third parties.

THE OUTCOME OF THE CASE

The decision of the Court of Appeal in the Baybasin Case was accepted by the Supreme Court of the Netherlands without further ado, notwithstanding the unreliability of the evidence demonstrated by experts in the field. The court considered it unnecessary to review the original data carriers and the original transcripts.

CONCLUSION

In this case, the most basic standards for translations used in criminal proceedings were not applied. The new basic requirement of "transparency" in the draft Bill on to court interpreters and sworn translators is undermined by the ruling in this case, in which summaries made by anonymous interpreters are considered to constitute evidence. According to the Court of Appeal or the Supreme Court of the Netherlands, the required 'independence' does not apply to interpreters. It is not relevant whether the translation made of the telephone conversation can be considered error-free and complete, but it is only relevant that those translation offer the essence of what was originally uttered. The only people who were able to judge whether the translations and the summaries reflected the essence of what was originally tapped, are anonymous interpreters/translators, who worked as policemen or in direct collaboration with the investigation team.

Such non-reviewable evidence as basis for a life sentence constitutes a flagrant conflict with the minimum standards set out in the Proposal for a Council Framework Decision and with the guarantee formulated in article 8 that the translations or interpretation provided should be accurate. It also conflicts with the requirement formulated in article 9 that the Member States must ensure transparency in the quality control of the translations used in criminal proceedings and with the more generally accepted standards of professionalism and independence of interpreters and translators in international law. These are summarised well in the Code of Ethics of the International Criminal Tribunal for the former Yugoslavia, which states that interpreters shall maintain high standards of professional conduct and are required to act faithfully, independently, impartially and with full respect for the duty of confidentiality[13].

Notes

[1] ECHR, article 5 par. 2 en article 6 par. 3 (a)

[2] ECHR, article 6 par. 3 (e)

[3] See: Luedicke, Belkacem and Koc v. Germany, ECHR, 1978, November 28th, A 29, par. 40

[4] Kamasinski v. Austria, ECHR, 1989, December 19th, A 168, par. 74)

[5] Z. Reijne, R.F. Kouwenberg, M.P. Keizer, Tapping telephones in the Netherlands, WODC Research and Policy, 155, 1996, pages 19 and 39

[6] *Rechtswirklichkeit und Effizienz der Überwachung der Telekommunikation nach den §§ 100a, 100b StPO und anderer verdeckter Ermittlungsmaßnahmen, H.J. Albrecht, C. Dorsch, C. Krüpe, Max-Planck-Institut für Ausländisches und Internationales Strafrecht, May 2003, p. 7*

[7] *M.S. Groenhuysen and G. Knigge, Het onderzoek ter terechtzitting: eerste interimrapport onderzoeksproject Strafvordering 2001, pages 130 and 140*

[8] *Article 276 section 2 of the Netherlands Criminal Code*

[9] *Cf. the report on the reappraisal of the Netherlands Criminal Code, the Moons Committee, November 1991, p. 17*

[10] Green Paper of the Committee. Procedural guarantees for suspects in criminal cases throughout the whole European Union, Brussels, 19.2.2003, COM (2003) 75 definitive. Reaction from the Dutch government to the Green Paper issued by the Committee: Procedural guarantees for suspects in criminal cases throughout the entire European Union, House of Representatives of the Netherlands, II 2002/2003, 23 490 nr. 272, letter from the Minister of Justice of the Netherlands, dated 16 May 2003

[11] President, of the District Court of The Hague, 28 October 1997, JV 1997/20

[12] Report dated 25 August 2003 by PriceWaterhouseCoopers, "A & K"-analysis of some five interception organisations and systems, appended to the letter of 5 December 2003 from the Netherlands Minister of Foreign Affairs, J.W. Remkes, addressed to the Speaker of the House of Representatives of the Parliament of the Netherlands

[13] See The code of ethics for interpreters and translators employed by the international criminal tribunal for the former Yugoslavia, 26 February 1999

CHAPTER EIGHT

Accuracy of the interpretation and translation Integrity and ethics, monitoring of recordings of proceedings, and professional code of ethics

Yolanda Vanden Bosch.

INTRODUCTION

Translation/interpretation is a human activity and there is room for error

The ECHR is applied by the courts in different ways. Violation of the ECHR is not uncommon in this subject matter. The European Court of Human Rights has already formulated an applicable procedure.
The Baybasin case, discussed by Adèle van der Plas, is drawn from real life. No matter how Strasbourg will decide in the matter outlined above, from the above clarification we must remember in all respects that the Ministry of Justice and the responsible authorities do not always act equally carefully and responsibly if foreign speakers are involved and if evidence is not available in the language of the proceedings. The lack of options for the monitoring of original texts and explanations in particular is an enormous void.

It is possible that the correct people or the right technical support are not available, or perhaps there is no sufficient budget to be able to respond more adequately to the very specific requirements. However, these are no excuses if the truth remains in the shadows and sentences are being passed. Does the rule that 'reasonable doubt' means acquittal not also apply here?

Professional practice of translators/interpreters implies quality control

Those who had any remaining doubts will, after the previous account and after some detective and contact work in their own environment, come to the conclusion that we must no longer hesitate to say that quality interpretation and translation are an absolute 'must' to determine the truth and to be able to judge and sentence based on correct actual facts. It is

obvious that this implies monitoring and checking of the original statements and texts.
Without any hesitation we can add that this starting point applies in all legal disputes, be they criminal, civil or administrative, for all parties involved, and that this must be the case in all member states of the European Union, and for all citizens. In this context, the integrity and quality of translators and interpreters is a condition for the quality of the justice system and determination of the truth.
Conversely, translators and interpreters themselves can also only have faith in the system they work in if they know how to protect themselves against accusations and reproaches and possibly even against liability claims for alleged professional errors. Once again, this is only possible if the original texts and interpretations remain available and can be checked.

Quality monitoring and control imply structuring of the professional practice by the responsible government

Persons seeking justice and legal parties (magistrates, lawyers, the police) must be able to appeal to and rely on organised professional practitioners and organisations for the professional group of court translators and interpreters within the entire European Community. Quality and integrity must be guaranteed in all areas by these professional organisations and professional practitioners at the same level and in the same manner.
In this context, there is absolutely insufficient focus on the structuring and definition of a statute required to guarantee a high-quality interpreter facility everywhere within the national legal institutions. It is pointless to monitor interpretation or translation in one case or another if no system is established to set up a register of recognised quality court interpreters/translators who are only allowed to work if they appear on the list that is organised and managed by the government in conjunction with the professional group.
Selection criteria must ensure that only high-quality candidates are included in the register. After proven errors or shortcomings in the professional practice it must be possible to prevent the same professional practitioner causing new problems in a potential new assignment. Temporary or

permanent removal from the register, and a system in which all users are aware of this, is essential.

Monitoring of the quality through the application of professional ethics
In the event of disputes about the performance of legal interpreters and translators, a deontological body, regulated by the government, must also be able to refer back to original texts and translations or interpretations, in order to be able to evaluate the conflict regarding a professional practice that may or may not be correct. From a disciplinary point of view translators and interpreters will only be able to defend themselves, to demonstrate that he did deliver a sound and correct translation/interpretation, on the basis of original documents or interpretations.
This system assumes uniform professional ethics and disciplinary procedures for court interpreters/translators. Such deontological facilities must be further defined and be made legally enforceable either by means of international standards or by means of national standards that are imposed by the national government, possibly pursuant to European legislation.
In every way, these standards must give shape to the demands the person seeking justice and the legal parties can make on the organised translators and interpreters on the basis of international treaties such as the European Convention on Human Rights (ECHR) and the interpretations thereof by the European Court of Human Rights (see the conclusions in my article in Aequalitas). The option to monitor the interpreted and original texts is, once again, the cornerstone in this context.

STANDARDS REGARDING INTEGRITY AND QUALITY, AND DEONTOLOGICAL IMPLICATIONS IN THE EU TEXTS

Those who want to ensure that situations such as those outlined in the previous account are prevented and/or remedied will, in fact, only find an initial impulse in the 'proposal for framework' and the 'green paper'. Fully defined and precise instructions or standards are rarely found.
In the European Commission's Proposal for a Framework Decision on Procedural Guarantees for Suspects, article 8 stipulates the following:

1. The member states will ensure that the appointed translators and interpreters have **the necessary qualifications** to be able to supply **accurate** translations and interpretations.
2. The member states provide a **mechanism** on the basis of which an interpreter or translator can be **replaced** if the translation or interpretation proves to be inaccurate.

According to the explanatory memorandum a certain translation/interpretation standard must be guaranteed, and there must be an option to replace the interpreter if this standard is not met.
The Commission stipulates that 'the standard of interpretation and translation must be **"good enough"** to enable the suspect to understand the nature and cause of the accusation'. This vague standard, as clarified in the explanatory memorandum, will create situations throughout Europe as well as considerable uncertainty among all parties involved, as described by Adèle van der Plas
It is deplorable that we can no longer find any reference to the viewpoint that quality can only be guaranteed if standards for selection criteria, education, training, registration etc. are also provided for. These standards were previously discussed in the EU Grotius projects regarding court interpreters/translators and in the Green Paper on Procedural Safeguards for suspects and defendants in criminal proceedings throughout the EU, and the associated meetings.

According to paragraph 2 the member states, in their legal structure, must provide a system that makes it possible for lawyers, judges, suspects and all other persons involved in criminal proceedings who conclude that the required standard of interpretation was not met by a certain interpreter or in a certain case, to report this and for another translator or interpreter to be provided.
All member states must therefore take the required measures in this respect. But even then the question arises how the problems can be determined. There is therefore a requirement for monitoring of the original text to be translated and of the original interpretation.

This must be provided for in procedural measures, insofar as the authority of the magistrates to intervene during a court session is not currently sufficient, and in a code of professional ethics.

The ECHR requires that the interpretation must guarantee the effective participation of the defendant in the procedure. If this is to be effectively made possible in case someone wishes to dispute the interpretation, a monitoring option for the interpretation is of course required. Recording by means of audio or video equipment is therefore essential and inevitable. Only then is proper monitoring possible.
Article 9 of the proposal for a framework decision stipulates:
"When an interpreter is involved in the proceedings, the member states will provide audio or video recording facilities to enable quality control. In the case of a dispute, each party will receive a transcript of the recording. This transcript can only be used to check the accuracy of the interpretation."
In a dispute there is often a situation whereby it is a case of the word of the foreign person seeking justice against the word of the interpreter. Recording is the ultimate guarantee for a fair process for the foreign person seeking justice. Incidentally, this is to the advantage of all parties involved in the proceedings: the legal parties and the party in the proceedings as well as the court interpreter in question.
The transcript can only be used to check the accuracy of the interpretation. As the Commission states, any other use of the transcript in the proceedings could result in discrimination against persons seeking justice who do not need an interpreter and who are not given a second opportunity to review statements.
The fact that States possibly or likely will formulate objections against recording, for whatever reasons, does not detract from the absolute necessity of introducing recording. Arguments such as impossibility or problems relating to the cost situation, technical realisation or potential misuse by lawyers do not matter. The right to a defence must always be given priority, and cannot be pushed aside as a result of whatever problem.
Even the Commission confirms this in its clarification. The Commission concludes that the content of this provision does, in fact, only confirm the

existing rights under the ECHR as confirmed in the dispensation of justice by the European Court of Human Rights. In this respect it is therefore not a new obligation but rather an existing obligation that, at present, not everyone is adhering to.
In Artico v. Italy the European Court of Human Rights decided, in a direct manner, that *'The Treaty is not intended to guarantee theoretical or illusory rights, but rather practical and effective rights; this applies specifically to the right to a defence, in view of the prominent place the right to a fair trial, from which these rights originate, takes up in a democratic society.'* (Artico, 13 May 1980, series A, no. 37, 32-33)
And after all, what are the costs of a good technical audio or video recording compared to other costs incurred for justice? For instance, what does the construction of a beautiful new 'glass' court building, a symbol of openness toward the citizen, mean if, on the other side of the coin, no monitoring option is provided for the work carried out by interpreters?

Finally, the appointment of an (own) monitoring interpreter by an accused person does not make the recording of the interpretation superfluous. After all, in a dispute between the monitoring interpreter and the interpreter deployed in the procedure, it must be possible to resort to the recording of the interpretation. Only then is effective monitoring possible; if not, the dispute continues to exist.
What is not discussed in the proposal is the necessary opposite of the possibility for monitoring and checking of the supplied quality, namely the realisation of a code and procedure of professional ethics for court I/T. Previously, efforts to guarantee the rights of foreign speakers had been taken further (EU Grotius projects, and the Green Paper published by the Commission).
In these efforts there was already a focus on the requirement for professional organisations and the need for a code of ethics for the professional practitioners.
This realisation of uniform professional ethics is essential within the EU for all court interpreters and legal translators.
The outlines of such a deontological system are sketched below. In doing this, we remove ourselves from the concrete previous account of the keynote

speaker, but we explore a legal system, imposed by the government, that must allow the monitoring of professional ethics and therefore the quality of translators and interpreters with, as its sole objective: to **improve** the ability of the courts and magistrates to establish the truth and to realise the **guarantees of articles 5 and 6** of the ECHR regarding **fair trial**, also for foreign speakers.

A DEONTOLOGICAL SYSTEM FOR TRANSLATORS AND INTERPRETERS IN ORDER TO MAINTAIN AND REALISE QUALITY, A 'MENTAL PISTE'

Translators and interpreters working as an employee, civil servant or independent contractor.

In employment, administrative and civil law there are rules that make it possible to appoint or dismiss the translator and interpreters in the aforementioned capacities and methods of professional practice. In most cases the court interpreters/translators work in an independent capacity. These rules do not make it possible to permanently remove the opportunities for a translator and interpreters who has failed in his assignment to resume the inadequate professional practice in a different capacity and carry on working.

These general rules do make it possible to sanction a specific and one-off poor performance, but they do not prevent further problems.

The professional practice of court interpreters/translators (but also of legal translator and interpreters, and translator and interpreters in general), require specific professional rules and procedures that protect the profession against unsound practitioners, and that therefore serve the objective: the quality and establishment of the truth on the part of the courts.

Content of a deontological code

Deontology is a **set of standards formulated by a certain professional group, or the representatives of this group**. It concerns **professional standards**. These standards enable proper professional practice.

The formulation, definition and application of these standards for professional ethics does, however, require the assistance of **lawyers**, as is also the case for other professional groups. After all, the work always takes place within a legal system. The content of the Code must be lawful and complete. The content of the Code determines its value.
Court interpreters/translators also have their specific role as a legal party. The Court demands independent, impartial and professional conduct on the part of court translators/interpreters, as is also expected from other legal parties. Lawyers and magistrates can also be subject to disciplinary action. In Belgium, for instance, the Court of Commerce, in which lay judges have a seat, also formulated a procedure for professional ethics for these lay judges. In the ICTY, the Code of Ethics was realised in conjunction and under the control of the judges of the Court.

However, no single code of professional ethics can nominatively predict all potential infringements and scenarios. The basis of such a deontological code is too broad for this: morals, ethics, religion, rules of workmanship,…. It is possible to create open rules that are defined and applied by carefully composed and government-appointed and mandated disciplinary courts. This is the way most other disciplinary systems within the justice system operate. Magistrates, lawyers, bailiffs, notaries and police officers are subject to open disciplinary rules that are assessed by the disciplinary bodies and defined in each individual case.
There is no reason to construe this differently for court translators and interpreters.

Within the common standards of professional ethics two groups can be distinguished.
In the first place there is the question of investigating the degree of good professional practice and the adherence or non-adherence to **professional obligations** associated with the profession. In addition, it is possible to investigate whether **the good standing of the profession has been negatively affected**.

These two questions will then form the basis of a range of variations and nuances on the part of the disciplinary proceedings. These nuances can also be seen in publications of summaries of disciplinary sentences, and in commentaries, analyses and critiques of the problems in the professional publications. For instance, summaries of the rules (in a certain district) regarding professional practice on the part of lawyers often contain more than 500 pages of commentary.
This commentary always concerns variations on the aforementioned themes.

In my article in Aequalitas, the publication of the second Grotius project, you will find ideas regarding structures for professional practice that have been further defined, and examples of ethical infringements and a summary of possible sanctions in non-deontological professional practice. This falls outside the scope of the current issue, but hopefully this article will be a useful tool in the discussion and further development of rules.

CONCLUSION

An effectively standardised monitoring option for interpreted and translated original texts in the context of legal proceedings is currently not or insufficiently guaranteed. However, monitoring alone is not sufficient for a watertight system that excludes or limits errors. There is also an urgent need for a deontological structure and statutorily standardised organisation of the court interpreters/translators.

Both are essential conditions for the realisation of improved establishment of the truth. Only in this way can the assessment of foreign speakers in the EU member states be deemed to meet the requirements of articles 5 and 6 of the European Convention of Human Rights (ECHR), as laid down in the decision by the European Court of Human Rights, to guarantee a fair trial and the right to a defence.

CHAPTER NINE

The right to defence counsel
Compensation for unreasonable length of criminal proceedings – Cellular confinement

Paola Balbo

Are the rights of foreign suspects at their trial and, even before, during investigation and questioning, properly safeguarded under Italian law? As regards the Criminal Code, the Code of Criminal Procedure and other legislation this question may be answered in the affirmative, but this is theory. In practice things seem quite different.

According to art. 8 of the Council's Proposal for a Framework Decision on certain procedural rights in criminal proceedings the standard of interpretation and translation must be good enough to enable the suspect to understand the nature and cause of the accusation.

In the Code of Criminal Procedure specific articles provide for the right to be correctly informed of the proceedings, the right to interpretation and to translations (articles 119, 143 *et seq* Italian Code of Criminal Procedure). A suspect who does not speak or understand Italian is entitled to assistance by an interpreter in order to understand the charges made against him and to follow the course of the proceedings.

The authorities must ensure that an interpreter will be available to interpret, or that a translation of documents into a foreign language will be made. The services of an interpreter are also required when the suspect who does not speak Italian wishes to make a statement Such a right to assistance by an interpreter is also compulsory when the judge, the prosecutor or the police officer speaks or understands the language or dialect of the suspect. An interpreter must be used in each instance. When appointing an interpreter, the ethnic and linguistic origin of the suspect must also be taken into account.

But what is the actual situation?
According to Italian law, a suspect who does not speak or understand Italian has certain fundamental rights, which include being treated equally as Italian nationals.
The first difficulty is due to the limited number of languages which are considered common languages (French, English and Spanish). But what happens if the investigating judge must decide a case where the suspect speaks a particular dialect? An example may clarify this. Incidentally, it does not matter whether it is a civil or criminal matter, because in both cases the problem is the same. Two years ago a couple living in Italy decided to divorce. Both were born in India, but when husband and wife appeared before an Italian judge, it appeared that the wife only spoke a particular Indian dialect and did not speak or understand any other language. The judge decided the case on the basis of 'good sense' applying, as required, Indian law. In this situation the problems were, first, the impossibility to find a competent interpreter for the particular dialect, and secondly, the correlative difficulty to obtain a faithful translation and, thirdly, as in this case, the impossibility for the wife to have a free choice of interpreter.

But apart from interpreters, we need to examine the situation regarding translations. In particular, where the translation is made for specific proceedings, namely when it is made of intercepted conversations. We need not consider here questions of legitimacy and the preliminary required authorisation of a judge to tap the telephone. The translation and recording of intercepted conversation may cause many problems, especially in connection with their transcription.
This is even more true because of **problems of comprehension** (the words may be perfectly intelligible, but the meaning of a sentence can be misunderstood due to a lack of determinate paralinguistic elements such as gestures), of **intelligibility** (the words spoken may be practically incomprehensible and the transcription results may thus be only hypothetical), of **reckoning** (how to specify and express emotional aspects, expressions of another speaker, and so on) and that of **'mere' translation**

(how to express whether the translation corresponds exactly, even when the dialect spoken is well-known to the transcriptor).
As stated hereinbefore equal treatment is guaranteed by law. Thus where measures are taken as to the right of entry, residence and expulsion there is a duty to provide interpretation in a language which the person involved will understand. The person whose right is considered must be given the possibility of providing factual information, personal data and his qualifications by means of documents issued by authorities of the State of origin (Statute of 4 January 1969, no. 15). The law of privacy and on the right to have access to information needs to be complied with in administrative or criminal procedures. Collection of personal data, and judicial information, in particular, needs to take place with due observance of protected rights. But there must also be a safeguard that the right of a person to obtain information on such data is respected so that he or she will understand why e.g. an application for a visa or work permit and the like is rejected or why certain decisions are given, such as a refusal of the right of rejoining the family. All information connected with the application of sanctions and the defence are relevant and needs to be understood so as to allow the person concerned to determine whether it will justify making a complaint or invoking any legal remedy.

