

Aequalitas

Equal Access to Justice across Language and Culture in the EU Grotius project 2001/GRP/015

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2003**

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Preface

This book contains the proceedings of a conference that was held as part of an EU Commission DG Justice and Home Affairs funded Grotius Project: Grotius project 2001/GRP/015).

As one knows, the aim of the Treaty of Amsterdam is to create an area of freedom, security and justice within the European Union. An essential pre-requisite to achieving that aim is reliable communication, for the quality of all decisions and actions depends upon the quality of information and communication on which they are based.

Therefore, reliable legal interpreters and translators and legal services skilled in working with them are needed at all levels, and in a range of situations, which include e.g.:

- judicial co-operation between member states, as called for by the *Tampere* European Council, through, for example, fighting organised crime, preventing drug trafficking and combating the trade in human beings and the exploitation of children
- judicial co-operation where individual matters cross national frontiers
- and safeguarding the implementation of international conventions, resolutions and covenants, particularly ECHR, Articles 5 and 6.

The current project – *Aequalitas: Equal Access to Justice across Language and Culture in the EU* – builds upon the foundations and recommendations of a first Grotius project on legal interpreting and translation - Grotius project 98/GR/131 - available in print as *Aequalitas: Access to Justice Across Language and Culture in the EU* (Lessius Hogeschool 2001) as well as on the website of the two projects: www.legalinttrans.info

The recommendations made in the first project particularly with regard to

- standards of selection, training and accreditation of legal interpreters and translators
- a code of ethics and guide to good practice
- and the inter-disciplinary working arrangements between legal interpreters and translators on the one hand, and the legal services on the other,

have proven to be solid ground for discussion throughout the EU and have contributed significantly to recent initiatives emanating from the EU Commission on procedural safeguards in criminal proceedings.

The aims of this second project are

- to disseminate the achievements of Grotius I to all member states and begin dissemination in some candidate countries through a network of contacts, publications, a conference and a website

- to hold the main issues discussed in Grotius I – training, codes, certification, working arrangements and interdisciplinary arrangements – once again against the critical light of a wider EU forum of discussion
- and to derive from this discussion standards and models for the implementation of a comprehensive quality trajectory in legal interpreting and translation both in individual member states and throughout the EU.

We believe that this project, and the Conference organised at the Lessius Hogeschool in Antwerp in November 2002 in particular, have succeeded in building a solid network of colleagues and experts in the field of legal interpreting and translation. I am extremely grateful to the participants, who represented all EU member states and two accession countries, for their enthusiasm, their interesting contributions to the discussion and their firm will to continue to further the cause of equal access to quality legal interpreting and translation in the EU.

As the reader will notice, the conference was organised in four sessions and besides the Introduction and three Appendices, the book follows this format. Thus these proceedings contain the final versions of the keynote speeches introducing each session followed by a complementary chapter.

These complementary chapters tend to differ considerably. Chapter 3 concentrates very much on a survey and analysis of the legal instruments and legal thinking behind legal interpreting and translation; Chapter Five renders the discussion of Session Two, with particular emphasis on two major contributions, one on Sign Language and one on Training; Chapter Eight summarizes the debate on codes of ethics and good practice, and Chapter Ten, rather than providing another summary of the discussion, at the editor's request, provides a concrete example of a model of implementation of a quality trajectory in one member state, viz. The Netherlands.

I have used a great deal of editorial privilege in streamlining the ten separate contributions into, what I hope, will be one coherent text that does justice to the intellectual efforts of the keynote speakers and the main issues raised during the panel and floor discussions. I have on the whole - though there are exceptions notably and for good reasons in Chapter Five - refrained from naming individual interventions simply because one did not want to read the report as a roll call and also because the tapes of the sessions too rarely provided reliable identification of the speakers from the floor. Anyway, I am very grateful to the authors of the ten chapters for their wonderful, inspirational work but I do accept ultimate editorial responsibility for the presentation of these proceedings.

The proceedings will of course also be made available on the projects website and I am confident that this website will continue to grow and can be developed into the most interesting EU site for information and exchange of views on legal interpreting and translation.

'Grotius' indeed is not the end, as is signalled by the Commission itself by initiating a new framework programme called AGIS that shares many of the Grotius aims and concerns. We are convinced that the same desire not to leave the cause of legal interpreting and translation half finished, pervaded the delegates at the conference and

we hope that these two Grotius projects will be an inspiration to continue the work that still need to be done in this field.

Finally, a very special word of thanks is due to the core partners from Denmark (Bodil Martinsen and Kirsten Wolch-Rasmussen), the Czech Republic (Zuzana Jettmarova and Katerina Martonova), The Netherlands (Evert-Jan van der Vlis and Miran Besiktaslian) and The United Kingdom (Ann Corsellis and Amanda Clement), who were all and each of them instrumental in conceiving and carrying out this project. In addition, I want to single out three Lessius colleagues – Professor Yolanda Vanden Bosch for her invaluable assistance in defining the substance of the conference, Ms Christine Gysen for her tireless organisational skills and Mr Wim Schramme for his unrivalled budgetary wizardry.

Erik Hertog

Introduction

From Aequitas to Aequalitas: Equal Access to Justice across Language and Culture in the EU (Grotius projects 98/GR/131 and 2001/GRP/015)

Erik Hertog

1. Introduction

The issue of justice is a fairly recent one in the European Union. Although the EU is obviously conceived as a democratic supranational structure governed by the rule of law - and the European Court of Justice is there to testify to this fundamental principle - as a matter of fact, it is only since the Single European Act in 1987 that the question of justice has come to the foreground in the development of a European framework. It is only since 'Maastricht' (1992) – where the 'third pillar' was established relating to justice and home affairs policies- and the Amsterdam Treaty of 1997 that 'justice' became a prominent EU objective. Article 29 of that Treaty stipulates that: "the objective of the Union is to provide citizens with a high level of protection in a area of freedom, security and justice ".¹

In 1998, the Vienna European Council adopted an Action Plan proposing a five-year timetable for the implementation of the measures needed to create this area of freedom, security and justice and the conclusions of the Tampere European Council of 1999 (cf. infra) established, among others, the work programme for judicial co-operation in criminal matters: i.e. approximation of criminal law, co-ordination of criminal proceedings, mutual recognition of judicial decisions and protection of individual rights.

This is a formidably ambitious, almost Herculean task the Union set itself and as Commissioner Vitorino knows all too well: “the question of justice at the level of the European Union is not often tackled in an institutional way. Each Member State of the EU has its own legal system and this is a field where the *European's* imagination has been particularly fruitful. We therefore have to build an area where judges and prosecutors from the 15 Member States (and many more tomorrow) can work together and be efficient despite their different systems. They will have to trust each other, and to fight effectively against criminality to ensure a high level of security for our fellow citizens in the full respect of the fundamental principles of our democracies.” (Vitorino 2002:3)

In other words, the common fundamental principles and noble objectives are pretty clear but they need to be implemented in concrete realities, translated into national practices. The issue that concerns us - legal interpreters and translators (LITs) working in the EU - most directly is that of the protection of individual rights. As the policy statement on the website of the Directorate General Justice and Home Affairs states: “if the principle of mutual recognition is to operate properly, there has to be a high level of confidence and trust between judicial authorities of the Member States.

¹ 'Living in an area of freedom, security and justice'. www.europa.eu.int/comm/justice

Compliance by all with the European Convention on Human Rights and review by the Strasbourg Court, are vital in order to ensure the common foundation without which no confidence would be possible. However, the establishment of an area in which judicial decisions can be enforced without hindrance, should also lead to the enactment of minimum standards at European level on points such as the right to legal counsel, entitlement to the services of an interpreter, the taking of evidence, provisional detention, or proceedings in absentia. More effective criminal justice in Europe must go hand in hand with a major effort to maintain and increase the guarantees enjoyed by European citizens.” (Judicial co-operation in criminal matters 2002)²

This is also essentially the background against which the two Grotius projects need to be situated as well as a host of other recent initiatives. But to understand this present state, a brief survey seems in order.

2. Legal Translation and Interpreting in the EU³

Communication problems across languages and cultures are well known in all parts of the European Union. Consequently, also in a wide range of legal contexts, whether in criminal or civil law, or in the case of asylum seekers or immigration, or indeed in the field of legal co-operation, one is increasingly faced with a number of occasions where there is no shared language or mutual understanding of the legal systems and processes involved.

Legal services now need to collaborate much more intensively and therefore have in place effective channels of communication in the form of reliable specialist LITs, and this on an international as well as a national basis.

- On an international basis, this is necessary in criminal matters, e.g. in the fight against international crime, against drug or people trafficking, terrorism etc., or in asylum and migration matters to deal with e.g. the c. 400,000 illegal immigrants into the EU each year. But also in civil, administrative or commercial law, the need to deal effectively with these communication problems is becoming ever more pressing in view of the EU open border policy resulting in the greater exchange of goods and services as well as in the free movement of EU citizens.
- On a national basis one is confronted with the same issues, with an ever-increasing number of individuals who do not understand or speak the language of the country where they get involved with the legal system, such as e.g. the 42,193 asylum applicants in Belgium in the year 2000, the foreign nationals speaking c. 45 languages now in Antwerp’s main jail, the victims of traffic accidents abroad, the tourists, the business people, the football hooligans, etc.

² www.europa.eu.int/comm/justice_home

³ This section repeats a few introductory comments from Hertog 2001, Chapter One, for reasons of consistency and progress with regard to Grotius projects I and II.

In all these cases legal interpreting and translation (LIT) is needed, both as a prerequisite to a genuine 'European area of justice', and simply to make also the national systems perform better. This can only be achieved through the provision of professional and qualified LITs, certainly not if poor communications in the judicial systems are perpetrated. Without qualified LITs there can be no effective legal process across languages and cultures.

The current national provision of LIT in member states is too patchy and uneven, however, as a result of which those working in the legal services are hampered in their efforts to provide the quality of service they would like, because they cannot always gain easy access to qualified LIT in the languages they need, whereas the LITs themselves are not provided with the professional quality training they deserve to do a good job. This 'systemic' reason would be reason enough as it is to try and do something about the state of LIT in the EU member states. However, there is also a body of international documents and precedents that is influential in the shaping of EU policy in this field. Most of them are well established and well known by now - though not always equally well complied with by the Member States - and need not really be elaborated here.⁴

- *The 1950 Convention for the Protection of Human Rights and Fundamental Freedoms* (the 'ECHR') providing the legal basis for the need or indeed the obligation for national authorities in the EU to provide legal interpreting, particularly Articles 5 par. 2 and Art. 6 par. 3 (a and e) on the right to 'fair trial'. Because ECHR is so central to the discussions on LIT, we repeat the relevant sections of the two articles here.

Art. 5 ECHR
[Right to liberty and security]

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in the accordance with a procedure prescribed by law:

(a)...

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him."

ART. 6 ECHR
[Right to fair trial]

" 1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

...

3. Everyone charged with a criminal offence has the following minimum rights:

⁴ A more comprehensive survey can be found in Hertog 2001, Chapter One and infra Part I, particularly Chapters Two and Three.

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

...

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

- *European Court of Human Rights* landmark decisions on language and interpreting such as *Luedicke, Belkacem and Koc v. Germany* (1978), *Öztürk v. The Federal Republic of Germany* (1984), *Kamasinski v. Austria* (1989), *Brozicek v. Italy* (1989), *Fox, Campbell and Hartley v. Great Britain* (1990), the *Quaranta* decision (1991), *Cuscani v. United Kingdom* (2002) and *Conka v. Belgium* (2002).⁵
- *Council of Europe* recommendations such as e.g. Art. 3 of *Resolution (78)8* on legal aid and advice, which recommends that legal aid should provide for all the costs necessarily incurred by the assisted person defending his legal rights, and in particular lawyer's fees, expert's fees, witnesses and translations; *Recommendation N° R(81)7* on measures facilitating access to justice, which urges states to pay particular attention to the problems of interpretation and translation to ensure that persons in an economically weak position are not disadvantaged in relation to access to the court or in the course of any proceedings by their inability to speak or understand the language of the court; and *Recommendation (97) 6* inviting the member states to provide, whenever possible, a lawyer who speaks a language which the applicant understands.

3. Recent developments

3.1. With, admittedly, some exaggeration one might argue - or hope - that '*Tampere*' will ultimately have the potential to change everything for LIT in the EU. As said, the European Council meeting at Tampere in October 1999 took upon itself the ambitious task to start implementing the principles of 'freedom, security and justice' inscribed in the Treaty of Amsterdam. In view of the various mandates arising from the resolutions, LIT acquired a new fundamental importance in all areas of the judiciary, in civil, commercial and administrative as well as criminal law, in refugee and asylum procedures.

To take the example of the co-operation envisaged in criminal justice: in the conclusions of the Summit, three main areas were singled out:

- *Access to justice*. This would include defendant's rights - to provide those accused of a crime with correct and precise information as to the charges against them - and victim's support, but also measures for those involved in the legal system to be heard and to receive information in their own language.
- *Mutual recognition* of judiciary decisions, during the investigation and pre-trial stages as well as in final decisions, rogatory commissions, extraditions etc. Obviously, such recognition can only be achieved if there is complete mutual

⁵ The ECHR decisions can be consulted at www.echr.coe.int

confidence in the way procedures are conducted in another member state, which includes guarantees concerning the quality of the interpretation or translation.

- *Co-ordination*, if possible centralisation of information, legal proceedings and of police and judicial authorities; the harmonisation of definitions and regulations.

It is obvious that in all these issues and areas, language proficiency and particularly LIT have become essential pre-requisites, hence their salience now for the Directorate-General of Justice and Home Affairs and the EU Commission.

3.2. Another important document is *The 2000 Charter of Fundamental Rights of the European Union* setting out the rights of the European Citizen in 53 articles. It was signed and proclaimed by the Presidents of the European Parliament, the Council and the Commission on behalf of their institutions on 7 December 2000 in Nice. The justice section (articles 47-50) sets out a.o. the right to an effective remedy and fair trial and the right of defence. Article 47, for example, provides: “Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.”

Similar to the ECHR, the Charter will have fundamental consequences for the judiciaries of the member states in all aspects covered by the ECHR and aspired to at the Tampere Summit. Therefore, the Charter is another key-document laying down the principle of equal access to justice.⁶

4. The GROTIUS projects

In most member states only a small élite in the judiciary are used to working across languages and cultures in both national and international contexts. Their expertise, though, has usually been acquired on the job and is not formally taught or structured. The majority in the judiciary has no proper understanding of the interpreting process and do not really know how to work efficiently with LITs.

As for the LITs, they are sometimes very good indeed, but their standards of training, practice and working arrangements differ from member to member state, or even within member states. On the whole, it is safe to say that there are insufficient LITs, either in terms of numbers, the wide range of languages required in member states or indeed in quality. Moreover, there is a lack of training and consistency in the interdisciplinary guidelines to good practice, and a lack of compatible national central registers - not to mention an EU one - which are easy to access on a 24-hour basis and are accompanied by an enforceable code of conduct.

⁶ The Charter of Fundamental Rights of the European Union. Available at www.europa.eu.int/comm/justice or <http://www.consilium.eu.int/>

These practical points combine to hinder the legal co-operation and equal access to justice throughout the Union. The implications for the legal system obviously affect EU member states in differing degrees but they are significant for the EU as such. No democratic country can afford to sustain a legal framework that does not support full and meaningful access to it across languages and cultures by all those who may become, or wish to become, involved in it. Equally, those who work in the legal system are professionally at risk where they cannot communicate reliably. It has therefore been the purpose of the following Grotius-project on EU-standards in legal interpreting and translation to make a contribution to remedying that situation.

4.1. GROTIIUS Project 98/GR/131⁷

This 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 (lead body, coordinator Ann Corsellis).

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 account of. 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:

⁷ I am grateful to all participants in both Grotius I and II for the ideas expressed in this section, but particularly to Ann Corsellis, OBE, Magistrate and Board Member of the Institute of Linguists for drafting and writing, or helping me to draft and write many of the texts that were circulated in both projects. I repeat in this section some of the information in Hertog 2001, Chapter One, for 'historical' reasons so newcomers to the Grotius project have an idea of the consistency and development of both projects.

- 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

For completeness sake, we list here the table of contents of the first report.

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Erik Hertog and Yolanda Vanden Bosch

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Edda Ostarhild

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Doris Grollmann, Bodil Martinsen and Kirsten W. Rasmussen

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Chapter Nine: Interdisciplinary Conventions with the Legal Services

Kirsten W. Rasmussen and Bodil Martinsen

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Good practice guidelines on working with legal interpreters and translators

Good practice guidelines on working across cultures.

Bibliography

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The project tried to seek 'equivalencies' so that, for example, the standards of competence, core curricula, codes of conduct and principles of good practice are the same but the variables may differ to accommodate different starting points or national requirements. However, the benefits of such equivalencies would, in the medium term, guarantee at least minimum standards and practice of LIT in present and future member states. It would also entail the practical advantages of LIT training and working in the countries of their language combination, the possibility of LIT collaborating on cases across national borders thereby ensuring consistency, and the possibility of a shared - and larger - resource of expertise in such matters as teaching materials, terminology, national registers etc. The end-result would definitely be the promotion of confidence in the communication across languages in the legal systems of the member states, improved interdisciplinary relations between the judicial actors and the LITs, thus ultimately guaranteeing and safeguarding the fundamental right and principle of 'access to justice'.

The recommendations resulting from this project have been accepted by the Grotius Committee and published in book form (*Aequitas: Access to Justice Across Language and Culture in the EU*, Antwerp, 2001, ISBN 90-804438-8-3 (contact erik.hertog@lessius-ho.be) and the text is also accessible on the *Aequitas* website that the Danish partners have set up: <http://www.legalintrans.info>

4.2. GROTIUS project 2001/GRP/015

This Grotius project (2001-2002) was carried out by a core team of four multi-disciplinary groups from five countries, i.e. Belgium, Denmark, The United Kingdom, The Netherlands and the Czech Republic.

The partners continued to address the needs and issues of LIT, namely that communication in the legal system necessitates mutual understanding of concepts and practices. Therefore those working in the legal system need to be competent in using the channels of linguistic communication provided by qualified LITs and in dealing effectively with legal colleagues and members of the public with backgrounds other than their own.

These inter-disciplinary and interdependent skills are needed at all levels, and in a range of situations, which include e.g.:

- judicial co-operation between member states, as called for by the Tampere European Council, through, for example, fighting organised crime, preventing drug trafficking and combating the trade in human beings and the exploitation of children
- judicial co-operation where individual matters cross national frontiers
- safeguarding the implementation of international conventions, resolutions and covenants, particularly ECHR, Articles 5 and 6.

The time line of the project was as envisaged follows:

- November 2001: National core team consultations
- December 2001: First preparatory seminar at Aarhus (Denmark) defining the substance and envisaged outcomes of the conference, i.e. the conference venue and date, appointment of the conference organizer, the process of inviting delegates to the conference from all member and possibly candidate member states, the process of starting up the web-site to disseminate the recommendations of Grotius I and to identify and begin developing the materials that would go on the website as pre-conference preparation materials
- January-February 2002: National team consultations and start-up website
- March 2002: Second preparatory seminar in Prague (Czech Republic). The core partner teams were joined here by delegates from Germany, France, Italy, Spain and Sweden to finalize the conference programme and arrangements and the process of inviting delegates, to continue the development of pre-conference materials to go on the web-site e.g. the legal service competencies, codes, teaching materials on interdisciplinary working arrangements, models for national and implementation, etc., and to develop access to the web-site by conference delegates and others, so that they could prepare themselves for the conference, including the option to receive and answer queries and comments and consult position documents.
- March-October 2002: Conference preparation and website development
- November 2002: Conference in Antwerp (Belgium). The conference was to be the culmination of the careful preparatory process, described above. The conference programme was to be carefully structured to arrive at concrete, relevant recommendations and allow for focussed discussion against clearly defined headings, whilst obviously allowing space for informal discussion as well. It was to bring together multidisciplinary teams of four from all EU member states to really create a momentum towards shared standards of quality and common strategies in interdisciplinary working arrangements.
- Spring 2003: Publication of the Report

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 interdisciplinary 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.

For the conference, the core partner teams were strengthened by four more delegates from each member state who, ideally, were:

- from the legal services as well as LITs or trainers of LITs
- included at least one key policy or decision maker
- were given access via the publication and web-site of the recommendations and other materials being put forward
- fully informed as to what exists in their own countries
- able to report back to their own national relevant bodies
- and in a position to take things forward.

Finally, some individual participants, selected on the basis of their expertise and commitment to the work were invited, to contribute their expertise and to raise awareness e.g. in candidate countries.

The conference programme itself was drawn up as follows (for the detailed programme see Appendix One):

- **Requirements:** legal framework and principles
- **Possibilities:** what language and legal skills and structures can be utilised to meet those requirements
- **Synthesis:** establishing complementary skills and structures between legal and language professions e.g. complementary codes of conduct, good practice standards and interdisciplinary working arrangements in this field
- **Models** for implementation: potential incremental steps that can be taken over time, according to individual states' traditions and conventions, to reach a common EU standard.

The anticipated outcomes of both Grotius projects include:

- 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 etc.,

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.

Again, it was recognised, from the outset, that the process of implementation of equivalent standards by different member states will involve different starting points, different approaches and different time-scales. The equivalence of standards envisaged does not necessarily mean the same but rather the identification of common targets, which each state may reach according to their individual systems and conventions. It is anticipated that these can only be achieved in incremental stages, which are carefully planned over a period of time. Co-ordination between member states, however, would produce quicker and more useful results.

Implementation will further require that the key people in all member states be given the opportunity to go through a process of:

- gaining an understanding of what is being recommended, including the opportunity to challenge it and to suggest improvements
- consulting with the relevant bodies and individuals within their own countries
- reaching a consensus on the main elements, while accommodating any necessary national variations
- establishing which of the recommended activities already exist in their own countries e.g. training programmes for legal interpreters and translators at the level suggested
- planning and managing overtly the necessary changes, which will bring about over time the implementation of any activities not yet addressed, aimed at EU consistency
- making positive use of collaborations and mutual support between member states.

The outcomes of both Grotius I and II are 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 series of processes carried out by different legal agencies. The integrity of each process affects the integrity of the whole.

5. The current situation of LIT in the EU

We are presently witnessing a number of interesting developments which, taken together, seem to indicate that there is a growing awareness of the need and importance of qualified LIT in the EU.

There is, first, The *Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings*, particularly Article 5 on Communication Safeguards which states: "Each member shall, in respect of victims having the status of witnesses or parties to the proceedings, take the necessary measures to minimise as far as possible communication difficulties as regards their understanding of, or

involvement in, the relevant steps of the criminal proceedings in question, to an extent comparable with the measures of this type which it takes in respect of defendants.”

Then there is the *Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States*, of 13 June 2002, particularly Article 12.2, which states, on the rights of a requested person, that: “A requested person who is arrested for the purpose of the execution of a European arrest warrant shall have the right to be assisted by a legal counsel and by an interpreter in accordance with the national law of the executing member State.”

The *Council Directive to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid and other financial aspects of civil proceedings*, Brussels, 18 November 2002, particularly Article 5.2 states about costs related to the cross-border nature of disputes that: “Such costs shall include interpretation and translation of the relevant documents.”

Another initiative was the *Seminar on the Quality of Justice* organized by the DG Justice and Home Affairs (Brussels, 20-22 March 2002). At the seminar, Commissioner Vitorino emphasised, among others, the importance of the Grotius programme and announced a Commission initiative for a consultation document on procedural safeguards in criminal matters. In this area, the Commission, in Commissioner Vitorino’s enumeration, intends to cover 10 priority issues, including:

- “1. The right to legal advice and assistance.
2. The right to a competent, qualified (but certified) interpreter and/or translator so that the accused knows the charges against him and understands the procedure. .../...
9. Specific guarantees covering detention, either pre - or post-sentence.
10. Proper protection for especially vulnerable groups such as nationals of another Member State who do not speak the language, minors, the mentally handicapped or those of subnormal IQ, mothers of young children, especially single mothers, those who cannot read or write.” (Vitorino 2002:5)

At the Seminar Commissioner Vitorino continued, saying: “It will be important that the texts on this subject, which will have to be quickly incorporated into the 'acquis communautaire', are not merely a reflection of the lowest common denominator, and that they show a genuine European ambition to protect citizens’ freedom in their dealings with criminal justice.” (ibidem :5-6)

In early 2002, a *Questionnaire for Member States on Procedural Safeguards* was sent out to all Member States’ Ministries of Justice (JAI/B/3, Brussels 16 January 2002)⁸. It is probably relevant and interesting for the purposes of LITs to list here what the questionnaire wanted to find out with respect to LIT:

“At the *pre-charge or charge phase* is there

- 6) Access to an interpreter/translator

⁸ See www.europa.eu.int/comm/justice_home/news

- (a) If the suspect does not understand the language of the State or region in which he finds himself accused, what provisions exist for interpretation of questions and translation of relevant documents?
- (b) Is there a scheme for emergency linguistic assistance on a 24-hour basis for suspects being held for questioning at the police station? If so, what languages are covered?
- (c) Is there a scheme for recruiting qualified translators/interpreters to work in police stations and courts? If so, how is it administered? What qualifications are required of the translators/interpreters? Are there any specific qualifications recognised officially (for example by the Ministry of Justice) for this specialised area of translation/interpretation ?
- (d) Are the interviews and the interpretation of questions and replies tape or video recorded? Is there any system for verifying the quality and accuracy of the translation/interpretation ?
- (e) What mechanisms exist to ensure that suspects who are foreign nationals understand the proceedings and what they are accused of from a legal point of view?

