

Ladies and gentlemen,

First of all, I would like to thank the organisers of the conference for this opportunity to reflect on the important issue of interpretation from the perspective of law practitioners. As a member of the Supervisory Board of the European Criminal Bar Association, my perspective will be that of the criminal defence lawyer.

In considering my contribution to this conference, I first reflected on what interpreting needs from a lawyer's perspective actually are. What do I want from an interpreter? What do my clients want from an interpreter?

The first answer I came up with was<sup>1</sup> that interpreters are best described as a necessary evil. Basically, you would rather not have need of them, but if you do, they should do their job without getting in the way of the really important stuff. And that really important stuff is obviously what the judges do, what the prosecutors do and, most importantly, what the defence lawyers do.

But then, on some further reflection, I considered that "not getting in the way" is very difficult for an interpreter, since - of necessity - he or she is in *between* the participants in a criminal procedure. The interpreter is *between* a defendant who does not speak the language of the court and the court. He or she is *between* a witness that does not speak the language of the court and the defence lawyer that wants to ask questions to that witness.

So, the best interpreter is an interpreter who is *between* the participants without "getting in the way".

So, actually, the interpreter can best be compared with a road between two cities: if you want to get from city A to city B, you will *have* to take that road. The road lies *between* those two cities. But let's hope that road does not "get in the way" of your travel plans –which could be the case if the road is so bumpy that you have to drastically reduce your speed and therefor don't get to city B in time for your appointment. Or even if the road proves to be non-existent, because it is closed off for repairs. So: for the road not to get in the way of your travel plans, the road must be *there* and it must be *good enough* to get to your destination in time.

These two basic requirements are also hold true for interpreters in criminal cases. They should be available - *there* at the time you need them - and the quality of their work should be *good enough* for the proceedings to which they offer their services.

Let's start with this last requirement: quality of service. What does that mean?

Quality must always be viewed in relation to the goal of the service. That purpose is *not* to translate every word that is being heard. Exhaustiveness, completeness, is not *in itself* a goal. That can be easily understood if you picture yourself as a defendant in a criminal case which is being conducted in a

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<sup>1</sup> The use of humor in a conference speech for an international audience is always tricky.

language you don't speak or understand. In such a situation you would want to understand what is being said about you and about the evidence. You would want to be able to discuss and confer with your lawyer. You would want to be understood when you react on the evidence and the charges, so you would want the things you say to others in the courtroom translated.

But there is always a lot of other stuff going on in a courtroom. Some procedural issue. A scheduling issue. Discussions on what to do first and what to do after. As a defendant in a case, you wouldn't want a *full* translation of all that kind of procedural and practical matters. You would just want to be reassured briefly that what these people are talking about are indeed just practical or procedural issues which do not concern you or impact your case.

I think I can say this because, as a lawyer, I interpret the law to my clients.

In considering the objectives of a translation we must of course consider the legal framework. The most important component of that legal framework is of course Article 6 of the European Convention on Human Rights.

According to Section 3 of this Article, *everyone charged with a criminal offence has the following minimum rights:*

*(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;*

*(b) to have adequate time and facilities for the preparation of his defence;*

*(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;*

*(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*

*(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.*

It is quite clear that these rights cannot be effectuated adequately by a defendant that does not speak or understand the language of the court.

From this, it is obvious that the objectives of interpretation on behalf of a defendant in a criminal case pursuant to Article 6, Sect. 3 (e) must be to effectuate the other rights that article 6 of the Convention grants. This in turn means that the translation must be sufficient or adequate to ensure a fair trial under the conditions of article 6 of the Convention.

This has also been recognized by the European Court of Human Rights in, for example & among others, *Luedicke, Belckacem and Koç v. Germany* (1978), *Kamasinski v. Austria* (1989), *Husain v. Italy* (2005), *Brozicek v. Italy* (1989), *Isyar v. Bulgaria* (2008).

A second component of the legal framework is Directive 2010/64/EU, concerning the right to interpretation and translation in criminal proceedings. According to Article 2(1) of the Directive, Member States shall ensure that suspected or accused persons that do not speak or understand the language of the criminal proceedings concerned are provided, without delay, with interpretation during criminal proceedings before investigative and judicial authorities, including during police questioning, all court hearings and necessary interim hearings. Article 2(2) adds to this that interpretation should be available for communication between suspected or accused persons and their legal counsel. Article 2(8) holds that the interpretation provided under this Article must be of a quality sufficient to safeguard the fairness of the proceedings, in particular by ensuring that suspected or accused persons have knowledge of the case against them and are able to exercise their right of defence. This obligation on Member states is reiterated and reinforced in Article 5, which holds that Member States shall take concrete measures to ensure that the interpretation provided meets the requirement of Art. 2(8).