Italian immigration law explicitly allows, for security or public order reasons or in the interest of national defence, that no reasons are given for decisions on immigration. However, a complaint with the regional administrative court may be filed when no reply is given within 30 days by a governmental agency on a request for information or on the contents of documents. Here again the problem is that a translation of the documents may be needed. The consequences may be more serious if the administrative documents or the administrative proceedings are reviwed in criminal proceedings where the person whose interests are considered is unable to give his views on account of the non-availability of translated documents. Clearly it is not sufficient that the law gives certain rights. In order for these rights to be effective they must also be respected. In many cases persons are sentenced without the suspect having understood the charges because of the

absence or inadequacy of the interpretation or translations or the absence of defence counsel.

What is the use of guaranteed rights to defence counsel, if the accused has insufficient knowledge of documents in the file and, moreover, when the authorities need not give any justification? In a case where a visa had been refused by the chief of police, the administrative tribunal in Veneto considered the refusal irregular as the applicant had not been advised that he could make an application for a revocation of the decision at the Italian consulate of the State of destination. A complaint or appeal may be filed with different types of court, judicial or administrative, depending on the nature of the measure (administrative or judicial expulsion), but it will not be admissible unless made within the statutory term.

From case law it appears that no verbatim translation will be required in the case of expulsion of persons who have been sentenced or accused of a criminal offence: this will not constitute a violation of the right of the defence. This is considered to be justified because the proceedings are not a trial at which the accused must demonstrate his innocence. The administrative measure only requires that the accused will understand the meaning of the order.
In the past the administrative Council of State, *Consiglio di Stato*, decided that the lack of a translation will not necessarily constitute a defect in the proceedings because it will not affect the jurisdiction or constitute a violation of the rights of the defence. Later decisions of higher civil and criminal courts altered this, as appears from recent judgments of the Supreme Court, *Corte di cassazione*, and the Constitutional Court, *Corte costituzionale*. By law, a violation of art. 143 of the Code of Criminal Procedure will result in nullity of decisions affecting a suspect, if no interpretation was provided in a language which the suspect understood. After considering a decision of the *Corte costituzionale* of 1993 in respect of the interpretation of art. 143[1], the *Corte di cassazione* held that no translation needed to be provided as long as an interpreter is assigned immediately after execution of the decision and at the time when the person is questioned

when it appears that the person arrested and/or questioned does not speak or understand Italian.
In 2000 the *Corte costituzionale* confirmed that any foreigner, even if he or she had entered Italy illegally, must understand exactly the content and meaning of any measure which limits his or her fundamental rights, or which in any way interferes with the freedom of self-determination. For a proper defence a translation of documents and of the pertinent statutory provisions will of course be needed to ensure a proper and correct defence. So, even in the case where there are fixed periods within which appeal or complaints must be made, the *Corte costituzionale* underlined the principle that the decision must not be defective and must be brought to the attention of the person against whom it is given. That also means that the courts must consider the purposes of the statutory provisions and whether the person against whom a decision was taken had every opportunity to exercise his or her rights.

There must be means to ensure compliance in practice with the rights under the European Human Rights Convention. This Convention only sets minimal standards which member States must comply with. Claims for compensation which could be enforced at the national level would be a means to ensure due compliance, e.g a claim for damages to ensure that a translation is provided and that an interpreter will be available at every stage of the proceedings. Under articles 643 *et seq* of the Code of Criminal Procedure compensation for a loss arising from unjust detention due to a judicial mistake may be claimed (see article 314 *et seq* for pre-trial detention). *Mutatis mutandis* this could constitute a basis for claiming compensation in the case of incorrect application of the right to assistance by an interpreter during proceedings contrary to all covenants on human rights. The Italian Statute of 24 March 2001, no. 89 is an example of compliance with the European Human Rights Convention, as it provides that fair compensation may be claimed by persons who have suffered an economic or non-economic loss when a reasonable term set by article 6, § 1, of the Convention is breached.
The State will be liable for conduct of persons responsible for any violation of the right to a reasonable length of the proceedings.

Just compensation may also be claimed under the law governing administrative responsibility. There are three criteria for establishing whether there is an unlawful transgression of the permitted length of the proceedings:

a. the case was not so complex as to justify the length of the proceedings,
b. the behaviour of the party was not the cause or reason justifying the length of the proceedings,and
c. the conduct of the authorities involved was the cause of the unreasonable length (see also European Court for Human Rights, Pélissier et Sassi v France of 25 March 1999; Philis v Greece no. 2 of 27 June 1997; Acquaviva v France of 21 November 1995).

The length of proceedings may be affected by the time needed to demonstrate the lack or incorrectness of the interpretation, e.g. because of incomprehensibility of the documents.
Compensation may be claimed for a loss sustained by a person as a result of incorrect use of information about himself. Moreover, it must be kept in mind that the Schengen system of collecting data provides for procedures for the creation and safe-keeping of archives, guarantees the right to information in respect of persons whether or not they are European citizens, denies access to data only when a prohibition will safeguard the rights and freedom of others. Italy has decided that their administrative authorities need only indirectly provide information,but when the administrative authorities check a person's identity, he or she may request the State for information, in which case this must be provided, unless for reasons of security or public order or repression of criminality this will not be possible. It must be kept in mind that this falls within the particular area of rights safeguarded by the European Human Rights Convention and the UN Charter ratified by Italy (Strasbourg 22 November 1984, Act of 9 April 1990, no. 98).
Finally, article 12 of the Council's proposed Framework Decision providing for the "right for a person remanded in custody to have his family, persons assimilated to his family or his employer contacted as soon as possible"

needs to be considered. It provides for a fundamental right that requires compliance.

Cellular confinement is a coercive measure, which may be applied to inmates on account of health problems and disciplinary requirements. But also during pre-trial detention, the measure of detention in isolation may be applied for as long as the judicial authority considers necessary, for more than seven days if the investigating judge decides on such detention on the requisition of the prosecutor. The power to keep a suspect in isolation and the length of this measure will depend on the prosecutor who orders the arrest or the preventive custody until the arrested person is arraigned before a judge.
Under Italian law (Statute of 26 July 1975, no. 375), the discipline and control of the detention in isolation depends on the powers of the governor of the prison where the person is in custody[2]. Generally, only a judge has the power to decide on the application of isolation.
It is questionable whether the right of investigation will constitute a violation of the corresponding right not to be subjected to psychological violence. In fact, this measure may be adopted not only to counter a possible destruction or concealment of evidence, but also to obtain a confession, which is a punitive measure in breach of the European Human Rights Convention. In particular, this will constitute a breach of the right to communicate with defence counsel in the presence of an interpreter.

Other countries where this regime may be applied under domestic law are e.g. France, Portugal, Spain and Denmark, although there are differences in respect of the permitted length of detention in isolation. The French *interdiction de communiquer* (art. 145-4 Code de Procédure Pénale) does not forbid the presence of defence counsel.
The Portuguese regime of *incumunicabilidade* may be absolute or not, in which latter case the person held in detention may be permitted to communicate with some people (articles 210 and 211 Execuçao das medidas privativos de libertade).

In Spain the judge who orders detention must control the respect of the rights of inmates, regardless whether they are accused or convicted (Proyecto del Ley Organica 4 April 1997, art. 6).
In Denmark the police may decide on isolation after arrest to avoid any contact with other prisoners; also the judge may decide to keep a suspect isolated during investigation, but appeal lies from this decision with a superior court.

Notes

[1] Art. 143 (1) of the Code of Criminal Procedure is intended and must be interpreted as a general clause, of extensive application. Its application can be extended and specified according to the different concrete needs.

[2] Art. 33, § 3 Statute of 26 July 1975, no. 354: "In penitentiary establishments the continuous isolation is admissible for accused during preliminary investigation and hearing and for arrested in preventive proceedings, if and till it is considered necessary by judicial authority".

Art. 73, no. 6, DPR 30 June 2000, no. 230: "Conditions of persons submitted to preliminary investigation who are put in isolation must not differ from those of the other inmates, apart from the limits imposed by the judicial authority".

Part IV Toolkits

The articles in this section contain many useful suggestions for the judiciary, the police and in fact all who are somehow involved in legal proceedings. In her article Ann Corsellis, magistrate, builds on the work of the two previous Grotius projects. Legal services and translation services have to cooperate in the best possible manner. In a way they are condemned to each other, so they might make the best of it.

Hermine Wiersinga, judge and lecturer at Leyden University, reflects on the, in her opinion, ideal situation Ann Corsellis depicts, which is, at least in the Netherlands, not yet achieved. Hermine Wiersinga indicates what translators and interpreters should be aware of when working in courts. But she also has some practical guidelines for the judiciary.

Another very practical approach can be found in Dirk Rombouts' article, since he gives his experiences as a police officer. What applies for police interviews also applies for court sessions. The ethical guidelines apply to both situations.

A very practical approach can be found in the article by Arend Krikke (Chairman of the Dutch Institute of Court Interpreters and Translators) and Miran Besiktaslian (director of the same institute). They present guidelines for training.

CHAPTER TEN

Inter disciplinary conventions & toolkits for legal services

Ann Corsellis

INTRODUCTION

The legal system is a multi-disciplinary exercise. It comprises a range of disciplines, which includes lawyers, police officers, judges, probation and prison officers. All these disciplines have their own particular roles and functions. Members of each discipline undergo particular routes for training, qualification, accreditation, continuing professional development and observe specified codes of conduct and good practice. All of them are designed to meet the overarching aim, which is the proper administration of justice.

That overarching aim is achieved through the combination of the expertise of legal disciplines; complementing one another, through inter-disciplinary conventions that have been tried and tested over many years. At the same time, the separate nature of each discipline contributes to the checks and balances necessary to preserve the integrity of the whole: thereby protecting, for example, the impartiality of the judicial process and the proper conduct of the investigative process.

Those of us who work in the legal system know, understand and respect the role and expertise of members of other legal disciplines. We are trained to work together. That training includes such activities as mock trials where potential judges, defence and prosecution lawyers learn who does what, when and why in a court hearing.

There is now a new member of the interdisciplinary team – the language profession. Interpreters and translators are now increasingly required to play their parts in the legal processes of all member states. They have to know the roles and functions of the other members of the team and vice versa.

They have to be integrated into the legal processes in the same way as other professional disciplines. The need to do this, and to do so with reflection and rigour, is that accurate communication is the absolute pre-requisite for the proper administration of justice. That applies with equal weight where defendants, witnesses and victims do not share fully the domestic language and culture.

Legal interpreters and translators are fast becoming a formal regulated profession. The two-year first EU project, in this series supported by the Judicial and Home Affairs DG, set out precisely what was needed for that to take place.

The implementation of what is required varies between member states, and none, one suspects, have in place all that is needed. There are still times when unqualified interpreters and translators are employed; where children and family members are pressed into service and even when fellow prison inmates from the same language group are asked to provide language assistance. The implications, on such occasions, for the integrity of the legal systems and the risk to members of the public and individual members of legal disciplines are frightening.

The management of change, between using individuals with unassessed language and professional skills and employing only members of the formal discipline of qualified legal interpreters and translators, will require particular vigilance in respect of inter-disciplinary conventions and an understanding of what those should be. In the UK we had, by way of example, instances of where police officers would request interpreters to take witness statements on their own. It had to be pointed out firmly to the officers that an interpreter, qualified or unqualified, does not know what to ask, what would be the important evidential factors; what procedures should be observed. Nor is it likely that such evidence would be admissible in court if it were known how it was gathered. We still see instances where lawyers and judges speak in ways that are almost impossible to interpret accurately. They mutter so the interpreter cannot hear them properly. They speak at a

speed that makes it impossible for the interpreter to keep up. They use Latin phrases, culturally bound idioms and even abandon logic in the middle of a sentence. We have started by training the magistracy in what is needed, so that the chairman of the court can monitor and protect communication.

There are three inter-dependant areas of inter-disciplinary conventions to be addressed. The longer the delay in paying attention to them, the greater the likelihood of costly errors that damage both the legal systems and all those involved. They are:

– administration and process
– communication skills
– cultural awareness.

ADMINISTRATION AND PROCESS

Record Keeping (Article 16 of the proposed Framework Decision)

A reliable information base is one of the essential planks of good planning and organisation. One needs to know, for instance, how many interpreters and translators are already being employed, in which languages, for whom, where and for what purpose. Only then does one have an opportunity to plan provision for the future by using existing data, combined with informed predictions.

In view of the acute awareness of the shortage of funds, cost effective planning is vital. It would be wasteful, for example, to train and accredit interpreters and translators in xy languages, when zy languages were the ones really needed. It would be foolish to have qualified interpreters in a particular language only in one part of the country when they were also needed in other areas and travelling costs would have to be paid. It takes at least a year to train carefully selected linguists to work safely in the legal system. Co-ordination and forethought enable a system whereby they can be trained in the main language combinations needed locally, with a national spread of lesser-used languages to cover the country.

Lack of effective data collection promotes the "ostrich" approach, whereby administrators and policy makers can deny the existence of need in this specific area. As a consequence, front line practitioners may be being constantly wrong- footed, and legal services and practitioners having to pay for the costs of interpreters and translators out of their own finite budgets, instead of having access to clear dedicated budgets for the purpose. If this is not sorted out, it is not long before there is a negative effect upon the administration of justice as a whole.

When we started to look methodically at the provision of legal interpreters and translators in the UK, we found our recording systems on the subject to be inadequate, inconsistent and uneven across the country. Records, for example, had been kept of when an interpreter had been paid, but not which languages had been involved and omitted occasions when interpreters or translators had acted but done so, probably reluctantly, in a voluntary capacity. The data collection criteria were not the same in various parts of the country, or indeed the same across the range of legal services. Our national census was of little help in respect of languages. We are trying to improve and implement a simple, transparent system. The results are already helpful. They will, one hopes, eventually inform such matters as the selection of student language combinations and the content of training, so that we can match the demand of the work place.

Disraeli said that there are "lies, damn lies and statistics". All data collection has limits and has to be treated with intelligent reservations. It would be difficult to identify, for example, the number of times when an interpreter was needed as opposed to one being actually employed. It is problematic to predict, with any precision, future demand for languages, arising from an influx of refugees from natural disasters, economic hardships or political conflicts – not to mention football matches, new trade routes and fashions in tourist destinations. But one can be prepared through having robust structures geared to adapt to change in demand in the shortest and most economical routes.

Data also provides one yardstick through which to assess the degree of success of any system being put in place. There will need to be a coherent management of change, through incremental stages, before any of us can reach the aims we envisage. That could be supported by the data collection proposed.

It could be mutually beneficial if each member state were to keep similar records, in the interests of standards and consistency. We are already in the position where we are seeking help from each other in terms of interpreters and translators; for assessment, training and practice. No one likes being monitored but perhaps we should not mind sharing our efforts for a good cause.

Easy access to competent language skills – national registers

Clearly, it is practical for legal services to be able to identify quickly a qualified legal interpreter or translator in the language combination required. A few member states have begun the process of establishing national registers of interpreters of the type described in the Green paper, and implied in the proposed Framework Decision, to promote quality assurance and the core of a professional system for legal linguists. For example, we have one in the UK that makes details of those registered available through a secure website to legal services who pay a modest subscription to help cover its cost. We now have nearly two thousand interpreters, registered at various levels of competence, in almost a hundred languages with English. This is not yet sufficient but it is a solid start.

The legal services, and members of the public, have been consulted carefully over the criteria for registration to ensure that needs are met. These criteria include:

– qualifications
– training leading to examination
– experience
– security vetting
– references as to character and suitability

– code of conduct
– disciplinary procedures.

The process of developing such a register cannot be done without the support and participation of members of the legal services. They are best placed to contribute to training linguists in legal structures, procedures and terminology. In return, of course, police officers, lawyers, judiciary and others learn how to work with interpreters.

Once the register becomes established, the administrator, or whoever is responsible, simply accesses the Register for an interpreter and selects, language, gender, and location according to need. Work is now being done to establish local non-profit making units, which would hold the register and act as a one-stop contact system to save legal service personnel from having to try a number of interpreters until they found one available. Such centres would be more responsive to local needs and also act as centres for growth and development. The Dutch are among other member states that have had these for some time.

A professional register also provides regulation of practice, through the code of conduct. Its members are obliged to sign up to and the associated disciplinary procedures where breaches of that code are alleged. Complaints can be made to any professional register in respect of the conduct of its members and, where proved to be necessary, appropriate action can be taken.

Selecting and commissioning interpreters and translators
These matters were set out in the recommendations of the first project, but are worth summarising again in this context. Many here will not be responsible for the details but they are responsible for making sure that sound and sensible systems are in place for the tasks in question. If the systems are not in place, it is more likely that court hearings will have to be adjourned and investigative proceedings delayed. The practical tasks include:

- ensuring a language match between the interpreter and the other-language-speaker. The average British person is not necessarily highly language aware and there have been requests for an interpreter who speaks "Swiss" or "Indian". But there is more to it than that. It is also necessary to be aware that it is important to elicit which dialects or variations to the standard version of a language may apply. In the UK, difficulties have been encountered with, for example, varieties of Dutch and Spanish, (and of course English) as well as with varieties of languages spoken in Asia, Africa and China
- discussing and confirming the practicalities of dates, times, place, venue, transport and security arrangements
- giving the name of the other-language speaker, to preclude potential conflicts of interest through the interpreter knowing that individual to a degree, which could give rise to allegations of partiality
- providing an outline of the subject matter and procedures, e.g. a not-guilty plea to having defective brake-linings, or taking witness statements in a matter of alleged murder or rape. This allows the interpreter to prepare any terminology
- providing written copies of the working agreement or contract, which may be standard but should be agreed and signed before any assignment. Lawyers are unlikely to work without this information in advance and there is no reason why interpreters should. These agreements would normally include, in addition to the agreed date, time, place, language and the relevant names, such items as:
    - fee per hour for interpreters
    - fee per thousand words for translators – plus arrangements for proof reading, cross checking and presentation
    - fee per hour of travelling time where necessary
    - cancellation fees where appropriate
    - travel and other subsistence rates
    - any insurance arrangements – personal and professional liability.

Preparing for the event to be interpreted

Common sense preparations do not take long and are likely to save time and cost in the long-run. The following are useful points:

- choose a venue with the best acoustics, where the sight lines are best (particularly for sign language interpreters) and that is the quietest possible, i.e. not the courtroom where the road is being dug up outside the window
- allocate sufficient time because, by definition, everything has to be said twice and additional explanations given
- ensure that everyone involved knows in advance that interpreters will be involved and understands how to work with them. This aids lawyers preparing their speeches, for example
- be aware of different cultural traditions of naming systems, so that records can be kept accurately and consistently
- where it is required that oaths are to be sworn, ensure that the right sacred text is available
- preserve and record the correct continuity between the sequence of legal service agencies involved. For example,
    - in some countries the same interpreter may not be used in the investigative and judicial hearings, where separation of those processes is required
    - systems are often used whereby the file that follows a defendant, witness or victim through the process, includes a sheet recording when, where and which interpreter has been employed. It may be thought sensible to have the interpreter countersign on each occasion
- include in the check lists for the normal pre-hearing administrative arrangements such additional matters as:
    - confirmation that an interpreter has been booked
    - the language and other relevant information
    - what texts should, or have been, translated
    - who should have those translations and by which date.