Pre-trial

7) Evidence

- (c) If the defendant does not understand the language of the State or region in which he finds himself accused, what provisions exist for translation or prosecution documents? Is there a time limit to ensure that the defendant has the documents in a language he understands in good time to prepare his defence?

At trial

8) Language difficulty or deafness

- (a) If the defendant cannot follow proceedings in the language of the State or region in which the trial is held, either because of a language difficulty or because he is deaf, what provisions exist for interpretation or signing during the trial?
- (b) Where there is a prima facie language difficulty (e.g. a foreign national or a defendant from a different region), who makes the assessment of whether the defendant is capable of following the proceedings without assistance?
- (c) What mechanisms exist to ensure that suspects who have a language difficulty understand the proceedings and what they are accused of from a legal point of view?"

At about the same time a *Consultation paper on Procedural safeguards for suspects and defendants in criminal proceedings* was posted on the JAI website to which there was a considerable response⁹. Over 100 contributions from government departments, professional bodies NGOs and individuals were received. Three such responses – one on behalf of the Grotius projects teams, one from FIT and one from AIIC – can be found in Appendix Three. We highlight here, by way of example, only two relevant, and at the time, very promising sections of this document.

⁹ See www.europa.eu.int/comm/justice_home/index_en.htm

Section 2.2.2.15 on the 'Proper protection for vulnerable groups' states that: "The Commission considers it desirable for a particularly high degree of protection to be afforded to vulnerable suspects and defendants. It is essential that vulnerable suspects are recognised as such at the earliest possible stage and that the duty of care applicable to them is respected. A "vulnerable" suspect or defendant is one who, owing to specific personal circumstances, may be unable to act in his best interests, may be more easily influenced by investigating officers and others and needs additional assistance. The Member States should ensure that their police and judicial authorities are able to identify such groups and that they conduct themselves in an appropriate manner.

Vulnerable suspects include:

- (a) foreign nationals, especially but not limited to those who do not speak the language and residents of a different linguistic region in the case of Member States divided into regions where different languages are spoken..."

Section 2.2.3.16 on 'A Summary of the rights', mentions under 16d "The right to a competent, qualified (or certified) interpreter and/or translator so that the accused knows the charges against him and understands the procedure.

This commitment to respect this right arises under several international and European instruments. The main problem is one of compliance.

A first step may be for each Member State to appoint a national institution that would issue a diploma or certificate of competence in legal/criminal translation and/or interpreting. The institution could work in tandem with the Ministry of Justice of the Member State to ensure that the standards were sufficiently high. The system should also extend to the mutual recognition of the diplomas of other Member State where the language requirement of the State issuing the diploma/certificate is met.

All oral interpretation, together with the suspect's replies, should be recorded and a transcript provided so that any subsequent challenges can be verified.

A translation should ideally be provided to the suspect of all written procedural documents."

An Experts' Meeting was held in Brussels in 7 and 8 October 2002 gathering 50 experts made up of nationally appointed representatives (1 per Member State), professionals and academics chosen by the Commission (1 per Member State) and representatives from NGOs. The coordinator of the Grotius II project and the chairperson of FIT were invited to represent the field of LIT.

All this 'preparatory' work finally resulted in a Green paper from the Commission on 'Procedural Safeguards for Suspects and Defendants in Criminal Proceedings throughout the European Union' (Brussels, 19 February 2003, COM (2003) 75 final)¹⁰.

For lack of space, we quote only a few relevant sections from pp. 26-31 of the Paper.

"The right of access to a competent interpreter and translation of the key documents is fundamental. It is clear that the suspect or defendant must understand what he is

¹⁰ The text can be consulted on via the home page of DG JHA at <http://www.europa.eu.int/comm/justice> or directly (with some luck) at http://www.europa.eu.int/comm/justice_home/fsj/criminal/procedural/fsj_criminal_procedural_en.htm

accused of. This right is well established – it is contained in the ECHR as well as in other instruments set out below. It is all the more pertinent today when many more people travel from one country to another, not only on holiday or to look for work, but to make another country their home. The difficulty is not in establishing the existence of this right, but rather one of implementation. The professions of legal translator and interpreter are not as well established as other branches (such as conference interpreter), but they are in the throes of getting organised, drawing up common standards of education, devising methods of registration or certification and drafting a code of conduct".

"Defendants who do not speak or understand the language of the proceedings (e.g. either because they are non-nationals) are clearly at a disadvantage. They might be on holiday or in the foreign country for a temporary work assignment and due home shortly. There is every chance that they do not have any knowledge of the country's legal system or court procedures. Whatever their circumstances, they are especially vulnerable. Consequently, this right, which is enshrined in numerous instruments (...), strikes the Commission as particularly important. The difficulty is, as already alluded to, not one of acceptance on the part of the Member States¹¹, but one of levels and means of provision, and perhaps most importantly, costs of implementation".

"The ultimate duty to ensure fairness of the proceedings, in this respect as in others, rests with the trial judge who have a duty to consider this matter with "scrupulous care"¹². However, clearly it is desirable for any language difficulties to come to light long before the trial begins".

"All (...) instruments that refer to interpretation and translation provide that, in the normal course of events, the defendant should not have to pay for these services. It can therefore be stated categorically that the assistance of legal translators and interpreters during the criminal proceedings must be free of charge to the defendant".

"As regards translation, the ECtHR has held that "documentary material" must be translated but this duty is limited to those documents which the defendant must understand in order to have a fair trial¹³. 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". As regards interpretation, all the oral proceedings have to be interpreted. If a conflict of interest may arise, two interpreters may be needed, one for the defence and one for the prosecution (or the court, depending on the legal system). 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

¹¹ The questionnaire shows that all the Member States are conscious of their ECHR obligations and make provision for translators and interpreters during at least part of the proceedings if circumstances seem to dictate that there is a need for them.

¹² In *Cuscani v. United Kingdom*, judgment of 24 September 2002, application n° 32771/96, the ECtHR held: " However, the ultimate guardian of the fairness of the proceedings was the trial judge who had been clearly apprised of the real difficulties which the absence of interpretation might create for the applicant. It further observes that the domestic courts have already taken the view that in circumstances such as those in the instant case, judges are required to treat an accused' s interest with "scrupulous care"

¹³ *Kamasinski v. Austria*

says and the testimony of all witnesses). The ECtHR 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”.¹⁴

"The Commission considers that in order to comply with the requirements of the ECHR and numerous other international instruments, all Member States should ensure that training, accreditation and registration of legal translators and interpreters is provided. The *Aequitas* proposals set out the following minimum requirements:

- (1) that Member States must have a system of training specialist interpreters and translators, with training in the legal system, visits to courts police stations and prisons, leading to a recognised qualification,
- (2) that Member States must have a system of accreditation/certification for these translators and interpreters,
- (3) that Member States should operate a registration scheme that is not unlimited (for 5 years for example) so as to encourage professionals to keep their language skills and knowledge of court procedures up to date in order to renew their registration,
- (4) that Member States should institute a system of Continuous Professional Development, so that legal translators and interpreters can keep their skills up to date,
- (5) that Member States adopt a Code of Ethics and Guidelines for Good Practice, which should be the same or very substantially similar throughout the EU,
- (6) that Member States undertake to offer training to lawyers and judges so that they can better understand the role of the translator and interpreter and consequently work with them more efficiently.
- (7) that Member States adopt an interdisciplinary approach to the above requirements, involving either the Ministry of Justice or of the Interior in the recruitment, training and accreditation of legal translators and interpreters".

"Cost is often mentioned as a reason why Member States do not fulfil their ECHR obligations in this respect. Member States must make funds available for this purpose. Court interpreters and translators must be offered competitive rates of pay so as to make this career option more attractive to language graduates. But it should not be limited to language graduates. Law graduates who find that practice is not for them, but who have excellent language skills should be encouraged to join the profession and offered appropriate training. The European Communities have a term for these professionals with dual qualifications – “juristes-linguistes” or “lawyer-linguists”.

So far the extremely interesting and encouraging proposals from the DG JHA on the issue of LIT singled out from the document. The consultations following the publication of this Green Paper will then lead to the publication of a White Paper, translating the conclusions of the whole debate and process into practical proposals for Community action, and ultimately into a Framework Decision from the Commission to the Council, which is planned for December 2003.

It is obvious that all these initiatives by the EU Commission, and particularly the work done by the DG Justice and Home Affairs deserve our most careful attention

¹⁴ *Kamasinski v. Austria*

and full support. In this respect, it is also extremely encouraging to note that a new framework programme has been launched replacing 'Grotius'. AGIS, named after a king of ancient Sparta, is a framework programme to help police, the judiciary and professionals from the EU member states and candidate countries cooperate in criminal matters and in the fight against crime¹⁵. It runs from 2003 till 2007. Its purpose is to set up Europe-wide networks, exchange information and best practices. AGIS again also explicitly refers to 'court interpreters' as a legal practitioners target group aimed at in this programme. It seems to the coordinators of Grotius I and II the ideal way to further the dissemination and implementation of the results so far achieved in the field of LIT.

6. Conclusion

Justice, which safeguards the fundamental freedoms of individuals and states and which goes to the heart of the Europe of the new millennium as envisaged at the *Tampere* summit, deserves and should require the highest standards of service across languages and cultures. The Grotius projects described above and the various recent EU initiatives all intend to make a contribution to that goal. We must hope that the concerted efforts by national LIT associations, international professional organisations such as FIT, AIIC or CIUTI and national interdisciplinary working groups consisting of LITs and the legal services, will support and strengthen the Commission's and the DG Justice and Home Affairs' resolve to at last implement a quality trajectory for LIT in the EU.

7. Bibliography

Hertog, Erik, ed. 2001. *Aequitas: Access to Justice across Language and Culture in the EU*. Antwerp: Lessius Hogeschool.
Vitorino, M. 2002. Taiex Office Seminar on 'The Quality of Justice'. Speech on 22 March 2002.

¹⁵ See www.europa.eu.int/comm/justice_home/funding/agis and also Official Journal of the European Communities, 1.8.2002, L 203/5, Council Decision of 22 July 2002 establishing a framework programme on police and judicial cooperation in criminal matters (AGIS).

Chapter One

Justice, not just us. Prolegomena towards an analysis of communication problems in criminal proceedings

Hermine C. Wiersinga

The theme of this conference is ‘Equal Access to Justice across Language and Culture in the European Union.’ Against this particular background we would like to treat communication problems in court. But before doing so, we need to select and underline some aspects of this background relevant to the subject of language barriers in (criminal) law.

1. Justice

A few words about justice first. Justice can be seen to be that which has been debated by the legislative authorities and subsequently pronounced by the judge during a fair trial. Making law and doing justice is a dynamic and performative process. ‘Truth’ in terms of the law is always the outcome of a number of other relative truths: the assumption of one single objective truth existing outside the subjects is a dangerous illusion. In principle, the (more or less inter-subjective) truths should always be open to discussion. During proceedings in which the arguments – drawn from various legal sources, but also from the parties’ stories – are put forward, a constant assessment of the truth as defined by law takes place. ‘True’ justice, therefore, is by no means an absolute given and cannot be defined in advance. Potential dialogue is a precondition.

In a state under the rule of law, justice is the supreme good. The central theme of this conference is the path towards justice (*access*), the opportunity to really achieve justice. It is therefore obviously important in a state under the rule of law that the ongoing debate regarding what is right by law is continued, and that this debate is allowed to take place by ensuring that the preconditions necessary for debate are in place. Obstacles – such as language barriers or cultural barriers – should be removed wherever possible and failing this, shortcomings should be compensated. This not only serves the individual interests of those concerned, such as the interests of a defendant in a criminal case, who otherwise would be unable to defend himself against the accusations, or the interests of a victim who happens to be involved in a criminal case. It also serves the more general common interest. Our common interests, as citizens in a state under the rule of law, are best served by a dynamic, transparent legal system. In that system, discussion and openness are inextricably bound up with each other. Minority groups cannot be excluded from the constitution of law. Everyone (we are considering *equal* access after all) must be able to participate in the process of making law, both by playing one's part in a democracy (in short, by participating in the discussion provided by the people’s representatives) and by occasionally actively participating in court, for example, by being able to argue with the judge.

All this is pivotal in a democratic state under the rule of law, and therefore it cannot come as a surprise to come across Articles 5 and 6 in the ECHR and their elaborations

in various decisions of the European Court.¹⁶

2. Language

With regard to the issue of language, the ideas of Paul Ricoeur are particularly interesting.¹⁷ Ricoeur makes a distinction between a number of aspects of the French words '*langue*' (language system) and '*discours*' (language usage). In a language system ('*langue*'), all references are intra-systemic, in other words, the system is based on the relationship between codes within the system and there is no direct relationship with the 'outside'. The system is not part of a world, time does not exist and there is no subject (there are no references to an author). It does not address a third party, it is not communication itself, but a *precondition* for facilitating communication. '*Discours*' on the other hand - language usage or language actions - enables a symbolic mediation in, and arrangement of, reality to take shape. "C'est dans le discours que la fonction symbolique du langage est actualisée".¹⁸ This is the concrete communication with the 'outside world': the world is arranged and formed by the use of language. There is, of course, interaction between '*langue*' and '*discours*' as the one establishes the other and vice versa.

Ricoeur makes a further distinction within '*discours*' between the spoken word ('*parole vive*') and the written language ('*écriture*'). In this respect a few characteristic differences are relevant when considering the dispensation of justice:

- Speech is transient whereas writing is more permanent and is not dependent on the physical presence of the subject of the language use;
- A speaker uses non-verbal means to direct his use of language ('body language', the 'deictic' reference), an aspect not present in written language;
- A written text is more open to personal interpretation than the spoken word; the author's intention can be replaced by new legitimate meaning;
- The "relationship between the speaker and his text becomes 'lengthy and complicated in the case of a writer.'" ¹⁹

One is able to re-read and reconsider a written text. This is sometimes essential. 'Complexity' can mean that language should be written down, in order to facilitate full

¹⁶ See, for example, *Kamasinski v. Austria* (European Court of Human Rights, 19 December 1989), *Čonka v. Belgium* (5-5-2002) and *Cuscani v. the United Kingdom* (European Court of Human Rights, 24-9-2002). We explored the subject of the democratic state under the rule of law further in H.C. Wiersinga, *Nuance in approach. Cultural factors in criminal proceedings (Nuance in benadering. Culturele factoren in het strafproces)*, PhD. dissertation, University of Leiden 2002, Ch. 2.

¹⁷ For a more detailed consideration of language and statute and customary law, see the Honours thesis in Philosophy of Law by Mireille Hildebrandt, *Sentencing and the principles of litigation (Straf(begrip) en procesbeginsel)*, (Erasmus University of Rotterdam, 2002). In chapter 1 paragraph 1.4, from which I am grateful to have been able to derive much of the following information, there are numerous references to P. Ricoeur, *Du texte à l'action. Essais d'herméneutique II*, Paris, Editions du Seuil 1986.

¹⁸ Quoted by Hildebrandt *o.c.* p. 81, see also p. 79 for the term 'langage': language in the broadest sense of the word, including the physical and psychological, individual and social aspects, as well as the contemporary and historical nature (with reference to De Saussure).

¹⁹ Hildebrandt, *o.c.* p. 83

understanding and consideration. On the other hand, a verbal delivery can sometimes command more focused attention. Consider the notorious small print in contracts and compare this with the caution given prior to questioning a suspect in order to inform him of his right to remain silent (Netherlands Penal Code, article 29, paragraph 2). The verbal expression is part of the 'performance' in court and thus has a more immediate impact. The same can be said about taking the oath.²⁰

3. '*Langue*' and '*discours*' in the law

The characteristic features of '*langue*' and '*discours*' are recognisable in the law ('*parole vive*' and '*écriture*'). They have to be acknowledged in order to get access to justice.

3.1. '*Langue*' of the law

The law, being a self-referential system of meanings with its own internal conventions and using its own jargon, can be considered to be a specific language ('*langue*'). The codes that are used in the law are a complicating factor as they are often very similar or even have exactly the same form as the language codes ('words') used in 'everyday language.' The fact that the form and usage of legal language are sometimes, but not always, very similar to that of everyday language, can be misleading. Legal language is obviously an artificial system of codes, which are bound by specific legal conventions: sometimes an everyday language code is stretched in its usage, at other times a very narrow meaning widely accepted by lawyers is attached to a code. This means there can be a lot of snakes in the grass for non-lawyers. A text is not, or almost never, what it seems to be. For example, speaking about 'the presumption of innocence' has a very specific, judicial meaning and implication, far removed from common sense assumptions. Saying that a suspect, even one caught with a smoking gun, has to be presumed innocent until proven guilty according to law, is for the non-jurist probably a routine expression; for the jurist, however, this goes to the heart of the (criminal) matter.

The conventions of a specific legal language system which has developed in slightly different ways within language and country borders throughout history²¹, should be acknowledged in order to satisfy the logical preconditions that will facilitate concrete litigation and the dispensation of justice (the '*discours*' of justice) within that system. The intra-systemic logic of the legal language ('*langue*') must be acknowledged in order to achieve justice.

3.2 '*Discours*' of justice

²⁰This performative character of the spoken word in court provides an explanation for the statements of mr. N. A. M. Schipper, in 'Experiences in criminal practice. Address to the annual meeting of the Netherlands Lawyers' Association' ('Ervaringen in de strafpraktijk. Rede bij jaarvergadering NJV 14-6-2002), Speech by the chairman of the Netherlands Lawyers' Association, *Netherlands Law Journal*, 2002, 1295-1298, with the proposal to preserve the right to remain silent but abolish the caution in court.

²¹ This is also true of the European countries, even though the ECHR has a unifying effect – and it is particularly true of Articles 5 and 6 of the Convention, which would seem to have been given absolute validity.

Just as in the '*discours*' in other languages, there is a difference between '*parole vive*' and '*écriture*' in the discourse of justice too.

The verbal elements include a.o. the investigation and questioning, the summons, the presentation of the evidence, the closing arguments and the decision²².

Sometimes, there is concurrence and in these cases the oral use of language will also have to be expressed in writing. This is beneficial in terms of understanding more complex matters. It is also a way of preserving decisions and providing the means to check and rectify them. Justice is not only a process of taking action. It also involves procedures being repeated, for example in the case of appeal to a higher authority. In an official report, a residual part of the oral statement is laid down, decisions are documented etc., and all this is the formation of '*écriture*'.²³ However, written documents can also be introduced without prior oral statements (for example, in Dutch legal proceedings, reports from experts are often submitted in writing only and can be very abstract by nature).

There is, of course, also written law in the form of specific laws and legislation. This source of law and contextual background, with the various interpretations stemming from previous proceedings, plays an important part during the discussions and deliberations. Therefore this too is a form of '*écriture*', be it with differing degrees of 'durability'.²⁴

4. Language barriers

Anyone wishing to make an analysis of the problems that may arise during the search for justice would do well to consider the different levels mentioned above and take stock of the various sub-areas of the '*discours*'.

It is evident that problems can arise at the '*langue*' level. One must be familiar with the auto-referential system of meanings that characterises law in order to be able to read the language codes. When translating one language into another, there must be an awareness of this stratum of meaning. The conventions of Anglo-Saxon law, for example, do not correspond with those of Dutch law. This causes a two-pronged problem when translating legal issues: the codes of the language as well as the codes of law must be translated as correctly as possible. The perfect transfer of one language into another is impossible by definition. Legal interpreters/translators are familiar with

²² Not an exhaustive list. I am referring to the situation in the Netherlands and already mentioned the caution and the taking of an oath.

²³ In countries (though not in the Netherlands) where meticulous recording takes place (including pauses, slips of the tongue and the like) there is more than likely an other intermediate form: the intention here is to set down the subjectivity of the author in writing. Another question that arises in this respect is that of the place that should be given to audiovisual registration. In the Netherlands it is not usual – and certainly not standard – that police interviews are recorded.

²⁴ One would assume that formal legislation is always drawn up in the language of the country concerned. A recent (October 2002) report in the press mentioned that the last law drawn up in French (the Mining Act of 1810) has now been replaced. This probably has anecdotal value, but see also the decision of the Supreme Court of the Netherlands, 16-12-1997, *Dutch Case Law* 1998/352, especially the annotation.

this problem. A thorough knowledge of the conventions of the legal languages in both systems is essential for translators and interpreters.

A differentiation between the spoken and the written use of language has already been mentioned with respect to the '*discours*'. In the dispensation of justice, it is customary to use an interpreter when transmitting the spoken word. When a written text is transferred into another language, one has recourse to a translator. Their skills are slightly different when considered in the light of the requirements that stem from the various characteristics of the '*parole vive*' as against those of the '*écriture*' mentioned above:

- An interpreter must be present in person, must communicate directly and must be able to grasp the transience of speech. A good interpreter can also interpret simultaneously;
- To a certain extent, an interpreter can take heed of the non-verbal expressions and can, for example, prevent the misinterpretation of body language;
- An interpreter can check the intention of the speaker. While avoiding personal interpretation, he can represent as accurately as possible the intention of the concrete speaker. The interpreter should be a neutral intermediary and his personal feelings must not be apparent.

Assuming that immediate access to the real intention of the author is deemed beneficial to the dispensation of justice, then simultaneous interpreting would seem the best strategy available. Litigation on the basis of written documentation leads to the subjective intentions being disconnected from the language actions that have taken place. What judges often value most - particularly criminal court judges - is their own assessment of the perpetrator's personality, in other words, the subjective intentions.

This illustrates, by the way, an example of the complexity of a 'physical' problem in conjunction with legal theory and concepts of criminal justice. How should one regard the perpetrator of a criminal offence? Is his or her personality and character important? To what extent should this be taken into account during the proceedings; in short, which interpretation of the law and which legal notions should one implement? This relates to the issue of translation too: which quality criteria can or should be laid down with regard to the translation of a suspect's statement: can it be summarized; should pauses be recorded, etc.?

On the whole it is probably better to commit complex issues to paper thus giving the other party – the party for whom the information is intended – the opportunity to assimilate this information, to let it sink in.

So there are also situations in which even a good simultaneous interpretation will not suffice: not because the interpretation may be unsatisfactory, but because the text can be too complex to be dealt with orally (i.e. once-only, transient). Both the interpreter (using his expertise) and the lawyer (on the basis of his prescriptive approach) will have their views when assessing a text in this respect.

Acknowledging these non-complementary components of '*discours*' is in my view predominantly a matter for the lawyer/administrator of justice. Let me repeat: interpreting and translation are not mutually interchangeable: some (more complex) texts need to be put into writing. This facilitates more structured consideration. Sometimes, an oral statement can be necessary, for example if the party concerned

needs to be informed immediately and urgently. The spoken word can have a certain symbolic value and command a different level of attention than a written text.²⁵ So they are not perfect communicating vessels, the '*parole vive*' and the '*écriture*'. There is certainly a connection between the two: it is understandable that official reports of evidence given in court that are integrally, simultaneously interpreted by an interpreter, need not necessarily be transcribed in their entirety into a written document.²⁶ Issues of this kind have a prescriptive component and require analysis and the professional consideration of a lawyer.

5 Cultural barriers

Cultural influences affect the dispensation of justice and hence play a role at all levels of the legal translation issue. The ability to interpret language codes and the ability to accomplish translation is partly a question of culture. Knowing how to render meaning within the prevailing cultural patterns is the ultimate way of bestowing real meaning at all levels.²⁷

Consequently, interpreters and translators should have a wide range of skills at their disposal in order to perform their task in the dispensation of justice adequately.

They should:

- Be familiar with the language systems (the language conventions) of the languages in which they interpret or translate;
- Be familiar with the '*discours*' of the languages, their usage and peculiarities;
- Be familiar with the legal systems (the legal conventions) so that a translation will not be coloured by this second level of meaning;
- Be familiar with legal '*discours*' and have mastered the use of this specific language;
- Be able to understand the cultural influences, certainly at the level of language and legal usage and thus be able to participate in interpreting or translation.

It is important for the interpreter – to whom the transient, immediate nature of the oral translation affords little time for detailed consultation with third parties or second thought – to keep his knowledge up-to-date and, even more importantly, 'at the ready'.

The analysis of the system of meaning is not the job of the interpreter or translator, but that of the expert: a cultural anthropologist, a non-western sociologist, a specialist in Islam, a specialist in Turkish affairs, etc. They have to have the expertise on the system level and they must be able to communicate with the accused. However, there is a difference of scope here.²⁸

²⁵ I recall the chairman of the Netherlands Lawyers' Association suggesting the abolition of the caution without wishing to affect the right to remain silent. Cfr. supra footnote 5.

²⁶ Decision Supreme Court of the Netherlands, 16-12-1997, *Dutch Case Law* 1998/352.

²⁷ I refer here to an uncomplicated intuitive cultural understanding in which culture is seen by (very) many as a more or less divided system of social meanings. It is not necessary to go into this in more detail at this point. Please refer to chapter 2 of H.C. Wiersinga *o.c.* for an extensive consideration of culture and the perception of the cultural and the connection with (the perception of) justice. The approach is based mainly on the work of Clifford Geertz.

²⁸ In H.C. Wiersinga, *o.c.* I recommended a distinction between the tasks of translator and cultural expert; see par. 5.4. II and par. 5.4. III.

6. Requirements set by the European Court of Human Rights

Within the dispensation of justice – and we restrict ourselves to the European context of criminal proceedings – the principle of optimising communication applies.²⁹

According to western standards, hearing both sides of the argument is a universal principle and the constituent essence of a fair trial. Proof of this can be seen in the history, the formulation and the effect of various conventions (in particular Articles 5 and 6 of the ECHR). This is part of the reason for the principle of minimising language barriers.