Both the Convention and the Directive take the fairness of the proceedings as the objective of interpretation. This means that any interpretation must be adequate to allow the defendant to interact effectively with the investigating officials. Must be adequate to allow meaningful communication with his lawyer. Must be adequate understand and assess the evidence. Must be adequate to understand and be understood in court.

A separate issue of quality I would like to mention is the issue of independence of interpreters. It must be self-evident that an interpreter that has interpreted in a privileged conversation between the defendant and his lawyer can not interpret in the following police interrogation. And certain language groups are ethnically, religiously or politically so divided that it is impossible to have an interpreter from one particular denomination interpret in a case where the defendant is of another denomination. An international data-base of interpreters should, in my opinion, scout out and list such incompatibilities to prevent accidents or delays.

This brings me to the second requirement for interpreters: they should be available at the time you need them. This is a very practical issue, in which I understand the project "LIT Search" is playing an important role.

The best option is always to have an interpreter physically present in the courtroom, sitting right next to the defendant, whispering softly in his ear. In most instances that can be planned some time beforehand, such as court sessions, the physical presence of an interpreter must be considered feasible. Therefore, we can and must expect the best option, and that is physical presence of the interpreter – there's no need to settle for less.

However, this may be difficult to achieve with less common languages, smaller or more exotic languages. If interpreters for such exceptional languages are not available in a physical sense, video conferencing or audio-links may be considered as second-best options.

Third best options would be a team of interpreters: interpreter #1 interpreting the court's language to language X, interpreter #2 interpreting language X to the defendant's language. We all know the concept of nuances "getting lost in translation". That is unavoidable. But I do have doubts on the result of "stacking" that effect. Won't that effect multiply? Is there any empirical data on the amount of information that falls between the cracks of the floorboards in such a stacked translation? I would be very curious to see such research.

In all such instances it is imperative to adopt best practices in interacting with the interpreter in order to get the best possible quality out of him or her. Provide the interpreter with key documents from the case file to prepare. Always have an extra copy of your written pleadings to give to the interpreter, etc. I believe there is still significant room for improvement in this area – I don't believe the Vademecum holding Guidelines for a more effective communication with legal interpreters, which is the result of a joint project between Eulita and the ECBA, is on every judge's desk just yet.

In instances that can *not* be planned a long time beforehand – such as police questioning after an arrest or a meeting in the police station between the suspect and his lawyer – there is much more acceptance of trading in some quality of translation in favour of speedy availability. In the early stages of the investigation, you cannot wait for days for the interpreter to arrive before talking to your client to discuss with him what he is going to tell the police. You need an interpreter *now* – and beggars can't be choosers.

So especially in this stage of an investigation, it is of essential importance that there are systems in place that can hook you up to an interpreter that can offer sufficient quality of service. I believe that especially in this area organisation is key. I have good experiences with our Dutch "Interpreters-hotline": you call the hotline on your mobile, they switch you to the interpreter you need and you can talk to your client by passing over your mobile phone. So I very much support all efforts to improve the level of organisation in this field – which definitely includes "LIT Search".

The need for immediate availability may compromise the available quality. However: time will eventually correct a lack of availability – you'll get an interpreter in the end. But time cannot correct a lack of quality: if the statement of the defendant has been interpreted with insufficient precision, he may get convicted on the basis of such a deficient interpretation. If the lawyer misunderstands his client because of bad interpretation, he may advise his client *into* problems, instead of out of them. If the court does not understand the defendant, he may get convicted wrongfully. And these errors, time will *not* correct. So availability and quality, preferably both, but the greater of these is quality.

So, from a lawyer's perspective, it is imperative that the interpreters that are provided, and especially those provided on short notice, have been pre-selected on quality. That the data-base of interpreters only contains those that have proven that they satisfy the requirement that their intervention enables the defendant to effectuate his right to a fair trial. Any improvement in the organisation and the efficiency in providing such interpreters to the suspect is applauded. And that is why the ECBA very much supports the LIT Search project.