Good practice guidelines

These are emerging to fine-tune the details of how best to proceed in specific situations. They are based upon the codes of conduct of the disciplines involved. When a witness statement is being taken, for example, both police officers and interpreters/translators need to know the correct procedures precisely to meet the evidential requirements.

Technology

As the title of this text includes the word "toolkits" brief mention should be made of the various forms of technology. These should be selected carefully to support the quality of an approach, not as substitutes or short cuts. There is a place for video- conference interpreting, where distance and climate preclude face- to- face interpreting. Telephone interpreting is useful on rigorously prescribed occasions such as lost tourists or emergencies but may not be appropriate for investigative interviews. IT comes into its own, however, when translations are required. Translators need not be physically present. Secure and compatible systems allow for the employment of the best available translators.

COMMUNICATION SKILLS TO ACCOMMODATE THE INTERPRETING PROCESS

Short in-service training is beginning to be offered, to those working in the legal process, in how to work with an interpreter. The teaching is often done by an inter-disciplinary team of trainers, comprising linguists and members of the particular service. It augments the practical experience that comes from participating in interpreter training and covers more people.

The training found to be helpful starts with a simple analysis of communication in three contexts:

– within a shared culture and language
– where there is a shared language but not a shared culture
– where there is neither a shared language nor culture.

Within a shared language and culture

Competent legal professionals tend to be very able communicators. This section of the training is no more than enabling them to deconstruct what they do intuitively, and give that a basic linguistic structure so that they can expand upon what they already know.

Within a shared language but not a shared culture

A very simple analysis of communication includes the following:

– the speaker thinks of the message he wishes to communicate
– he reads of what are known as the "indicators" of the listener: age, social and educational background, context and so on
– he then "encodes" the message, selecting such elements as words, tone of voice, stress, grammar
– the listener "decodes" the message
– there is a monitoring/feedback process to ensure mutual understanding, that may include a nod, another question or a statement in reply.

How does the speaker read the indicators of someone with whom he does not share a culture? It can be difficult to do so with any reliability and the subsequent encoding and decoding are therefore equally ineffective as a consequence. How does one monitor mutual comprehension when there may be different cultural conventions for that purpose. For example, eye contact with someone in authority may be construed as impolite in some cultures.

It is possible to acquire strategies for overcoming these potential obstacles once one knows what they are.

Without either a shared language nor culture

Those strategies can also be expanded to accommodate communication through an interpreter, who decodes the speaker's message and re-encodes it for the listener and participates in the exercise of monitoring understanding. Similar strategies are used when working with translators.

It requires particular understanding, insight and practice to conduct investigative police interviews and cross examination in court when there is no shared culture and/or language.

CULTURAL AWARENESS

Interpreters occasionally come away from assignments feeling that their time and expertise has been wasted because the overall outcomes of the event have been so obviously unsatisfactory by any yard-stick. They feel powerless in the face of a monolithic legal system that appears determined, or careless which is worse, about not doing things properly when other-language-speakers are involved. Yet interpreters are obliged, by their very proper code of ethics that has been agreed with the legal system, to remain impartial and refrain from giving advice or opinion. Sometimes it takes considerable professional self-discipline to adhere to their code.

The reasons for maladroitness or incompetence on the part of the legal services are various but the main one is often ignorance. One useful approach has been the establishment of formal systems for inter-disciplinary problem solving for linguists and members of the legal services where they exchange information and seek solutions to practical problems and dissonances. These provide a continuous, interesting and enjoyable process of mutual learning. The kind prison officers, who thought they would give their Hindu prisoners the quiet job of cleaning the lavatories, found out why it was not such a good idea after all. The interpreter who was unsure of the procedures in, for example, dealing with detained persons with HIV could be informed.

Interpreters and translators provide channels of communication. It is what is done and said through those channels that is of importance. All member states are obliged to observe the ECHR principle that every individual is equal before the law, irrespective of language and culture and, indeed, that principle is enshrined in most domestic legislations. Like many noble principles, it can be a challenge to implement in practice. It is vital that we all have the skills to work effectively and appropriately across cultures, as

well as across languages, and that structures are in place to apply those skills in ways that are transparent, consistent and accountable. The legal system is the foundation of our social infrastructure. It is therefore essential that everyone, whoever they are, can give it trust and confidence. Such confidence cannot be given automatically. It has to be earned, on a day-to-day basis, by everyone working in the legal system. Many of the new arrivals in Europe will have come from countries where the legal system has broken down, or is corrupt and arbitrary. In short, we have to prove that our legal systems are worth communicating with; that those systems can be trusted and, eventually, that new arrivals can not only exercise their rights but also exercise their responsibilities.

No one is suggesting that, in observing cultural dimensions, the law should in any way be changed to apply differently to different people. The law is immutable but its application should support its underlying principles. This we do all the time. We recognise that, within our own culture, stereotyping is unhelpful and that everyone is unique and has their own individual cultures, arising from their family background, education, work experience and so on. We appreciate that things go better if we work with the grain of the individual, in how we talk to them, listen to them and that our decision- making reflects what we know of the individual. What is being suggested is that we should take pains to understand enough about individual speakers of other languages so that we can work to the same and equal standards.

Time, people cry. We have not got the time, or the money or the space. But many members of the legal services have found all of these for the purpose and also found that that saves time, money and space. Like all information, what is required for inter-cultural competence, is acquired in layers. It starts with a background knowledge of the other cultures in their area – how those people got there, their language, religion and so on. It progresses to the fine-tuning of relevant detailed information relating to an individual that can be obtained by asking him or her through the interpreter.

It might be useful, therefore, just to consider the following points involving other-language-speakers by way of simple examples:

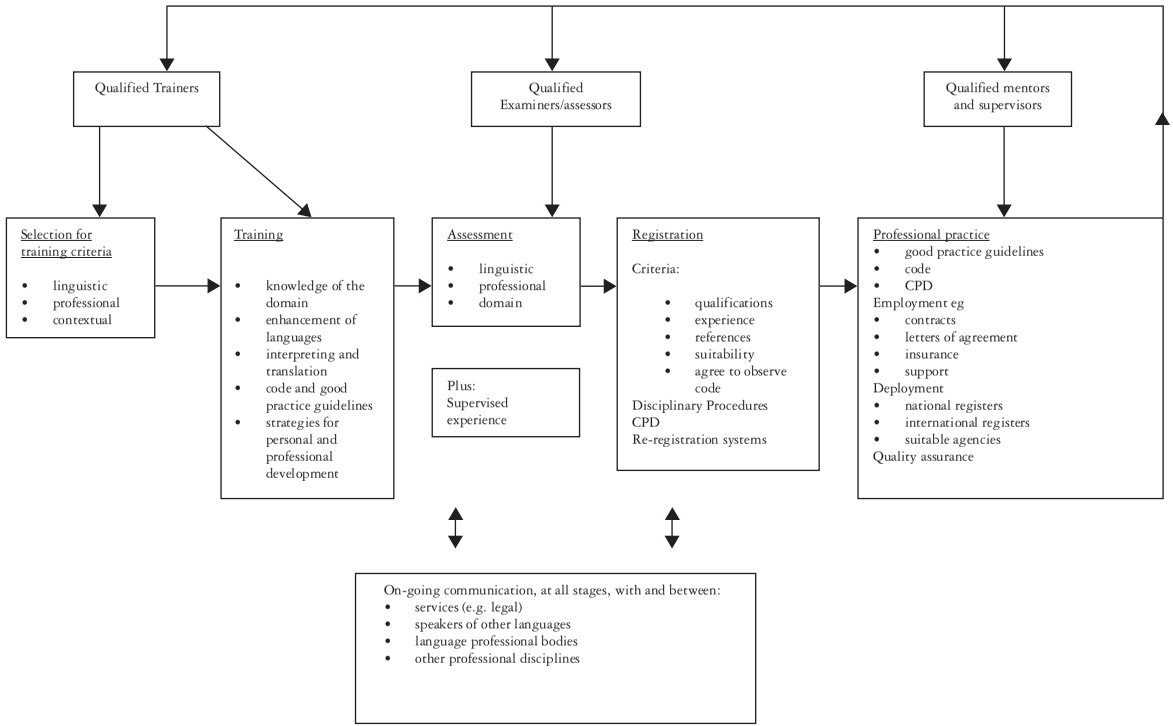
– how does an officer decide on the degree of distress suffered by a victim, bearing in mind that people from different backgrounds can demonstrate distress in different way
– how does a police officer, probation or court welfare officer assess the degree of cognitive development of a defendant
– how does a family law solicitor or mediator accommodate other cultural attitudes and perceptions
– how does a judge or magistrate identify community based sentences, that will work with the culture of the individuals sufficiently to achieve the desired objectives of stopping re-offending and any reparation

CONCLUSIONS

It is inevitable that legal services and linguists are going to have to work together, so we might as well programme ourselves to succeed, rather than to fail, in our important tasks. We are all, I fear, coming to a point where the pressures of a multi-cultural, multi-lingual social reality have overtaken the structures and skills we currently possess. We have the means to deal with it, if we take a pro-active and robust approach together.

PUBLIC SERVICE INTERPRETING&TRANSLATION: COMPONENTS OF THE PROFESSION

Interdependent, transparent, accountable and consistent



CHAPTER ELEVEN

'Interdisciplinary conventions & Toolkits for legal services' Reflection on the article by Ann Corsellis

Hermine Wiersinga

1.

In her interesting contribution the author sketches what is, in my eyes, a very harmonious picture of (criminal) justice. All those who are involved in a case within the legal system work toward the higher objective of: 'the proper administration of justice' –. "Those of us who work in the legal system know, understand and respect the role and expertise of members of other legal disciplines" We are trained to work together", says Corsellis in the beginning of the Introduction. She refers to the judge, defence and prosecutor, who are on the same wavelength. The relative newcomers in the subtly crystallised process practice are the interpreters and translators (members of the language profession, who have to become members of the interdisciplinary team. "They have to be integrated into the legal processes in the same way as other professional disciplines", she stated a bit further on. The general impression I get from this is that this picture is too beautiful to be true.

It is possible that Corsellis did not paint a realistic picture, but an ideal, an endeavour toward the optimum of a fully balanced, harmonious system in which it is clear what the place of the interpreter/translator must be: they still have to be integrated in the system but that is mainly a question of time.

2.

But in reality, to me in any case, the situation appears to be quite different. In the criminal justice process, from detection to sentencing and enforcement, a number of moments may be identified in which conflicting interests can collide and do collide in practice. These potential conflicts are restrained by process rules, practices and customs, and people prefer not to

'wash their dirty laundry in public' – ("Justice must be seen", a somewhat cynical colleague of me in chambers once paraphrased the Strasbourg court), but underneath the exterior some contradictions rage and even smouldering fires, as well as – not easily solved – 'structural issues'. Relations in the judicial process are not all that peaceful.

Let me give you some examples.
One problem is the fact that the guidance of police officers has proven to be virtually impossible in practice. In her article Corsellis mentions the – in her eyes apparently *resolved* – problem of the interpreter who displays independent questioning behaviour in a police interview. Maybe this problem has been resolved in the UK, but in the Netherlands this is certainly not the case. And I am inclined to believe that the average TV thriller is realistic on this point: police officers – who must do their work in the 'heat of the battle' and therefore under great pressure and often with insufficient capacity – have a kind of natural tendency to think insufficiently along procedural lines and to explore the (lower) limits of the 'proper administration of justice'. Things that are only just permissible are often good enough in the eyes of the police officer. It appears to me that it is necessary to remain constantly alert to the quality of interpreter deployment and the misuse of the interpreter (who is sometimes also culturally better suited to the suspect) in police interviews ("Leave this suspect to me and Allah"). I herewith repeat what others in the Netherlands have previously suggested: it would seem prudent to make it possible to monitor these interviews with the aid of audio (or audiovisual) recording equipment. As I understand it, this is standard procedure in the UK. And so it should be! But what happens outside official interview situations? I remain suspicious. The interests of the suspect/defence and police officers often clash violently, not only with regard to the evident contradiction that is inherent in each criminal case, but also because procedural justice is only meted out in small quantities.

For instance, to mention another point, in the city of Amsterdam, in any case, relations between police officers and criminal justice lawyers can be

called distinctly bad. The 'polarisation' between participants in the proceedings – including between criminal justice lawyers and members of the Public Prosecutions Department – has now reached such levels that in the Netherlands a workgroup has even (I ask you!) reported on the subject and new codes of conduct in and outside the courts are being researched. This is strongly related to the codes within the different legal disciplines, which tend to vary quite a lot. The media interest in criminal cases has also made the necessary contribution to this situation. The fact that, in practice, the prosecution and the judiciary also tend to be at odds is a public secret.

3.

As the criminal case progresses the formal framework tends to get tighter and the rules multiply. The presence of an interpreter in court sessions is the least of the problems, for the parties involved can generally see the necessity. (As an aside: even here we sometimes see problems, for instance if the handling of the case takes so much longer than expected that the interpreter has to leave because of other obligations.) The question who must supplement the process file with *translations* creates larger-than-life questions (and therefore potential conflicts). In view of European case law, which appears to have formulated the beginning of a right to the translation of process documents, there is an unclear obligation. For all parties the rule applies that the costs associated with translations can be enormous. People are generally only prepared to do this if the relevance of the statements and other documents (as opposed to documents that, for instance, are only relevant to the determination of the punishment, or to the authority of the judiciary etc.) is evident. And even then … lawyer, prosecutor and judge tend to deal each other the 'joker'.

Let me give you an example: if the prosecutor decides *not* to call certain witnesses (and the judge does not overrule this) it may be that the file only contains written witness statements. Were these ever translated? Does the judge present these to the suspect in such a way that the interpreter can still transfer the information in this way during the session? Or are the witness statements pushed through at lightning speed? Are the potential exculpatory parts of the statements also presented to the suspect? Is it the

lawyer's responsibility to comprehensively run through all statements with his client? Does the suspect have a lawyer? How must the prosecutor deal (if the suspect does not have a lawyer), in his official capacity, with the translation problem, and what is the situation for the judge? Does it make a difference whether it concerns a complex statement which, for one reason or another, is not very suitable for a verbal treatment (a complex statement about a 'sham drugs rip-off deal' with multiple aspects, or a vice case with all kinds of ambiguities for instance, or causing a problem for the victim), or simple hearsay ('the witness says he recognised the suspect')? This makes quite a difference indeed. Who checks this?
There are countless numbers of these problems (I have only mentioned a few; another important point in practice concerns reports of tapped conversations) that relate to the (quality of) legal aid, the immediacy (verbal verses written), the complexity of the case, the process attitude of the suspect (judgment by default in the absence of the suspect, for instance), all viewed against the structure of the legal system (which may differ per country), and also the attitude of the government officials.

4.
A further word about this attitude, which Corsellis also refers to: she also considers the language use of lawyers and judges to be (just) a practical problem– an attitude problem, therefore. Just above the last paragraph of the Introduction Corsellis states "They use Latin phrases, culturally bound idioms and even abandon logic in the middle of a sentence." There can be training of the magistracy, as she suggests – never enough – but I think this problem may be reduced, but cannot be completely resolved. That is a matter of principles. Expressions are culturally bound, and within the legal culture certain jargon cannot be abandoned under penalty of – sometimes important, legal – loss of meaning. I would also like to expressly acknowledge this problem.

5.
The risk of not naming conflicts of interest and potential conflict matter is, ultimately, disappointment and half measures.

What is *my* ideal – which in my view can also be defended with the power of arguments, based on the European convention and legal principles?

5.1.
Judges must be aware of the fact that they and they alone have the *ultimate responsibility* for the proceedings. It is up to them to convince themselves at their own initiative (and not, therefore, relying on the defence/suspect) that sufficient effort has been made to provide the suspect with the information that is relevant to the defence in a manner he can understand (therefore, translated/interpreted if necessary).
This means that they must ask themselves the conscious question whether they can make a responsible final judgment, if, on certain points/with regard to certain material, there was no real opportunity for the other side to be heard. It is very difficult to draw the line *in abstracto*, but during a court session it must/should be a legitimate discussion point whether the suspect has been sufficiently informed.
It is also up to the judge to try to remove any potential cultural barrier that prevents the suspect from adequately processing this information or the magistrate from understanding the reaction of the suspect. This means that, in addition to the language conversion, there may also need to be a cultural 'conversion'. In my view these are two separate objectives that must be realised independently from each other; the interpreter must not present cultural 'explanations' about the offences. Cultural communication aspects, however, can be clarified (see also Corsellis section Cultural Awareness).

5.2.
Interpreters/translators must also specifically be aware of the shortcomings of the judicial system. They must operate sufficiently independently to be able to take a critical approach toward their 'employer' the Ministry of Justice. I would like to see a situation where an interpreter refuses further collaboration, in a court session in which he is assailed by detailed explanations from all sides, where he has to translate these explanations without preparation, without any breaks and without written support (a

copy), while he notices that the suspect is completely unaware of what he is talking about … Interpreter *organisations* should focus on arguing for more facilities (to benefit a correct translation) for their members. I am not thinking about the obligatory glass of water, but about a certain 'screening' of files, also for the presence of (good) translations. The other side of the coin is that the organisation (s) should undertake to provide a kind of permanent education of members and a quality control system, even after the certificate has been obtained. The issue of security checks is another chapter again and must be arranged in consultation with the police and the Ministry of Justice.

5.3.
I feel it to be very desirable that there is a complaints procedure outside the criminal procedure, and that this fact is made public. In many countries (including the Netherlands) it is possible to challenge the (session) interpreter; but in many more countries this is not possible. For this reason, a criminal case in which the interpretation/translation was dubious on a number of points will often not (entirely) or not at all be revised. A complaints procedure may have a supplementary function. It is useful that there is a possibility to complain about the deployment of an interpreter internally (within the interpreter organisation, about the quality of the interpreter himself, disciplinary) and externally – via the right of complaint, about the officials in charge of the deployment of an interpreter. In the Netherlands it is possible to complain to the
Ombudsman about the latter category. It is therefore not possible to complain directly about the content of the interpreter assistance that is ultimately provided, only *indirectly* via a complaint about the conduct of government officials, not being the interpreter himself. In the right of complaint the issue is not only the lower limit (the lawfulness of the deployment/non-deployment) – but also the appropriateness of the actions of officials (not being interpreters); this criterion mainly also includes the *treatment* of the persons involved! It is my expectation that there will also be a certain interaction between lawfulness and propriety standards. We will in any case obtain a better insight into the (quality of) the practice.

6.
I do, however, fully agree with Corsellis that a reliable (and secure!) database is essential. Training, experience and security procedures are essential and require, I must add, regular updating. In this context it must be possible to take disciplinary measures (disciplinary rules!). Also very important is the separation between investigative and judicial hearings.
The inclination in the Netherlands is to make fewer arrangements, pay less and record less in the investigative interpreting/translation phase, but, at the same time, place the centre of gravity of the evidence here. The separation between preliminary investigation and main investigation may – and must, in my opinion – exist because of the impartiality, but the quality of the interpreter in the preliminary phase must definitely not be any less!

7.
I find it very correct and hopeful that Corsellis can see signs of voluntary collaboration and teamwork. It is also possible, I am convinced, despite the complaints about time and money. I would, however, like to stress somewhat more that it is not only possible, but must really be done. Europe has many, many newcomers and the support for careful (criminal) justice must be (re) confirmed and guarded. In the short term the language problems in criminal justice may lack a certain gravity – if something occasionally does go wrong in a case it often appears not to be serious enough to prevent a judgment or void that judgment. Language and especially also cultural barriers may appear insurmountable, so people leave it just for that one criminal case. For a judgment in this one case it often appears not really necessary. However, seen from a broader viewpoint, it could be possible for a socially very undesirable effect to be the result, somewhat comparable to the appearance of the judiciary: that in one individual criminal case three Caucasian women dispense justice is possible. But if judges are always both Caucasian and female, it becomes more questionable. This way procedural justice (the header under which I include the professional, appropriate treatment of suspects, including the 'right' to translation/interpretation) must be maintained, not just because of the

interests of that one suspect, but because of the sum of all interests (which is more than a simple addition).