In this respect, the *Kamasinski* case has become known as a 'leading case'. The suspect, who cannot understand or speak the language used in court and therefore cannot follow the proceedings or make his own comments, has not been given a fair trial. It is striking that the Court makes a distinction in paragraph 74 of the decision between 'translation' and 'interpretation': it is not absolutely necessary for the interpreter to interpret everything simultaneously. A summary will also suffice. This basic assumption can be reconsidered in view of the language usage (*'parole vive'*), which is transient by nature and quite strongly subjective in relation to the author if it involves the statement of a suspect in the context of criminal proceedings, or the so-called compulsory communication context.³⁰

The *Cuscani v. the United Kingdom* case shows a.o. that a suspect who only understands the broad outlines of the case can get his fingers burnt with regard to his defence (in this case the accused pleaded guilty on a misapprehended basis). The Court was of the opinion that this had not been a fair trial on account of the language problem, partly because his lawyers had not fully informed him of the consequences of his decision. In this case, strangely enough, the Government was held responsible. It had to exercise due care.³¹ But the case illustrates once again that translation, interpretation, being well-informed (quality of legal assistance) and complexity, are all connected, though not on a simple one-to-one basis.

It can also be concluded from the *Kamasinski* case that a suspect has the right to an interpreter during preliminary inquiries, i.e. in the period prior to the trial, to enable him to become familiar with the relevant facts of his case in order to defend himself properly. He could also be given (restricted) rights with regard to the translation of important documents. Article 6.3.b is also relevant in this respect, i.e. the right to facilities. Everything must be seen against the background of adequacy. Generally speaking, the rights guaranteed by Art. 6 ECHR have to be "practical and effective". This means that a lot of 'casuistics' can be modelled on this pretty vague, European standard.

²⁹ In H.C. Wiersinga, *o.c.* Ch. 3, I present a principle-based approach to law in more detail. This is an approach that is not based exclusively on positive law although this, of course, plays an important role in so far as it serves to express these principles. In paragraph 3.4. I deal with the right to an interpreter and the right to translation in more detail.

³⁰ It should be borne in mind that the ECHR formulates the minimum requirements. More is allowed.

³¹ Conform *Kamasinski* par. 75.

Nevertheless, some lines are drawn. In the *Čonka v. Belgium* case we see a lower limit. This was a case where circumstances voluntarily created by the authorities, did not afford applicants a realistic possibility of using the remedy. For example, only one interpreter was available to assist the large number of Romany families who attended the police station and under the circumstances this was not enough.^{32, 33}

7. Final remarks

It is essential that lawyers should take and generate an interest in these important preconditions for conducting a fair trial. The relevance of these issues will only grow in an increasingly cosmopolitan world with more and more movement and migration. This is the reason for this legal-philosophically tinted exposé. The interest on the part of lawyers should also be shared and nourished by the other side, the professional 'language decoders'. One must hope for a fruitful dialogue, as a start for discussions on other, more practical issues. And there are a lot of important practical issues, not dealt with here, that urgently need to be discussed by lawyers and language experts together.

Agreements on quality control are crucial. Lawyers do not have the expertise to assess interpretations and translations other than at a very tangential level. A branch should be established within the judicial system to carry out internal quality control checks and to provide clarity with regard to working arrangements. Checks can be carried out on a random basis. Moreover, in my opinion, the Justice Authorities in the Netherlands should switch to recording interviews by means of audio(visual) equipment and it should become common practice to make, at the very least, a verbal transcript of the interview in an official report. Legislation in the Netherlands has not yet been amended to *Kamasinski* and there is no well-organised forensic translation branch with a clear code of practice. There would appear to be a certain amount of opposition to the recording of interviews on the part of the somewhat disorganised group of professional interpreters. There are well-intended initiatives on this issue (as well as on others), but little has been achieved so far. For example, there is still a distinction in the Netherlands between police interpreters and court interpreters. In terms of payment as well as working arrangements, the differences are so great that they would seem impossible to justify.

The starting point of this exposé was a rather abstract consideration because of the complex nature of the subject matter. This instrument that is so important to the lawyer, possibly the most important instrument he possesses – 'language' – deserves much more attention than it currently receives.

The approach to the language issue should not be purely instrumental or 'practical', whereby the outline of the costs is immediately visible on the horizon. If the real

³² There was a lack of governmental reliability. Wrong written information (a 'little ruse' by the Government, making people believe that their attendance at the police station was necessary to complete their asylum applications, when from the outset, the sole intention of the authorities had been to deprive them of their liberty), lack of interpretation and lack of legal assistance, lead to the conclusion there had been (among other things) a violation of Article 5 par.1 and par.4. There are more decisions on similar and related issues: see e.g. *Brozicek*, *Hadjinastassiou* and *Luedicke v. Italy*.

importance of demolishing language barriers is acknowledged – as well as the research for insight into the ways in which they can and must be demolished – a large number of practical problems will still remain, but - as we are used to saying in our faculty– nothing is so practical, as a good theory. Hopefully, this contribution can help us to focus on what is right, just and adequate.

References

Wiersinga, H.C. 2002. *Nuance in benadering. Culturele factoren in het strafproces*. Den Haag: Boom Juridische Uitgevers.

Chapter Two

The European Convention on Human Rights: The Right to the Free Assistance of an Interpreter

Brecht Vandenberghe

The *Council of Europe* is the continent's oldest political organisation. The Council was founded in 1949, has a membership of forty-four countries and its headquarters in Strasbourg. According to its statute, this international organisation was, set up to promote human rights, parliamentary democracy and the rule of law. One of the Conventions that has been adopted within the legal framework of the *Council of Europe*, is the *Convention on the Protection of Human Rights*. This Convention has been ratified by all forty-four member states. The Convention organs were originally the *European Commission on Human Rights* and the *European Court on Human Rights*. However, on 1 November 1998 a full-time Court was established, replacing the original two-tier system of a part-time Commission and Court.

Concerning the topic of equal access to justice, we would first like to recall that, from a human rights perspective, it is essential that someone who is prosecuted knows why he is prosecuted. This will enable him or her to prepare his or her defence properly. When someone who is prosecuted for criminal offences is not informed properly about the criminal charges brought against him or her, a fair trial will simply not be possible. The same, of course, is true for someone who has been arrested or more generally deprived of his liberty. Again, someone who has been arrested needs to know why he or she has been arrested, otherwise the person concerned will not be able to prepare his or her defence properly.

The *European Convention on Human Rights* explicitly states in Article 5 second paragraph, that everyone who is *arrested* shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him. On the other hand, when a person has been *charged with a criminal offence* Article 6 will be applicable. Article 6 third paragraph (a) states that everyone *charged with a criminal offence* should at least be informed promptly, in a language which he understands and in detail of the nature and cause of the accusation against him. Furthermore, Article 6 third paragraph (e) states that everyone charged with a criminal offence should have the free assistance of an interpreter if he cannot understand or speak the language used in court.

In *Kamasinski v. Austria*, a case dating from 1989, the Court has expressly not excluded from the scope of application of Article 6 third paragraph (e) the interpretation costs incurred when complying with the guarantees of Article 5 second paragraph or Article 6 third paragraph (a). This is why we first need to consider Article 6 third paragraph (e) in more detail. Afterwards we shall briefly discuss Article 6 third paragraph (a) and Article 5 second paragraph.

1. Article 6 third paragraph (e)

As already said, Article 6 third paragraph (e) guarantees the right to everyone charged with a criminal offence to the free assistance of an interpreter if he cannot understand or speak the language used in court. Under this provision the *European Convention on Human Rights* guarantees a right that is generally recognised by Human Rights instruments to an accused when he or she does not speak the language of the criminal proceedings. Concerning this provision several questions are relevant. First, what is the meaning of "free"? Secondly, which costs are covered? Thirdly, is the obligation of the competent authorities limited to the appointment of an interpreter? And last but not least, does the accused need to ask for an interpreter? Let us now look at each question separately starting with the meaning of "free".

1. What is the meaning of "free"?

One of the first issues the Convention organs had to address was the meaning of "free" for Article 6(3)(e) purposes. In *Luedicke v. Germany*, a case from 1978, the German government submitted that while Article 6 paragraph 3(e) exempts the accused from paying in advance for the expenses incurred by using an interpreter, it does not prevent him from being made to bear such expenses once he has been convicted. The German government submitted that the various guarantees of a fair trial were intended to enable the accused to preserve his presumption of innocence, which inevitably lapsed upon conviction. The argument, however, did not convince the former Commission on Human Rights nor the Court. The Court sought guidance in Article 31 of the *Vienna Convention on the Law of the Treaties*. The Court ascertained "the ordinary meaning to be given to the terms" of Article 6 paragraph 3(e) in their "context and in the light of its object and purpose". The Court found, as did the former Commission, that the terms "free" or in French "*gratuitement*" have in themselves a clear and determinate meaning. The Court stated that in French "*gratuitement*" signifies, for example, "*d'une manière gratuite, qu'on donne pour rien, sans rétribution*". Similarly, in English "free" meant "without payment or not costing or charging anything, given or furnished without costs". Consequently, the Court could not but attribute to the terms "*gratuitement*" and "free" the unqualified meaning they ordinarily have in both of the Court's official languages: These terms were found to denote neither a conditional remission, a temporary exemption, nor a suspension. Having reached these conclusions, which were derived from the wording of the provision, the court turned to the context, its object and its purpose. The Court considered that to read Article 6 paragraph 3(e) as allowing domestic courts to make a convicted person bear these costs would amount to limiting in time the benefit of the Article and in practice would deny that benefit to any accused person who was convicted. Such an interpretation would deprive Article 6 paragraph 3(e) of much of its effect. It would leave in existence the disadvantages that an accused, who does not understand or speak the language used in court, suffers in comparison with an accused who is familiar with that language. Furthermore, as the Court stated, it cannot be excluded that the obligation for a convicted person to pay interpretation costs may have repercussions on the exercise of his right to a fair trial as safeguarded by Article 6, even if, as in the Federal Republic of Germany, an interpreter is appointed *ex officio* to assist every accused person who is not familiar with the language of the court. According to the Court, the risk remained that in some borderline cases the appointment or not of an interpreter might depend on the attitude taken by the accused, which might in turn be influenced by the fear of financial consequences.

2. Which costs are covered?

Again in *Luedicke v. Germany*, the German government argued that Article 6 third paragraph (e) covered only the question of assistance by an interpreter at the oral hearing and did not apply to other interpreting costs. However, the Court did not accept this. The Court considered that Article 6 paragraph 3(e) does not state that every accused person has the right to receive the free assistance of an interpreter at the oral hearing ("*à l'audience*") but that this right is accorded to him "if he cannot understand or speak the language used in court" ("*s'il ne comprend pas ou ne parle pas la langue employée à l'audience*"). The words "at the oral hearing" merely indicated the conditions for granting free assistance of an interpreter and did not restrict the right to a certain part of the proceedings. The Court considered that Article 6 paragraph 3(e) signifies that the accused, who cannot understand or speak the language used in court, has the right to an interpreter for the translation of all those documents or statements in the proceedings which are necessary for him to understand in order to have the benefit of a fair trial. In *Kamasinski v. Austria*, the Court stated that the 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 person concerned should have the right to the free assistance of an interpreter for the translation or interpretation of all those documents or statements instituted against him, which are necessary for him to understand or to have rendered into the court's language in order to have the benefit of a fair trial.

However, in the same case the Court stated that paragraph 3(e) does not go so far as to require a written translation of all items of written evidence or official documents in the proceedings. The interpretation assistance provided should be such as to enable the defendant to have the knowledge of the case against him and to defend himself, notably by being able to put before the court his version of the events. During questioning by the police or a pre-trial questioning by the investigation judge, for example, it is sufficient that the accused is able to comprehend the questions put to him or to make himself understood in his replies. The fact that there are no written translations does not necessarily mean that the trial wasn't fair. Also, the interpretation at the trial does not have to be simultaneous. A consecutive and summarising interpretation can be sufficient. Furthermore, the absence of a written translation of the decision does not in itself entail a violation of Article 6 paragraph 3(e). Oral explanations may be sufficient when the accused sufficiently understood the decision and its reasoning to be able to lodge an appeal, for example. Finally, in a case against Austria from 1973 (App. No. 6185/73), the former Commission considered whether the state should pay an interpreter when an accused cannot understand his own lawyer. The Commission, however, rejected arguments that Article 6 paragraph 3(e) required the payment of the costs of interpreting communications between counsel and the accused.

3. Is the obligation of the competent authorities limited to the appointment of an interpreter?

In *Kamasinski v. Austria*, the Court stated that in view of the need for the right guaranteed by Article 6 paragraph 3(e) to be practical and effective, the obligation of the competent authorities is not limited to the appointment of an interpreter but may also extend to a degree of subsequent control over the adequacy of the interpretation provided.

Nevertheless, the former Commission considered in the same case that an obligation of the competent authorities to intervene could only arise if the competent authorities were aware of shortcomings in the interpretation likely to intervene with the rights of the defence. Furthermore, in the light of the importance of the right and in order to facilitate European supervision, the former Commission expressed the view that the details of the interpretation should be recorded in an appropriate manner. This does not imply that there must be a full record in the foreign language, but the trial record should show with sufficient clarity which statements made or documents read out were interpreted. However, the failure to record such details does not involve in itself a violation of Article 6 paragraph 3(e).

4. Does the accused or his lawyer needs to ask for an interpreter?

It would seem that the responsibility to request the services of an interpreter and monitor their quality rests in the first place with the accused and his lawyer. However, in *Cuscani v. The United Kingdom* (2002), the Court considered that the ultimate guardian of the fairness of the proceedings was the trial judge. In this case the trial judge had directed an interpreter to be present at a hearing. The judge was thus clearly aware that the applicant had problems of comprehension. However, at the relevant hearing, the court noted that no professional interpreter was present despite its earlier direction. The judge, notwithstanding his earlier concern to ensure that the accused could follow the proceedings, allowed himself to be persuaded by counsel's confidence that the accused was able to "make do and mend". However, in the Court's opinion, the verification of the applicant's need for interpretation facilities was a matter for the judge to determine in consultation with the accused, especially since he had been alerted to counsel's own difficulties in communicating with the applicant. The Court noted that the applicant had pleaded guilty to serious charges and faced a very heavy prison sentence. According to the Court, the onus was on the judge to reassure himself that the absence of an interpreter at the hearing would not prejudice the applicant's full involvement in a matter of crucial importance to him. Finally, the Court considered that in the circumstances of this case, that requirement cannot be said to have been satisfied by leaving it to the accused to invoke the untested language skills of his brother. Accordingly, it seems that the domestic court is expected to act *proprio motu* in cases of apparent linguistic difficulties for the accused.

2. Article 6 third paragraph (a)

According to Article 6 third paragraph (a) everyone charged with a criminal offence should at least be informed promptly, in a language which he understands and in detail of the nature and cause of the accusation. According to the Court's case law a judicial notification materialises an accusation within the meaning of Article 6 of the Convention. In *Kamasinski v. Austria* the Court considered that an indictment plays a crucial role in the criminal process, in that it is from the moment of its service that the defendant is formally put on written notice of the factual and legal basis of the charges brought against him. The linguistic guarantee set forth in Article 6 paragraph 3(a) shall secure, like that in paragraph 3(e), that an accused, who does not understand the language used in court, disposes of the same chances of defending himself as an accused who does. Where the charges are formulated in writing, the question arises whether Article 6 paragraph 3(a) requires a written translation. The Court considered that this is not necessary when an oral explanation has been given to the accused as to the nature (i.e. the legal qualification of the

material facts) and cause (i.e. the material facts alleged against the accused which are at the basis of the accusation) of the accusation.

3. Article 5 second paragraph

Finally, Article 5 second paragraph states that everyone who is *arrested* shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him. The rationale for this second paragraph ensues from the idea underlying Article 5: the liberty of a person is the rule and is guaranteed, and any encroachment on it is allowed only in cases expressly provided for and in conformity with the law. According to the Court's case law, the accused must be told, in a simple, non-technical language, which he can understand, the essential legal and factual grounds for his arrest, so as to be able, if he sees fit, to turn to a court or to challenge its lawfulness in accordance with the fourth paragraph of the same article. The words "arrest" and "charge" used in paragraph 2 might create the impression that this provision is only relevant to cases arising under criminal law. However, the Court took a different view. According to the Court, this paragraph should be interpreted "autonomously", particularly in accordance with the aim and purpose of Article 5 of the Convention. Thus the "arrest" referred to in paragraph 2 of Article 5 extends beyond the realm of criminal-law measures. For example, in extradition cases (*Conka v. Belgium*, 2002) or when persons of unsound mind are deprived under domestic law of their liberty (*Van der Leer v. The Netherlands*, 1990) they should be informed promptly, in a language which they understand of the reasons why they are prevented from moving about freely.

Furthermore, the Commission considered (Requête N° 2689/65) that someone who had been interrogated in his own language by the investigation judge but who had been served with an arrest warrant drafted in a language he could not understand, could not complain of a violation of Article 5 second paragraph. Similarly, in extradition cases it is sufficient that an interpreter is present when the order to leave the country, accompanied by a decision for removal and detention, is served. (*Conka v. Belgium*)

It seems therefore that, although the Court did not exclude Article 5 second paragraph from the scope of Article 6 paragraph 3(e) in the *Kamasinski* case, this provision has been given a wider interpretation by the Court and will also apply to non-criminal cases.

Chapter Three

Adequate legislation to 'Equal Access to Justice across Language and Culture'

Yolanda Vanden Bosch

1. Introduction

Justice has become one of the European Union's major pillars since the Amsterdam Treaty entered into force. One of the main objectives today is the creation of a single European judicial area. A lot of attention is being paid to police and justice cooperation. But what about civil rights? Are they safeguarded enough? For example, what about the language problems the accused, or victims, may face in legal proceedings in the EU?

In police interviews or court trials in member states, foreign-language speakers should be accorded the same rights as native citizens. Frequently, however, these rights are curtailed by their language problems. One of the cornerstones of the quality of justice in the EU, is the right to language assistance. There must be a right of access to a competent, qualified (or certified) interpreter and /or translator, so that the accused who does not speak the language of the court, knows the charges against him and understands the procedure.

This right arises under several conventions and other international legal instruments. The legal basis for the obligation of national authorities in the EU to provide LITs is to be found, in particular, in the following international documents³⁴:

Within the United Nations:

- The Universal Declaration of Human Rights of the United Nations (1945)³⁵
- The International Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights of the United Nations (1966)³⁶
- The International Convention on the Elimination of All Forms of Racial Discrimination (1966)
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- The Convention on the Rights of the Child (1989)³⁷

³⁴ See also Vanden Bosch www.legalinttrans.info sub 'international requirements'.

³⁵ <http://www.un.org/aboutun/charter>

³⁶ <http://www.un.org/Overview/rights.html>-http://www.unhchr.ch/html/menu3/b/a_ccpr.htm

³⁷ <http://www.unhchr.ch/html/menu3/b/k2crc.htm>;

- The Resolution of the General Assembly of the United Nations on the Principles for the protection of all persons under any form of detention or imprisonment (1998) ³⁸

Within the Council of Europe:

- The European Convention on Human Rights, amended by 13 Protocols (1950) ³⁹
- The Council of Europe Recommendations.⁴⁰ Resolution (78) 8 of the Committee of Ministers of the Council of Europe on Legal Aid; Recommendation N° R (81) 7 on Measures facilitating access to justice of the Committee of Ministers of the Council of Europe; Recommendation R (97) 6 of the Committee of Ministers of the Council of Europe aimed at the practical application of the European Agreement of the Transmission of Applications for Legal Aid
- The draft 'Enlarged Partial Agreement' creating a 'European Commission for the Efficiency of Justice – ECPEJ' ⁴¹

Within the Statutes of different International Tribunals, such as:

- The Statute of the International Criminal Tribunal for the former Yugoslavia(1993)
- The Statute of the International Criminal Tribunal for Rwanda(1994)
- The Rome Statute for an International Criminal Court (1998)

Within the EU area of freedom, security and justice rules, including rules for fair and equal access to Courts and to justice for everyone⁴² as in:

- The Amsterdam Treaty of the European Union, particularly art. 29⁴³
- The Vienna Action Plan (1998)
- The Multi-disciplinary Group against Organised Crime⁴⁴
- The Tampere Extraordinary European Council - October 1999⁴⁵ (a genuine European Area of Justice)

³⁸ http://www.unhchr.ch/html/menu3/b/h_comp36.htm

³⁹ <http://www.echr.coe.int/Convention/Convention%20countries%20link.htm> and <http://conventions.coe.int/Treaty/EN/STEList.asp?MA=3&CM=7>

⁴⁰ http://www.pili.org/library/access/resolution_78_8.htm;
<http://conventions.coe.int/Treaty/EN/Treaties/Html/092.htm>;
<http://cm.coe.int/ta/rec/1997/97r6.html>

⁴¹ Council of Europe, Committee of Ministers Resolution Res. 2002/12 - 18/9/2002

⁴² **Publication of the Information and Communication Unit of the Dir. Gen. Justice and Home Affairs of the European Commission, Brussels 8/2002, p.2; see also 9259/98 JUSTPEN 65 CRIMORG 97 and 5451/99 JUSTPEN 6 CRIMORG 8**

⁴³ **The European Council of the European Union, Tampere, 15-16 October, 1999;**
<http://ue.eu.int/Newsroom/related.asp?bid=76&grp=2017&lang=1&Version=noJS>.

⁴⁴ 0259/98 JUSTPEN 65 CRIMORG 97; 5451/99 - JUSTPEN 6 CRIMORG 8, 9 February 1999

⁴⁵ <http://ue.eu.int/Newsroom/related.asp?bid=76&grp=2017&lang=1&Version=noJS>

- The EU Charter of Fundamental Rights (2000)⁴⁶
- The Treaty of Nice (2001), including rights of victims in criminal cases
- The EU Council Framework Decision on combating terrorism (2001)⁴⁷
- The EU Council Framework Decision on combating racism and xenophobia⁴⁸
- The EU Council Framework Decision on rights of defence, rights of victims in criminal cases (2001)⁴⁹
- The EU Council – Proposal for a Council Directive for the improvement in the availability of legal remedies and access to the presiding magistrate in cross-border disputes through the establishment of common minimum rules regarding legal aid and other financial aspects of civil procedures (2002)⁵⁰
- The Council Framework Dec. 2002/584/JHA on the European arrest warrant and surrender procedures between member states (2002)⁵¹
- The EU Council Framework Decision to clarify definition of terrorist offences in all member states (2002)⁵²
- The EU Council Framework Decision on a programme on police and judicial cooperation in criminal matters (2002)⁵³
- A proposed Council Directive to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes as scheduled for adoption as an 'A' item by the Justice and Home Affairs Council session (28/29.11.2002) but not adopted due to a parliamentary scrutiny reservation from the Netherlands delegation⁵⁴
- The EU Council Decision establishing a framework programme on police and judicial cooperation in criminal matters.⁵⁵

The EU Commission continues to work on procedural safeguards, including better access to justice and protection of rights because of language problems⁵⁶ for suspects,

⁴⁶ http://ue.eu.int/df/docs/and/EN_2001_1023.pdf; www.consilium.eu.int

⁴⁷ COM (2001) 521 final

⁴⁸ COM (2001) 664 final, 28 November 2001

⁴⁹ See OJ L 82, 22.3.2001

⁵⁰ See 5513/02 JUSTCIV 7 - 7938/02

⁵¹ OJ L 190, 18/7/02

⁵² 2002/475/JHA - OJ L 164, 22 June 02

⁵³ **2002/630/JHA - see OJ L 203/5 – 1 August 2002**

⁵⁴ <http://ue.eu.int/en/summ.htm>

⁵⁵ **2002/630/JHA, see: Official Journal of the European Communities, 1 August 2002**

⁵⁶ **See also Commission communication of 28 May 1999 to the European Parliament, the Council, and the Economic and Social Committee: "Crime victims in the European Union - standards and action"; Council Act of 29 May 2000 establishing, in accordance with Article 34 of the Treaty on European Union, the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union [Official Journal C 197, 12 July 2000]; Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings. Official Journal L 82 , 22 March 2001; Council Act of 16 October 2001 establishing, in accordance with Article 34 of the Treaty on European Union, the**

defendants and victims in criminal proceedings throughout the European Union. Within the EU there exists active judicial cooperation in criminal matters in order to improve the speed and efficiency of judicial cooperation. The aim is to achieve Mutual Assistance in Criminal Matters between member states and to encourage and modernise cooperation between judicial, police and customs authorities by supplementing the provisions and facilitating the application of the 1959 Council of Europe Convention on Mutual Assistance in Criminal Matters, and its 1978 Protocol, the 1990 Convention applying the Schengen Agreement and the Benelux Treaty of 1962. The mutual assistance must respect the basic principles of each Member State and the 1950 European Convention for the Protection of Human Rights.

The question in all this, of course, is how this legislation is to be translated into practice? Are the resolutions, recommendations and rules being complied with, or is there rather an ongoing discrepancy between the two? How well are international human rights instruments – and particularly the European Convention on Human Rights - being complied with? Is current EU and domestic legislation adequate with regard to respect of legal interpreting and translating legal processes across cultures? And if not, what kind of new mechanisms are necessary or could be usefully added?

2. Further thoughts on current EU legislation

As a whole current EU legislation and case law constitute an adequate framework of concrete minimum rules, which jointly could serve as a basis for EU 'regulation' of LIT. The basic principles governing equal access to justice, irrespective of language and culture, are recognised within EU member states. They apply to both the criminal and civil legal systems. In particular, as all EU member States are member states of the European Convention on Human Rights of the Council of Europe and as existing EU regulations and decisions of the ECHR are binding in all member states, these constitute positive legislation, which overrules the law and case law in member states.

The EU regulations and ECHR case law, however, provide a minimum position. The current international legislation being general in nature, needs to be further developed by ECHR case law and member states are of course free to provide more and other measures which offer more safeguards to foreign language speakers. National legislation and courts' practice vary enormously, but every state should use its own system in a search for a 'framework' that will permit to adjust the existing rules via the highest common denominator to Articles 5 and 6 ECHR and the required norms of a 'fair trial'.

Mostly, the courts and presiding magistrates are responsible for safeguarding these requirements, which include the expertise and availability of LITs. But all judicial actors in each and every EU member state must become conscious of the current issues and needs. This implies undertaking a search for the 'best possible balance' between, on the one hand, the individual interests of the parties involved in the process and, on the other hand, the interests of the authorities, including the restrictions in terms of the availability of qualified personnel and available resources.

Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union [Official Journal C 326, 21.11.2001]

With regard to the national concerns, the core of the juridical question that needs to be addressed and posed to the European authorities is whether more needs to be done to ensure a proper level of quality of LIT in the EU. One might argue in favour of a so-called 'pragmatic' and less intrusive process with no real need for more EU initiatives, because essentially all the instruments are in place. In this perspective it is up now to the member states to implement them. However, one could also argue that member states need more prodding, that the EU but also the ECHR could do more to improve the quality of LIT.

It is clearly not necessary to re-invent a set of general rules. As said above, an array of general binding protocols and their concrete implementation through ECHR case law dealing with LIT already exists, the Green Paper on Procedural Safeguards in Criminal Proceedings being only the most recent example of such EU concern to implement the principles of 'fair trial', and particularly of Articles 5 and 6 ECHR. These minimal but concrete yardsticks have a direct impact on the legal systems of all member states and form distinct complements to the existing legislation in member states. It therefore seems obvious that a two-pronged approach is required concerning LIT: one that continues the EU's guiding and steering role in this but an other that at last starts implementing in the member states the 'acquis' in this field.

3. Some concrete additional concerns

3.1. Quality control

The current absence of control over the work of LITs in most member states is clearly a worrying issue.

- Who can check the quality of LIT during proceedings? Via occasional appointment of a monitoring interpreter; in the case of simultaneous translation via speech-to-text software on pc monitors; via tape or video-recording?
- Is there a need or requirement for a (complete) transcript?

3.2. Problems of organisation and budgets

Another problem is the ever-increasing cost of quality LIT. The costs of LIT are affected by the fact that there is a free pro bono Court Translator/Interpreter service in criminal proceedings as against a paid for Translator/Interpreter service in civil cases. The present budgets are clearly inadequate to properly compensate the services of qualified LITs but obviously, higher costs should as such not be an obstacle to the provision of a fair trial.

- What about the costs of the quality control strategies mentioned above?
- The costs of training of LITs.
- Need interpreters be available throughout the whole procedure, or on stand-by, or only during certain parts in the proceedings?
- Is full simultaneous interpretation always necessary or can a summary be acceptable?
- Is there a need for the translation of all documents in a file? Can a summary be acceptable?

- Is telephone interpreting or via video acceptable in order to reduce costs?
- Can a system be envisaged of less experienced and therefore less expensive LITs in e.g. pro bono cases? If not, who should have a right to receive a pro bono LIT and who not?
- The organisational aspect of keeping the national and possibly EU register of LITs is complex and time-consuming. Who is to pay for this indispensable service?

3.3. Matters relating to qualification – training – registration

- Can all member states agree on the minimum training programme for LITs as outlined in Grotius I (*Aequitas*) and II (cf.. Infra Part Two)?
- Should regulations be developed to establish equivalent (though not identical!) correspondences between the LIT programmes and certificates in all EU member states?
- Is there a sufficient number of qualified LITs to draw from, particularly in less common, non-European languages? How to tackle this issue?
- Should LITs always be trained in both interpreting and translation?
- What kind of institutions will grant certificates of competence to LITs? Who engages them?
- Should continuing professional development be compulsory in the work of LITs?
- Who will monitor the registration of LITs? What is the procedure and kind of collaboration between the Ministry of Justice and the institute of registration? How are the registration lists updated and monitored and who will be responsible for this work? Who will have access to these registers?

3.4. Control over the duration of the proceedings

- Must interpreters be guaranteed preparation time to examine the documents of the case and will additional time increase costs or can additional legal training limit such loss of time and money, wholly or partially?
- Is it advisable, in the interests of control over budgets and a swifter judicial process, to make more use of documents drawn up in advance in various languages?
- Should LITs be engaged as permanent employees of the legal system? Would it be possible to work with a permanent pool of LITs per court, particularly for certain languages?

3.5. Extent of the assignment of LITs

- What procedure to follow and guarantees to implement when the LIT needs to act as a cultural expert?
- Should an allophone defendant be given the right to an explanation of the proceedings by the interpreter or by a magistrate, when the same right is not granted to an accused native citizen or to an accused allophone, conversant with the legal procedure and terminology?

3.6. Users of LIT

- Should judges or lawyers be asked in general to use a more understandable 'legal discourse', and should they be obliged to formulate their views in more commonly accessible and comprehensible language?
- Is it feasible to require judges when using their common 'legalese' to use a more easily comprehensible rendering of their decision in cases involving LITs.
- Should users such as magistrates and police officers devote more time to cases where LITs are called in and proceed at a slower pace in order to make quality interpreting possible?
- Should there be extra procedural rules to allow proceedings to be interrupted to discuss and decide interpreting problems on the spot?

4. Conclusions and Recommendations

4.1. Incremental progress

In the short term, identical and minimal EU standards and regulations must be integrated into a national legislation (by way of EU regulation).

In a longer time frame, national legislation must comply with EU framework decisions that harmonise needs in the areas to be dealt with in the three other sessions of the conference:

- organisation of LIT (skills and structures)
- conduct, discipline and good practice (rules and disciplinary authorities)
- national planning and coordination to achieve implementation of the EU minimum regulations and directives.

4.2. A blueprint of current and adequate European legislation

By way of experiment, a compilation is presented of existing jurisprudential rules of the ECHR on Articles 5 and 6 ECHR issues concerning LIT problems. (In the following compilation of an adequate basic framework, elements in *italics* represent important issues not yet expressed as such in ECHR decisions);

4.2.1. Pre-arrest rules (pre-charge / pre-trial)

Cf. Art. 5 ECHR

Everyone **who is arrested** shall be informed in a language he understands.

A.1 Information in the language he understands shall be given **promptly**. **This information includes the motive for the violation of the liberty of the arrested person.**

A.2 Information in a language he understands includes **the reasons for his arrest and any charge against him.**

Information must be given **in a simple non-technical language** that he can understand, and include the legal and factual grounds for his arrest.

A.3 This information has to enable the arrested person **to apply to a court and to challenge the legality** of the arrest.

A.4 This guarantee will also **apply to non-criminal cases, as 'arrest' extends beyond the realm of criminal-law measures and people's deprivation of their liberty:**

- in **extradition** cases,
- in cases when **persons of an unsound mind** are deprived under domestic law of their liberty,
- *in cases of minors whose liberty is reduced by measures that move them away from their actual family home or residence to another place even when these measures are not taken in a court procedure, e.g., by administrative authorities,*
- *in the case a person receives an order to leave the country and is arrested meanwhile.*

4.2.2. Trial Rules (at trial/after trial)

Cf. Art. 6 ECHR

Everyone **charged with a criminal offence** has the right to free assistance of an interpreter if he cannot understand or speak the language used in court.

B.1 **Free assistance** exempts the accused in a definitive way from paying for the expenses incurred by using an interpreter.

B.2 Free assistance by an interpreter is **not limited to the oral hearing** or certain parts of the proceedings; it is extended to police and pre-trial hearings.

In order to have the benefit of a fair trial, the accused has the right to the free assistance of an interpreter or translator for the translation or interpretation of all those documents or statements, used in proceedings instituted against him. This is necessary for him to understand the documents or to have them rendered into the court's language in order that he may enjoy the benefit of a fair trial.

Simultaneous interpretation can be required at the discretion of the magistrate and the accused or his advocate; if not, a subsequent and summarised interpretation will be sufficient.

Written translation of the judgement, or at least assistance of an interpreter for oral translation of the judgement and its motivation at the moment of the decision is required, so as to enable the parties and advocates to lodge an appeal.

An accused person and his legal aid lawyer should be given free assistance to interpreting and translation services to enable them to decide about the way to organise their defence, in pre-trial as well as during trial proceedings itself.

B.3 The obligation of the competent authorities is not limited to the appointment of an interpreter.

The assistance of an interpreter or translator has to be practical and effective. It includes a subsequent control over the adequacy of the provided interpretation or translation in order to guarantee the right of defence.

The trial record, recorded in an appropriate way, must show clearly which statements or documents were read out or interpreted.

To make control possible in the case of interpretation before the court and in pre-trial and police hearings, the interpretation will be recorded in detail, including, and as a minimum requirement, the verbal foreign language statements made by the interpreter and accused or witness.

Ideally, a translation of all written procedural documents should be provided to the suspect.

B.4 The obligation of the authorities **is not limited to the case where the accused or his lawyer asks for the assistance** of an interpreter. The trial judge is the ultimate guardian of the fairness of the proceedings, and will 'proprio' motu' appoint an interpreter if the accused has problems of comprehension.

B.5 Information in a language the accused understands has to be given **in detail and promptly**. Information has to be given **as to the nature and cause** of the accusation. **The nature of the accusation** concerns the legal grounds of the material facts. **The cause of the accusation** is the whole of the material facts alleged against the accused and which are at the basis of the accusation.

B.6 **A written translation** of the accusation, **and at least an oral interpretation on the nature and cause** of the accusation, have to be given.

This obligation aims to **secure for the accused** who does not understand the language used in the procedure, **the same opportunities of defending himself** as for an accused who does.

4.3. Need to harmonise existing but scattered domestic legislation

The minimum rules mentioned above have automatic and direct force in the member states, certainly after their incorporation in a regulation. But besides these basic minimum rules, the national authorities possess wide independence and freedom for implementation and organisation of these regulations in order to realise fair and equal access to the courts and to justice for everyone. National courts and EU authorities will ultimately have to judge whether the elements of national legislation and regulation comply with the minimum rules as summarised supra.

This national regulatory power concerns:

- the organisation of LIT services (skills and structures)
- rules on discipline and good practice
- national planning and organisation to achieve implementation of these EU regulations.

In addition one might think of:

- the need for a European database on LIT
- the need for some standard documents to be made available in different languages
- the need for information on LIT services to users and consumers.

Additional (national) regulations already exist, of course, but vary considerably and the question of conformity of these additional rules needs to be evaluated and answered, in the first place by the member states and their parliaments. It is felt that the existing quite considerable differences are more of a risk and obstacle and hinder the further harmonisation in the field of quality LIT in Europe. The necessary additional, national regulations are the responsibility of the member states themselves, because of the specific issues relating to LIT in the different countries. Unification of these additional rules is not a realistic option, given the immense (and quite natural) differences among the member states. Nevertheless, the EU should do all it can to further equivalence and harmonisation in the field of LIT in the long term. Without violating the independence and specific answers based on national traditions and differences, the EU can stimulate and 'assist' member states in reaching conformity, equivalence and harmonisation, even without the direct enforcement that is possible by formal regulation or legislation.

Thus, in a framework decision, it should be possible, despite existing national differences, to realise equivalence and harmonisation in the three fields mentioned above, and also the topics of the other three sessions at the conference:

- the organisation of LIT services (skills and structures)
- rules on discipline and good practice
- national planning and organisation to achieve implementation of these EU regulations.

Chapter Four

What skills and structures should be required in legal interpreting and translation to meet the needs?

Bodil Martinsen and Kirsten Wølch Rasmussen

1. Introduction

Legal interpreters and translators (LITs) play a vital role in facilitating communication within the judicial system. LITs serve as intermediaries between whoever is speaking or writing - the judge, prosecutor, attorney, police officer, etc. - and individuals from different language and cultural backgrounds, so that these individuals can hear or read in their own language everything that is being said or written in the language of the legal system and so they can respond and thus participate actively in the interaction. Without qualified LITs there cannot be an effective and fair legal process across languages and cultures.

In the following, we discuss what specific competences are required in order to provide quality legal interpreting and translation and what educational structures are needed in order for these competences to be acquired. Our discussion is based on the results and recommendations of EU Grotius Project 98/GR/131, which are presented in the report *Aequitas: Access to Justice across Language and Culture in the EU*⁵⁷. The main idea is that in the course of time a common set of standards regarding competences and training structures should be developed in the EU countries. Our approach is general and does not consider the situation of any specific country in detail. We shall, however, have a look at the specific situation regarding minority languages (see section 3.2.4), which represents a problem for all EU countries. In our contribution we shall deal both with issues directly related to training, such as training levels, accreditation or continuous professional development, as well as with issues less directly related to training and the quality of legal interpreting and translation, such as for example registration of LITs and the role of the legal services.

2. Competences required of LITs

Legal interpreting and translation is a profession that demands high levels of competences – being bilingual is not sufficient, but it is of course a precondition. LITs must have a thorough knowledge of the two languages involved in the communication to be interpreted or translated. In addition, they must be able to deal with the specialized, legal language and terminology of the legal services, as well as with the colloquial language and slang of some witnesses and defendants and the technical language of expert witnesses, etc. all without changing the register or compromising intended meaning. Legal interpreters must be able to perform consecutive and

⁵⁷ Hertog, E. (ed.), 2001.

simultaneous interpreting as well as sight translation, and they must have the ability to convert the source language accurately into the target language and vice versa, often with only an instant to come up with the equivalent words and phrases. Apart from possessing these competences, interpreters must be well aware of the interpreter's role in the judicial system, which is that of a neutral intermediary between two interlocutors not understanding nor speaking each other's language. This means that they must obey a strict code of ethics and must know, for example, that it is improper for them to take sides, engage in private conversation with the parties, give advice or advocate in any way for one side or the other. With the exception of the interpreting techniques, the same requirements all apply to legal translators too. In addition, legal translators have to be able to render the style and conventions of legal documents in the target language and must know how to locate and access a wide range of information sources to resolve particular or complex translation difficulties.

3. Standards of competences and educational structures

Virtually all European countries guarantee the right to an LIT for persons who do not speak or read the language of the proceedings and as such they recognize the importance of LITs. The question, however, is how interpreting and translation is provided for this purpose.

The levels of competences which are required for legal interpreting and translation are not as yet standardized amongst the member states of the European Union, nor do all countries have their own mandatory or recommended standards for their LITs. As a result, the right to equal access to justice is not guaranteed similarly in all EU member states. Furthermore, because of the lack of competent LITs with specific language combinations, such as for example Danish-Somali or German-Urdu, and because of problems locating competent LITs, the right to equal access to justice may at times be seriously jeopardized even in countries with established standards.

Therefore, we recommend the following actions:

- Establishment of standards of required LIT competences in all EU member states
- The setting up of training programs in order that these competences can be acquired
- Registration of qualified LITs.

3.1 Standards of competences

The standards of competences must be sufficiently high to ensure that LITs can provide a reliable and accurate service, and they should be described in detail in order to function as a basis for the establishment of specific training programs, courses and assessment criteria. We will not discuss the specific components of such standards here at this point. A detailed description of the standards of competences recommended by the Grotius I group can be found in the *Aequitas* report⁵⁸. (Generally speaking the standards are divided into two levels: the BA and the MA level). Instead,

⁵⁸ Hertog, E. (ed.), 2001.

we would like to discuss a question of vital importance when establishing standards of competences, namely the question of a classification of standards.

As the level of skills and knowledge required of a professional LIT, able to work in all – or most - fields of the legal system, is obviously high, the possibility of establishing a classification of standards according to different types of interpreting or translation tasks should be examined. The question is: is it possible to define tasks or groups of tasks to be performed by LITs which are separate and distinctive and sufficiently important to provide jobs for specialized LITs and require separate training courses ? Is it possible to define separate groups of tasks, for example, on the basis of the degree of complexity of the subject matter and/or of the setting, i.e. the communicative situation? Would it, for example, be relevant for interpreters to distinguish between minor and major police or court proceedings? Would it be relevant to distinguish between one-on-one situations, such as police interrogations and interviews, where communication can be quite easily interrupted for clarification, and, on the other hand, more complex settings, such as court proceedings?

In the affirmative, it would then be possible to define various specialist areas and also various levels of standards, because these groups of tasks might require different levels of competences. Thus an interpreter with a basic level of competences may well be able to interpret during a relatively uncomplicated police interview but may not be able to interpret during rather complicated court proceedings. If specialist areas and levels of competences could be defined, it would be possible to target training programs or courses at specific groups of tasks, and by attending specific courses students would be able to obtain the required competences within specific fields in a relatively short span of time.

However, the idea of establishing a classification of standards along these lines runs into several difficulties. One important problem is the fact that in many situations it is impossible to predict, at the outset, how linguistically complicated a task will be, and thus to know from the beginning what legal or other specialized fields will be involved and consequently what level of competences will be required. Another problem is that LITs are often involved at every stage of the legal process, not only during the police interview, for example, but also in consultations with the solicitor or lawyer, in court, etc. And finally - depending on demographic and geographic factors – LITs with a narrow specialization may not find enough assignments to make a living out of it. All this seems to indicate that all LITs should have a very high level of competences, but in reality this is impossible. So how do we cope with that?

In the following sections (3.2.1 and 3.2.2) we distinguish between two – both high – levels of competences, but the specific tasks to be fulfilled by graduates from each of these levels remain to be defined.

3.2.Training structures

The required competences do not come naturally – they have to be acquired. This means that, in order for interpreters and translators to be able to acquire these skills, relevant training programs must be available. The structure of such training programs must reflect the need for different levels of competences and thus be based on the standards set for these competences.

Instead of going into details about course contents etc., we shall point out here a general structure which will give students, i.e. the (future) LITs, the necessary competences for doing their job at a given level.⁵⁹

It is suggested that a general structure comprise two main levels: an initial professional level, a BA, followed by a professional postgraduate MA level.

3.2.1. BA level

The aim of the courses at BA level should be to prepare students to work as LITs at an initial professional level, performing tasks that are not too complicated. The approach should be a combined professional-vocational and academic approach. Course objectives are to give students the necessary competences and knowledge to perform their tasks in a professional and responsible way, and course contents should therefore focus on the following subjects: knowledge of the criminal and civil legal systems; written and spoken competence in both languages including formal terminology as well as informal language; transfer skills; code of conduct and guides to good professional practice. Some of the courses – or course units – could be targeted at specific tasks for which there might be a great demand for LITs. Courses at this level should provide the stepping-stone to professional post-graduate MA courses.

3.2.2. MA level

The MA level should be set up in connection to the BA level with elements of continuity and progression and so that any unnecessary repetition is avoided. Because of the very complexity of the legal context, courses at MA level should allow students to improve their legal interpreting and translation competences and thus provide them with the competences that are necessary if they wish to perform more complex tasks. Such courses should therefore offer them the possibility of deepening, widening and updating their legal subject knowledge and of developing specialist areas. Another aim of MA courses could be to develop students' competences for teaching either in the BA or MA courses, or for training others to teach in these courses.

The length, contents and format of courses at both the BA and MA levels, depend on a wide range of factors, such as e.g. existing training structures, the level of skills and proficiency of the students, specific national needs and existing educational conventions. Therefore we do not mean to suggest that every course should be exactly the same all over the EU, but as far as contents are concerned we recommend that a course core should be held in common. This would ensure that LITs within the EU are prepared and able to deal with the same range of assignments whilst observing the same standards of practice and code of ethics. Consequently, defendants would get the same competent LIT assistance wherever they are on trial in the EU. Finally, a common core content would make it possible for students to enrol in courses offered in other countries; just as it would make it easier for LIT trainers to exchange experience regarding teaching materials and methods and even to set up an exchange of trainers.

⁵⁹ Details can be found in Hertog, E. (ed.), 2001.

3.2.3. Need for flexibility

As the LIT market is characterized by great fluctuations, it is essential that structures be kept very flexible, so that the contents of courses can be – more or less easily - changed in order to meet sudden needs, and so that the format of courses too can be changed relatively easily, for instance from full time to part time courses or to courses offered during weekends. Furthermore, students should be allowed to enroll in only one or two BA or MA courses, depending on what competences or knowledge they may actually need to acquire at a certain time.

Lots of questions arise when talking about the setting up of training facilities. Does one set up a proper program (a BA and/or an MA) or does one just set up shorter courses? Does one set up generic courses, i.e. courses taught language-independently in the official language of the country? This is the cheapest way, as it allows for several language groups to attend the same course, but the question then is how to make sure that the students' language competences in the other language are sufficiently proficient. The answers to these questions will in most cases depend on the situation (demographic, geographic etc.) of each country, and the option for one solution does not necessarily exclude the other – combinations can be made, depending on needs and practicalities.

3.2.4. Action to improve the situation regarding especially minority languages and languages of limited diffusion

In most European countries BA and MA programs in interpreting and translation exist. However, these programs are generally offered in European languages only. With regard to the so-called 'minority languages', i.e. the languages spoken by immigrant minority groups, and the 'languages of limited diffusion' (LLDs), i.e. the official languages of the smaller countries, there are no such programs because, depending on the demographic and the geographic situation, there are often not enough students to set up a program and if a program is nevertheless set up, there might not be enough work for the graduates. Thus, for instance in a small country like Denmark, it would probably not be realistic to offer a BA or an MA in interpreting and translation only for Somali students, partly because there might not be enough qualified students, partly because – even if there were students enough – there might not be enough work, for say, 15 BA or MA graduates in Somali.

Furthermore, the persons actually interpreting within minority languages and LLDs represent a heterogeneous group of bilinguals who, in many cases, are self-taught. This group is not very likely to be willing – or able - to take a university degree. Some will not find it worthwhile because they will not be able to find even part-time jobs afterwards; others may only occasionally work as LITs besides having other professional commitments and will not be interested in abandoning these commitments to take a formal course or training program. Still others will not be able to attend university courses or the like because of their educational level.

Reducing the basic functional standards of LITs, and thus producing semi-qualified LITs, is a dangerous road to take. However, the legal systems are facing an acute

problem which has to be solved, i.e. the problem that within these languages bilingual individuals often do interpret in police stations or in courts without any instruction at all in legal interpreting and without any previous testing or training.

The question therefore is: under these circumstances how do we improve the quality of interpreting and translation services provided in the legal system?

Well, in order to improve quality the legal services will have to be able to tell the unqualified from the qualified interpreters, which means that they need to know the competences of the persons who actually interpret and perhaps even translate. With the purpose of obtaining documentation for their competences an assessment test could be carried out. The results of the test would testify to what extent a person meets certain minimum requirements, and could at the same time serve as an indicator of the person's suitability to join the profession and thus to the usefulness of attending a basic course. It is important to underline, however, that the assessment test does not improve the qualifications of the persons passing the test, as there will normally not have been any training prior to the test, but it serves to discard those who do not fulfill the requirements of a given test and thus contributes to improve the quality of the LIT services provided in the legal system.

The assessment solution is not ideal – by far – but it is better than nothing at all and it covers an urgent need for assessment of practising LITs' competences while waiting for structural training options to be established. In other words, it should only be adopted as a temporary solution to cover urgent needs while waiting for training programs to be set up and it is only an acceptable solution as long as all parties involved are aware of its limitations.

Furthermore, either before and/or after the assessment test, short preliminary courses focusing e.g. on good practice and ethics, interpreting techniques, and basic criminal procedure and legal terminology should be set up. Such elementary courses offered before the assessment test would give LITs the possibility to enhance their chances of passing the test, while courses set up after the test would allow LITs who failed to pass the test to improve their qualifications. These courses could, for example, be offered in the form of weekend courses or workshops. They should not only provide basic introductions to the aspects mentioned above, but also provide help and guidelines for further self-study. The courses would not necessarily have to be language-specific – some or perhaps all of them could be generic courses in which interpreters of all languages could participate.

3.2.5 Issues related to the training of LITs

When training programs have been set up it is important to make sure that the students that are admitted into the program, are carefully screened, and that when students have completed their training and passed the exams, they be given a letter of accreditation or certification. Furthermore, it is important that LITs have the possibility to maintain, upgrade or further develop their knowledge. Last but not least it is crucial to have competent trainers because without them one cannot have competent LITs.

In the following we shall briefly discuss each of these issues.

3.2.5.1 Selection criteria

Whether we are talking of the BA or MA levels or of shorter or lower level courses, students should be selected for training. The selection criteria may vary from course to course, but three main criteria should always be observed: first, competence in the official language of the country or region; second, competence in the other language(s) (normally including the native language) and, thirdly, the suitability to join the course and the profession, i.e. the possession of a number of skills, such as e.g. transfer skills, or attitudes, e.g. a sharp ethical awareness.

However, selection criteria may also relate to specific needs, e.g. the language combinations that should be covered by the courses. If one starts from scratch, the first course(s) should deal with those language combination(s) that are most needed, and only candidates mastering a relevant combination could be invited to register for the selection procedures.⁶⁰

3.2.5.2 .Accreditation

In order for the legal services to know the level of skills of the LITs, training must be linked to some sort of accreditation system. This system must comprise several levels of accreditation corresponding to the level of skills. A short course cannot give an LIT the same competences and the same type of accreditation as a 5-year MA course. Minimum requirements for each level of accreditation are needed.