CHAPTER TWELVE

Police interviews with the assistance of a court interpreter Critical thoughts based on practical experience

Dirk Rombouts

INTRODUCTION

The police force in the police zone of Antwerp (Belgium) numbers 2.364 persons who perform a wide range of services. Since the unification of the police services in Belgium the average number of police officers of the criminal investigation department ("CID") is 10% of the total police force in the police zone of a metropolitan city. The criminal investigation department in Antwerp employs 215 police officers who perform the following specialised services:

- drugs (drugdealers, French drug tourists and hemp farms)
- priorities (theft from dwellings with forceable entry, pickpockets, handling stolen goods and break-in of cars)
- structural violence (murder and manslaughter where the perpetrator and the victim have personal ties, crimes of violence)
- thefts with the use of violence (all thefts with the use of force and arms, carjackings, tyrejackings)
- anti-hooliganism
- offences against common decency, prostitution and traffic in humans
- sham marriages
- eco-fin (investigation of financial offences or offences which have a financial repercussion) and credit card frauds

On an enquiry with all specialised services on their total working time and how much time was spent on interviews and the involvement of court interpreters at such interviews, we were given the following answers.

About 65% up to 72% of the working time is spent on interviewing victims, witnesses, suspects and informers.

The involvement of interpreters at these interviews varies greatly as may appear from the following survey:

- at the drugs section: 50% of all interviews take place with an interpreter
- at the priorities section: 70% of all interviews take place with an interpreter
- at the structural violence section:
  - in the case of murder and manslaughter: 20% with an interpreter
  - at investigations of crimes where knives and guns were used: 50% with an interpreter
  - at the thefts with use of violence section: 75% of all interviews take place with an interpreter
- at the anti-hooliganism section: 45% up to 55% of all interviews take place with an interpreter
- at the section for offences against common decency, traffic in humans and prostitution: 85% of all interviews take place with an interpreter
- at the sham marriages section: 50% of all interviews take place with an interpreter
- at the eco-fin section: 25% of all interviews take place with an interpreter
- at the credit-card frauds section: 7% of all interviews take place with an interpreter

Two conclusions may be drawn from these results in respect of the working time spent and the involvement of court interpreters at interviews:

1. The interviews have a high score where the working time spent is concerned.

   Interviews constitute the backbone of forensic investigation. The object of the police hearing is to find: the "objective truth" and not, as is often mistakenly thought, "to obtain confessions". Of course, a confession may logically follow from the strategy used at the interview but the finding of the truth is the ultimate object.

   The interview serves to obtain all relevant particulars of a crime and is used by the police officer to seek all elements which incriminate and exonerate the suspect.

The police force realises the importance of interviews and has given a great deal of attention to giving courses and training detectives in the use of the different methods of interviewing, e.g. analytic interview, cognitive interview, listening skills, non-verbal communication, intercultural communication. National School for Detection at Brussels *(Nationale Rechercheschool)*.

2. At many police interviews the presence of a court interpreter is required.
   The police force in general and the crime investigation departments in particular need well-trained and highly qualified court interpreters. One must admit that interviews with a court interpreter proceed "differently" from an interview with a person who speaks the same language as the police officer. The use of an interpreter at an interview does constitute an encumbrance as the police officer may not fully avail himself at interviews where he uses an interpreter of the standard skills in which he was trained and which he has learned to use. The police officer will not have an easy task (certainly in the case of exotic languages) because he must pay attention to other aspects and accentuate other matters which take time.

It is very important – prior to commencement of the interview – to clearly agree both with the interpreter and the person who will be interviewed how the hearing will be conducted and to demarcate what is involved.

We stress the importance of the court interpreter having the following attitudes:
IMPARTIALITY: the court interpreter must not take sides with the police officer nor with the person who is interviewed. A court interpreter must avoid to become personally and/or emotionally involved in a case. For that reason he must not give assistance to suspects, witnesses and victims beyond the performance of his services as a court interpreter.

CONFLICT OF INTERESTS: if there should be a conflict of interests the interpreter must mention this and, where necessary, refrain from acting in the matter.

An example: often court interpreters come from foreign countries and, of course, know their mothertongue and integrate in the host country. As a result they will also master the language of the host country. When such a court interpreter belongs to a small minority in the host country, the following problem will immediately arise: the court interpreter often "knows" many of his fellow countrymen belonging to such a minority. Will a conflict of interests arise when such a court interpreter is asked to act as an interpreter at an interview of a person belonging to such a minority group? Should we clearly distinguish interviews of victims/witnesses and hearings of suspects? Where crimes are reported and complaints are lodged at police stations by persons of foreign origin, such victims are often accompanied by members of their family or acquaintances who act as interpreter (although not as court interpreter).

INDEPENDENCE: court interpreters may not be actively involved in the police investigation and must take an independent attitude.
LITERAL TRANSLATION: "everything" must be translated verbatim and this must always be as precise as possible and in good faith. Court interpreters must speak in the same way as the parties, e.g. : simple, formal, academic. If insulting or obscene language is used by the person who is interviewed this must also be conveyed by the court interpreter. The court interpreter may not add or leave out anything, he must not "colour" what is said and he may certainly not give his own personal views. The court interpreter must also see to it that a yes- or-no question remains a yes-or-no question and that an open question remains an open question – possibly the police officer uses a certain strategy which the court interpreter must respect.
USE OF DIRECT LANGUAGE: all the parties who participate at the police interview must always use direct language. Where we have mentioned the "encumbrance"of using a court interpreter at police

interviews, the system of using direct language will contribute to a more or less "natural" and "spontaneous" interview and to the creation of the same level of communication between the police officer and the person who is interviewed. We will revert to the actual place where the court interpreter should be seated at the police interview.

An illustration:
Wrong: question of the police officer (addressed to the court interpreter) to Mr. X:

> "Ask Mr. X where he was yesterday-evening between 20hrs. and 23hrs.?"

Correct: question of the police officer (addressed to Mr. X):

> "Where were you yesterday-evening between 20hrs. and 23hrs.?

CONFIDENTIALITY: whatever the court interpreter hears at the police interview is strictly confidential and falls under his professional secrecy.
NO PRIVATE CONVERSATIONS: the court interpreter must refrain from any conversation with the person who is interviewed outside the police interview. The police officer "steers" the interview so that the court interpreter may never, on his own initiative, say anything.
At the commencement of a police interview the duties and position of the court interpreter must be clearly stated and the court interpreter must be given the opportunity to clearly explain his role for the person to be interviewed. For that reason we always ensure that the following is said by the court interpreter at the beginning of the police interview:

At the commencement of the police interview the court interpreter will state to the person who is interviewed:

- I am the court interpreter called in by the police to act as an interpreter
- I am not employed by the police
- I am neutral and independent
- whatever is said here I will translate literally
- I will not have any private conversation with you

- the police officer will turn to you directly and you must direct your answer to the police officer
- whatever is said here is strictly confidential

When a court interpreter has made such a statement his duties will be quite clear. Where there are several police interviews the person who is interviewed will know what to expect while it will further discourage the person who is interviewed from starting any "social talk" with the court interpreter.

An example:
When the court interpreter and the person to be interviewed belong to the same ethnical or cultural community it is logical that the person to be interviewed upon seeing the interpreter will immediately recognise him as being someone who belongs to his own "people" and he may therefore believe that the interpreter will be "on his side". For that reason, it is never permitted that a court interpreter and the person to be interviewed will first have a confidential chat before the police interview begins.

IN PRACTICE …
Calling a court interpreter
The police officer will contact a court interpreter by telephone.
The contents of the telephone conversation will include:

- the language involved (in order to avoid later misunderstandings the police officer may arrange that the person to be interviewed will come to the telephone in order to give the interpreter the possibility to verify the language involved).
- the facts involved (merely the statutory provisions of criminal law without any explanation – the court interpreter must come to the police station without being prejudiced).
- the police officer must consider which additional information may need to be provided to the interpreter so that he will not quit because he will not be able to cope emotionally with the facts which will be in issue.

An illustration: Can one ask a young woman (mother of a small child) to act as an interpreter in a murder case of a child when the person to be heard, the suspect, is the mother? Can one ask a young Turkish woman to act as interpreter at an interview of an old eminent man from her local community?

- or whether the interview will be strictly technical:
  Where a lot of professional jargon is used (for instance, nautical sciences, accounting terms) the court interpreter must be so informed so that he will be able to prepare himself. Court interpreters are always still allowed to use dictionaries.
- **not** to disclose the identity of the person to be interviewed as this may later give rise to problems when it is established at the police station that the court interpreter and the person to be interviewed know each other, which could have been avoided when the interpreter is told the name of the person to be interviewed. However, the police officer must play "safe", for if the interpreter knows the person to be interviewed and informs the police officer that there is a conflict of interests so that he cannot act as an interpreter, the court interpreter may (if he is not bonafide), pass on the information which he obtained by phone to others and thus violate the secrecy of the investigation.
- The commencement and possible duration of the police interview (at some investigations it will not always be possible to mention the time that the interview will take, as a search of premises may still need to be made or a reconstruction. The court interpreter must be well-informed so that he will be able to take this into account when planning his time).

Arrival of the court interpreter at the police station.

First, the police officer must check whether there is a conflict of interests and, where this proves to be the case he must then refrain from using the interpreter who has been called. The language used by the suspect must be briefly checked. Thereupon the police officer must briefly sketch to the court interpreter the factual situation which needs to be investigated.

An example:

- the man present at the station was caught red-handed by the police at a burglary
- a mobile phone and the car keys of a VW were found in the pocket of his trousers
- he does not possess any means of identification.

At the station (the interview room) the police officer will designate the seating of the interpreter. In some cases (in any case when a suspect is interviewed) the court interpreter could best be seated so that he is not seen by the person who is interviewed as this will help to clearly delineate the role of the interpreter (to make a word-for-word translation) and to avoid that there will be any private conversation between the interpreter and the person who is interviewed, while this will improve the level of communication between the police officer and the person who is heard. Some court interpreters quite often react to this as follows:
1º) when the court interpreter is seated diagonally behind the suspect the interpreter feels this as being a threatening element for the person who is interviewed. The interpreter does not feel at ease.
2º) some interpreters also wish to observe the non-verbal communication at an interview because this may have a certain influence on the entire communication process, which especially plays a role in the case of persons who belong to a certain culture.

When the court interpreter has been shown his seat the court interpreter first proceeds to what we mentioned under "the attitudes of the court interpreter", followed by mentioning the statutory provisions which apply to the interview (a person who is interviewed in Belgium must be informed of his rights under the Franchimont Law).

The police interview.

- the police officer must ensure that the questions are concise and clear so as not to complicate the translation process. At some criminal investigation departments the "question and answer method" is used at

interviews with a court interpreter, just to facilitate the interview with the interpreter and to enable the interpreter to translate word for word. This method may be distinguished from an interview "where a continuous text is translated".

An illustration:
Question: "Where were you in the night of 16 to 17 November 2004?"
Answer: "I was sitting in a café at The Hague".
Question: "Which café?"
Answer: "I do not want to say".

The court interpreter may not act as a filter and must translate as literally as possible. If it is necessary to make any explanation on account of intercultural factors or a description is needed for reasons attributable to the language used, the interpreter must explain this to the police officer.
The court interpreter must immediately notify the police officer of threats in any form expressed by the person who is interviewed which are directed at the interpreter. This may be a reason to break-off the interview and, where appropriate, the court interpreter must lodge a complaint.
The court interpreter must avoid any private conversation with the person who is interviewed and must mention to the police officer if the person who is interviewed makes certain promises or promises gifts if the interpreter will put in "a good word" for the person who is interviewed.
The court interpreter may intervene during the police interview for the following reasons:

- to ask for a clarifcation from one of the parties
- to point out to the police officer that the translation may be correct but that the question or answer was not properly understood either by the person who is interviewed or by the police officer
- in order to facilitate the translation process: one of the parties speaks unclearly, too quick,
- when the interpreter hears threats on the part of the person interviewed or when the person who is interviewed makes promises and/or gifts.

The court interpreter will NEVER put any questions himself – the police officer steers the interview until the very end.
The court interpreter may not be charged with any further duties, like keeping an eye on the suspect in the interview room when the police officer leaves the interview room.

SPECIAL INSTRUCTIONS FOR THE COURT INTERPRETER.
As mentioned hereinbefore, in some instances the court interpreter may be asked to do something else other than at a regular police interview. The court interpreters should be told of this in advance as he may then be given some specific instructions.
Briefly stated:

- assisting in the search of premises
- visit to the place of the crime (neighbourhood questioning)
- viewing at the site of the crime
- reconstruction
- telephone interception
- polygraph (quite exceptional)
- video interview

CONCLUSION
We have briefly sketched the situation where police interviews take place with the assistance of a court interpreter in the judicial district of Antwerp. Since a few years compulsory courses for court interpreters have been given which, in our view, has considerably improved the level and expertise of court interpreters.
Nevertheless "a natural selection" will continue to manifest itself.
Police officers quickly know which court interpreters are always available and do not look at their watch all the time. Court interpreters who are called when a file is opened will continue to be called when the case is being built up until its end, because they will be familiar with the file. Police officers can judge for themselves whether the court interpreters meet the required standards. A court interpreter who clearly shows at a police interview to lack a ready knowledge of the Dutch language will not be

contacted again by such police officer in future. Courses and training continue to require attention: there must be courses not only for court interpreters but also for police officers, magistrates and defence counsel who must be trained in "using court interpreters in court proceedings". Finally, we plead for a uniform, national swearing in of court interpreters and the compilation of a national court interpreters data bank.

CHAPTER THIRTEEN

Effective use of interpreters

Arend Krikke and Miran Besiktaslian

This paper, which targets the persons who play a professional role in court, in particular judges of a court's criminal division, where an interpreter is present, is based on the Dutch system of criminal procedure with, first, an investigation by the police and the public prosecutor, followed by the pre-trial investigation (by a judge, the *rechter-commissaris*) and a trial before the court's criminal division on the basis of the file made during the pre-trial investigation. Under the Dutch system complex criminal matters involving several suspects may be tried simultaneously.

1. INTRODUCTION

The court, which is responsible for a proper investigation, must ensure a fair trial at which the truth is established in the best possible way, which will require that the court and the suspect can communicate effectively, which is a prerequisite that will enable the court to acquit itself of its tasks.
Whenever a suspect has no or an insufficient command of the language of the country where he is tried, the input of a court interpreter will (often) be required for an effective communication without problems.
The court should not consider a court interpreter as a translation machine: It is a misunderstanding that a court interpreter simply translates what is said as a word for word translation does not exist. It is important that the contents of what is said, the intention behind the spoken words, is conveyed. The profession of a court interpreter is, like the work of the judges, strenuous, demanding. The interpreter has a specialised profession and plays an important role in the public interest.
As is so well expressed by Monique van den Reijen[1], whose words we are pleased to quote: 'There are three different processes involved at interpretation: listening/analysing, processing and translating. One's ability to pay attention is limited so that the balance may be quickly disrupted if

any one of these processes unexpectedly take more 'space'. Any unbalanced processing will result in distortion and loss of information. It is very important to have a long memory and working memory when interpreting as a human being is only able to retain a limited number of information units like amounts, names and the like. One's skill to draw on one's memory will be dependent on the ability to organise data in the form of patterns. External factors, like bad audibility, a strong accent, incorrect use of grammar and vocabulary and an incoherent construction of a sentence will affect the possibility of listening and analysing as the interpreter must exert himself in order to understand the message. Words are not always identified at once but this may depend on the perception of words which follow. All of this will affect the processing and result in mental tiredness causing a strain for the interpreter and a loss of information. This will be noticeable especially when the interpreter is not trained and is not a professional."
When the communication via an interpreter with a suspect goes well this will have a direct positive effect on the quality of the finding of the truth and the realisation of a fair trial. Communicating through an interpreter also has its disadvantages, in particular where the length of the hearing or trial is concerned. However, when there is a proper inter-action at the investigation the detrimental effects may be kept to a minimum. When the court is aware of the specific techniques used by the interpreter, this will prove quite beneficial, both in time and finance when taking into consideration the cost of a lengthy hearing or trial. Aside from the lingual aspects of his work, i.e. an excellent command of two languages, there are many theoretical matters and practical skills in which a court interpreter must be trained. However irrespective of the quality of the training of court interpreters, the ultimate quality of his work will also much depend on the persons who make use of his services. The manner in which one communicates with an interpreter will determine significantly whether the proceedings will be efficient, smooth and reliable. It is therefore of great importance that the courts are aware of the (im)possibilities when working with an interpreter.

2. DIFFERENT TYPES OF INTERPRETERS

In the daily administration of criminal justice one finds three types of interpreter. In this respect 'type' does not refer to a specific technique which the interpreter has learned but the manner in which interpreters perform their work and their attitude. When one knows of and has insight in how the various types of interpreter perform their work one can recognise the right and the bad characteristics of an interpreter, which will make it possible to better establish to which extent the file of the pre-trial investigation is to be trusted.

Type A

The first type of interpreter orients himself on the police. We call him a *type A-interpreter*. The way in which he works will vary, depending on whether he acts according to the saying: 'He who pays the piper calls the tune' or whether he is in league with the principal.

When such an interpreter at the pre-trial investigation reads out the recorded written statement he will not take the trouble to clarify or draw attention of the suspect to any differences which he notes between the source text and the written text in a way which the latter will understand, as a result of which the suspect may not be aware of any incriminating elements which are at variance with his original statement. In such case the interpreter will believe to have performed his task to the best of his knowledge and conscientiously as he has read and interpreted the statement.

A type A-interpreter is aware of the tools at his disposal. If he reads out part of the text which differs without emphasis or a different intonation it will be very likely that the suspect will not notice it either. The interpreter may also act as if the differences are trifling and draw as little attention thereto as possible. In either case the suspect will sign the statement which he has made, by which he may well be faced later with a serious problem as his statement will mention in so many words that he persists in this statement when it was read/its translation and that he has signed it. We do not mention the interpreters who, just to make things easier, leave out relevant parts of the text when reading the statement.

The type-A interpreter will at work in a trial, as may be clear, 'set his sail according to the wind' of the court, for instance when the presiding judge maintains a pace which will not allow the interpreter time to fully translate what is said, such an interpreter will adjust the pace at which he will interpret accordingly and only translate part of what is said.

Type B

The second type of interpreter orients himself on the suspect. We call him a *B-type* of interpreter who takes the side of the suspect and who, either actively or not, at the pre-trial investigation, tries to avoid that something will be laid down in the official report which is incriminating for the suspect.

This type of interpreter will not give the police officer who draws up an official record an opportunity to lay down the latter's own interpretation of the statement made by the accused, but he will try, when the statement is read out, to protest and say that a particular sentence from the statement must be struck 'because he did not translate such part'. In this way he will try to personally steer what is put on paper and, in any case, create a situation whereby the suspect is immediately aware that the police officer has put on paper things which may incriminate him. This may also cause mistrust on the part of the suspect so that he will from then on listen with a biased skepsis to the rest of the statement and find fault with everything. The B-type of interpreter will in court exert some influence by the way he interprets or by his conduct on how the suspect will answer questions or the latter's willingness to answer questions.

Type 3

The third type of interpreter is neutral. We call him a *C-type* of interpreter who focuses on an optimalisation of communication and thus to bridge the language barrier. He, being fully aware of the position in which the parties find themselves at the interview, will not lose sight of the interests of the person who is conducting the interview nor that of the suspect. He knows his role and will not interpose himself at the communication between both

parties. He will not needlessly step in and will try to consider the interests of the persons who take part in the interview.
The C-type of interpreter at the pre-trial investigation will not read out a recorded statement which is at variance with the original statement as if there is nothing wrong although he will not protest against this from the very start or ask that such a part of the text involved be removed: he will interpret the relevant part in the recorded statement for the suspect as if these were stated in 'bold script' or 'underlined'. On his part, the suspect must then pay proper attention and object against a possible wrong interpretation of his original statement. Thereupon it is the responsibility of the interviewing police officer to adequately deal with the objection raised by the suspect.