Students/LITs who pass an exam at a certain level should obtain a letter of accreditation, stating that they have achieved the standards required for the level in question, which means that they are considered to have acquired the competences required for doing assignments whose degree of difficulty corresponds to this level.⁶¹

3.2.5.3.Continuing Professional Development (CPD)

LITs who have completed a BA or an MA course, should not think themselves qualified for the rest of their professional careers. LITs need to keep abreast of new developments in their particular area of work. Laws, procedures, applications constantly change and LITs need to be aware and informed of such changes in so far as they affect their competence as LITs. Therefore, educational structures should also comprise facilities allowing already practicing LITs to improve or upgrade their competences, their knowledge of legal systems, terminology and procedures, and LITs should be urged to make use of these facilities, which could take the form of conferences, seminars, workshops etc. Certain BA or MA courses could also serve as continuing professional development (CPD) courses for LITs wanting to improve or update their competences.

Conscientious LITs should constantly subject themselves - i.e. their competences and their performance - to critical self-assessment in order to find out whether they live up

⁶⁰ For further information on selection criteria, see Hertog, E. (ed.), 2001, pp. 89-102.

⁶¹ See section 3.1 regarding problems related to the establishment of levels of competences.

to the requirements of the profession in general, and of the various assignments in particular. Employers and professional bodies of LITs should urge interpreters and translators to engage in CPD and these parties, together with academic institutions and organizations, should get together and cooperate in ensuring that CPD facilities are provided.⁶²

3.2.5.4. Training of trainers

The setting up of training facilities demands competent trainers. Therefore, the training of trainers constitutes a very important factor when talking about the training of LITs. It is very important that trainee trainers are carefully selected to make sure that they possess both the necessary theoretical and practical qualifications in legal interpreting and translation and potential teaching skills. The aim of training courses should be to provide trainers with knowledge of educational theory, methodology and course management as well as some teaching practice. Training courses could be set up separately or – as mentioned earlier – specific courses at the MA level could contain subjects related to training and thus aim at training trainers.

4. Registration of qualified LITs

The educational and training structures outlined above and linked to an accreditation system, should further be supplemented by an official registration system, i.e. a national register of interpreters and translators that lists all LITs according to their level of accreditation (competences). Thus, only LITs who have been assessed in some way, either by passing an exam – BA, MA or other – or by passing a specific assessment test, should be admitted to the register. The national register should specify the LITs personal data, language combinations, education and training, specialisation, experience and availability, to make it clear to the legal services what the exact qualifications of each LIT are and how to locate them.

The register could be structured and consulted according to, for example, the level of competences, to specific specialization required, gender, location, etc. Furthermore, the register should be made available both on paper and electronically, so that all relevant services have direct and easy access and, finally, that it is regularly updated so that searches for an LIT for a specific assignment can be made without waste of time.

The registration process should include:

- security clearance – at various levels
- satisfactory professional and personal references
- agreement to observe the code of conduct and, where breaches are alleged, the register's disciplinary procedures.

Official registration of all qualified LITs would benefit all interested parties. It allows the legal services to find an LIT possessing exactly the competences needed for a given assignment and at the same time it gives LITs an optimal chance of finding

⁶² For further information on CPD, see Hertog, E. (ed.), 2001, pp. 127-138.

employment in line with their particular competences and location.

A national register might well cover not only the legal services but also several other services - or indeed all public services - at the same time, such as the health care services and social welfare institutions, and thus list all interpreters and translators that are qualified to do interpreting and translating in these particular services. The register would thus function as a national register for the whole Public Service Sector and would consequently enhance the interpreters' and translators' possibilities of finding employment.⁶³

5. Other issues relevant to the field

The setting up of training programs and the introduction of an accreditation system for LITs, however, are not enough to enhance and professionalize the services provided by LITs. Lots of other issues have a bearing on the situation, such as the LITs' motivation to attend courses or financial and professional prospects, as well as lots of actors besides the LITs, such as the legal services themselves and political decision-makers. Let us therefore briefly look at some of these issues;

5.1. LITs' motivation to attend courses

An essential issue is that of 'motivation'. The question here is: how do we motivate (potential and practising) LITs to attend courses? In most countries training is not yet a job requirement. Therefore trained LITs have no more guarantees of getting assignments than untrained ones and they very often do not even get better paid than unqualified LITs. So, if they cannot benefit from training it and if one can fairly easily get a job without, then why should LITs invest resources – human and financial – in training? Therefore, it must be a prerequisite for working as an interpreter or translator to have attended training.

5.2. The availability of training facilities

This leads to another important issue, namely that training programs must be made available. This means that universities or other educational establishments or professional language bodies must take action and set up relevant educational programs and training courses. However, it seems evident that they will need the support of – and collaboration with – the legal services and politicians. Without their involvement, nothing much will happen.

5.3. Financing

Another important issue is that of financing. The question here is: who is going to pay for training? Can governments be convinced to pay because of the obligations stemming from different international conventions obliging them to ensure equal access to justice, irrespective of language and culture? Can the legal services be convinced to pay because it is in their interest to obtain competent LIT assistance? Can LITs themselves be convinced to pay because of a desire to be able to perform in

⁶³ For further information on registration, see Hertog, E. (ed.), 2001, pp. 167-172.

a competent way – and perhaps in the hope of getting more work and better pay? A realistic answer is probably a combination of the three possibilities, so that all parties contribute together to raising the quality of LIT.

5.4. Courses for the legal services

When talking about the role of the legal services, one essential question is to what extent they know how to work with LITs. The truth of the matter is that the success of interpreted proceedings and interviews does not only depend on the qualifications of the interpreter but also on the legal services' knowledge of how to handle interpreted communication. It is therefore important that training structures also include courses for the legal services. As a supplement to – or as a substitution for – such training courses it is recommended that good practice guidelines on working with LITs are drawn up and made widely available, and it is recommended that this be done in collaboration with the legal services themselves.

5.5. Commitment of legal services to use only qualified LITs

The above mentioned issue leads to a very important question, viz. how do we convince the legal services to use only qualified and registered LITs, especially if they can easily obtain interpreting and translation services from untrained and unregistered LITs - and perhaps even at a lower price. The legal services might even think that untrained LITs perform quite well as they are not capable of evaluating their linguistic performance.

Therefore, in order for LITs to consider it worthwhile to attend training courses and to register, there must be a commitment on the part of the legal services to make use only of LITs who have been trained and who are registered and thus assessed. If legal services can go on hiring untrained and unqualified LITs, then there is no evident need for LITs to spend time and money on training courses.

6. Conclusion

Once standards of competences and educational structures are established one will have a situation in which the legal services as well as the other language speaking persons can expect to get qualified interpreting and translation, performed by competent LITs. This situation will have to be strengthened by a commitment of LITs to attend courses and register if they wish to get a job and a commitment of the legal services to use only trained and registered LITs.

When these goals have been achieved, the profession of legal interpreting and translation will be a profession endowed with the prestige and the status that it deserves. Legal interpreting and translation will no longer - as is often the case now - be considered a job that can be carried out by anyone speaking two languages.

But, as will appear from the above, it is quite a complicated matter to arrive at the

ideal situation, especially as the various issues involved are to a high degree intertwined. Where to start and where to end? We would say that all this can be dealt with over time as long as there is a sincere desire to change the situation for the better. One key word in this respect is collaboration – national collaboration between all different relevant authorities, institutions and bodies, as well as international collaboration between the different relevant authorities, institutions and bodies from the EU member states and candidate countries.

References

Hertog, E. (ed.), 2001. *Aequitas. Access to Justice across Language and Culture in the EU*. Antwerp, Lessius Hogeschool. This report can be found on the website of the Grotius projects: www.legalintrans.info.

Chapter Five

On Language, Legal Skills and Structures that should be utilized in LIT

Liese Katschinka

Language, legal skills and competencies in general that interpreters and translators working in legal settings should have, are obviously an issue of the greatest interest to anyone working or training in this field. The FIT Committee for Court Interpreting and Legal Translation, for example, consider the following as essential:

- Good language skills (mother tongue and working languages, as LIT work in both directions).
- A broad educational background (because of the different subjects which they must deal with).
- A knowledge of the culture and the legal system of the countries of the working languages.
- Professional skills (code of ethics, code of good practice).
- Interpreting and translation skills (the two modes of language communication should not be separated, as they are both required in practical settings).

However, it is also felt that not only interpreters and translators but also the legal professionals need training – on how to work with court interpreters. Bar associations in Australia and the United States, for example, have drawn up guidelines on the different aspects of this cooperation and the encouragement and support of the European Commission in organizing workshops, seminars or courses to improve interdisciplinary working arrangements and better cooperation between LITs on the one hand and police officers, judges, lawyers, etc. on the other, would be highly welcome and undoubtedly very beneficial.

But although competencies can be discussed in a generic way, one would also do well to take into consideration specific challenges such as, for example, the problems and training of sign language interpreters.⁶⁴

The points that seem particularly useful for further consideration on this issue include the following:

1. Notion of core competencies
2. Recognition of the fact that currently, LIT training varies significantly across the EU, along with the suggestion that specialist training in legal domains might also include and be relevant to professional practice in social service and health domains.
3. Testing and Research.

⁶⁴ The following comments are taken from the intervention by Lorraine Leeson.

1. Notion of Core Competencies

Martinsen and Rasmussen make reference to the *competencies* of the LIT and include reference to the mode of interpretation (simultaneous/ consecutive/ sight translation, etc.). The issues raised here by the authors are of extreme importance, but one could add a few points for consideration from a sign language interpretation specific point of view. These include:

- **Status of sign languages:** sign languages are under-recognised as indigenous languages of Europe. Despite two European Parliament resolutions recognising sign languages at EU level (1988, 1998) and calling on Member States to implement official recognition at national level, very few EU countries have given sign languages official status (Krausnecker 2001).
- **Sign languages are unwritten languages,** which raises a problem vis-à-vis the weight attached to the written word in legal domains. For sign language interpreters, translation in the legal context typically involves taking a witness statement from a sign language user and having the verbal interpretation committed to paper in the target language. This is then 'read back' to the witness, undergoing a process of re-translation. The witness is (in many jurisdictions) then expected to sign their name to the translated document, outlining that it is a true representation of what they have said, despite the fact that they may not understand the target language or, perhaps more critically, may not recognise the importance associated with the wording of the translated statement nor its value as evidence in court proceedings. This point also relates to the comments made by Hermine Wiersinga regarding the usefulness of the written word in complex situations where one has recourse to re-reading and may reconsider the data. She noted that written forms have great status in legal domains. We need to consider the consequences for individuals coming before the courts who use a language (spoken or signed) that does not have a written tradition. Following Brennan and Brown (1997), the issue of video recording proceedings where sign language interpreters are at work must be seriously considered to ensure that the accuracy of interpretations and translations can be safeguarded.
- **Sign Language interpreters function in bilingual and bimodal contexts:** Sign languages are visual-gestural languages. Spoken languages are auditory-verbal. Thus, not only are two different languages being used in contexts where sign language users participate, but so too are two different modalities for delivering the linguistic message: speech is delivered verbally and sign is delivered gesturally. The fact that 'signing space' can be used to represent the signer's perception of real-world locations, encoded in a specific sign language can have consequences in courts. Information such as path of motion is typically encoded in verb forms in sign languages and expressed in what has been called 'topographical space' (Sutton-Spence and Woll 1999), that is, where points in space and paths of movement in signing space are reflective of relative positions in the real world as perceived by the signer (i.e. signer point-of-

view seems to influence how information is structured; see Slobin and Hoiting 1994, Leeson 1997).

- **Register:** We must also take account of the fact some languages and users of these languages have been so oppressed that users of those languages have not had access to 'high register' domains (for example, how many Deaf, sign language using Deaf lawyers, police officers, judges, etc. does one know?). Further, in many countries, Deaf people are not allowed to sit on juries – exclusion from participation in a particular domain can limit the development of domain specific vocabulary. Thus, in some situations, it may be necessary to consider implementing language-planning exercises before implementing training for specialist interpreters.

Other issues for consideration:

We need to consider the notion of core competencies in some further detail. For example:

- What criteria are we assessing?
- How are we going to assess entry-level candidates?
- Will these competencies hold across all language pairs – even where there is no systematic approach to teaching/ learning of a lesser-used/ minority language in a given country?
- What skills do we consider indicative of the potential to function as a skilled LIT?
- The authors refer to assessing potential interpreters' "suitability to join the profession." As a profession, what characteristics are we referring to here and how do we measure or test for them?
- Duties of LITs: What competencies and duties are expected of LITs (by clients) that we, as a profession, do not feel that the generic interpreter should be expected to perform (e.g. linguistic assessments of clients, judging the literacy levels attained by clients in the language of the legal jurisdiction, judging a person's understanding of the language of the court or state of mind, etc.). As a profession we may wish to draw up a list of sample activities that interpreters should be asked to engage in.⁶⁵

2. Recognition of the fact that currently, interpreter and translator training varies significantly across the EU

Martinsen and Rasmussen raise the question of whether we can expect colleagues to undertake specialist training when we consider the cost/ interest/ long-term benefits for individual LITs professionally. While we recognise the need for specialist

⁶⁵ Helge Niska referred to the 'Standard Guide for Language Interpretation Services', published in June 2002 in the USA by ASTM (American Society for Testing and Materials). The guidelines were drawn up from the viewpoint of the service provider, which would be the legal professionals in our case. They describe how to set up a language interpretation system and give a catalogue of the system requirements. He suggested that these guidelines might serve as a good inspiration for LITs in defining their requirements. See <http://www.astm.org/>

training, we need to remain aware that EU-wide, there is as yet no standardised approach to the training of generic sign language interpreters. So, in some ways, from the perspective of a sign language interpreter trainer, the notion of specialist interpreter training puts the cart before the horse in some ways. The alternative perspective might be that this is an excellent opportunity for collaboration - and one that needs to be grasped firmly – and that one could envisage identifying a set of legal competencies that we expect students to acquire after they demonstrate competence as a generic interpreter.

While we acknowledge that training varies significantly from Member State to Member State, we should also note that cultural perspectives and world-views differ significantly across linguistic groups. If a specialist EU-wide programme were established to train LITs, then the cultural views of the differing linguistic communities must be represented in some way. That is, it is not enough to talk about how different legal systems differ: student LITs must also gain an insight into how different language communities perceive justice, legal proceedings and core concepts such as wrongdoing, intentionality, etc. This issue is of extreme importance when working in a context where the majority language community holds power and controls the legal process while the person using the minority language is facing this power. Again, status is an issue.

These points suggest that we need to consider the tasks that an interpreter who operates in a legal domain carries out. These tasks are carried out by a professional who has linguistic *and* cultural competence, which means for sign language interpreters that knowing a particular sign language is not enough, they must also know, for example, the role of touch in gaining attention, etc.

3. Testing and Research

Again, when considering testing, we also need to consider the following more clearly:

- **What do we test?** L1 and L2 knowledge? Ethics and professionalism? Understanding of the legal system? Interpreting skills? Academic achievement in a given domain? All of it?
- **Who tests?** The State? Will this lead to the establishment of a 'lowest common denominator' approach? Currently several Member States seem more interested in the cost of interpretation than in the quality. Or does the interpreting profession test? Or perhaps an amalgam of state and professional bodies would test? In any case it should be possible to consider an EU level system of registration which would allow for easy recognition of qualifications and standards across Member State borders, allowing for mobility of interpreters across jurisdictions⁶⁶.

⁶⁶ Helge Niska referred to the distinction between accreditation and testing. He felt that testing did not produce quality in translation/interpreting, that only training could achieve this goal. He recommended that an aptitude test should first be taken, followed by some form of training, which could also be self-study, which sometimes produces surprisingly good results. The final step would in any case be accreditation. Carmen Valero added the point that when discussing the final qualifications of BA or MA programmes, it is important to remember that in academia students are evaluated

There is a clear need for research here, both in terms of what criteria we use to assess LITs but also in terms of their function in the broader legal domain. Currently it seems that most Member States' legal departments cannot judge the skills level of the LITs they employ. This suggests also the need to describe current practice for LITs across the EU, perhaps via case studies.

Martinsen and Rasmussen completed their presentation by suggesting that “once standards of competences and educational structure are established, you will have an ideal situation”. This may well be misleading for the following reasons, and we take our examples again from the Deaf community:

- LITs are just one cog in the wheel that makes up the legal process. Other factors mitigate against 'ideal' situations including overt and covert discrimination against minority populations on the basis of race, religion, language, disability, sexuality, etc. This may be unintentional or may result from institutional procedures that are unintentionally but inherently discriminatory (e.g. the handcuffing of male prisoners in the Irish legal system: handcuffing a Deaf defendant is like gagging a hearing defendant).
- We must also consider majority community views of minority cultures, their status in the community and how they are portrayed by the media. These factors can be vital and exist separately from the interpreter's role – and separate from the legal domain itself (e.g. the majority view of Deaf people as a disabled group rather than as a linguistic and cultural minority).
- In bilingual-bimodal settings (courts, police stations, consultations with legal representation, etc.) an understanding of core cultural traits of the Deaf community is necessary (e.g. the role of vision in Deaf culture, normalcy of use of touch in gaining attention, the role of specific facial gestures as part of the grammar structure of sign languages, etc.). Courts also need to be made aware of the consequences of oppression on minority communities, particularly with respect to language development, second language use and literacy, particularly when courts may draw on written documents in a proceeding. The portrayal, interpretation and understanding of such documentation may be altered significantly given specific cultural contextualisation (e.g. the average Deaf child leaves school with literacy skills equivalent to a 9 year-old hearing child. In Ireland, English is very much a second language for most Deaf people. Representing their language use as naïve or as an indication of low levels of intelligence misrepresents the fact that they are operating in a second language that they have no auditory recourse to, perhaps coupled with the

and graded on many aspects of their performance, such as e.g. progress, attitude, effort and so on, and not merely on the actual level of professional proficiency achieved. Therefore, students should still take and pass an independent qualifying examination even if they graduate from a university programme. This would be similar to the approach used in several countries for physicians or lawyers who must take a qualifying exam before they can begin to practice.

fact that they have a limited awareness of the way language is treated in legal settings (e.g. shifts between formality and informality/ the weight attached to written documents, etc.) (Kyle 2002).

4. Training Programmes

Such considerations on competencies, training and testing force us to reflect again on the advantages of generic training, together with a harmonization of the standards for training the trainers of such courses, in order to create a generally agreed European framework.⁶⁷

The keynote talk pointed out the problem that public services in all EU Member States are faced with communication needs in languages for which there are no professional interpreters simply because, for many languages, there are no training facilities. Take the example of Austria: the official Austrian register of court interpreters lists interpreters for a total of 48 languages, but university-level interpreter training is available in Austria for only 14, predominantly European, languages. The situation is probably similar in most countries of the EU. Of course, a much larger number of languages are actually used in the daily practice of judicial and other public authorities, a range of 130 to 150 languages in refugee and asylum proceedings is not unusual.

Thus, inevitably, in the majority of languages interpreting is provided by persons without any training for this task, and there is little need to discuss again our assessment of such mediating activity. If this ratio remains unchanged, we will continue to have a small élite of professional interpreters on the one hand and a majority of people providing 'interpreting services' on the other. Unless we tackle this problem, we cannot speak of professional standards, and 'due process', 'fair trial' and 'equal access to justice across language and culture' will remain empty phrases.

Martinsen and Rasmussen have drawn attention to the problem that there is usually a lack of candidates for language-specific interpreter training in languages of limited diffusion. Indeed, the provision of language-specific training courses for all languages would probably not be feasible due to a lack of financial resources. In most EU countries, training programs are offered mainly for European languages.

Therefore, first and foremost, we need a new approach to training. We need to develop a model which ensures that, in future, each interpreter working for the courts or other public authorities has had appropriate training. A model offered for reflection and discussion is, that this can only be achieved if a large part of LIT training is offered in the majority language rather than in language-specific courses. Such an approach may well be viable and needs to be given serious attention. After all, the fundamental issues arising in the context of interpreting for public authorities are the same for all languages and can thus be addressed in generic courses within a training programme that comprises: theoretical principles and problems of interpreting and

⁶⁷ The following thoughts are a summary of the intervention by Mira Kadric.

legal translation; basic concepts of intercultural and trans-cultural communication; legal systems; language for special purposes; professional ethics; practice-oriented aspects like interpreting techniques, situational behaviour, note-taking, preliminary and introductory exercises for various working modes (e.g. shadowing for whispered simultaneous interpreting, consecutive interpreting, sight translation etc.).⁶⁸ These components are essential to any training programme, also in a (more costly) language-pair-specific curriculum. However, at an advanced and final stage of training, when trainees have acquired the fundamental theoretical knowledge and practical skills required for legal interpreting, language-pair-specific exercises should be offered to fully develop would-be interpreters' transfer competence. As we all know, transfer skills can be acquired in a relatively short period of time, provided that all the necessary prerequisites – language proficiency, cultural competence, world knowledge, subject-matter knowledge and relevant techniques – are in place. (By the way, ESIT in Paris has applied a similar approach for decades to train interpreters for conference settings).

A harmonized curriculum for non-language-pair-specific basic legal interpreter training would be easier to set up at commonly (EU?) agreed standards and be a way to also cover training needs in 'rare' languages or languages of limited diffusion. But it would have to go hand in hand with a harmonized (EU?) training of trainers involved in such basic interpreter training courses. In both cases, uniform standards throughout the EU could be envisaged.

There remain, of course, many specific issues to be addressed. What kind of selection procedure should be used? What to do for languages in which the only available candidates have insufficient proficiency in the majority language? More generally, we ought to consider the basic problem that many potential candidates for training do not have the necessary competence in the majority language (as required by the standards published in the Grotius I report). All of these questions need to be discussed and resolved first.

In this respect it is vital to make use of existing models and initiatives. For example, the Council of Europe has drawn up a 'Common European Framework of Reference for Languages' to promote multilingualism in Europe. Based on a common framework

⁶⁸ In this respect, Carmen Valero drew attention to the issue of teaching materials. Professors of LIT are often hard-pressed to find authentic courtroom materials to use in class. They do have the required experience and knowledge to prepare classes and teach those materials but it is difficult to get a hold of e.g. court transcripts, authentic and varied police records and so on, at least in some countries. If there are places where these materials are more readily available, one should seek out ways to pool, share and disseminate them. Similarly, there are related skills that LITs need that are not specifically language or interpreting-based, such as computer skills or interface skills (knowing how to work with a system that they need). These ancillary skills should also be addressed in training programme. Finally, one could certainly make more use of on-line courses and materials for languages of limited diffusion, later to be complemented by e.g. language-specific mentoring and shadowing programmes.

of reference, proficiency profiles and levels of competence have been fixed for language courses in the various national languages of EU Member States as well as other European countries. In other words, courses in the respective majority or national language(s) are being offered in the various countries according to the profile established in the 'Common European Framework of Reference for Languages – Learning, Teaching, Assessment', thus ensuring that course contents and levels are the same throughout Europe. For our LIT purposes, this would mean that those who have followed and completed a language course e.g. at the highest level, could be seen as meeting the uniform standard required for admission into the basic training course in LIT. A similar 'common framework of reference' could and should be envisaged for a first-degree diploma in public service interpreting at the level of the EU.

The same approach could underlie a harmonized system of training for interpreter trainers. Using once again the idea of a common European reference for languages as our point of departure, we could develop a standardized program for teacher training and organize preparatory courses for interpreter trainers at a European level. As stated earlier, most of the issues which arise in the context of court and public service interpreting are of a fundamental nature, the exception being specific legal knowledge, e.g. of national rules of procedure, or cultural knowledge. For the latter, part of the training could be organized in groups according to the languages and cultures involved.⁶⁹

This approach may have a number of distinct advantages:

- A standardized curriculum for trainers would ensure a common approach and comparable teaching standards throughout the EU.
- European-level preparatory courses for trainers would be more cost-efficient than courses in each individual country.
- And EU-level training of trainers would make a pool of well-prepared teachers from all over Europe available to programs for the training of interpreters.

To repeat, one could (should!):

⁶⁹ Carmen Valero pointed out that it is important to emphasize again the need for greater collaboration and cooperation between the professional and academic communities. Practicing interpreters are usually not interested in teaching and when they are hired it is often as associate professors at low pay and often less than satisfactory working conditions. The other side of the coin is that many current university teachers of interpreting and translation, who have the required educational credentials, do not have the practical experience most professionals consider to be necessary for training future interpreters. So, more venues of collaboration must be sought. For example, professionals training academics; professionals allowing academics to shadow them; special courses being taught with professionals as guest lecturers or trainers or indeed, professionals happy to accept compensation for training that is less than what they earn as interpreters for the good of future generations. Francisco Magalhes too pointed out this overriding need for collaboration: between training institutes and the 'market', LIT-institutes or organisations and lawyers and judges, and between the world of LIT and government ministries. In all these areas the translators'/interpreters' associations have a key role to play when it comes to establishing this dialogue.

- Resolve the problem of the many languages for which no training in interpreting is currently available by establishing a standardized curriculum for basic interpreter training with a focus on generic (i.e. non-language-pair-specific) courses. This would bring a significant improvement with regard to the status quaestionis by ensuring standardized training also for interpreting in 'rare' languages.
- Complement the harmonization of LIT training by harmonizing also the standards for the training of trainers, thus integrating the training of trainers as well as LITs into a single, generally agreed European framework.

5. Conclusion⁷⁰

It seems clear that a kind of hierarchy should be set up, where an aptitude test would first establish whether candidates were able to meet certain minimum standards.

Basic training of some form, i.o.w. not necessarily immediately on an academic level, should follow, leading to a first degree examination and diploma. This would, in particular, be helpful for persons working with minority languages. After all, minority languages change over time, depending on political or economic crises in the world. Minority languages come and go. One can therefore not expect interpreters of minority languages to achieve overnight a very high level of specialization. Hence provisions must be implemented to ensure that also in these circumstances minimum standards of quality are assured and safeguarded. In principle, all languages should always be treated equally and no language should be regarded as secondary or inferior at any point.

This first level would then potentially lead on to a university-type B.A. or M.A. programme in LIT, when and wherever such studies were available. Drawing up a model B.A. or M.A. course for LITs on a European level, which would comprise and describe different modules, would facilitate better cooperation between and among universities and allow students to spend the required study time abroad. Such a strategy would combine the universality of many components in an LIT training programme with specific language combinations applications, like a surgeon who can acquire and ultimately practice his skills in any country.

Finally, it is essential that the dialogue between legal professionals and LITs be stimulated and deepened. The dissemination of the Grotius projects on LIT via EU pilot projects could help deepen the understanding between judges, public prosecutors, lawyers, the police on the one hand and LITs on the other so that a relationship of confidence between them is built up that would eventually further the cause of 'due process' and a 'fair trial' throughout the European Union.

⁷⁰ What follows is a summing up of some remarks made during the plenary discussion.

References

European Parliament Resolution 1998: *Resolution on Sign Languages as Adopted by the European Parliament in Plenary Session on 18 November 1998* (Doc. B4-0985/98).

European Parliament Resolution 1988: *Resolution on Sign Languages as Adopted by the European Parliament in Plenary Session on 17 June 1988* (Doc. A2-302/87).

Brennan, M. and Brown, R. 1997; *Equality Before the Law: Deaf People's Access to Justice*. Durham: University of Durham.

Krausneker, V. 2001. Sign Languages of Europe – Future Chances. In Leeson, L. (ed.): *Looking Forward: EUD in the 3rd Millennium – The Deaf Citizen in the 21st Century*. Gloucestershire: Douglas McLean.

Kyle, J.G. 2002; *Deaf People and the Law: Needs, Resources and Prospects*. Unpublished paper. Centre for Deaf Studies, University of Bristol.

Leeson, L. 1997. *Verbs of Motion In Irish Sign Language – Implications for Interpreters*. Paper presented at the European Forum of Sign Language Interpreters. Greystones, Co. Wicklow, Ireland.

Leeson, L. 2002. *Sign Language Interpreters as Agents of Social Change in Ireland*. Paper presented at International Translators Day. Irish Translators and Interpreters Association. Irish Writers' Centre, Dublin. September 2002.

Miller, K.R. and Vernon, M. 2002. Assessing Linguistic Diversity in Deaf Criminal Suspects. *Sign Language Studies*. Volume 2, No. 4. Summer 2002.

Reed, M., Turner, G.H. and Taylor, C. 2001; Working Paper on Access to Justice for Deaf People. In Harrington, F. J. and Turner, G.H.: *Interpreting, Interpreting: Studies and Reflections on Sign Language Interpreting*. Coleford: Douglas McLean.

Turner, G.H. and Brown, R. 2001. Interaction and the Role of the Interpreter in Court. In Harrington, F. J. and Turner, G.H.: *Interpreting, Interpreting: Studies and Reflections on Sign Language Interpreting*. Coleford: Douglas McLean.

Slobin, D. I. and Hoiting, N. 1994; Reference to Movement in Spoken and Signed Languages: Typological Considerations. In Gahl, S., Dolbey, A. and Johnson, C. (eds.): *Proceedings of the Twentieth Annual Meeting of the Berkeley Linguistics Society*. February 18-21, 1994. Berkeley: Berkeley Linguistics Society, 487-505.

Sutton-Spence, R. and Woll, B. 1999: *The Linguistics of British Sign Language: An Introduction*. Cambridge University Press.

Chapter Six

Professional Ethics

Christiane Driesen

The purpose of this presentation is not to propose yet another code of ethics or code of best practice. Indeed, Chapter 7 of *Aequitas*⁷¹ by Ann Corsellis and Leandro Felix Fernández, already covers the essential aspects of this subject. Nevertheless, a surprisingly large number of codes of ethics has already been drafted for court interpreters all over the world. Would it not be more logical and preferable to have a universal code of ethics adopted by all court interpreters, similar to that known in other professions? In the following we shall try to explain briefly why the issue of court interpreting ethics is so confused and suggest possible solutions using a comparison with other professions, in particular the medical profession.

1. Code of ethics

In the discussion on professional ethics for court interpreters there are several aspects that require a clearer definition. What is a code of ethics? What are the differences between a code of ethics, a code of conduct, or a code of best practice? What is the role of legislation and regulation in a professional code?⁷²

Consulting several codes of professional ethics,⁷³ the following characteristics can be noticed in common:

1.1. A code of ethics is essentially adopted by a General Assembly of members of a given profession, for example, The World Medical Association adopted its Code of Medical Ethics during its 3rd General Assembly in London in 1949⁷⁴.

1.2. A code provides a general definition of the aims of a profession. An example from the world of journalism is the “Associated Press Code of Ethics”. These principles are models against which news and editorial staff members can measure their performance. They were formulated on the understanding that newspapers and

⁷¹ Erik Hertog, ed., *Aequitas: Access to Justice across Language and Culture in the EU*. Antwerpen, Lessius Hogeschool, 2001.

⁷² This total lack of clarity is by no means confined to the English language. In German reference is made to “Berufs- und Ehrenordnung” as well as “Ehrenkodex”. The French have a “Code déontologique”, “Code d’honneur”, etc.

⁷³ Illinois Institute of Technology, Center for the Study of Ethics in the Professions. Code of Ethics online at <http://www.iit.edu> (Last consulted on 22.01.2003)

⁷⁴ World Medical Association <http://www.wma.net>. Its predecessor, the Hippocratic Oath has not been produced by any professional assembly but has exclusively ruled the medical profession for several centuries.

the people who produce them, should apply the highest standards of ethical and professional conduct.⁷⁵

1.3. A code enumerates a limited number of general moral principles to be observed, the purpose of which is generally to prevent any possible excesses of power over other members of the profession and community. They include a.o.:

- confidentiality and discretion, particularly not deriving benefits from any confidential information that might ensue from the exercise of the professional activity;
- never accepting assignments one is unable to fulfil;
- accomplishing the task to the best of one's ability;
- solidarity towards professional colleagues.

This is the case for medical, legal, religious professions, for journalists or conference interpreters (AIIC)⁷⁶

Some professional associations put greater emphasis on professional conduct or make no clear distinction between ethics and conduct.⁷⁷ Their codes of ethics and conduct are simply more detailed. One could say that for them 'conduct' is simply considered to be 'applied ethics'.

1.4. To become a member of the profession, applicants must adhere officially to the corresponding Code of Ethics⁷⁸. Professions often establish a system of internal disciplinary sanctions.

2. Codes of best (or good) practice⁷⁹

These are even more specific and deal essentially with best working arrangements and standards. Some of them also refer to the rights and duties of a professional. Most of them are also drafted and adopted by the corresponding profession and some of them are drafted in cooperation with authorities. They can be compared to the implementing directives of a law.

3. Code of ethics and the law

Some of these generally accepted principles of professional ethics were sometimes taken on board by legislators, be it after a relatively long time. For lack of space we confine ourselves to only example, i.e. confidentiality. This principle was mentioned

⁷⁵ http://apme.com/about/code_ethics

⁷⁶ A non-exhaustive enumeration: Hippocratic Oath, WWA, IFJ Declaration of Principles on Conduct of Journalists. <http://www.ifj.org>,

⁷⁷ Declaration of Principles on Conduct of Journalists <http://www.ifj.org>, (Consulted on 22.01.03)

⁷⁸ By oath or signature.

⁷⁹ A typical example: the Code of Best Practice of Web trader http://www.whichwebtrader.whichnet/webtrader_code_of_practice

in this context by the Greeks around 300 BC and came to be applied to physicians, priests and later to lawyers, followed by many other professions. In France this was a binding principle for centuries before the Revolution without there being a reference in any legal text. It was abolished during the Revolution but reappeared in the Code Pénal of 1810, art. 378. Later, the various professions that were bound by this principle were defined by jurisprudence⁸⁰.

Ethics thus seems to have become part of professional qualifications and was first defined as such by members of the various professions. Later, the legislators were sometimes obliged to incorporate it into law and, of course, consequently to define sanctions.

4. More misunderstandings

It should also be noted that there is considerable confusion as to the very definition of the title 'court interpreter'. In most European countries, court interpreters are defined in terms of their workplace, not in terms of the qualifications enabling them to fulfil their tasks. One easily assumes and accepts that physicians need a common basic cognitive background wherever and however they practise their profession, whether they do so in a hospital, as a prison doctor, within an NGO, or in a village. So what about court interpreters?

4.1. Almost non-existent corporate identity. In the case of court interpreters, unfortunately, a corporate identity has yet to be developed. This has largely to do with their heterogeneous origin and is also due to differences in education and qualification. Among court interpreters we still find too few specifically qualified professionals working in the national courts and for financial and organisational reasons, there are also very few university trained interpreters⁸¹

4.2. Heterogeneous backgrounds of court interpreters. In my experience as a committee member of several professional associations, we have found that most people acting as court interpreters come from very different professional and cultural backgrounds. They very seldom work with other colleagues and often seem reluctant to discuss their professional difficulties with colleagues.

4.3. Lack of knowledge about the indispensable skills for court interpreting. Some are well aware of the existence of interpreting techniques but consider themselves to be incapable of learning them and so convince themselves that a court interpreter can do without. Others are not even aware of their insufficient command of languages or lack of forensic knowledge for the work in court.

For obvious reasons the 'users' (defendants and witnesses) are reluctant to complain and the authorities often lack experience in assessing 'real' i.e. professional interpreting.

⁸⁰ Loi sur le secret professionnel pour les psychologues (France)
<http://www.univ.tlse2.fr/cerpp/divers/secret-profession> (Consulted on 23.01.2003)

⁸¹ In many European countries (e.g. France) the remuneration is ridiculously low. In some other countries (e.g. UK) an interpreter is supposed to accept long-term assignments and then often has to turn down other potentially more interesting jobs.

4.4. Ethics and skills cannot be separated. There is consensus on one common denominator: Court interpreters are bound by the ethics of human rights. Irrespective of the diversity of cultural roots, the ethics of human rights is a matter of international law. The foundation for this is provided in the Universal Declaration of Human Rights and its Covenants, the European Convention on Human Rights and in national legislation. This means that the central objective of the profession of the court interpreter lies in contributing to ensuring equality before the law of any person not knowing the language of the court. It is not only a matter of ethics, it is in fact a fundamental principle anchored in national and international law.

The oath a sworn interpreter takes - "I swear to interpret to the best of my ability" - is the main obligation imposed upon a court interpreter. However, even in this respect there is no guarantee of equal treatment before the law, because such a requirement is devoid of meaning as long as there is no equality with regard to the interpreter's qualifications. In most cases, the skills required by the interpreter are not clearly stipulated by legislators in Europe.

What is worse, ignorance of the interpreting process on the part of the legislator can jeopardize the right to a fair hearing (German Penal Code StGB Art. 251). Mere knowledge of a second language does not enable one to interpret accurately. An inexperienced person lacking the skills and expertise of a professional interpreter is not in a position to perform adequately as an interpreter.

The qualified interpreter, on the other hand, will master the tools and techniques of the profession, such as simultaneous interpreting and whispering techniques, consecutive interpreting and sight translation. With the relevant linguistic and cultural background and acquired forensic knowledge, the professional interpreter will be able to contribute to a fair trial, in keeping with the specific objectives of the profession.

To return to the analogy with other professions: it is true that physicians are often required to examine certain ethical or legal principles in the light of their conscience, for example in matters of euthanasia or abortion. Journalists too must consider the moral issues of protecting their sources. The same applies to the court interpreter who will interpret *in extenso*, even when this is not required by law.

5. Conclusion: a universal code of ethics

Adopting a universal code of ethics is a logical step, considering the fact that it should be based exclusively on universal human rights. Until agreement is reached on the definition of terms (codes of ethics and court interpreting skills), the necessary decision-making processes for professionals, authorities and diverse European legislators will continue to be impaired and the often deplorable conditions in national courts throughout the EU will persist.

What then should a professional code of ethics provide?

First, it should be a tool for decision-making. It should also provide a yardstick for the profession to measure the ethical quality of professional performance. As such it should be drafted and adopted exclusively by the profession. Finally, as with other

respected professions, interpreters alone should decide on disciplinary sanctions⁸² that may ensue. Of course, as responsible professionals they will consult members of the legal profession to make sure that the draft of their code is in total conformity with the law.

It also has to be perfectly clear that sanctions can be decided without reference to penal matters as, for instance, in the case of damage caused to the reputation of the profession, which is rarely a penal offence.

A code of best practice, on the other hand, could well be established on an interdisciplinary basis, since the court interpreter is in constant interaction with the legal profession. A code of best practice could also take account of national specificities.

In conclusion, we would advocate that a standard of court interpreting be adopted that is both high and homogeneous, to ensure equal access to justice within the EU. This requires ethical and qualified interpreters. We therefore recommend that the profession, like other professions, aspire to a universal code of ethics in keeping with the principles of international law. This will only be possible if all parties involved recognise the need to bring together and codify the necessary skills. A concerted effort towards this must be made, for the sake of human rights!

⁸² In the BDÜ (German Translator and Interpreter Association) it is mandatory to have a lawyer among the members of its disciplinary board.

Chapter Seven

Translators' and Interpreters' Codes of Ethics: Drafting and Enforcement Responsibilities and the Role of the Lawyers

Maria Canellopoulou Bottis

When the organizing Committee of the Antwerp Conference sent out invitations for a keynote speaker on the topic of 'Ethics Codes for Interpreters', I thought this was a great topic for me: I am a lawyer, I drafted the Code of Ethics for the Bar of Corfu, Greece, several years ago and I have specialized in ethics and the professions in the United States of America.

A few days after I had accepted the invitation and informed the Committee on these personal points, I received a message from the co-keynote speaker Christiane Driesen who informed me that: "My experience always taught me that the legal profession has a very limited idea about ethics in the interpreting process. Would you expect medical doctors to have their Codes of Ethics drafted by another profession?"

I start from this interesting point of view and I interpret it like this: the only people competent and justified in drafting and implementing a code of ethics for a particular profession are the members themselves of this profession; lawyers have in se nothing to do with the whole process.

I went on to check the published recommendations of the first Grotius project and came across the following relevant parts from Chapter Seven, entitled 'Code of Ethics and Conduct and Guidelines to Good Practice': "Who is responsible for disciplining legal interpreters and translators? If interpreting and translating are to be professions, their professional bodies/registers have to be *primarily* responsible for conducting disciplinary proceedings in respect of their own members...The legal services may decide not to employ an individual interpreter or translator, *but they cannot discipline them, any more than legal interpreters and translators can discipline lawyers or police officers....*"(emphasis mine) Further on, though, something like a little window towards change is opened:"(perhaps in the future there will be a necessity for) the involvement of an independent third party in disciplinary proceedings". By 'third party', this text means someone outside the profession.

The same text admits that the usual members of a disciplinary panel are "a representative of the legal services" (together with a senior officer of the professional body and two experienced practicing legal interpreters or translators). For the appeals panel, though, we read that its composition should be a chairman or most senior officer of the professional body, two senior practicing interpreters/translators and "an appropriate senior person from a relevant outside body". This time, on appeal, it seems that the author of the text is not staying with a representative of the legal services, but would accept a non-lawyer, someone from a 'relevant' outside body: so, a non-lawyer/non-interpreter/non-translator may participate when the disciplinary

proceedings are at the stage of appeal. So it is not entirely clear from the text why the representative of the legal services can be – justifiably so - a member of the lower disciplinary panel, but that on appeal there is no necessity for a lawyer anymore.⁸³

I took as my starting point the supposed membership of the disciplinary panel for LITs, and opted not to start from who is supposed to draft a code of ethics for interpreters, because I believe that the answer to the question 'who is competent to enforce a rule' is a very clear indication of who is competent to draft this rule. I mean, there should not be a huge difference of identities between drafters and enforcers. The whole theory of the autonomy of the professions, very explicitly stated in my colleague Christiane Driesen's position - "doctors draft their own codes"- rests, I believe, on the notion that professionals are able and solely competent to self-regulate: that professionals as a team (i.e. 'the profession') are capable of drafting and enforcing rules of conduct upon all of their members. In a way, these competences are part of the core of what a profession really is: the very existence of a separate profession presupposes autonomy and self-regulation. In this sense, professions are like states: strip a state off the principle of sovereignty, say that a state is not governed by the rule of law, accept that a state may sometimes bow to outside interference, and you do not have a state anymore. This fear, I think, of the outsider's interference, is what lies behind the clear voice of (not only) professional interpreters, that no other profession may discipline them, as this would defeat their separate identity.

I understand these fears but, on the other hand - and not because I happen to be a member of the 'other side' in this case, i.e. a lawyer - I cannot help believing and stating that the case for a separate profession, the case for an autonomous profession should never be allowed to lead to a 'closed' profession, subject only to the laws its members decide that it should. And with regard to the argument that what we are talking about here is ethics and not the law, allow me to say from the beginning that codes of ethics are texts of an unquestionably legal nature. Codes of ethics contain rules, mandatory upon those bound by them; codes of ethics forbid a great number of offences which simultaneously are forbidden by the Criminal Codes of the criminal common law systems of every country, for example, the rule of confidentiality, the rule against bribery, the rule against conflicts of interest, etc. And it is for these reasons, I suppose, and because of the very nature of a code of ethics, that they are usually the result of (only) or (jointly with other professionals) lawyers' work. Consider the severity of the penalty when a breach of an ethics' rule may lead a professional to lose her license to work - which e.g. in the United States is a right no one can be deprived of without the constitutional safeguard of due process of the law – and it becomes instantly clear, I think, that the legal system is automatically involved in these cases, and very much so.

In Greece, in medical disciplinary proceedings, the Code of Medical Ethics of 1955 is a royal decree (a legal text having the force of a statute) and the possible penalties go as far as the revocation of a license; The doctor accused of a breach of conduct, will be heard by a panel and, on appeal, by the Highest Disciplinary Panel of the National Medical Society. Any decision by a court of law does not impede or suspend the disciplinary proceedings (Art. 62). On a third level, against the Highest Disciplinary

⁸³ See Hertog, E., ed., *Aequitas: Access to Justice across Language and Culture in the EU*, Antwerpen, Lessius Hogeschool, 2001, 161-165.

Panel's decision, the doctor may appeal to the Supreme Court. How far outside the law are these procedures, when the doctor starts from a panel of doctors and may end up before the Supreme Court? It believe it is obvious that "the doctor's disciplinary responsibility must never be seen as a closed, an internal and as a 'family' affair between the defendant doctor and the Medical Association, as a typical relationship; on the contrary, the whole procedure of a disciplinary action, research, trial and the implementation of penalties is regulated by implemented statutory laws and clearly has the character of a legal proceeding".⁸⁴ This is true for all professions, I think, as in every profession's ethics code, there is, or should be, some breaches which could lead to the expulsion of a member from the profession.

Another point I would like to make is this: suppose we leave professionals alone to draft and implement their own codes, what would people think of a profession's code of ethics wherein, for example, there is no provision on the demand for competence? What if the provision for confidentiality or impartiality were missing? Would society accept that this is quite alright, because the professionals decided that they do not wish to bind themselves more than by what they have already done? Would it be acceptable for, say, the profession of psychiatry, if psychiatrists decided that to sleep with a mental patient should never constitute a disciplinary offence? Professions do not operate on Mars, they operate within a society which has legitimized them, trusted them as separate entities and allowed them to flourish, as long as they play within the rules of the game. This is the situation we should aim at, even if it is not quite the general rule and absolute truth today.

But, of course, the question can be raised: how about you, lawyers? Why should you alone, as *the experts on rules*, draft your own codes, decide your penalties? What is it that carves out the legal profession from all the other professions and secures for it the formidable position of absolute self-regulation *plus* a claim and a right to intervene and check and control the other professions on whatever has to do with rules and ethics? I admit that I do not particularly like this preferential status. I do not like being accused of so much self-interest as a professional but, on the other hand, in an ordered and lawful society there has to be someone who is the expert on the laws of this society. There has to be someone who is the expert legislator, someone who knows why and how rules should be enforced, when their enforcement is undesirable, when a statute of one profession clashes with another, or indeed with another profession, and this professional someone, we are used to believing in our societies, is the lawyer.

I remember how one of my friends, a dedicated ophthalmologist and a member of the disciplinary panel against another fellow physician in a case in Corfu, was almost shocked to hear me asking him whether there was a lawyer on the panel at this stage of the disciplinary proceedings. He told me sharply that, if it were up to him, he would immediately institute special courts – not disciplinary bodies. All sorts of courts - civil and criminal - for physicians, to be judged only by physicians because "nobody else understands the case of medical negligence *but* a doctor". He was not absolutely sure whether this meant we should also have courts by architects for architects, by accountants for accountants, by tree gardeners for tree gardeners and so

⁸⁴ Koutselinis 1999. *Basic Principles of Bioethics, Medical Ethics and Medical Liability*. Athens: Parisianos Publishers, p. 75. This text provides a survey of the possible disciplinary penalties against doctors and of the procedures all the way up to the Supreme Court (the 'Court of Cassation', the highest Court for administrative disputes).

on, but his outspoken views reflect a very common view among doctors, from whatever country they come from.

My problem with this position is, of course, not the systemic problem: how could we ever institute so many different courts? The real problem is why is it so difficult to persuade the professionals - because the citizens know better and do not need to be persuaded - that if for nothing else, the 'conspiracy of silence' syndrome, so well known in doctors' circles and, of course, also in lawyers', means that in a case against a professional it would be completely undesirable to let him or her be tried by members of the profession only. But this is of course not all. It is not this fear of prejudice which convinces us professionals should be tried in courts by judges with the help of expert witnesses. The foundation of the legitimacy of lawyers and judges in the civil law countries and juries and judges in the common law countries, lies in the Constitution of these countries, in the minds of the drafters of these Constitutions, and they saw it fit, legitimate and just that their fellow-citizens should be tried (also) by people trained in law and not by people trained in the profession, 'accused' through the defendant. And in the common law paradigm, in principle, no member of the jury may exercise the same profession as the defendant, as this would be a clear reason for her being excused.

I dealt with the question of who should try whom in a court of law in some detail because I believe that in our discussion on disciplinary matters we should certainly take into account how other relevant matters of responsibility and liability towards third parties by professionals are resolved in any given state. I now want now to return to the question of who should draft and implement the ethics codes. I carried out a minor research task on how ethics codes for interpreters have been drafted in the past, particularly on who was responsible for their drafting. I was somehow convinced that it was impossible that the legal profession would have had nothing to do with these Codes, and my research indeed led me to this conclusion, as I suspected. One exemplary response came from the administrator of the RID organization, Mr. Clay Nettles, who said that whilst he did not have enough information on who was the drafter of the Codes of Ethics for Interpreters in the 1960's and the 1970's, he could with certainty tell me that "when the Ethical Practices System was put into place in the late 1980's and early 1990's, it was designed with many aspects of the criminal justice system of the United States in mind and that was definitely accomplished with the input of legal counsel. To this day, RID consults legal counsel with regard to the operation of our Ethical Practices System... However, it is a committee of professionals in the field, the Ethical Practices Oversight, that recommend policy for the Ethical Practices System. They do ask for opinions from legal counsel, but counsel does not formulate policy that is presented to the Board of Directors for adoption". In other words, we can see here how the Code was drafted, that is with the help of legal counsel and with the criminal justice system in mind and as a model; that counsel is involved with everything but designate *policy* - which of course is not a legal matter – seems to support my view.

Another example concerns one of the most important legal interpreters' and translators' codes of ethics around, i.e. the Code adopted by the International Criminal Tribunal for the Former Yugoslavia. It was initiated under rule n.76 of the 'Rules of Procedure and Evidence' (Rule 76 is entitled 'Solemn Declaration by Interpreters and Translators') and came into life after the former Registrar Dorothee de Sampayo

Garrido-Nijgh drafted it, with the help of the Chief of the ICTY Conference and Language Services Section, Mrs. Maja Drazenovic-Carrieri, who is an interpreter. The text was then passed on to the Senior Legal Adviser of the Tribunal, Mr. David Tolbert. He checked the whole document and added the rules of ethics. The text was then checked by the Tribunal's Judges and implemented as the regulation on ethics for the interpreters in this most important court of law.

Throughout the whole of this procedure, no interpreters' professional *association* took part in the drafting, or in anything else. I repeat: Mrs Drajenovic is an interpreter and she made the first draft of the code along with her staff of the Languages Section who, I presume, are also interpreters and translators. However, the text was then checked and amended by lawyers and checked again by the Judges of the Tribunal. Finally, this ethical Code of conduct was in fact *simply imposed* upon all the interpreters and translators working in this court. It says very explicitly in the preamble of this document that "since the duties and responsibilities that interpreters and translators have towards the Tribunal continue after the expiration and termination of their employment, they may be held accountable for any breach thereto, including *but not limited to* referral to their respective national or international professional association- It is therefore necessary that these persons be aware of these duties and responsibilities". This, by the way, was one of the main amendments to the text made by the Senior Legal Counsel, Mr. Tolbert.

Where does this leave us? Why did the Court not simply ask for the codes of ethics these "respective national and international professional associations" have promulgated and ask their interpreters to adhere to these provisions? Why did the Court, through the combined efforts of the languages section, legal department and the judges, draft the Code and impose it on the interpreters, threatening offenders with more severe penalties than a mere referral to the professional organization?