2.1 Interpretation techniques and attitude of the interpreter
In order to have a proper understanding courts must be aware of the various interpretation techniques and attitude of interpreters.
The interpretation techniques are distinguished in simultaneous and consecutive interpretation. Which technique is best for which part of the investigation? What are the advantages and disadvantages?
Where the attitude of interpreters is concerned, it will be clear that the interpreter must interpret impartially and without bias, for which he needs to have an inner and intellectual independence, both for the suspect whom he assists and for the persons who administer the law with whom he comes into contact. It goes hand in hand that the interpreter must have a stable personality so that he will not become nervous e.g. as a result of conduct of the suspect or the latter's counsel or of police officers or members of the judiciary with whom he is confronted.

2.2 Inter-action when using an interpreter at the trial; in general
First, it should be noted that the contents of the file already at hand cannot be regarded as 'holy'. It has come about after communication between the police officer who made the official record, the judge charged with the investigation and the suspect. Such communication is, by definition, unsafe due to the language barriers. By engaging an interpreter of type-1 or 2 the

communication will have become even more complex. However, when using an interpreter of the third, neutral, type, the file will prove reliable.
In this connection it is to be noted that a video or audio recording of a hearing may greatly contribute to resolving problems which may appear later about what was precisely stated. The police interviews of a suspect in serious criminal cases are nowadays often video recorded. We recommend taping of interviews at the pre-trial investigation or at a trial with the assistance of an interpreter.

It is important that the court is aware or can at least quickly determine with which type of interpreter it has to work, his skills as an interpreter and his general conduct as interpreter or, in other words: the interpreter's qualities and shortcomings. The court can then better decide how to deal with the matter.

3. INTERACTION BETWEEN THE COURT AND THE INTERPRETER

A judge in charge at the hearing or trial who has the required knowledge and skills must use the interpreter in the best possible way and try to communicate directly with a suspect who does not have a (sufficient) command of the language used in court.
Each judge more or less has his own way of working, i.e. how he will conduct the examination at the trial. This manner of conduct also extends to how he will work with the interpreter in court. Judges need to be aware and critically review the way in which they work with interpreters in court and ascertain whether this is always adequate. Only then will it be possible to determine whether the judge needs to adjust his style in dealing with a case at hand and with the interpreter resulting in an approach which is best for the interpreter and conducive to the best possible result.

4. BASIC RULES FOR 'INTERACTION WITH INTERPRETERS'

Based on our practice a number of 'rules' or suggestions may be formulated on the adequate interaction with an interpreter in court. We would list these as follows:

4.1 *Check the audibility (in the sense of intelligibility)*

The court will quickly notice and need to take action when it does not properly understand the interpreter or the interpreter does not understand the court. However, this will not be noticed quickly when the interpreter and the suspect understand each other badly, for instance when the interpreter and the suspect do not speak exactly the same language or the same dialect. It is not uncommon that interpreters allege that they speak more languages and/or dialects than is actually true. When a suspect reacts awkwardly it may suddenly appear that he and the interpreter do not understand each other well. For that reason it is important, at the beginning of the court session, that the court checks whether the interpreter who is present is interpreter for the correct language and/or correct dialect.

The court must realise that defective communication between the court and the suspect need not necessarily be due to the interpreter. For, sometimes the suspect speaks also another language than his native tongue while the interpreter is giving his assistance in the other language of which the suspect has an insufficient command. It is the court's task to pay attention hereto and to check this. The interpreter may not be expected to point this out to the court without being asked.

4.2 *Ensure that the interpreter is positioned properly*

The interpreter must properly hear what the persons in court say to one another just as the persons in court must hear what the interpreter is saying so that they must mutually be clearly audible. If the interpreter must interpret simultaneously, he should be seated in a place in court from which he will be able to have sufficient eye-contact with the suspect, the court, the public prosecutor, the witness or the expert who is heard, if any, and the defence counsel, when the latter raises questions.

For that reason it is important that the interpreter will be given a seat in court from where he can properly hear all the persons present in court, the judges, the suspect, the public prosecutor, the defence counsel and, as the case may be, the witness or expert who is heard without his having to overly exert himself and, where necessary, that he will be able also to have eye-contact. The court must also pay attention hereto.

4.3 *Explain the interpreter's role*

It is important that a suspect knows that an interpreter has been called to exclusively interpret what is stated in court. He will then know what to expect and what he may not expect from the interpreter. The court should point out to the suspect that the interpreter is independent and neutral and is not employed by the judiciary. As a result, it will also be clear to the suspect that he may not regard the interpreter as an adviser. In this way it can be avoided that a suspect will ask the interpreter when the court asks a crucial question: 'What could I best say?'

It can do no harm to say, when the court session commences, who is the public prosecutor and his role, and who is the clerk of the court and the role of the court. In this way the independent judicial role of the judiciary is stressed. This will help to give the suspect confidence in the impartiality of the judiciary, which confidence is one of the most important conditions for a proper communication. This may dispel the thought of the suspect that the judiciary should be regarded as an enemy.

4.4 *Ensure that the interpreter will be able to keep up with the case*

The court has a duty to watch out that the interpreter will be able to keep up with the proceedings. The interpreter must be able to do his work and to interpret everything. This also applies to what is said by the public prosecutor. In practice, the public prosecutor when reading out the indictment and his closing speech often does not realise that it must be translated and that his wording may often prove rather complex.

4.5 *Aim at completeness*

Completeness of the interpretation is of a crucial interest. Even though the court, when it does not have a (sufficient) command of the foreign language, may not understand the foreign language, it will notice if something is said which is thereupon not interpreted. Just like it is important that the interpreter will translate small interjections of the court which may or may not be innocuous, it is also important that he interprets in full the suspect's reaction.

For instance, when a suspect suddenly interjects: *'Thank God'* indicating his pleasure at the court raising a matter, this must also be translated as the court will otherwise not be aware of the suspect's reaction at this very moment and of his feelings.

4.6 *Do not say anything to the interpreter which is not fit to be translated*
As the interpreter must interpret whatever is said at the session the court should not say anything to the interpreter which is not fit for translation. The court must resist from any 'between you and me' discourse with the interpreter as this may cause the suspect to mistrust the interpreter and to doubt his impartiality resulting in his doubt of having a fair trial and in his not raising any further questions.

4.7 *Keep account of the 'language register' of the interpreter*
The court must take into account the 'language register' of the interpreter: an interpreter who has not grown up in the Netherlands may find it difficult to understand certain expressions, abbreviations and less common words. Even when they are funny special expressions should be avoided. 'You don't get owt for nowt' may, translated literally, cause a misunderstanding, like using the expression a 'hardened chap' for a slim but extremely dangerous criminal. Words like 'consistent' in the expression 'your statement is not consistent with that of the witness' could better not be used but described. The use of abbreviations must also be avoided as much as possible because these are often only known locally. Examples are the acronyms of local transport companies.
It is true that the language register of Dutch suspects will often also derogate from civilised Dutch but when use is made of an interpreter the likelihood of a misunderstanding is twice as big.
The court should also be aware that 'its' language may not be that of the other participants at a trial. The judges should express themselves as much as possible in plain Dutch and explain or describe difficult terms. When the interpreter does not or not properly understand the court because the language used by the court is too difficult for him, he should ask for clarification. The court should allow room for this even though it may take

time. When the interpreter asks the court for a clarification, it is advisable to so inform the suspect so that he will not think that the interpreter and the court have a 'tête-à-tête.

4.8 *Ensure that the interpreter receives the indictment in time*

It is always to be recommended that the interpreter will have examined the indictment before the trial so that he will at least know the facts 'at issue' at the trial. With such a marginal knowledge of the case he will be in a better position to prepare himself for the trial. As most criminal cases are dealt with at a public session, there should be no objection from a privacy point of view to provide the interpreter with the indictment. It is practice at several courts to send the interpreter a copy of the indictment which he is called as an interpreter.

The interpreter will often have to translate the closing speech of the public prosecutor and the final speech of the defence counsel. In order to ensure that the proceedings will not drag on it is best to have him interpret this simultaneously. It is important that, prior to the speeches, a copy of the closing speech of the public prosecutor and the defence's speech, when in written form, are received by the interpreter who can later on return these to the public prosecutor and defence counsel at the end of the session.

When the interpreter must interpret a sentence imposed in a case in which he was not involved, it is to be recommended to briefly inform him beforehand of the contents of the indictment. When this does not take place, he may find it impossible to adequately interpret the decision, because it is quite difficult to do so.

4.9 *Always address the suspect and not the interpreter*

It occasionally happens that a judge, possibly for reasons of politeness, addresses the interpreter and asks him to translate what he is saying. This is not necessary and can needlessly hold up the communication or even undermine it. A judge who conducts the hearing should address the suspect directly and look at the suspect and not at the interpreter even though the latter may feel slighted. This approach will improve communication between the judge and the suspect. The interpreter will not mind being

engaged professionally and will be aware of the reason for such direct communication. Moreover, the interpreter will then be able to confine himself to his task, the bridging of the language barrier between the court and the suspect.
In addition, direct speech takes up less time as the following example may show:

The court to the interpreter: *"Will you ask the suspect where he was born?"* (9 words)

The court to the suspect: *"Where were you born?"* (4 words)

The recommendation for this working method also applies to the interpreter.

The interpreter (3rd person): *"He says that he was born in Casablanca."* (8 words)

The interpreter (direct speech): *"Casablanca."* (1 word)

4.10 *Speak to the correct person also in case of confusion*

If one feels that the answer of the suspect does not have a direct bearing on the question, the court should so indicate to the suspect and not to the interpreter. The interpreter interprets what is said so that the court may not expect him to embellish the story of the suspect on his own initiative or to make it more logical or to 'convey' it in a consistent way. The interpreter just interprets what is presented. If it is not understandable or even where there is a suspicion that the interpreter will not have properly understood, the court must maintain its conversation with the suspect in order to obtain an explanation. The court should not make the interpreter a party to the conversation.
If the confusion is due to the interpretation e.g. as a result of the interpreter having left out part of the source text, the suspect will by his reaction indicate this without meaning to do so. A statement like *"I have already said so"* is a sign that part of what was said was not interpreted. In such a case a professional interpreter will, without placing himself too much in the

forefront or without joining the conversation, indicate by way of subtitling or by means of brief comments that the misunderstanding was due to him.

4.11 *Make sure that the interpreter speaks in direct speech*

Direct speech proves more efficient when both the court and the interpreter use direct speech. We confine ourselves here to the importance of the use of direct speech by the interpreter. Of course, there are different ways to convey what a suspect says. For example, an interpreter may say that the suspect is ill as follows:

1. He says that he is ill.
2. He says: *"I am ill"*.
3. He says: *"He is ill"*.
4. He is ill.
5. I am ill.

The most efficient and effective manner of interpretation is interpretation in direct speech (example 5). The interpreter directly expresses what the suspect has said. Apart from the fact that the repeated additional words *'he says'* are superfluous as the court sees the suspect who faces the court, this will exclude the possibility that the interpretation is coloured; in direct speech the interpreter will not be able to convey by the way in which he expresses himself that he does not believe the suspect. By saying: *"He says…"* the interpreter may expressly distance himself from the suspect's words which is not his task.

Speaking in direct speech has a third advantage, because it reduces the likelihood of confusion when more persons are involved in the story, like in the following example.

The suspect: *"She says he obtained the weapon from me which is not the case"*.

The interpreter: *"He says that she said that he obtained the weapon from him but he says that that is not the case."*

The court: "Will you ask him whether he …".

It needs no further argument that this manner of interpretation may result in misunderstandings.

4.12 *As a matter of principle, do not permit switching languages*
When the suspect has some command of the Dutch language it may occur that he starts to speak partly in Dutch and partly in a foreign language, as a result of which interpretation may take place intermittently. When an interpreter is used the interpreter should interpret whatever is said. Once the court allows a suspect to determine which part of the questions put to him are translated and which part he will answer in Dutch, he will have an opportunity to intentionally cause misunderstandings. A basic rule for suspects with a defective command of the Dutch language is: either interpretation take place or no interpretation takes place. An exception to this rule may be made when the suspect has a sufficient command of the Dutch language and, on account of emotion (e.g. because of the nature of the case) or very specific wordings, is unable to express himself properly in his native language. In such a case the matter should be heard in Dutch, in principle, but the assistance of an interpreter may be desirable if the suspect needs to express himself in his native tongue, in which case the services of an interpreter who is present could be used, with the formula: "interpreted if and to the extent the suspect indicates that he considers this necessary". In practice it appears now and then that a suspect, during the hearing of his case, indicates that on second thought he wants assistance by an interpreter without there being any need for this when he made prior statements. The underlying reason may be that the suspect needs extra time to think over what he will say. The court must watch out for this.

4.13 *The interpreter interprets, do not address the interpreter as an expert-witness*
The court may not consider the interpreter as an expert-witness. Having to answer meaningful questions about the case may embarrass the interpreter. This rule also applies for innocent questions of a practical nature e.g. in which precise region a certain town is located. Questions like these could be put directly to the suspect via the interpreter.
It is also possible that it will cause problems for the suspect when the court asks the interpreter to answer certain questions on a personal basis. Suppose: the suspect has stated something during his interview about his having stayed abroad and the interpreter notes that this cannot be correct.

This could be an incriminating factor for the suspect when the court insists that the interpreter will answer the question of the court about this. If the interpreter gives an explanation in court from which it appears that the suspect lied, his impartiality will be at stake. When the matter is important and the opinion of an expert is needed, it will clearly be best to adjourn the hearing in order to have an expert answer the question. Such an expert could very well be an interpreter but never the person who served in court as interpreter. It is noted that answering questions in respect of the presumed nationality or origin of the suspect requires a specific expertise which an interpreter normally does not have. When a suspect raises that certain parts or specific words in the records of intercepted conversation were wrongly translated or interpreted, it is preferable for the same reason to use a translator or another interpreter than the one who acted as interpretor. Confirming the correctness of records of intercepted conversations may, incidentally, even be dangerous for the interpreter as he will then openly possibly give an opinion that could be used against the suspect.

4.14 *Services of a translator during the hearing of a case*
An interpreter interprets the spoken word, a translator translates what is written. The interpreter may give a brief summary or explain to what a document relates. He must also be considered able to translate brief paragraphs 'sight translation' (*à vue*) but an integral translation during the court session is not desirable, especially when the document is complicated and lengthy.

4.15 *Never leave the interpreter alone with the suspect*
This especially applies for police interviews. The police officer must ensure that he does not leave the interpreter and suspect alone with each other. But in court also it is better that during the suspension the interpreter is not left alone as there is then a possibility that the suspect will talk to the interpreter at length about the case and start a discussion on the matter which could put the interpreter in a difficult situation. In such a situation a professional interpreter will leave the suspect and ask the usher to warn him when the session is recommenced.

4.16 *Avoid premature or otherwise undesirable contact between the interpreter and the suspect or the latter's acquaintances*

The usher must not introduce the interpreter to the suspect prior to the court session as this may give rise to an undesirable prior discussion between the interpreter and the suspect. The usher should also see to it that acquaintances of the suspect do not talk with the interpreter. In particular, in very serious criminal cases, it occurs that acquaintances of the suspect try to influence the interpreter in an implicit and subtle manner e.g. by indicating that they count on it that he will *'properly do his work as interpreter'*. The court would do well to give instructions to the usher in such cases. The interpreter should not be required to explain anything to the suspect outside the courtroom after the session. There is a case where a court asked after the case an interpreter to explain in the corridor to the person who had been sentenced after the case had ended what the latter could do about his community service. The interpreter was asked to do so in order to allow the court to commence the following case as quickly as possible. This type of efficiency is undesirable because an interpreter should not be charged outside the courtroom with a continued contact with the suspect. Aside from the fact that a professional interpreter will see no need whatsoever to remain in contact with a suspect any longer than necessary, a request as stated is not warranted because an interpreter is not a lawyer so that the court should not saddle him with these duties.

4.17 *Number of suspects per interpreter and two suspects who do not get along*

When a complex criminal case is tied simultaneously, at which the individual cases of several suspects are heard, it happens that several suspects speak the same foreign language. In such a case the court has a responsibility that the interpreter is not used to interpret for more suspects than he will reasonably be able 'to cope' with. An interpreter may not be expected at a simultaneous court hearing of cases to assist more than two suspects simultaneously. In the courtroom the interpreter normally sits next to the suspect in order to ensure that he will not needlessly hold up or disturb the continuation of the hearing by a loud interpretation. In fact, it will not really be possible to adequately assist more than two suspects

simultaneously because the interpreter cannot be required to rush from one to the other suspect or to bend over in front of them to be able to interpret for the next suspect.
It regularly happens during a hearing that suspects appear to have a conflict of interests. It is also possible that they are incompatible or fear one another, for instance because they have accused each other. In such instances it is wise to employ a separate interpreter for each suspect. For, during the court session an interpreter will try to put himself as much as possible in the situation of the suspect. With two suspects who have conflicting interests this could cause problems. Both suspects will not trust an interpreter whom they must 'share'.

5. FINALLY

SIGV (*Stichting Instituut van Gerechtstolken en -vertalers*), a non-profit organisation established in the Netherlands in 1988 for training court interpreters and translators, in particular for criminal cases, trains court interpreters in criminal cases in fifteen languages while translation courses are given in nine languages. Most Dutch courts have interpreters commissions which have provided in their regulations interpreters and translators who have passed the SIGV-exam must be used by priority.
Aside from courses for court interpreters in 15 different languages, 'supra-lingual' courses for court interpreters in criminal cases are given whereby no lingual interpretation is taught but interpretation techniques, the attitude to be adhered to and the conduct of interpreters who work for the administration of criminal law. This latter course was developed by SIGV on the initiative of the interpreters commission of the Amsterdam courts.
Furthermore, SIGV has developed a course, in close cooperation with SSR (the training institute for the judiciary), for the effective inter-action between members of the judiciary and court interpreters. As an annex to this essay you will find information on this course and the cases which serve to enable the interpreters to exercise.

With thanks to Rob Blekxtoon and Hans Warendorf

Note

[1] *Tolk en taal in strafzaken* (Interpreter and Language in Criminal Cases); Kluwer Deventer 2004 ISBN 90 13 018311 9)

Part V Outside the EU

This book concludes with two articles describing the state of affairs in two non-European countries. Norwegian Judge Kristian Jahr describes how in Norway things are arranged. Court interpreter Cristina Helmrichs gives a brief overview of court interpreting in the US.

CHAPTER FOURTEEN

Right to interpretation and translation in criminal proceedings in Norway

Kristian Jahr

In recent years, the legal safeguards for non-native language speakers in their contact with police, prosecution and courts have received increasing attention also in Norway. There is a growing recognition that an adequate language communication is decisive to secure fair trial standards. This has resulted in rather extensive efforts to ensure the use of an interpreter whenever necessary. We also want the interpreters that are used to have the necessary qualifications in terms of both linguistic skills and interpreting competency. Similarly, there is a need to ensure non-native language speakers the right of access to documents in criminal cases.

In the summer of 2004, the Norwegian Ministry of Justice set up a working group to review our internal legislation and present proposals to ensure that Norwegian provisions at least satisfy the requirements that follow from the European Convention of Human Rights and the European Court of Human Rights' application of the Convention. I was asked to head this working group. We intend to present a report towards the end of February 2005. The work that has been carried out through the Grotius and the Agis Projects will be an important input to our work.

SOME COMMENTS ON INTERPRETATION QUALITY

The training of interpreters is not my field, but a short presentation of the efforts made in recent years to ensure sufficient interpretation quality is important for the overall picture.

In Norway, the Directorate of Immigration is the central authority in charge of interpretation issues, including general responsibility for ensuring quality in interpretation. As part of this work, a three-year professional interpreter course has last year been established at the University of Oslo. In addition,

four educational institutions in Norway now offer a one-year course based on Internet distance learning in combination with weekend seminars. These courses have proven popular. Unfortunately funds have only been allocated throughout 2005.
Since 1997, Norway has had a certification scheme for interpreters. The scheme is administered by the University of Oslo. The certification exam is demanding, and the failure rate has been rather high. Today we have approximately 90 certified interpreters in about 15 different languages. It goes without saying that in many situations and within many languages one must rely on non-certified interpreters to do the job.

It has been common for both police and courts in Norway to use public or private agencies that facilitate interpreting services. In addition, both the police and the courts have partly maintained their own lists of frequently used interpreters. Oslo Police District has established its own register of interpreters.
Common to all these arrangements is the insufficient quality control of interpreters. To improve the situation, a nation-wide register of interpreters for the courts was established about a year ago. In this register, interpreters are ranked in 5 categories:

1. Government certified interpreters and government authorized translators with interpreting studies from universities or university colleges.
2. Government certified interpreters
3. Government authorized translators
4. Interpreters with interpreting studies (from universities / university colleges)
5. Interpreters having passed a vocabulary test with the required score.

The vocabulary test is administered by the Directorate of Immigration. It is a rather simple test that does not prove the candidate to be a qualified interpreter; it does however make it possible to identify persons who clearly do not possess the necessary skills.

The idea is that when a court wants to book an interpreter, it will conduct a search in the register that will return a list of available interpreters by order of ranking. In theory, this will ensure that the best qualified of the available interpreters is appointed by the court. At present, the register contains approximately 800 persons both with and without professional qualifications.

In addition to this, the Directorate of Immigration is now developing a nation-wide interpreter register for the public sector in general. This register is expected to be in operation by early 2005. There is a possibility that the courts' register eventually will integrate with the upcoming nation-wide register.

THE RIGHT TO AN INTERPRETER

I will now proceed to a chronological review of a criminal case, focusing on rules and provisions, current practices and possible improvements in Norway.

Meeting the police

Norwegian internal rules of criminal procedure lack explicit provisions on the right to an interpreter during the investigation phase.

Art 5 (2) of the European Convention on Human Rights states that: "Everyone who is arrested shall be informed promptly, and in a language which he understands, of his arrest and of any charge against him."

In Article 6 (1) of the Commission's proposal this is concretised as follows: "Member States shall ensure that a suspected person who does not understand the language of the proceedings is provided with free interpretation in order to safeguard the fairness of the proceedings."

The right to interpretation during police investigation is not explicitly stated in Norwegian regulations today.
Article 177 of the Norwegian Criminal Procedure Act reads as follows:

"Any person who is arrested shall be informed of the offence of which he is suspected. If there is a written decision to arrest him, he shall be given a copy of the decision."
This requirement cannot be complied with if the detained person does not receive information in a language he understands. This provision thus implicitly requires that the information be either interpreted or translated in writing; it would however be an advantage to have the law state this requirement explicitly.

The Norwegian Directions for the Prosecution paragraphs 8-1 and 8-2 read:
" Before interrogation of the suspect, he shall be informed of the subject of the case and of any charge. …"
"The interrogation shall take place in a way that makes it possible to obtain a continuous explanation about the subject of the case. The suspect shall be given the opportunity to refute the reasons for suspicion and to point out the circumstances that talk in his favour."

Implicitly this will require interpretation during the interrogation provided the police officer does not speak a language that the suspect understands.
In practice, all interpretation costs are at the public expense.
The interview report is always written down in Norwegian. The person interrogated must sign the report, which means that non-native language speakers are obliged to trust the officer's or interpreter's rendering of what is written in the report.

The right to an interpreter for communicating with the defence lawyer
Article 6 (2) of the Commission's proposal reads as follows:
"Member States shall ensure that, where necessary, a suspected person receives free
interpretation of legal advice received throughout the criminal proceedings."

Norway's internal law has no explicit provisions on the right for persons charged to have an interpreter for communicating with their defence lawyers. However, there are regulations with special provisions on the fees to be paid to interpreters and others in criminal cases. These provisions presuppose that the authorities should cover interpretation costs for defendants' meetings with their lawyers, and this is always done in practice. However, there is a need to make this a statutory provision.

The right to interpretation in court

The main provision on interpreters in court is found in section 135 (1) of the Court of Justice Act, stating:

"If someone who does not speak Norwegian shall participate in the proceedings, an interpreter … shall be used."

This provision applies to both criminal and civil cases. The provision has been construed so as to mean that the court has both a right and a duty to appoint an interpreter when needed. This applies even if the defendant himself does not request an interpreter. All court interpretation costs are at the public expense.

The Act does not state explicitly how much of the proceedings must be interpreted. In the Kamasinski case from 19. December 1989 *(A Series no 168 1989)*, the European Court of Human Rights held that:

"…the interpretation assistance provided should be such as to enable the defendant to have knowledge of the case against him and to defend himself, notably by being able to put before the court his version of events".

The Commission's Green Paper contains a statement I appreciate:

"It is not sufficient only to provide interpretation of questions directly put to the defendant and answers given by the defendant. The defendant must be in a position to understand everything that is said (such as speeches by both prosecuting and defending lawyers, what the judge says and the testimony of all witnesses)."

My personal view is that, as a general rule, everything that is said in court should be translated. This includes statements from the prosecution, defendants and witnesses, and the closing arguments of the prosecution and the defence. One should avoid relying on mere summaries of the proceedings provided to the defendant by the interpreter. It is of course not the interpreter who shall evaluate which parts of the oral proceedings it is important to let the defendant hear.

Norwegian courtrooms largely lack technical equipment for simultaneous interpretation. This means that interpreters normally sit in the courtroom itself. The defendants' statements are usually interpreted consecutively, while the rest of the proceedings are interpreted by "chuchotage", meaning that the interpreter is located next to the defendant, interpreting simultaneously and in a low voice. This is a strenuous form of interpretation for both the interpreter and the defendant. In my opinion, the interpreter should in such cases have a break at least every 45 minutes. If not, the quality of the interpretation will decrease dramatically, ultimately jeopardising the defendant's right to a fair trial. Since court hearings with interpretation do take time, the court may want to avoid the additional breaks that are taken out of consideration for the interpreter. Because of this, at Oslo District Court we try to follow the rule that if a hearing is thought to require more than a day, we consider the need to summon two interpreters who can take turns. You then get the additional benefit that the interpreter that is not interpreting can monitor his colleague's work and help discover any mistakes.

RECORDING THE PROCEEDINGS

Article 9 of the Commission's proposal reads as follows:

"Recording the proceedings

Member States shall ensure that, where proceedings are conducted through an interpreter, an audio or video recording is made in order to ensure quality control. A transcript of the recording shall be provided to any party in the event of a dispute. The transcript may only be used for the purposes of verifying the accuracy of the interpretation."

I presume that "proceedings" here, as for Art. 6, also include police questioning.
In Norway there is no requirement that police interviews should be audio recorded. Some studies have been made that clearly indicate a need for this, and I hope this eventually will become a statute requirement. It is my view that this should apply to all police interviews, independently of whether an interpreter is present. This especially concerns interviews done without an interpreter despite the possible need for one, where subsequent documentation may become important. Even for Norwegian-speaking persons there may be a need to verify how the interview actually was conducted and what was said.

Few of our courtrooms today have any equipment for recording proceedings. A few years ago, a pilot project was done that consisted in audio recording criminal proceedings. A committee set up to prepare a new civil procedure act has proposed that audio recordings should be made of statements given by parties and witnesses in civil cases. It is quite possible that we eventually will have recording equipment in all courtrooms.

THE RIGHT TO FREE TRANSLATIONS

The Commision's Proposal Art. 7 states:
"1. Member States shall ensure that a suspected person who does not understand the
language of the proceedings is provided with free translations of all relevant documents in order to safeguard the fairness of the proceedings.
2. The decision regarding which documents need to be translated shall be taken by the
competent authorities. The suspected person's lawyer may ask for translation of
further documents."

Section 2-8 of the Prosecution Instructions of 1985 states that the prosecution should get the documents translated to the extent that is

considered necessary in order to safeguard the interests of the person charged.
The word "translation" is here used about both oral and written rendering. According to the Instructions, the translation should normally be in writing, unless it is considered unobjectionable that the content of the decision is translated orally. At present, few – if any – of the documents involved in criminal proceedings are usually translated in writing. But if the person charged has a defence lawyer, the police count on the lawyer to go through the most important documents with the assistance of an interpreter. If not, the person charged will in practice depend on having the most important documents explained by the police in connection with interrogations.

As regards the courts, we have no provisions on the written translation of documents into the language of the defendant. This applies to both criminal case documents, indictments and any other documents presented in court during the proceedings. Nor do we have any provisions on the translation of judgments.
During the court proceedings, any documents presented are read out in Norwegian and then interpreted to the defendant. When the judgment is served on the person concerned, it is sometimes done by giving him a written translation of it, but most often it is read to him with the assistance of an interpreter.

CONCLUSION

Even though I believe that Norway in most areas in practice complies with the European Convention on Human Rights, we have a clear potential for improvement. There is a need for more clearly defined provisions in Norway's internal legislation as regards the use of court interpreter registry, the right to interpretation during the entire criminal proceedings, the right to written translations of documents and the use of audio recordings. The past and ongoing efforts within the European Union will provide an important input for our own work in this field.

CHAPTER FIFTEEN

Court Interpreting: The U.S. v. EU a brief comparison of our realities

Cristina Helmerichs

Given the differences that exist between the judicial structure in the United States and the structure in many of the countries that are members of the European Union, it could be expected that the field of court interpreting would mirror such differences. In fact that is not the case. Professionals and the court system on both continents face similar challenges.

When compared to most European countries, the U.S. legal system has several very marked differences. Its legal system is founded in common law, it has a strong oral tradition, and the proceedings are adversarial. The role of the Court during these proceedings is to assure that the law is being followed, and, if there is not a jury, to be the trier of the facts; but even then a U.S. judge does not generally play an inquisitorial role in the proceedings. Another notable difference is that in the U.S. there are two levels of courts functioning simultaneously—the federal court system and the 51 state court systems, each with independent procedures for the selections of judges, attorneys and interpreters.

Article VI of the European Convention on Human Rights requires that from the moment of arrest and through all legal proceedings, a person who does not command the language of the land be afforded a certified interpreter. In the United States the right to an interpreter arises out of the defendant's right to confront their accuser, to consult with their defense attorney and to participate in their defense. In criminal matters, throughout the U.S. it is not common for certified interpreters to be used prior to a case coming into court. A notable exception to this is the U.S. Attorney's Office in San Diego, California. The practice tends to be either to use bilingual staff, if these are available, or to use outside contractors. A few federal agencies, like the

Federal Bureau of Investigation, have their own internal credentialing exams, but again these are the exception.

The first regulation of the quality of interpretation in U.S. courts occurred when the Federal Court Interpreters Act was passed in 1978 (Gonzalez et al, 1991). This legislation came in response to appellate decisions in the *United States ex rel. Negrón v. New York* (1970) and *United States v. Carrión* (1973). The act required that Spanish interpreters working in the federal courts demonstrate proficiency by passing an examination. Today, the federal court system tests interpreters in English-Spanish; testing has been offered in English-Navaho and English-Haitian Creole, but examinations in these combinations are not being offered at present.

Several individual states in the U.S. followed the lead of the federal courts and adopted certification requirements for court interpreters. California, for example, began testing interpreters in 1979, followed by New York (1980), New Mexico (1985), and New Jersey (1987). This trend accelerated in 1995 when the National Center for State Courts founded a consortium of states to pool resources for interpreter training and testing (NCSC, 1999). Through this consortium states have access to tests in 11 languages (Spanish, Russian, Vietnamese, Korean, Hmong, Cantonese, Laotian, Haitian-Creole, Arabic, Mandarin and Somali) (NCSC, 2003). Today, thirty-one of the fifty states are members of this consortium. The governing bodies for the regulation and accreditation of interpreters throughout the fifty states varies dramatically. At the federal level the governing body is a part of the Administrative Office of the U.S. Courts. In several states the accreditation of the interpreters is under the state supreme court; in others it is the court's administrative body; in at least one state accreditation is offered through a licensing agency; finally, in other states, there is either no governance or no requirement for accreditation.

Three other important participants in the field of interpreting and translation in the United States are the professional associations. The national organizations for spoken language interpreters and translators are: the National Association of Judiciary Interpreters and Translators (NAJIT) and the American Translators Association (ATA). For sign language

interpreters the national association is the Registry of Interpreters for the Deaf (R.I.D.) Each of these three associations has developed testing and certification programs. The NAJIT certification is available only for the English-Spanish bi-directional combination, but its applicability is nationwide since Spanish is the primary second language found in the U.S. court systems. The ATA's certification program is exclusively for written translation and is available from 12 languages into English (Arabic, Danish, Dutch, French, German, Hungarian, Italian, Japanese, Polish, Portuguese, Russian and Spanish) and from English into 12 languages (Chinese, Danish, Dutch, French, German, Hungarian, Italian, Japanese, Polish, Portuguese, Russian and Spanish). It should be noted that the ATA tests are for general translation; a specialization in legal translation does not exist. The Registry of Interpreters for the Deaf (RID) has developed a legal skills certificate as a complement to the general certification exam it had been administering since 1972 (RID, 1999).

Although the structure of how and why court interpreting services are credentialed and provided varies greatly between the U.S. and EU nations, the challenges faced by court interpreters and the courts are quite similar. In contrast to conference interpreting, court interpreters must always have two active languages and must be able to move between them seamlessly. Court interpreters must not only be good simultaneous interpreters but must also command good consecutive and sight translation skills. Professional court interpreters on both sides of the Atlantic and throughout the world are bound by similar codes of professional conduct or codes of ethics that require them to: be accurate and complete; be impartial and free of conflicts of interest; protect the confidentiality of the information they are privy to; know the limitations of their skills and not accept service they are not qualified to perform; know, keep and protect the protocol and appropriate demeanor in the courts where they serve; maintain and improve their skills, among others. In the exercise of their profession, court interpreters become officers of the court and are bound by those obligations.

The lack of training of both interpreters, and the courts who use their services, is a challenge that exists throughout the world. Few courts and staff members fully understand the pressure and stress interpreters are

working under and their working conditions and requirements. In order for an interpreter to interpret, it is essential for the interpreter to hear all of the proceedings, and simultaneously to have access to those persons who require their services without risking personal health or safety. The use of simultaneous interpreting equipment is fairly common through the U.S. federal court system, but is not at all common in the U.S. state courts or the European courts. A second major challenge confronting spoken language interpreters on both sides of the Atlantic is the habit of expecting interpreters to work for extended periods of time alone, instead of abiding by the accepted practice in other interpreting venues of team interpreting. Scientific research done regarding the effects of time working on an interpreter's ability to maintain and protect accuracy indicates that within 30 to 40 minutes of continuous interpreting, accuracy decreases by approximately 40 to 50% (Vidal, *Proteus*, 1997), which directly conflicts with the sworn duty to be accurate and complete. The most often cited reason for this lack of team interpreting, both in the U.S. as well as in Europe, is the cost; but slowly, through appeals and training, courts and interpreters are becoming more and more aware of the long-term costs of not following the team interpreting protocol.

As the world's population becomes more mobile, the demands on our courts and their court interpreters will continue to grow. Today it is not uncommon for a case to require interpreters for several of the participants, not just the defendant. Thus the need for training courts on how to efficiently and appropriately work with interpreters will continue to increase, as will the training required for the interpreters themselves, so that they may keep abreast of new requirements and technologies. The scope of subject matter that will require their services continues to expand. It is in these arenas that the courts, their governing bodies and the professional associations, working in common and sharing resources across countries and oceans, can reap exponential benefits.

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APPENDIX A

The Relevant Articles from the
Proposal for a Council Framework Decision on certain procedural rights in criminal proceedings throughout the European Union, 28 April 2004

Article 6 – The right to free interpretation

62. The assistance of an interpreter or a translator must be free of charge to the suspect. This right is established in the case-law of the ECtHR. In the case of *Luedicke, Belkacem and Koç v. Germany*, the ECtHR held that it follows from Article 6 (3) (b) that for anyone who cannot speak or understand the language used in court, the right to receive the free assistance of an interpreter, without subsequently having claimed back from him payment of the costs thereby incurred30 must be respected. In *Kamasinski v. Austria*31, the ECtHR held that the principle also extended to translation of "documentary material".

63. Member States are under an obligation to provide an interpreter as soon as possible after it has come to light that the suspect does not understand the language of the proceedings. This right extends to all sessions of police questioning, meetings between the suspect and his lawyer and, after charge, occasions when the person's presence is required at court. It is clear from the ECtHR case-law that the obligation to provide an interpreter, which is laid down in the ECHR, is not always respected32. Article 6 of the Framework Decision sets out the right, pointing out that it applies "throughout the proceedings".

64. This Article covers persons with hearing or speech impairments. Article 6(3) of the ECHR provides that everyone charged with a criminal offence has the right to be informed about what he is accused of so that he understands the nature and cause of the accusation. He also has the right to have the assistance of an interpreter if he cannot understand the language used in court. This applies also to deaf suspects or people with hearing or speech impairments. Inadequate communication can affect a deaf suspect's chances of receiving fair treatment as regards questioning by law enforcement officers. It also affects his chances of a fair trial. Member States must therefore ensure that police stations and courts provide proper

specialised sign language interpreting for deaf suspects. As the consequences of poor or incompetent interpreting can be so serious, it is important that only qualified and experienced sign language interpreters are assigned for court proceedings or police interviews.

65. Some people who are deaf require the services of a lipspeaker. Lipspeakers communicate with deaf people who do not know or use sign language, but who are usually skilled lipreaders. This is also covered in the Article as an alternative.

Article 7 – The right to free translation of relevant documents

66. There is a right to translations of relevant material but this right is not unlimited. The ECtHR has ruled that Art. 6(3) (e) ECHR does not require a written translation of all items of written evidence or official documents in the procedure but it has ruled that documents which the defendant "needs to understand in order to have a fair trial" must be translated33. The rules on how much material is translated vary from one Member State to the next and also in accordance with the nature of the case. This variation is acceptable as long as the proceedings remain "fair". The onus should be on the defence lawyer to ask for translations of any documents he considers necessary over and above what is provided by the prosecution. Since the conduct of the defence is essentially a matter between the defendant and his lawyer, the defence lawyer is best placed to assess which documents are needed. Consequently, this Article places the onus is 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 – Accuracy of the translation and interpretation

67. The standard of interpretation and translation must be good enough to enable the suspect to understand the nature and cause of the accusation.
68. Member States must ensure that there is in place within their jurisdiction a system so that 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.

Article 9 – Recording the proceedings

69. The standard required by the ECHR is that the interpretation be such as to enable the defendant's "effective participation" in the proceedings. If he then makes an application to the ECtHR on the grounds that the interpretation was inadequate and damaging to his effective participation in the proceedings, it is important to have a method of verification of the interpretation. It is therefore incumbent on Member States to ensure that a recording exists in the event of a dispute. 70. The purpose of this provision is to have a method of verifying that the interpretation was accurate and not to challenge the proceedings from any other point of view since this would otherwise lead to preferential treatment of suspected persons who need interpretation. Therefore, the recordings may only be used for that one purpose.

Article 10 – The right to specific attention

71. This Article provides that Member States shall ensure that a person who cannot understand or follow the proceedings, owing to their age or mental, physical or emotional condition, is offered any specific relevant attention, such as medical attention or the presence of a parent in the case of children. The duty to provide specific attention applies throughout criminal proceedings. This enhanced duty of care is to promote fair trials and to avoid potential miscarriages of justice based on vulnerability. Consultation and replies to the Green Paper have made it clear that identifying these suspects is difficult. The minimum expectation is that law enforcement officers ask themselves the question whether the suspect is able to understand or follow the proceedings, by virtue of his age or mental, physical or emotional condition. Any steps taken as a consequence of this right should be recorded in writing in the suspects' notes.