Of course, we immediately arrive at the inevitable conclusion that there is no uniform practice on who can legitimately draft a code of conduct for interpreters and translators. We are convinced that because legal interpreting or translation has the peculiarity of possibly affecting the constitutional rights of defendants and the right of the public at large, indeed the right of society as a whole, to the fair administration of justice, this means that the LIT-profession in this sense has lost its closed and self-regulatory character and must be subject to codes of ethics and general rules which can be imposed upon its members. We are dealing here with a situation where the ethical issue does not simply arise between A and B; this is not the case of doctor A harming client B - besides, in principle again, breaches of ethical rules do not have to result in someone's injury before becoming actionable. This is a situation where the ethical conduct, or unethical one, of a legal interpreter or translator has the potentially immense power to threaten the inner fabric society is made of. Society governed by the rule of law survive because of this absolute, not subject to negotiation right of everyone involved with the judicial system, to justice, fairness and truth. The importance of the interests at stake and the substantial risk of great harm, are a very clear signal that there is no way that interpreters can continue to support that they should be the only drafters and controllers of the code of conduct of their members.

References

- Hertog,E.,ed. 2001. *Aequitas: Access to Justice across Language and Culture in the EU*. Antwerpen: Lessius Hogeschool.
- Koutselinis 1999. *Basic Principles of Bioethics, Medical Ethics and Medical Liability*. Athens: Parisianos Publishers.

Chapter Eight

Establishing complementary skills and structures between the legal and language professions

Katerina Martonova

1. Introduction

Establishing workable interdisciplinary arrangements between the language and legal professions across the EU, specifically in criminal proceedings, is a tall task indeed. And although complementary codes of conduct and codes of good practice are only mentioned as one particular example of such complementary structures, they are intuitively perceived by both professions to be a *conditio sine qua non*. The whole sophisticated and intricate web of EU and national legislation might become weaker, ineffective and inefficient if the agents who operate this web, the legal and linguistic professions among them, do not uphold and profess the same basic values and principles. But even if they do so separately, one agent must know about the other that this is really the case. Therefore all the 'actors' in the legal system must be able to communicate to each other what they expect of each other and to be able to communicate with each other they must have a shared understanding not only of the values and principles but also of the ways in which these values and principles are expressed and materialise in real-life settings. Only then can two of the essential professions, the legal and linguistic professions, one day become inseparable twins in the fair and just process of criminal proceedings in the EU.

The issue of ethics is obviously a very sensitive if not outright emotional one but, as said above, also an issue regarded by all participants as one of the crucial elements of workable interdisciplinary arrangements. Of course, anyone from this wide range of specialised professions involved in criminal proceedings supports the principle itself, i.e. the passage of justice with respect of human rights in general. Most of them also express their appreciation of each other's role in ensuring that all human beings are guaranteed these basic human rights. There are, however, also some inevitable differences in opinion between the language and legal professions as well as, in fact, some serious differences of opinion within each of these professions themselves as to the ways and means through which to achieve these principles, including the codification of professional ethics⁸⁵.

Ethics is the cornerstone. Every profession has its Code of Ethics or Code of Conduct. And each profession almost jealously guards its code because it feels that only members of the profession 'know what is it all about'. Consequently and inevitably,

⁸⁵ One LIT colleague saw no controversy really between the keynote contributions as they both support cooperation between professional organisations of LITs and the legal services. He/She argued that a collection of rules useful to LITs, their clients and the legal services be drawn up internationally, listing professional good practice, working conditions, fair terms of assignment, etc. and with an authoritative legally binding force.

differences of opinion in the understanding of the validity of the code of ethics arise. While the legal profession generally holds that the code of ethics should be formally codified to become a law, the 'linguists' wonder why it should be imposed on them by law, referring to the lexical meaning of the word ethics. (Cfr. Oxford Dictionary of the English language: Ethics, Moral philosophy, moral principles; → moral: based on people's sense of what is right or just, not on legal rights and obligations) Moreover, there are different views on this among interpreters themselves, i.e. between interpreters covering the entire field of interpreting (conference, community, business, court, etc., called 'general interpreters' for the purposes of this contribution) and the 'pure' LITs with a legal background and whose mindset may, quite naturally, coincide rather with that of the legal people. General interpreters tend to view their work as a self-regulating but *liberal* profession of *sui iuris* adults who know what ethical rules should apply to those performing the profession, who do not need a whip from the outside and who do not want to feel to be automatically presumed 'not to behave without penalties'. They tend to see the code of ethics, formulated by their professional associations and certainly with the assistance of lawyers, as guidance and inspiration for their members' behaviour. The legal profession, including 'pure' LITs, tends to want to codify ethics in a law, including sanctions for non-ethical behaviour. So there clearly is a need for the language professionals to explore whether they can speak with single voice on this issue to the legal profession, i.e. clarify inside the profession itself what the profession wants⁸⁶ but, secondly, the two professions need to thrash it out between them too, keeping in mind two main aspects:

- The two professions, i.e. the legal and the LITs, should regard each other as equals. After all, they are both trained, qualified, bound by codes and professional standards and both equally essential to the protection of justice and human rights. No one profession should try to 'impose' itself on the other but they should seek help and guidance from each other when formulating rules and working arrangements that affect the other profession's needs. The legal profession has a stake in what the LIT profession's code of ethics should or should not look like while the language professions equally have the right to raise suggestions for the improvement of the legal profession's codes of ethics where they impact on LITs.
- The outcome of this exercise should be useful at both the national and EU level. It is up to the two professions to find out whether besides national codes - which today may be incompatible between countries - a general EU code should be put in place. This is where the two professions should work hand in

⁸⁶ 'General interpreters' rely on their perhaps more variegated experience when they say in essence: 'There is only one interpreting, the art and modes and principles of good interpreting remain the same in all areas', whereas legal interpreters tend to stress their additional specialist education and training, perhaps considering the interpreting and linguistic skills as somewhat secondary. In many European countries LITs have their own independent professional organisations that operate alongside the more general professional associations that do not differentiate membership (even if the membership base is usually quite diversified). This trend may deepen and may even take on another dimension: LITs working for EU organisations and international tribunals will lead a very different professional life - including the 'passport' to this life such as EU-level examinations and certification - from those engaged in legal interpreting work at the national level only. We may therefore see the emergence of even more specialist associations reflecting this development such as EU-wide professional association of suitably qualified and certified LITs.

hand, with lawyers providing guidance as to what, for example, the *acquis communautaire* or national legislation allows or not.

A code of ethics has been proposed in *Aequitas*. Both professions agreed that it offers an excellent starting point for further discussion⁸⁷. But two additional issues need to be considered.

- Sanctions: should they be part of the LIT's code of ethics? How to avoid possible sanctions from being abused either within associations (e.g. due to personal relations) or by the legal profession? How to ensure appeal and third-party arbitration in such cases? And should professional associations have control over their members through the codes? *Quis custodiet custodiet?*⁸⁸
- Abilities: From a legal mindset point of view, one trained in rules and regulations and the precise formulation thereof, "to the best of one's ability" as the phrase goes in many codes, may not be good enough, it only testifies perhaps to good faith and goodwill. But in the LIT's mindset, this sounds only natural and in fact expresses the LIT's knowledge of the day-to-day experience with the art of interpreting. But then by definition, people cannot do better than their abilities allow them to do⁸⁹.

⁸⁷ In the view of one judge, *Aequitas* Chapter Seven is indeed quite comprehensive and a good basis for a future EU Code of Ethics or national Codes of Ethics. However, there is a need for regulation, whether in legislation or through government decrees. And when referring to human rights, we must also keep in mind LITs' human rights: every LIT must have the right to appeal suspension or expulsion from the profession to a relevant competent body, and there also must be a clear definition of who has the right to become a LIT in the member states. Rules for remuneration should be laid down in a government decree, based on negotiation between the country's associations and the government. Although a Code of Ethics must basically be interdisciplinary, interpreters must determine most of the rules they want to abide by. They must, for instance, reflect on and provide for situations when an LIT is not competent any longer to function.

⁸⁸ The issue of the 'legal aspect' of such a code continued to be debated. For some the code should definitely not have the 'form' of law, due to the very definition of 'ethics' and 'law', ethics being something that comes from within the mind and heart, whereas law is imposed on us. The code of ethics should have the nature of generally accepted standards and be weary of penalties because they can be too easily abused. A code of ethics should help LITs to take responsibility, to take decisions, to follow a proper ethical strategy. The LIT profession should develop its own code of ethics, be it with the help of lawyers to make sure that the formulations do not breach the law. The code of ethics published in *Aequitas* clearly benefited from lawyers' input. Moreover, if we are to have a truly independent LIT profession then one must have a register and one of the conditions to be on the register is to agree with the code of ethics. Other colleagues, however, argued strongly that one cannot have a true code of ethics without penalties for breach of, say, confidentiality. A code without penalties is not complete. How else can one persuade others that one behaves ethically? The code controls the behaviour of members and thus must contain disciplinary measures to wield control over members. We might need to differentiate, however: have the principles of a code of ethics enshrined on EU-level and let the member states specify the sanctions and the more specific articles on disciplinary procedures.

⁸⁹ A judge made the following point. The international criminal proceedings rules are becoming more uniform and interconnected, and this implies the need for a uniform, Europe-wide standard in the skills of court interpreters. An example of this trend is the European arrest warrant replacing the former more complicated extradition rules. However, in some countries it is difficult to meet the new requirements due to the shortage of qualified interpreters, particularly of less common languages. Training of LITs is therefore crucial and urgent. After all, the judiciary needs the LIT to translate procedural acts during

Provided the code of ethics has been drafted - keeping in mind that ethics is a concept both in the realm of the abstract and the universal as well as that of the subconscious, the personal and the culture-specific, and hence more difficult to grasp and codify -, the Code of Practice may prove to be easier to tackle as it describes concepts in the realm of the concrete, the conscious, the public. In this area, the two professions find it easier to explain to each other in very concrete, understandable and tangible terms what the best practice is in their own professions and how they wish the other profession to accommodate their respective practical needs. This kind of collaboration is under way and is proving successful where it has been tried out in some European countries.

The efforts to establish sound interdisciplinary dialogue and collaboration will require a lot of enlightenment inside each of the two professions. Enlightenment in the sense of making one profession aware of the other profession's rules, techniques, needs and, well, idiosyncrasies. There are some major issues to be covered in this respect. Tackling them will be difficult and sometimes also costly, as some of the examples that follow may indicate.

2. Enlightenment needed within the world of LIT

LITs are part and parcel of the procedures and proceedings but they should be skilled and considerate enough not to be in the way, not to be an obstacle, and they should impart this attitude to the legal services that employ them; they should help the legal services work as if they (the LITs) were not in the room. Their main function is to make the justice system work and function equitably across language and culture.

Written translation and oral interpreting are skills that are very different by nature and have to be taught as such, separately. Translating legal texts is as important as legal interpreting.⁹⁰

But the linguistic profession and the trainers of this profession acknowledge that when it comes to communication in general and in official legal proceedings in particular, *consistence* is crucial. If a case is dealt with by a single highly skilled LIT, the chances of maintaining consistence from the moment of detention to the final verdict are much greater. Hence, LITs should want to be trained as both translators and

the hearing or trial in a neutral and faithful way, and with an eye to the legal consequences for the accused person. If the interpreter does not know the legal implications of the acts he is translating, it is more difficult to achieve consistency and to respect the code of ethics in the relations between the judge and the interpreter. A code of ethics should therefore contain a clause saying the interpreter should refuse to translate when he believes he is not competent enough to do the job. During oral hearings, the interpreter should translate as faithfully as possible, should chose words as close as possible to the meaning of the question and the answer. The interpreter must therefore have experience and professional ability to give the judge the complete rendering of the information he needs in order to reach his decision. Hence, the fundamental premise of a hypothetical interdisciplinary code between judges and LITs must be based on mutual respect.

⁹⁰ It was several times pointed out that LIT is of course very important in civil proceedings but that on the whole the range of written material the LIT has to deal with - letters, expert reports on accidents, medical reports, etc. - that the word 'legal' translation probably needs to be redefined in this context. .

interpreters, they should master both skills and be ready to combine and apply them as may be required by the relevant authorities. Persons aspiring to become LITs should be willing to train for a different professional career than the traditional translator or the traditional interpreter.

Of course, LITs must have a very good knowledge of terminology of, say, human anatomy, weapons or drugs, a thorough proficiency in all sorts of language registers in both languages used in the proceedings⁹¹, a knowledge of the workings of the national and possibly international legal systems and the concepts on which they are based that are relevant to a particular case. Ideally, LITs should have some idea of comparative law and how the legal systems of the two cultures in question may, or may not, interact with each other. And they should be willing but also be given the opportunity to learn all of this. LITs must also be willing to become engaged in life-long education and training. Maybe an LIT, unlike the 'general' interpreter, should feel more of a civil servant, a person in whom public trust has been vested, a person who is crucial to at least the well-being if not the life itself of other human beings. And this may well be one of the critical differences that are felt by 'pure' LITs as opposed to 'pure' conference interpreters. To put it bluntly by way of illustration: if the conference chair's welcome speech is not translated properly from the booth, nobody goes to prison.

3. Enlightenment needed within the world of the judiciary

As said, first and foremost, LITs are part and parcel of the proceedings. The legal services should accept and recognise this as a matter of fact. Of course they should demand that LITs be skilled and considerate enough not to be in the way, not to prove to be an obstacle, but then they themselves should learn how to work with LITs in oral and written communication and in turn make it possible for the LITs to work properly. They should show them the respect they are entitled to, exactly as they do to other professions such as e.g. medical doctors.

In other words, the legal services need to understand what LITs do and why they do it, they need insight into the profession. LITs are not a nuisance, busybodies, court secretaries or ancillary staff of the police or courts. They are professionals in their own right and field who provide linguistic services to the legal services. As one knows, the legal services are bound by procedures and the procedure itself must not

⁹¹ An interesting point of discussion between the two professions was raised about whether the court interpreter translating the judge's discourse into the defendant's language should use exactly the same register as the judge. In that case the defendant may not understand anything at all, not because of the interpreter translating inadequately but simply because the level of his education does not allow him to understand legalese. Of course, even highly educated people may not understand the legalese of their own language and judicial system. But is it acceptable for the LIT to switch to a simpler register *deliberately or arbitrarily* to make the defendant understand, thereby giving passage to his rights? Who will decide whether and when the register may be changed? Developing this notion into absurd dimensions, there will be hosts of well-trained LITs in the EU, all faithfully observing all codes of ethics and practice, all well trained, all certified etc. – but the non-native speakers who have come from very different cultural and social backgrounds and who are to benefit from their expertise, will not understand a thing, with all the consequences for them. The issue of register may serve as an example of an area where the two professions' codes of practice should be complementary and compatible and where the legal profession might listen to the language profession's expertise and v.v.

change. Everybody has the right to the same procedure but the techniques and strategies by which the procedures are dispensed will inevitably change when there is an interpreter in the room. It's all about 'accommodation' and thus the legal services really need to understand what LITs can and do, and why they do it, and LITs in turn need to know the principles and procedural constraints the justice system works with. So we need to train the LITs to work in legal settings and the legal profession on how to work with interpreters. That could be a key strategy to get both professions to talk to each other and learn from each other. A lot of problems might be solved then

As said above, LITs need to be given opportunities to learn, ranging from, for example, the case file made available to the LIT before the proceedings so can prepare and render a better service, to more systematic courses with legal experts as trainers. The making available of the case file may serve as an example of how the two professions now view the LITs. The art and profession of interpreting dictates that interpreters request materials of whatever nature for preparation beforehand. This is usually incorporated in the codes of good practice of conference interpreters in many associations and countries and all conscientious interpreters know they need preparation to do a good job. But as the case file is 'confidential' (but why then an LITs' code of ethics?), one must be able to work right on the spot (what's the problem, aren't you a professional?)

So *trust* is essential. The legal professions need to be confident that good LITs really do facilitate communication. They need to know that those on the Court Interpreters Register have passed through a selection process guaranteeing certain standards, ethics, practice, and other quality factors. The example of the 'case file' is essentially – given mutually accepted codes of conduct - a matter of flexibility whereas the systematic training of LITs, national as well as an EU-integrated system of education for LITs, is primarily a matter of finances. In this respect, various national ministries in the member states and the EU as a whole, will have to coordinate initiatives to arrive at an integrated LIT training system. Member states and their legal services would then find it easier to have trust in what is going on at the police station or in the courtroom, and in turn have more confidence that human rights are being safeguarded at all stages.⁹²

Which brings us to *standards*. They are another complementary strategy to be shared by both professions. What standards do the professions expect of each other? Does the legal profession know what standard of interpreting it ought to demand? Should judges and police officers be given the opportunity to observe quality legal interpreting to have an idea of what they can, should demand? What standards should be implemented at the national level? Should they be different from those implemented at EU-level? If so, will they be recognised throughout the EU? Or should the EU set certain minimum standards to be met in each member state and

⁹² A criminal defence lawyer pointed out that it is very important that lawyers and interpreters work together in developing the principles for the conduct of trials through interpreters. From his point of view the most important thing was to be able to trust the interpreter to convey accurately the legal advice to the client and the client's instructions. This is a question of pure trust and it is very difficult for a criminal defence lawyer, who has been trained to have a very direct, one to one relationship with the client, to mediate that relationship through interpreting. There may be feelings of loss of control. Trust, therefore, is also the basic bottom line in relations between lawyers and interpreters.

again, if so, how to determine the threshold of this 'minimum' level? On the other hand, how to teach the legal services to work with LITs? Has the LIT the right to expect that members of the legal profession will themselves strive to observe certain standards as, for example, to their powers of clear and comprehensible expression or are LITs *ipso facto* expected to hear the inaudible and straighten out the convoluted?

Another related sensitive issue is the following: once all the standards are in place and training schemes well under way and the well-trained and prepared LIT professionals start making their mark in each member state, what will happen to those who have not gone through this training, the practising 'old-timers'? Of course they cannot be abandoned. So either examinations, or evaluations of their years of practice, or forms of continuing professional development will have to be worked out to preserve their experience in the judicial system but, given that, the moment must also be grasped to rid the system of those unqualified and downright dangerous LITs that compromise the very foundations and principles of the profession.⁹³

Last but not least: Remuneration. This mundane point may at first seem to be very remote from the issues of how the two professions should work with each other. But if the professions are serious about collaboration and realize they operate to each other's benefit, then one might take a common stand on decent remuneration for LITs too. Of course, individual countries will have different remuneration systems for LITs and the systems will be more generous in some countries than in others, naturally. But it is essential that the best talents in LIT are not discouraged from investing their time, effort, skills and their money in training, life-long learning and a very taxing profession, if the remuneration continues to be so low on the whole throughout the EU. European societies tend to remunerate many professions' highly skilled intellectual performances quite well. There is no reason why highly qualified and well-trained LITs should be an exception.

4. Conclusion

It is important to find a consensus on what a Code of Ethics should contain and to make sure that they are arrived at in a collaborative way, though without one profession 'imposing', 'dictating' its concerns on the other. Only then can they be agreed upon as legitimate and applicable by the linguistic profession, which will rely on the Code, and by the legal professionals who will work with the LITs.

At the same time, members of the legal services who work with LITs have to be made aware of what such LIT Codes of Ethics mean, what they provide for and what the role of the LIT is. Legal professionals need not become 'applied linguists', just as the interpreters do not need to become qualified lawyers, but they do need to be aware of each other's role, objectives, professional strategies and, last but not least, the optimum conditions under which the LITs can perform best. An alertness on the part of the legal services is needed to the demands put on LITs to assure interlinguistic communication in legal settings, which may vary immensely depending on the

⁹³ Referring to common implementation through the EU, one judge insisted that the existing LITs be taken to account. Those who worked under the old rules should be allowed to continue and be automatically registered; newly registered LITs would have to meet the new rules. But rights of practising LITs cannot just be taken away.

language in question, with sign language as a very specific mode of communication indeed, on the complexity and circumstances of the case, the level of the interviewee's or defendant's proficiency and, of course, the ability of legal professionals to work with LITs.

The LIT profession should, in turn, make sure that its members are competent and qualified, which includes understanding of and respect for the course of justice as carried out by the legal professions.

The two professions therefore need to consult together on a structural – European – basis and platform to dovetail their awareness of the cornerstones of each other's profession in order to be able to work more efficiently and more successfully together, based on mutual trust and on the confidence that the other profession is performing properly. Of course, there is always the chance that a professional (in whatever field) will not perform properly, if only because of human frailty, ultimately unavoidable in the real world out there. This is one of the many reasons that can be cited as proof for the codification of LITs' professional ethical behaviour. In this respect, the gist of the discussions seems to be:

- That LIT professional associations are first and foremost responsible for taking the initiative and drafting such codes and instituting a system to monitor and sanction the unethical behaviour of their members
- That lawyers should have a role in drafting such national Codes of Ethics in full collaboration with the professional (LIT) associations of interpreters
- That any sanctioning system linked to breaches of the Codes should meet the highest requirements of fairness and transparency, including the composition of the board to decide on such sanctions
- That professional standards of conduct and good practice should also be drawn up on an EU level thereby supporting the judiciary in the quest for justice for all.

Chapter Nine

Models for Implementation

Ann Corsellis

The ability to manage change has been central to the development of contemporary Europe. One obvious and practical example was the careful planning, which led to the successful overnight introduction of the Euro in the majority of member states. Other changes have involved the subtle synthesis of collaborative international actions to meet present and anticipated future social structures and situations. These have created significant achievements, such as the European Convention on Human Rights. In comparison, creating what is needed to provide effective legal services across language and culture is not difficult, complex or expensive. It just needs commitment, clarity and competence.

Common targets can be reached through a variety of routes. Different countries manage change differently, according to their individual cultures and conventions. All legal systems are rich fabrics, woven with threads of history, culture, anxieties and aspirations and patterned with ever changing procedures and processes. There are, however, common elements in the development processes, whichever country they take place within. Listed below are some of the central factors to be considered in this particular area of work, which are offered as a starting point for our debate.

1. Clarify targets

The provision of competent interpreters and translators is only a practical first step. Achieving the long-term targets of equality before the law, irrespective of language and culture, does not mean simply the ad hoc employment of interpreters or translators at certain (and often random) points in a legal process, it involves a wider and deeper approach.

Interpreters and translators provide a vital channel of communication. The crux of the matter is what is said through them, to whom, why and when.

An overview of the whole has to be recognised at the onset of planning for change and includes:

1. Preserving the integrity of the continuum of legal processes

Criminal and civil legal processes normally involve a series of procedures carried out by a range of disciplines. In criminal law, for example, the discovery of a crime may be followed by investigations, arrest, preparation for trial, hearings and possibly conviction and sentencing. At each stage, the quality of decisions depends upon the quality of information and communication. Units of communication and information are incrementally accumulated at each stage and no stage, necessary to the overall

process, must be omitted. There are checks and balances in place to test each component as it is put in place to preserve the integrity of the whole. The chain is as strong as its weakest link.

Where there is not a shared language and culture, greater care has to be taken to avoid the risk of damage to one component, which can affect the whole process. Flawed communication and information at the investigative stage, for example, puts any trial at risk and the judiciary may not be in a position to act as forensic linguists. It has been instructive to see what has happened in those countries where the tape- recording of police investigative interviews, including interpreted interviews, has been introduced and copies of the tapes made available to the defence as part of the procedures.

In order to preserve accuracy of communication, all those working in the legal services (such as police officers, lawyers and jurists) should have in-service training to acquire the skills to work with interpreters and translators; and to recognise and accommodate different cultural perceptions and ways of exchanging information.

2. Breadth of legal process

Legal processes involve a breadth of approach, as well as being linear. Victim and witness support, medical and psychiatric reports and counselling services in cases of matrimonial conflict are all part of the breadth of a legal system. In the interests of justice they cannot be denied, on the basis of cost, time or inconvenience, to those who do not speak the language of the country, tempting though that may be. Sentencing options are an interesting illustration. To restrict sentencing options, on the grounds of language, to fines or custody undermines both the potential for success and the principles underpinning sentencing in those countries where there is the opportunity for community-based sentencing programmes, such as parenting classes and remedial education and for the prevention of the abuse of drugs and alcohol.

3. Delivering information to develop EU and national social integration

In member states with diverse populations, all members of the public, whether they are new arrivals to Europe or citizens of other member states, should have access to information which will provide them with a background understanding of transparent national and European legal systems. This background understanding is necessary to sustain a legal system based upon a broad public consensus and for everyone to exercise not only their rights, but also their responsibilities. Some member states have made real efforts to make this information available and accessible. Similar background information sharing also promotes European collaboration between justice systems, for example over the prevention of terrorism or drug trafficking.

Sharing information about complex subjects, such as a legal process, is best layered to allow for step-by-step understanding. Specific information is given most successfully on a need-to-know basis against a background of general knowledge of the subject.

Modest research in the UK demonstrated that most non-English speakers, including English deaf people, had insufficient reliable information about the English legal system and, indeed, a good deal of misinformation. Nor did they know where to

access sound information. Anxiety and mistrust thrives on lack of knowledge. As part of the process of creating an inclusive and integrated social infrastructure for increasingly diverse societies, each legal system has the responsibility to earn trust by providing information about itself, in ways which are accessible to anyone who may become involved with it.

2. Commitment at national and local levels and from legal disciplines

Time and resources can easily be wasted through having to convince decision-makers of a necessary course of action. Wise developers, like wise lawyers preparing a cross-examination, take care to define precisely what the opposition is likely to be, in order to deal with it.