Article 11 – The rights of suspected persons entitled to specific attention

72. This Article specifies which steps must be taken in accordance with Article 10. In order to verify that the correct procedures have been followed in the case of questioning by law enforcement officers of persons who cannot understand or follow the proceedings, Member States must ensure that an audio or video recording is made of any pre-trial questioning. Any party

requesting a copy of the recording in the event of a dispute must be provided with one.

73. Medical assistance should be provided if the suspected person needs it.

74. A suspected person entitled to specific attention should, where appropriate, be allowed to have a suitable third person present during police questioning in order to provide an additional safeguard of the fairness of the proceedings.

Article 15- Evaluating and monitoring the effectiveness of the Framework Decision

82. It is essential that this Framework Decision is fully evaluated and monitored. Apart from reporting on the proper implementation of its provisions into national legislation, the Commission proposes that regular monitoring be carried out. This is particularly important in the case of legislation that confers rights as those rights are meaningless unless they are complied with. Only regular monitoring will show that there has been full compliance. Additionally, if the Framework Decision is to achieve its stated objective of enhancing mutual trust, there must be public, verifiable statistics and reports showing that rights are complied with so that observers in other Member States (not only in government, but also lawyers, academics and NGOs) may be confident that fair trial rights are observed in each national system. The evaluation and monitoring should be carried out under the supervision of the Commission. An independent team may be employed to carry out the necessary research and analysis.

83. In its resolution of 5 July 2001 on the situation as regards fundamental rights in the European Union, the European Parliament recommended that "a network be set up consisting of legal experts who are authorities on human rights and jurists from each of the Member States, to ensure a high level of expertise and enable Parliament to receive an assessment of the implementation of each of the rights laid down notably in the Charter, taking account of developments in national laws, the case law of the Court of Justice of the European Communities and the European Court of Human Rights and any notable case law of the Member States' national and constitutional courts"37. A Network of Independent Experts on Fundamental Rights ("the Network") has been set up and submitted its first

report on 31 March 2003. Its tasks include preparing an annual report on the situation as regards fundamental rights in the European Union. In this connection, it is examining compliance with Articles 47 and 48 of the CFREU38. Article 47 CFREU provides: "Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice." Article 48 CFREU provides "[…] Respect for the rights of the defence of anyone who has been charged shall be guaranteed".

84. It could be appropriate to make use of the evaluation carried out by the Network in respect of Articles 47 and 48 of the CFREU and to assess whether this could be a suitable long-term solution. The Commission may subsequently decide upon a different system of evaluation and monitoring. If the Network were to cease to carry out its functions, or to provide the necessary services, or the Commission were to decide upon a different system of evaluation and monitoring, another suitable body could be appointed to analyse the data and information provided by the Member States in accordance with the provisions of the Framework Decision.

85. Evaluation and monitoring will benefit all Member States. It will enable them to show other countries that they observe fair trial rights and it will enable them to reassure those implementing the measures of the Mutual Recognition Programme in their home State, should such reassurance prove necessary, that safeguards ensuring equivalent fair trial standards are operated in other Member States. The evaluation shall be for the purpose of general assessment, and decisions of courts will not be examined.

Article 16 – Duty to collect data

86. In order for the Framework Decision to be monitored, and for the necessary evaluation of compliance to be carried out, Article 16 places an obligation on Member States to collect relevant data and this data must also be analysed in order to be meaningful. Member States must provide relevant statistics, *inter alia*, as regards the following:

(a) the total number of persons questioned in respect of a criminal charge, the number of persons charged with a criminal offence, whether legal

advice was given and in what percentage of cases it was given free or partly free,

(b) the number of persons questioned in respect of a criminal offence and whose understanding of the language of the proceedings was such as to require the services of an interpreter during police questioning. A breakdown of the nationalities should also be recorded, together with the number of persons requiring sign language interpreting,

(c) the number of persons questioned in respect of a criminal offence who were foreign nationals and in respect of whom consular assistance was sought. The number of foreign suspects refusing the offer of consular assistance should be recorded. A breakdown of the nationalities of the suspects should also be recorded,

(d) the number of persons charged with a criminal offence and in respect of whom the services of an interpreter were requested before trial, at trial and/or at any appeal proceedings. A breakdown of the nationalities and the languages involved should also be recorded,

(e) the number of persons charged with a criminal offence and in respect of whom the services of a translator were requested in order to translate documents before trial, at trial or during any appeal proceedings. A breakdown of the nationalities and the languages involved should also be recorded. The number of persons requiring a sign language interpreter should be recorded,

(f) the number of persons questioned and/or charged in connection with a criminal offence who were deemed not to be able to understand or follow the content or the meaning of the proceedings owing to age, mental, physical or emotional condition, together with statistics about the type of any specific attention given,

(g) the number of Letters of Rights issued to suspects and a breakdown of the languages in which these were issued.

APPENDIX B

The conference programme of The Hague

Thursday 18 November 2004

15.30 - 17.00	Registration at Ministry of Justice – The Hague	
17.00 - 17.30	Welcome and reception at Ministry of Justice	
17.30 - 18.30	Reception at Ministry of Justice	

Friday 19 November 2004

09.00 - 09.15	Welcome at the Peace Palace in The Hague. by **Mrs Heleen Keijzer-Lambooy**, chair of the Dutch Steering Committee. **Mr John Coster van Voorhout** (NL), judge, member of Court of Appeal Arnhem, chairs the conference	The sessions will be held in the Great Hall of Justice of the Peace Palace
09.15 - 10.45	Session 1: **Introduction and update on the Proposal for a Council Framework Decision (PCFD)** Keynote speaker: Ms Caroline Morgan, European Commission, DG-JHA, Criminal Justice unit. Respondents: Mrs Nancy Schweda Nicholsen, University of Delaware (USA), Dr Tobias Mästle, Bundesministerium der Justiz, Berlin (D)	What steps should be taken, what problems need to be solved? This session offers the framework for the conference and is based on Articles 6 to 10 of the PCFD.

10.45 - 11.15	Coffee break	
11.15 - 12.45	Session 2: **The right to specific attention (persons handicapped by age or mental, physical or emotional condition** Keynote speaker: Ms Nadine Tilbury (UK), barrister Crown Prosecution Service. Respondents: Mr Marco Nardi (UK/IT), president European Forum on Sign Language Interpreting; Ms Helga Stevens (BE), lawyer and member of Belgium Parliament	Article 10 PCFD. An approach to physically and mentally impaired defendants
12.45 - 14.00	Lunch + guided tour Peace Palace and background information International Court of Justice	
14.00 - 15.30	Session 3: **Accuracy of the translation and interpretation** Keynote speaker: Mrs Adèle van der Plas (NL) lawyer. Respondents: Mrs Yolanda Vanden Bosch (BE) lawyer, Ms Paola Balbo, lawyer (IT)	Article 9 PCFD Recording of the proceedings (eg. audio & video) – Integrity and ethics
15.30 - 16.00	Tea and coffee	
16.00 - 17.30	Session 4: **The right to free translation of relevant documents** Keynote speakers: Prof Taru Spronken (NL), lawyer. Respondents: Mr Holger Matt (D), lawyer, Mr Paul Garlick QC (UK)	Article 7 PCFD

18.00 - 19.30	Reception offered by the Municipality of The Hague, at the invitation of the Mayor and Aldermen. Speech by Mr W.J. Deetman, Mayor of The Hague	
20.00 - 23.00	Evening meal at Surakarta, Indonesian restaurant	

Saturday 20 November 2004

09.00 - 09.30	Welcome at Hogeschool INHOLLAND in The Hague	The Law School of the Hogeschool INHOLLAND
09.30 - 11.00	Session 5: **Case study: How things work at the ICTY (International Criminal Tribunal for the former Yugoslavia)** The Psychology of Interpreters, by Mr Kevin Cullen The Use of Interpreters in a Security Environment, by Mr William McGreeghan	Focus on interdisciplinary interaction of judiciary, public prosecution defence counsel and interpreters
11.00 - 11.30	Coffee break	
11.30 - 13.00	Session 6: **Interdisciplinary Conventions and toolkits for the legal services** Keynote speaker: Mrs Ann Corsellis (UK), magistrate. Respondents: Mr Dirk Rombouts (BE); Hermine Wiersinga (NL) researcher and deputy-judge	Article 16 PCFD. Tools for monitoring the gathering of information and models for data gathering and guidelines
13.00 - 14.00	Lunch	

14.00 - 15.30	Session 7: **Various practical issues in working groups** - Situation outside EU: Judge Kristian Jahr (Norway); Cristina Helmrichs (USA) - Videos and other training materials, presented by Mr Erik Hertog (BE) - Presentation Language Services International Court of Justice by Mr James Brannan, interpreter - The arrest, interview and trial of a Deaf Person: what do I need to know, or do I just need to shout? By Mrs Gloria Ogborn (UK) and Mrs Beppie van den Bogaerde (NL)	Reflection and discussion on the materials and best practices presented during this conference. All participants take ideas and practical materials back home
15.30 - 16.00	Tea and coffee	
16.00 - 17.00	Session 8: - Musical Farewell by three students and graduates of the Royal Conservatory The Hague **- Summary and follow up** - Closing ceremony	**How to proceed when back in home country; what lies ahead in AGIS II**
20.00 - 23.00	Closing dinner at Julien	

Sunday 21 November 2004

Morning	Breakfast and check-out

APPENDIX C

The Members of the Dutch Steering Committee

Heleen Keijzer-Lambooy, chair
Rob Blekxtoon
Willem Jan Gasille
Evert-Jan van der Vlis
Hans Warendorf

The members of the International Steering Committee

Belgium
Erik Hertog
Yolanda Vanden Bosch

Czech Republic
Jiri Janecek
Zuzana Jettmarova
Vera Prochazkova

Denmark
Bodil Martinsen
Kirsten Woelch Rasmussen

Greece
Maria Cannelopoulou Bottis

Poland
Danuta Kierzkowska
Jacek Labuda

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Cynthia Giambruno

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APPENDIX D

The participants of the conference in The Hague

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Trained to become a translator and interpreter (Bosnian/Croatian/Serbian-German-Russian) at the Institute for Translation and Interpreting (University of Vienna);
Certified court interpreter;
wrote interdisciplinary doctoral thesis on court interpreting at the Institute for Translation and Interpreting and Institute for Civil Law Procedures of the University of Vienna;
teaches translation theory, translation methods, court interpreting at the Centre for Translation Studies at the University of Vienna, works as an interpreter at court;
as the examiner she is involved in the certification exams for legal interpreters and translators provided by Oberlandegericht Wien and organising continuing training in court and legal interpreting;
main research interest in community interpreting, in particular court interpreting. Her main publications are in the fields of court interpreting;
author of the book *Dolmetschen bei Gericht. Anforderungen, Erwartungen, Kompetenzen*. Wien: WUV. 2001, 250pp.

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judge in Vienna (criminal and civil matters, high percentage of proceedings with participation of interpreters)
2003 doctoral thesis on European Law
2000-2001 Head of Legal Affairs Department of Austria's Permanent Representation to the European Union, Brussels
1997-1999 Official, Ministry of the Justice, Vienna, Austria
1997 Internship at the Legal Service of the European Commission

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Professor in the Department of Translation and Interpreting of the Lessius Hogeschool in Antwerp, Belgium. He teaches British and American Cultural Studies and Conference and Liaison Interpreting. He is involved in a pilot project to provide training for legal interpreters and translators working in the Antwerp courts as well as in a similar federal, Belgian project. He participated in the first Grotius project on 'Aequitas: Access to Justice across Language and Culture in the EU' and coordinated the second Grotius project 'Aequalitas: Equal Access to Justice across Language and Culture in the EU'. His main publications are in the fields of English literature, Cultural Studies, Conference and Legal Interpreting.

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Dirk Rombouts, police commissioner of the local Antwerp police criminal investigation department – "hold-up" branche. Studied in Canada (Ottawa) "forensic interviewing" at the C.P.C and in the U.S.A. (Washington) at the Air Force's Office of Special Investigations. Lecturer at the Antwerp police school and at the National Investigation School (NRS) Brussels teaching: forensic interviewing, intercultural communication, interviewing with interpreters and identification parade. Participating in the Antwerp-project "training for legal interpreters and translators". He also provides training in interviewing for magistrates and judges (High Council for Justice).

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studied Law at the University of Antwerp,
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judge in 1993 and examining magistrate (1995 – 1999)
appointed councillor in the court of appeal in Antwerp in april 2004
From 1999 until 2004 responsible for a project in Antwerp to train legal interpreters and translators. The aim of this project – in which the local police, the courts of Antwerp and the Lessius Hogeschool participate -is to ensure quality of the legal interpretation and translation.

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Master of Laws Harvard University (USA), 13 juni 1968
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Former President of the Wervingscollege der Magistraten (Examination board for the future magistrates)
Member of the Hoge Raad voor de Justitie (High Counsel for the Justice)
Coordinator continuous education Belgian Magistrates
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Helga STEVENS was born and raised in the Flemish part of Belgium. Thus her mother tongues are Dutch and Flemish Sign Language. She went to a school for the deaf in Hasselt until age 10 and was then mainstreamed. After having spent one year in St Louis, Missouri, USA, as Rotary Exchange Student, she enrolled into law school at the Catholic University Leuven, Belgium in 1988 and obtained her legal degree in 1993. In 1991-92 she was an Erasmus Exchange student at the Law Faculty of the University of Leeds, UK. In 1994 Helga STEVENS received her Master of Laws degree from the University of California at Berkeley (Boalt Hall Law School), USA. She trained as attorney at the Brussels Bar and is currently practising in Ghent, Belgium. She is also director of the European Union of the Deaf (EUD) (www.eudnet.org). She is Chair of the Committee of Women with Disabilities of the European Disability Forum (www.edf-feph.org). On 13 June 2004 she got elected into the Flemish Parliament. Her personal campaign website can be found at www.helgastevens.be.

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Degrees: Diploma in translation and interpreting (Charles University), PhD. in Slavic Studies (Charles University), MSc. in Applied Linguistics (Univ. of Edinburgh). She was a free-lance translator and interpreter (1976-1983) is now teacher in the Institute of Translation Studies, Charles University (1981-) and Director of the same Institute (1991-). Membership (current): Vice president of the Czech Committee for Translation and Interpreting; EST; CIUTI Task force for international accreditation of T/I programmes.

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Completed her university studies at the Law Faculty of the Charles University in Prague. Worked as a translator and interpreter from English to Czech and vice versa. Now works as a lawyer at the EU Department of the Ministry of Justice where as of June 2004 she exercises the post of a Head of EU Legal Information And Programme Unit.

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Education: Graduated in Psychology and Special Education at Charles University in Prague
Post-graduate psychotherapy training (movement therapy)
Training in Czech Sign Language
For almost 3 years I have been in charge of the Special Center for Mental Health for the Deaf, which exists under the Association of parents of Deaf Children in Prague (is a member if international association of parents of Deaf children FEPEDA). There I work as a psychologist for the Deaf, as a tutor-specialist on the Deaf community for the medical doctors, psychiatrists, police etc. and as a SL interpreter.
In September 2003 the Czech Chamber of Sign Language Interpreters become a full member of European Forum of Sign Language Interpreters and I was delegated to be the Czech Chamber's representative in EFSLI.
I am a part of a Steering Group working in GRUNDTVIG 1 (General European Co-operation Project in Socrates Programme) "Teching Sign Language and the Culture of the Deaf for Different Educational Groups" where my Czech Deaf colleagues participate together with specialists on sign languages from UK, Finland, Estonia and Holland.
I work as a psychologist for the Counseling Center dealing with hearing children and adolescents, who have problems with drugs, are criminal cases etc.

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1977: Military service
1978: Preparatory judicial service at the District court in Kroměříž
1978: Judicial exam at the Ministry of Justice in Prague
1978: Presiding judge at the District court in Kroměříž (civil law)
1980: Title: JUDr. (doctor juris)
1982: Presiding judge (criminal law)
1993: Judge at the Court of appeal in Brno (criminal law)
1994: Vice-president of the District court in Kroměříž
1995: Judge ofthe Criminal Chamber of the Supreme Court of the Czech Republic
1998: Presiding judge of the Crimimal Chamber of the Supreme Court of the Czech Republic

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MA in Law (1978)
Since then employed by the Danish judicial system.
Appointed Judge by the District Court of Copenhagen in 1997, where currently allocated to both Criminal- as well as Civil Proceedings.
Member of the Council of the Copenhagen Court since 1998, and (in 2000) elected as the representative for the judges of this court.
Member of the Board of the Danish Association ofJudges (since 2000).

As a growing percentage of the population in her district is of non-Danish heritage, she is in particular exposed to the challenges of interworking with different languages as well as with different cultural origins. It is therefore obvious, that she carries a lot of interest in the field of correct interpretation during her court proceedings.

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EUROPEAN COMMISSION

Mrs Caroline Morgan
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Caroline Morgan is a member of the Criminal Justice Unit in DG Justice and Home Affairs at the European Commission. After graduating from the London School of Economics, she trained as a solicitor, qualifying in 1988. After a period as a defence lawyer in London, she worked at the European Court of Justice in Luxembourg and at the International Court of Justice in The Hague as a *juriste-linguiste*.
She is desk officer for the European Commission's initiative on procedural rights. Her other files include, evidence and evidence-based safeguards in criminal proceedings, the rights of victims and the judicial cooperation aspect of the International Criminal Court at EU level.

ESTONIA

Mrs Emmanuelle Gallez
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LLB in Legal Studies (1994-1998, University of Tartu, Estonia)
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3. 2000-2001	prosecutor, adviser on foreign affairs in Prosecutor General's Office of Estonia
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Narva is Estonian city located on the border with the Russian Federation populated by 97% of Russian-speaking population. The official language in Estonia is Estonian as well as the language of legal proceedings. Language barrier is one of the main problems in legal proceedings in this region of Estonia, therefore the conference is a subject of a great interest for me as a judge.

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Implementation of a training course for court and legal translators and interpreters in association with the University of Hamburg.
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January 2000 Training workshop for Kinyarwanda-speaking interpreters at the United Nations Criminal Tribunal for Rwanda, Arusha.
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Mette Rudvin, has been lecturing in Translation, English and Dialogue Interpreting at University of Bologna, Italy since 1996. She has studied at the Universities of Oslo, Oxford and Warwick and holds a PhD in Translation Studies. Among other things, she has published and lectured on translation, community interpreting and issues of ethnic-national identity and migration and is presently conducting a region-wide survey on public-service interpreting in the legal and medical sectors to map the current state of the profession. She has also worked for many years as a professional translator and has experience as a court interpreter between Italian, English and Urdu.

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Judge of Kurzemes district court city Riga, Latvia, from December 6, 2000. As a judge hears civil cases, including case relate with family law, rent cases and other cases relate with civil law. Besides I hear criminal all kind cases, too.
From 1997 until 2000 I was as expert of Ministry of Justice Latvia, and before that, I worked as a clerk in Ziemelu district court city Riga, Latvia.
I am interesting in civil and criminal law, including European Union Law, which I studied in faculty of law in Latvian University, and in 2002 studied this law in Riga Graduate School of Law.
I am interesting how to apply European law in cases.

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Mrs. Nijolė Šidagienė is the judge of the Vilnius Regional Administrative court since 1999.
Her career, as the state servant, has started in the local (Vilnius) municipal authorities in 1982 after graduating Law faculty of Vilnius University in 1978. Later (since 1990) she worked in Parliamentof the Respublic of the Lithuania, in 1994 she was appointed in the ombudsperson'sposition (The controller of the Seimas (Parliament) of the Respublic of the Lithuania). During herwork in this position Nijolė Šidagienė had participated ina working group, wich had prepared the Law on administrative reform of the State and many other lows. As a National Ombudsperson took part in many international conferences on the international protection of Human Rights.
The Vilnius Regional Administrative court is the court hearing administrative cases and the cases on minor misdemeanours, wich are the part of the criminal justice.

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On 1 May appointed Assistant Secretary of the Supreme Consil.
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On 11 March 1996 by the Decree of President of Lithuania she was appointed as Judge of the 1 st Local District Court of Vilnius City. On 15 November 2001 by Decree of the President of Lithuania she was appointed and still is working as Judge of Vilnius County Administrative Court.

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I have been a teacher of English and Slovak language for over twenty five years. Since 1998 I have been a University teacher at Philological Faculty, Matej Bel University in Banská Bystrica, which is the only academic institution specialising in the training of future professional translators and interpreters in the Slovak Republic.
As the head of the Department of English and American Studies at the Faculty I have been involved in working out projects and the Study programmes for Bachelor and Master Degrees so that we could train the undergraduates who are supposed to become skilled translators and interpreters. These graduates are in great demand as the Slovak Republic has become the EU member and all legal and economic documents have to be translated into the Slovak language. The conference attendance would be of great benefit for my students.

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In 1990 and 1993 I was awarded a NATO Research Fellowship and worked out two educational projects during my several month stay in the Benelux countries. Since 1998 I have been teaching at Philological faculty Matej Bel University in Banská Bystrica, the only Slovak institution educating professional translators and interpreters in fourteen foreign languages. The accurate translation of legal documents is of great importance especially after Slovakia entered the European Union.

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Was born in Amsterdam (1934) and is a Member of the Amsterdam Bar since 1960. He is an English translator, co-author of English translations of Dutch legislation, a.o. Netherlands Business Legislation, The Civil Code of the Netherlands Antilles and Aruba (2002) and Belgian Company Law. He is also the author or co-author of articles on legal translators and interpreters and the Dutch Sworn Translators Act. He is also the Treasurer of SIGV (Stichting Instituut van Gerechtstolken en – vertalers).

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Nancy Schweda Nicholson, Ph.D. is Professor of Linguistics, Cognitive Science and Legal Studies at the University of Delaware, USA. She has studied language planning and policy development for court interpreter services for over 20 years. Prof. Nicholson is currently conducting research on interpreting at the International Criminal Tribunal for the Former Yugoslavia (ICTY). She is also a consultant to the International Criminal Defence Attorneys Association (ICDAA) and the International Criminal Bar (ICB), assisting in efforts to sensitize lawyers to the challenges of working with interpreters.

APPENDIX E

Rules in respect of the swearing in, quality and integrity of sworn translators and of court interpreters working in the domain of the judiciary and police (*Wet gerechtstolken en beëdigde vertalers*; Dutch Act on Court Interpreters and Sworn Translators).

LEGISLATIVE PROPOSAL

We Beatrix, by the grace of God, Queen of the Netherlands, Princess van Orange-Nassau, etc.
Greetings to all who shall see or hear these presents! Be it known:
Whereas We have considered that it is desirable to lay down rules on the integrity, the quality, and the swearing in of interpreters and translators working in the domain of the judiciary and the police, which shall revoke the Act of 6 May 1878 containing stipulations regarding sworn translators;
We, therefore, having heard the Council of State, and in consultations with the States General, have approved and decreed as We hereby approve and decree:

CHAPTER I DEFINITIONS

Article 1
For the application of the provisions of this Act, the words below shall have the following meaning:
a. Our Minister: Our Minister of Justice;
b. register: the register referred to in article 2;
c. sworn translator: the person listed as such in the register;
d. court interpreter: the person listed as such in the register.

CHAPTER II REGISTER

§ 1 Establishment of the register

Article 2
1. There shall be a register for court interpreters and sworn translators.
2. The register shall be managed by Our Minister, or by an authority to be appointed by Our Minister.

§ 2 Content of and listing in the register

Article 3

1. By or pursuant to order in council, rules are laid down regarding the register. These rules relate in any case to:
    a. the content of the register;
    b. the listing in the register;
    c. the qualifications which interpreters and translators must have to be eligible for inclusion in the register.
2. The qualifications referred to in the first sub-section relate to command of the language, knowledge of terminology,
translation skills, written skills, listening skills, objectivity, integrity and professional ethics.
3. Anyone who so requests will be provided with the following information:
    a. whether a person is listed in the register;
    b. for which language combination (s) the person is registered;
    c. whether the listing of a person in the register has been temporarily suspended or cancelled.

Article 4

1. An application for registration is made to Our Minister.
2. Simultaneously with the application for registration referred to in the first sub-section, the interpreter or the translator shall submit a certificate of good conduct, issued according to the Judicial Records Act.
3. Contrary to the provisions of the second sub-section, an interpreter or translator who has resided in the Netherlands for less than five years shall submit an integrity certificate issued by a competent authority in the country of origin, in addition to the certificate of good conduct. Our Minister shall reject the registration of the person in question if he is not convinced that the submitted integrity certificate provides sufficient guarantees regarding the person's integrity.
4. Contrary to the provisions of the second sub-section, an interpreter or translator who does not live in the Netherlands shall submit an integrity certificate issued by a competent authority in his country of origin. Our Minister shall reject the registration of the person in question if he is not convinced that the submitted integrity certificate provides sufficient guarantees regarding the person's integrity.
5. By or pursuant to order in council, rules are laid down regarding:

a. the data and documents to be submitted with the application, required for the assessment of the application;
b. the manner in which the application must be submitted;
c. the fee payable for the handling of the application.

6. Our Minister shall make a decision on the application for registration within six weeks.

Article 5

1. The application for registration will not be processed if the applicant does not meet the requirements set out in
article 4, second, third and fourth sub-section.
2. Registration shall be refused if:
   a. the applicant does not meet the requirements set out in article 3, first sub-section, parts b and c;
   b. the applicant is a foreign national and does not have legal residence in the Netherlands within the meaning of article 8, opening lines and under a through e, or l, of the Aliens Act 2000, or is not authorised to work in the Netherlands;
   c. the applicant has been placed under guardianship because of a mental disorder pursuant to a final and conclusive court order, or
   d. a measure of cancellation of the registration taken against the applicant pursuant to this Act dictates otherwise.

Article 6

Contrary to the provisions of article 3, an interpreter or translator who does not meet the relevant requirements laid down in accordance with this Act, may be registered if:
a. he has been issued an EC certificate referred to in the Dutch Recognition of EC Higher Education Diplomas Act (*Algemene Wet erkenning EG-hoger-onderwijsdiploma's*) or the Dutch Recognition of EC Vocational Qualifications Act (*Algemene Wet erkenning EG-beroepsopleidingen*) for the relevant profession.
b. he has obtained a foreign certificate designated by Our Minister that serves as proof of having acquired professional competence which can be regarded equal to the professional competence that may be derived from meeting the requirements referred to in article 3, first sub-section, or
c. Our Minister, having regard to a foreign certificate obtained by the person involved, has issued a statement upon request that there are no objections against him being listed in the register as far as his professional competence is concerned.

Article 7

1. The court interpreter or sworn translator listed in the national register shall receive proof of registration.
2. The proof of registration shall list the interpreter's/translator's language combination (s).

Article 8

1. Registration shall be valid for a period of five years. Upon expiry of said period, the registration may each time be renewed for another five years, at the request of the court interpreter or the sworn translator.
2. Our Minister shall make a decision regarding the application for renewal of the registration within four weeks.
3. In order to qualify for renewal of the registration, the court interpreter or the sworn translator must:
   a. submit a recent certificate of good conduct or certificate of integrity as referred to in article 4, third sub-section, and
   b. demonstrate that he has remained up to date with the essential professional knowledge and has acquired sufficient work experience as a court interpreter or sworn translator in recent times.
4. The registration shall be cancelled if the application for renewal is not made at least four weeks prior to the expiry of the registration period.
5. By or pursuant to order in council criteria shall be formulated on the basis of which the court interpreter or sworn translator can demonstrate that he has maintained the required professional knowledge and has acquired sufficient work experience.

§ 3. Cancellation in the register

Article 9

1. The listing in the register may be cancelled if Our Minister has become aware of serious facts or circumstances relating to the integrity or professionalism of the court interpreter or the sworn translator.
2. At the time the decision is made to cancel the registration a period shall be set during which no new application for a listing in the register can be submitted. This period shall not exceed ten years.
3. Pending the investigation as to whether there is cause to cancel the registration, the listing of a court interpreter or sworn translator may be temporarily suspended.
4. If a court interpreter or sworn translator is not sworn in within two

months after registration, Our Minister may decide to cancel the listing in the register.
5. The listing in the register shall in any case be cancelled upon the death of the registered person or upon the request of the registered person.

Article 10
If a court interpreter or sworn translator is listed in the register for more than one language combination, the cancellation may also be limited to one or more of these language combinations.

Article 11
1. Any decision to cancel an interpreter's or translator's registration shall be published in the Government Gazette.
2. Our Minister shall ensure that the lifting of a temporary suspension is published in the Government Gazette.

CHAPTER III THE SWEARING IN

Article 12
1. Within two months of being listed in the register, the court interpreter or sworn translator shall take the oath or make the solemn affirmation referred to in articles 13 and 14 before the district court of the district in which he has his place of residence.
2. If the place of residence is outside the Netherlands the oath or solemn affirmation is sworn/made before the court in The Hague.
3. In order to be allowed to be sworn in, the court interpreter or the sworn translator must submit proof of registration.

Article 13
1. At the session of the district court, the interpreter shall take the following oath or make the following solemn affirmation:
   "I swear/promise that I shall carry out my work as court interpreter in an honest, accurate and unbiased manner and shall behave as a decent court interpreter when carrying out my work".
   "I swear/promise that I shall observe secrecy in respect of confidential information which I take note of in the performance of my work".
2. Having taken the oath or made the solemn affirmation, the court interpreter shall be presented with a certificate of the administration of an oath.

Article 14

1. At the session of the district court, the translator shall take the following oath or make the following solemn affirmation:
   "I swear/promise that I shall carry out my work as a sworn translator in an honest, accurate and unbiased manner and shall behave as a decent sworn translator when carrying out my work".
   "I swear/promise that I shall observe secrecy in respect of confidential information which I take note of in the performance of my work".
2. Having taken the oath or made the solemn affirmation, the sworn translator shall deposit his signature at the district court's registry, as referred to in article 12, first sub-section or second sub-section.
3. Having taken the oath or made the solemn affirmation and having deposited his signature, the sworn translator shall be presented with a certificate of the administration of an oath.

Article 15

1. Upon submission of the certificate of the administration of an oath the person in question shall receive an identity card.
2. Our Minister shall lay down rules with regard to the identity card.

CHAPTER IV COMPLAINT HANDLING

Article 16

1. Any person can submit a complaint to Our Minister regarding the way in which a court interpreter or sworn translator has acted toward him or someone else in a certain matter.
2. Our Minister shall establish a complaints commission which will deal with and advise on complaints regarding court interpreters and sworn translators.
3. The written complaint shall be signed and shall contain at least:

a. the name and address of the person submitting the complaint;
b. the date;
c. a description of the conduct that is the cause of the complaint;
d. the name of the court interpreter or sworn translator to whose conduct the complaint relates.

4. By or pursuant to order in council, rules are laid down regarding the establishment of the complaints commission.

Article 17
If the court interpreter or the sworn translator has resolved a complaint to the satisfaction of the person who submitted the complaint, Our Minister shall refrain from further treatment of the complaint.

Article 18
1. Our Minister shall confirm receipt of the complaint in writing.
2. The confirmation of receipt will state that a complaints commission will advise on the complaint.
3. The hearing shall be conducted by the complaints commission referred to in article 16. The complaints commission can charge the chairman or a member of the commission with the hearing.

Article 19
1. Our Minister is not obliged to deal with the complaint if it relates to conduct:
a. regarding which a complaint has previously been submitted that was handled in accordance with article 16 and subsequent articles
b. that occurred more than a year before the complaint was submitted;
c. in respect of which an investigation by order of the public prosecutor or a prosecution is in progress, or if the conduct forms part of the investigation into or prosecution of an offence and an investigation by order of the public prosecutor or a prosecution is in progress in respect of this offence.
2. Our Minister is not obliged to deal with a complaint if the interests of the person submitting the complaint or the seriousness of the conduct appear to be minor.
3. If the complaint is not handled the person submitting the complaint shall be notified of this fact in writing as soon as possible but no later than four weeks after receipt of the written complaint.

Article 20
The person to whose conduct the complaint relates shall receive a copy of the written complaint and the accompanying documents.

Article 21
If the complaint relates to the actions of a member of the complaints commission this member will be replaced by another member, to be appointed by the chairman.

Article 22
1. The complaints commission shall give the person submitting the complaint and the person to whose conduct the complaint relates the opportunity to be heard.
2. The person submitting the complaint need not be heard if the complaint appears to be unfounded or if the person submitting the complaint has waived his right to be heard.
3. A report on the hearing shall be prepared.

Article 23
1. The complaints commission shall deal with the complaint within six weeks after receipt of the written complaint.
2. The complaints commission can adjourn the handling of the complaint for a maximum of four weeks. The person submitting the complaint and the person to whose conduct the complaint relates will be notified of the adjournment in writing.

Article 24
1. The complaints commission shall notify the person submitting the complaint and the person to whose conduct the complaint relates of the findings of the investigation into the complaint in writing, supported by reasons.
2. The complaints commission shall submit a report on the findings, accompanied by an advice and any recommendations, to Our Minister. The report will incorporate an account of the hearing.
3. Upon finding the complaint justified, the complaints commission can recommend to Our Minister that, as a result of his conduct, a court interpreter's or sworn translator's listing in the register should be temporarily suspended or cancelled.

Article 25
1. Our Minister shall deal with the complaint within ten weeks after receipt of the written complaint.
2. Our Minister can adjourn the handling of the complaint for a maximum of four weeks. The person submitting the complaint and the person to whose conduct the complaint relates shall be notified of the adjournment in writing.

3. Our Minister shall notify the person submitting the complaint and the person to whose conduct the complaint relates of the findings of the investigation into the complaint, as well as his resulting conclusions, in writing, supported by reasons.
4. If Our Minister's conclusions differ from the advice, the reasons for this deviation shall be stipulated in the conclusion.

Article 26
Our Minister shall ensure the complaints submitted to him are registered. The registered complaints will be published annually.

Article 27
It is not possible to lodge an application for review against the handling of a complaint as referred to in article 16, first sub-section.

CHAPTER V ENGAGEMENT OBLIGATION

Article 28
1. In a criminal law and aliens law context the following services and authorities exclusively use court interpreters or sworn translators:
a. the Administrative Law Division of the Council of State;
b. the judiciary;
c. the Public Prosecutions Department;
d. the Immigration and Naturalisation Service;
e. the police;
f. the Royal Dutch Military Constabulary.
2. Our Minister is entitled to designate, by ministerial regulation, institutions and authorities that are also obliged to use court interpreters or sworn translators in a criminal law and aliens law context.
3. Contrary to the first sub-section an interpreter or translator may be deployed if, as a result of the required urgency, a person listed in the register is not available in time or if the register does not have a listing for the language combination (s) in question.
4. If the first sub-section is deviated from this must be documented in writing supported by reasons. Articles 29 and 32 equally apply to an interpreter or translator, as referred to in the third sub-section.

CHAPTER VI COURT INTERPRETERS

Article 29
The court interpreter is obliged to uphold the secrecy of all information that is made available to him in the performance of his duties and which he can reasonably presume to be confidential, except in cases where statutory provisions oblige him to disclose such information or his work requires him to disclose such information.

Article 30
In the performance of his work the court interpreter is obliged to produce the identity card referred to in article 15 when requested to do so.

Article 31
1. An agency or institution referred to in article 28, first sub-section may, if the special nature of the work so requires, request that a court interpreter submit a recent certificate of good conduct prior to being engaged.
2. The costs associated with the application for the certificate of good conduct shall be at the expense of the agency or institution requesting the certificate.

CHAPTER VII SWORN TRANSLATORS

Article 32
The sworn translator is obliged to uphold the secrecy of all information that is made available to him in the performance of his duties and which he can reasonably presume to be confidential, except in cases where statutory provisions oblige him to disclose such information or his work requires him to disclose such information.

Article 33
1. An agency or institution referred to in article 28, first sub-section may, if the special nature of the work so requires, request that a sworn translator submit a recent certificate of good conduct prior to being engaged.
2. The costs associated with the application for the certificate of good conduct shall be at the expense of the agency or institution requesting the certificate

Article 34
Our Minister is entitled to lay down rules with which the sworn translator's translation method and administration must comply.

Article 35
1. If documents or statements, which pursuant to statutory rules must be entered in public registers, are in a foreign language, a literal Dutch translation of these documents will be included, made and provided with the relevant certificate by a sworn translator for that language.
2. Contrary to the provisions of the first sub-section, a literal Dutch translation made by and provided with the relevant certificate by the civil-law notary before whom the instrument was executed will suffice, if it is a notarial instrument in the Frisian language concerning the forming of an association or foundation or containing the articles of association of such legal entity. A Dutch translation need not be provided if the association or foundation carries out all or part of its activities in the Dutch province of *Friesland*. When an interested party who has not mastered the Frysian language requires a Dutch translation of the instruments of the foundations or associations referred to in the preceding sentence, such foundation or association shall provide a Dutch translation made by a civil-law notary and provided with the relevant certificate.
3. For certain sections of text it will suffice for a sworn translator to provide a faithful translation if a literal translation would result in an incorrect translation. In such a case the translator will clarify that this is a faithful translation and will explain what the result of a literal translation would be.
4. The translations shall be entered instead of the documents or statements in the foreign language, which will remain appended to the register.
5. The law may stipulate that the first, second, third and fourth sub-sections do not apply.

Article 36
In the event a sworn translator carries out work for an agency or institution referred to in article 28, first sub-section, he is obliged to produce the identity card issued by Our Minister, as referred to in article 15, when requested to do so.

CHAPTER VIII TRANSITIONAL AND FINAL PROVISIONS

Article 37

1. Persons who, at the time this Act comes into effect, are working as a sworn translator within the meaning of the Act of 6 May 1878, containing stipulations regarding sworn translators, shall be legally deemed a sworn translator within the meaning of this Act after they have submitted a certificate of good conduct and shall be listed as such in the register, including their language combination (s).
2. Translators who are not already sworn within the meaning of the Act of 6 May 1878, containing stipulations regarding sworn translators, but who, at the time this Act comes into effect, are definitely registered in the quality register for interpreters and translators, shall be legally deemed a sworn translator within the meaning of this Act after they have submitted a certificate of good conduct and have taken the oath or made the solemn affirmation. They shall be listed as such in the register, including their language combination (s).
3. Interpreters who, at the time this Act comes into effect, are definitely registered in the quality register for interpreters and translators, shall be legally deemed a court interpreter within the meaning of this Act after they have submitted a certificate of good conduct and have taken the oath or made the solemn affirmation. They shall be listed as such in the register, including their language combination (s).
4. If a person referred to in the first, second or third sub-section wishes to qualify for renewal of the registration referred to in article 8, he must meet the registration requirements referred to in article 3, first sub-section and articles 5 and 6.

Article 38

The Act of 6 May 1878, containing stipulations regarding sworn translators, is revoked.

Article 39

In article 6, first sub-section, of the Registration Act 1970, the sentence "within the meaning of the Act of 6 May 1878 (*Stb.* 30)" will be replaced by: "within the meaning of the Act on Court Interpreters and Sworn Translators".

Article 40
Article 11 of the Act on the use of Friesian language in law is deleted.

Article 41
To article 276, third sub-section, of the Code of Criminal Procedure a new full sentence is added after the second full sentence, namely: Swearing-in shall not take place if it concerns a court interpreter within the meaning of the Act on Court Interpreters and Sworn Translators.

Article 42
This Act shall be cited as: the Act on Court Interpreters and Sworn Translators.

Article 43
The articles in this Act shall come into force on a date to be determined by Royal Decree, which may differ for the different articles or sub-sections thereof.

We order and command that this Act shall be published in the Bulletin of Acts and Decrees, and that all ministerial departments, authorities, bodies and officials whom it may concern shall diligently implement it.

Done,

The Minister of Justice,

The Minister of Immigration and Integration,