The list of perceptions likely to block a quality development trajectory usually includes:

- 1 We do not have to do this
Answer: EU and domestic legislation
- 2 We cannot afford this
Answer: it will not cost as much as taking cases on appeal to higher courts or to Strasbourg
- 3 This not a priority
Answer: see above answers
- 4 We do not have the facilities
Answer: see development of skills and structures over time
- 5 Existing arrangements are adequate
Answer: range of evidence
- 6 This does not fall within the remit of one/my government department
Answer: collaboration between e.g. education and legal departments
- 7 They should all learn the language of the country
Answer: it takes years to learn a language to the level of a native speaker, adequate for communicating in the legal context and there will be continuous new arrivals.

These are excuses and not reasons. It is often more interesting to elicit the reasons why authorities may *not* want to address this matter, than why they should. There may be a fundamental reluctance to engage positively with the multi-cultural nature of C21 societies. Concerns over dealing with such societies can be valid in many ways but the inevitability of diversity means that those concerns have to be confronted, debated and, if possible, diffused.

Identifying the existing situation

To begin planning, there is a need to know, only in general terms:

- the number of people who do not speak adequately the language of the country in question, the languages they do speak, their age, sex, education and social backgrounds and where they are situated
- the likely future situation

- the provision, and likely success, of any teaching of the language of the country
- what provision and good practice already exists to deliver the civil and criminal legal systems across language and culture.

Such information also provides legal services with the background information about the public, which parallels the background information given to the public about the legal services, while recognising that every individual and situation is unique.

Timescales

In most member states, the supply of skills and structures to implement equal human rights is already short of the demand. The increasing movement of people between countries and global events do not allow time to defer matters any longer. Rather than allow short-term compromises to slide into unsatisfactory and expensive long-term solutions, it is better to set a five or ten year time-scale within which to initiate incremental and co-ordinated planning to maximise resources. In practical terms what is needed could be set in place within five years but more time may be needed around each step to allow for absorption of the concepts and consolidation of the activities.

Budgets

Whether these are a combination of resources from central government, administrative systems and regions is a matter for different national conventions. It is clearly better to match costs against a nationally co-ordinated incremental plan, devised against the agreed time-scale.

It should be noted that there would be economies of scale if other public services, such as healthcare and social services, were included in national schemes. They serve the same multi-lingual constituency and often the same interpreters and translators are used. The costs of sharing elements of the approach taken would produce savings.

Evaluation, monitoring and accountability

Legislation and professional good practice standards provide a framework, lines of accountability and checks and balances. New areas of development, however, require more than that to sustain them until they are firmly established.

Successful evaluation and monitoring strategies do more than control activities. They provide a focus for giving support to those involved by:

- looking objectively at procedures and processes as they develop
- identifying successful approaches and disseminating them
- adjusting or revising approaches, which have not gone so well
- co-ordinating efforts between disciplines and geographical areas.

The challenge is to determine at the outset the criteria to be applied, who is going to assess their application and how they are to do it. Consideration could be given to regional legal multi-disciplinary teams, operating under national guidelines, with strategies for consultation with other-language-speaking groups.

3. Incremental planning, possible approaches

Most member states have already started down the road of supplying what is needed. The Swedes are among those who started to formalise matters nationally in the 1970's. There are many examples, across the member states, of outstanding good practice, such as: functionally bilingual police officers (for use where appropriate), lawyers and probation officers; post-graduate courses in legal interpreting and translation; and multi-media and multi-lingual information sharing.

It has been a struggle for most of us and, now when looking back, we are imbued by that sense of “if only I knew then what I know now”. We each have a solution to share, which could save others valuable time and effort.

What we now have to do is to complete what is needed in our own countries and, at the same time, to correlate and cross fertilise our activities across the European Union to achieve equivalencies of standards.

What follows is “un texte martyre”. There is no English equivalent for this excellent French phrase, which means a text, which can be martyred by shooting arrows at it – and from which salvation solutions perhaps may come.

Most of the items mentioned are described in greater detail in the recommendations arising from the previous Grotius project and are accessible on this website (www.legalintrans.info) under 'Publications'.

PHASE ONE: Establish the foundations

- Establish an organisational structure
 - Set up national multi-disciplinary steering committees, with regional subsidiaries.
- Assess present demand in broad terms, e.g.:
 - Languages/dialects spoken in the country/region
 - by how many people
 - in which geographical location
 - and their likely command of the language of the country.
- Estimate likely future demand under headings above.
- Identify long-term targets, e.g.:

Language

- training courses, assessments and good practice standards for legal interpreters and translators (LITs)
- the registration administrative framework, criteria, codes of conduct and disciplinary procedures in place for LITs
- the range of language combinations available against what is needed
- the contact systems and working arrangements required to attract and retain reliable LITs.

Legal

- commitment to using only qualified and registered LITs by a specified future date
 - skills required to work with LITs and across cultures
 - inter-disciplinary and other professional conventions and protocols to be observed
 - organisational structures required to support this approach
 - systems for evaluation, monitoring and accountability.
- Objectively assess existing national range of skills, practice and structures, against the long-term targets.
 - Implement basic safeguards to protect legal process in the short-term, e.g.:
 - code of conduct for any untrained LITs accepting assignments because there is not yet any training/ assessment available in that language category
 - support systems for trained LITs
 - provide basic guidelines to good practice to those working in the legal system across language and culture.
 - Begin process of organising courses to train trainers
 - for LITs
 - for legal services.

PHASE TWO: Establish an annual format as a structure for a development spiral

- Train trainers – January to June.
- Select, through objective tests, potential student interpreters and translators, on a regional basis under national criteria – May to August.
- Finalise future working arrangements for LITs, e.g. fees, insurance, expenses before courses start so that potential students can choose whether this is a career they wish to pursue.

- Begin LITs training courses at start of academic year in October
 - for students who have met the selection criteria
 - in the language combinations required
 - attending accessible courses
 - in relevant geographical locations
 - leading toward the level of assessment set out.
- Begin in-service training for those working in the legal system across languages and cultures against nationally agreed standards and content, so that the interpreters who qualify at the end of the academic year can begin to practice within a sound professional framework of recognised inter-disciplinary conventions and working arrangements.
- Offer nationally recognised examinations to student LITs, which could lead to EU consistency.
- Administer registration process for LITs who pass the qualifying examination.
- Begin remedial training to bring potentially good LITs, who have not met the selection criteria this year, up to scratch for next year.
- Begin assessing, revising and up-dating accessible information about the legal system.
- Promote the systems for effective second language teaching to both those working in the legal system and those members of the public intending to stay in the country.

PHASE THREE: The spiral of development

Continue the spiral of development towards:

- Provision of qualified interpreters and translators in all the languages required in the geographical areas where they are most likely to be needed.
- A national register of interpreters and translators, through which legal services can contact qualified LITs in the widest possible range of languages.
- Perhaps a European Register to enable legal service practitioners to pursue, with confidence, collaborative actions and deal with cases which cross national frontiers.
- Adequate access to information about the criminal and civil legal systems of each member state.

- Provision of consistent in-service training of all those working in the legal system across language and culture.

4. Conclusion

Commitment, clarity and competence were listed at the beginning of this text. Consistency and collaboration should be added. The ultimate aim is to ensure Fundamental Human Rights for everyone, irrespective of language and culture, in all member states. That principle can only be achieved through working together to establish effective practical methods of implementation.

References

- Corsellis, Ann 1995. *Non- English Speakers and the English Legal System*. Cambridge: Institute of Criminology, University of Cambridge, Cropwood Occasional Papers No. 20.
- Corsellis, Ann 1998. *Working Across Language and Culture*. Birmingham: The West Midlands Probation Service.

Addendum 1

FRAMEWORK FOR THE PROVISION OF PUBLIC SERVICES ACROSS LANGUAGES AND CULTURES (Corsellis 1995)

A Providing a service includes:

1. Finding out about the client(s) and their requirements
2. Preparing the service to meet those requirements
3. Giving information about the service to the client(s)
4. Exchanging information and negotiating decisions with client(s)
5. Delivering an appropriate service
6. Quality Assurance
7. Researching and developing the service

B. by using, at each stage, the combination of professional skills below:

COMMUNICATION SERVICE DELIVERY

1. Interpreters
2. Translators
3. Language aware personnel
4. Bilingual service personnel

MANAGEMENT

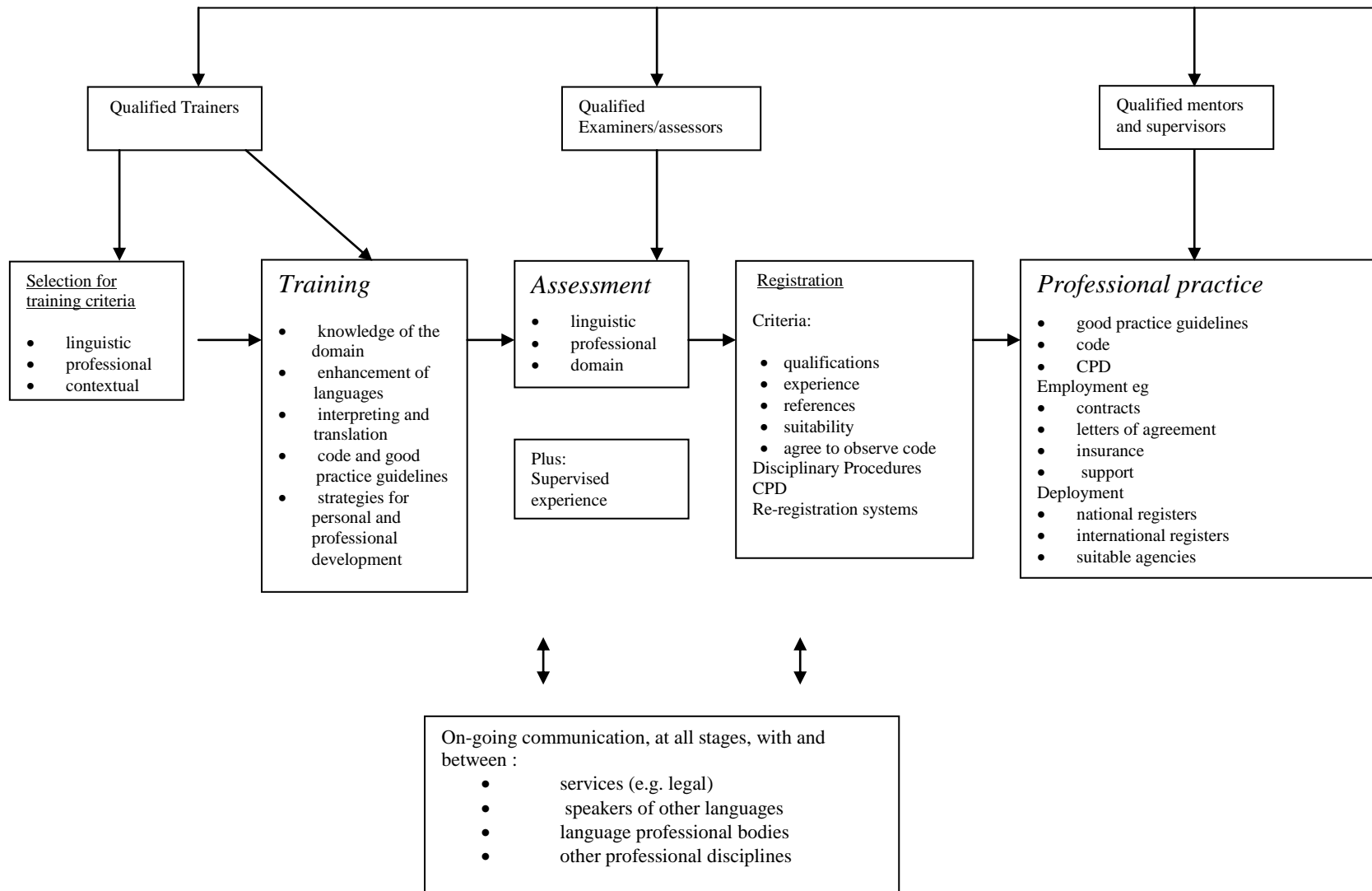
5. Service professionals with relevant expertise
6. Planners, organisers, researchers with relevant expertise

C. each skill (in B above) is made available through consistent, transparent:

1. Selection
+
2. Training
+
3. Assessment at appropriate levels
+
4. Observance of code of ethics and good practice
+
5. Appropriate employment arrangements
+
6. Deployment
+
7. Support and Continuous Professional Development

Addendum 2

Components of the profession: Interdependent, transparent, accountable and consistent



Chapter Ten

Implementing a model: The Dutch Experience

Evert-Jan van der Vlis

1. Introduction

The legal system cannot escape the effects of the increased internationalisation of society and the ensuing increase in the mobility of citizens. A development is taking place whereby an increasing number of countries are becoming party to a single legal system that has been dictated by international agreements and which will inevitably lead to a certain degree of uniformity in the administration of law and order. On the other hand, one must accept that the exclusive language of the law is inextricably linked to the specific country in which an individual citizen may have become entangled in a legal process or have instituted legal proceedings himself. This has consequences for the legal protection that each country must provide to its citizens in accordance with international agreements. For a person to be in a position to make adequate use of his rights, he should at the very least be able to obtain knowledge and information regarding his legal options in a language that he can understand. Language differences should be overcome objectively. Interpreters are increasingly becoming an indispensable link in the communication between citizens and the Justice authorities in many areas. The fulfilment of such an important bridging function requires safeguards in terms of quality and integrity.

The Netherlands has some thirty years' experience of a public facility for communicating with non-native speakers. As part of a quality programme for interpreters, a system is currently being developed to ensure that by 2005 only accredited interpreters will be working within the field of Justice in The Netherlands. This contribution describes our experiences with the organisation, the financing and the quality of the interpreting services in The Netherlands.

2. Interpreting services in The Netherlands

2.1. The increasing need for interpreters

Like many other European countries, international migration is rapidly turning The Netherlands into a so-called multi-cultural society. Large groups of non-native speakers have been arriving in The Netherlands for decades either to live here temporarily, to work or in an attempt to take up permanent residence. The number of immigrants has now reached 2.9 million.

The number of immigrants has doubled in three decades

In 2001, the total population of The Netherlands was 16 million, 2.9 million of whom were immigrants. Some 1.5 million of these people came to The Netherlands from other countries (first generation) and 1.4 million people had at least one parent who had been born outside The Netherlands (second generation). This means that almost one in every five people in The Netherlands is an immigrant.

Source: Netherlands Central Bureau of Statistics

The influx of non-native speaking immigrants has led to an increased need for interpreters in The Netherlands. This is not only necessary for serious matters involving personal situations such as illness, psychiatric problems, offences or accounts of people's flight from their country of origin, but also for more practical matters including driving licences, rent rebates or tax returns. All these cases involve people who either do not speak Dutch at all or who are unable to communicate satisfactorily. For these people, interpreters work as intermediaries in their contact with the various (semi-) public authorities. Dutch is not a widely used language, and there is therefore a greater need for the services of interpreters than in the surrounding countries. A large proportion of the immigrants coming to live in the countries surrounding The Netherlands come from former colonies of those countries where 'global' languages such as English, French or German are widely spoken.

2.2. Services

Interpreters offer a wide range of services. Most interpreters are self-employed professionals, working on a freelance basis.

Interpreting services in the (semi-) public sector are provided by:

- Approximately 1,400 professional (freelance) interpreters. And
- The Netherlands Interpreting and Translation Service (*Het Tolk- en Vertaalcentrum Nederland* or *TVCN*).

Freelancers

The Ministry of Justice hires freelance interpreters to work for The Netherlands Immigration and Naturalisation Service and the courts. The interpreting services provided for the Immigration and Naturalisation Service mainly involve the processing of applications by refugees.⁹⁴ The interpreting services provided for the courts are mainly concerned with the investigation, prosecution and adjudication of criminal offences.⁹⁵

Netherlands Interpreting and Translation Service

The Netherlands Interpreting and Translation Service is fully financed by the Ministry of Justice. It is the job of The Netherlands Interpreting and Translation Service to provide interpreting services to the (semi-) public authorities. The centre functions as a sort of 'broker', and its main task is to match supply to demand. The Netherlands Interpreting and Translation Service can call on the services of a pool of some 900 interpreters, who work in approximately 100 languages and dialects.

⁹⁴ Information in English on the Immigration and Naturalisation Service can be found at: <http://www.ind.nl/>

⁹⁵ Information in English on how the administration of Justice is organised in The Netherlands can be found at: <http://www.rechtspraak.nl/flashed.asp> and http://www.openbaarministerie.nl/english/engl_frm.htm

The Netherlands Interpreting and Translation Service

The (six) interpreting and translation centres that preceded The Netherlands Interpreting and Translation Service were set up in 1977, with partial funding from Central Government. Initially, clients were expected to pay for interpreting and translation services. This changed in 1983 when Central Government decided to fully fund the interpreting and translation centres. Institutions coming under the Grant Scheme for Interpreting and Translation Centres could apply for free use of the centres' services. In 2000, the six centres amalgamated to form The Netherlands Interpreting and Translation Service.

Working area

The Netherlands Interpreting and Translation Service holds a special position within the field of those requiring and providing interpreting and translation services. The primary role of the centre is that of intermediary between those needing these services and the interpreters and translators who provide them. It is estimated that between 12,000 and 15,000 people and authorities use The Netherlands Interpreting and Translation Service to a greater or lesser extent. These people and authorities include: municipal and provincial authorities, lawyers and civil-law notaries, people and official bodies in areas that come under the policy fields of the Ministries of Justice, Health, the Interior, Education, Social Affairs and Housing.

The services of the Netherlands Interpreting and Translation Service are free. The authorities and social workers using the Service's interpreters to communicate with their non-Dutch speaking clients do not receive a bill.

Types of services

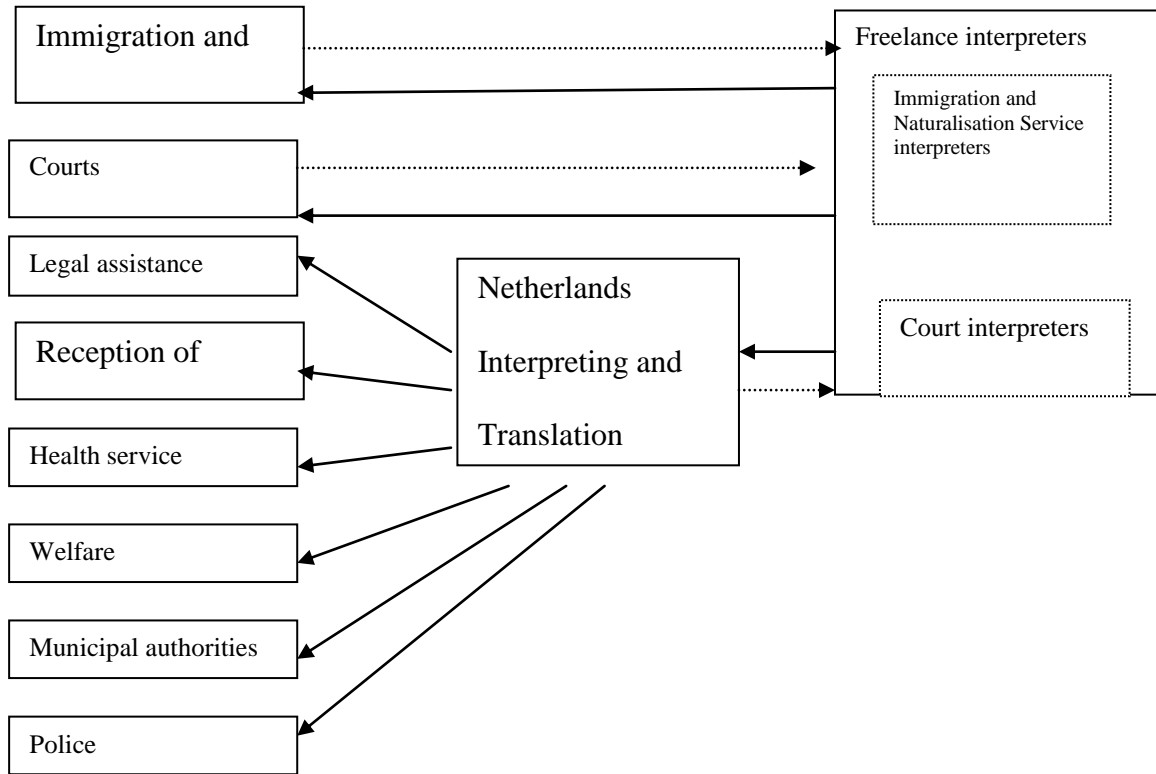
The Netherlands Interpreting and Translation Service provides four different types of service:

- *Telephone interpreters (35%).* The majority of requests for interpreting services are met by using interpreters working on the telephone. Interpreting services expected to take no longer than an hour are always provided via the telephone. An interpreter providing his services via the telephone will not lose time travelling and waiting. Interviews on the telephone are usually shorter and more concise than when an interpreter is present in person.
- *Personal interpreting services (53%, including interpreters' 'surgery').* Communication problems are sometimes so complicated or lengthy that an interpretation via the telephone will not suffice. In such cases, the interpreter will travel in person to where the communication is taking place.
- *Interpreters' surgery.* A special type of interpreting service is provided during the 'surgery' hours when a series of consecutive, personal interpretations are provided in one single language.
- *Translations (12%).* Written documents are translated when providing individual help and for cases where a translation is deemed more efficient than a series of personal interpretations.

The diagram below clarifies the flow of money and services.

Diagram 1

Provision of services
Payment for services



2.3. Rates for providing interpreting/translation services

There are fixed rates of pay for interpreting and translation services, the level of which is set by the Ministry of Justice.

Table 1

Interpreting services	Netherlands Interpreting and Translation Service	Courts	Immigration and Naturalisation Service
Hourly rate	€ 36.60 - € 42.00	Language-dependent, € 40.45 - € 54.00	€ 40.45

Table 2

Translation services	Netherlands Interpreting and Translation Service	Courts
Basis of rates	per word	per line
Rate	€ 0.14 for non-character languages € 0.28 for character languages	€ 0.79 - € 1.69 per line, depending on the language

2.4. The cost of interpreting services

The Ministry of Justices pays all the costs for interpreting services. In 2001, the costs amounted to more than € 63 million.

Table 3

Costs of interpreting services	2001
Criminal cases	€ 16,200,000
Civil and administrative law cases	€ 400,000
Asylum cases	€ 17,800,000
Netherlands Interpreting and Translation Service	€ 28,721,000
Total	€ 63,121,000

Source: Ministry of Justice budget (www.minjus.nl)

3. Policy on quality

In The Netherlands, interpreting is a profession that can be practised by anyone. Unlike translators, there are currently no specific statutory professional requirements for interpreters. There is no form of protection for the title of interpreter. In theory, anyone can claim to be an 'interpreter' and clients have no way of checking whether the interpreter they plan to employ is qualified or not. Although several laws include

regulations regarding the swearing in and admission of people providing interpreting services during legal proceedings, there are no requirements with regard to professional training. It is usually deemed sufficient if the interpreter in question has a good knowledge of the Dutch language (to be assessed by the authority concerned) and can produce a ‘statement of good conduct’ (in other words, no criminal record).

3.1. Background and training

Interpreters deployed by The Netherlands Interpreting and Translation Centre, the Immigration and Naturalisation Service and the courts can be roughly divided into four categories in terms of background and training.

- The *first* group comprises Dutch nationals with specific training in languages and/or interpreting, often at an academic level. This group mainly interprets European community languages and most of their work is concerned with criminal and asylum cases.
- The *second* group comprises native speakers. These are usually bilingual immigrants (often second generation) who provide interpreting services for compatriots. These interpreters do not usually have a specific training in languages or interpreting skills. In the past, they mainly interpreted for The Netherlands Interpreting and Translation Centre, but nowadays they also work for the Immigration and Naturalisation Service and the courts if required.
- The *third* group mainly comprises asylum seekers who have been admitted to The Netherlands and who have mastered the Dutch language. The interpreters in this group come from countries where minority languages are spoken which are not provided by the regular pool of interpreters. They mainly interpret for compatriots requesting asylum.
- The *fourth* group – partly a sub-group of group three – comprises people who interpret in dialects and tribal languages. They are deployed by the Immigration and Naturalisation Service, the courts and the interpreting centres.

Education

The results of a Ministry of Justice investigation amongst interpreters who regularly work for the Justice authorities showed that approximately 30% of the interpreters providing services for the Justice authorities have completed Higher Vocational Education (*HBO*) and that approximately 50% have an attended university. Approximately 30% of these interpreters have had specific training for interpreting. *Source: Research for Policy, 2001.*

3.2. Doubts regarding quality and integrity

The lack of training in languages and/or interpreting skills is a problem in groups two and three in particular (immigrants and asylum seekers who have been admitted to The Netherlands), but also in group four. Another problem is that, generally speaking, these people have not been in The Netherlands long and have therefore not yet completely settled into Dutch society. The first problem can give rise to doubts regarding the quality of the interpretation. The second problem makes an interpreter’s position vulnerable in terms of integrity and loyalty. Consider an interpreter in an asylum case who has himself been involved in an (armed) conflict in the country of origin, who has connections with foreign intelligence services or who passes on

information to compatriots in criminal circles during an investigation into criminal offences.

Complaints regarding quality of interpreters for the Immigration and Naturalisation Service

On the basis of an investigation into the files on 27 asylum cases, the National Ombudsman upheld a complaint that the Minister of Justice was not monitoring the functioning of interpreters during follow-up interviews in asylum procedures satisfactorily. The National Ombudsman formulated three high priority quality requirements:

- Expertise.
- Reliability/ integrity.
- Objectivity.

In the National Ombudsman's opinion, the Minister of Justice should take these requirements into account when appointing, instructing and monitoring interpreters. The National Ombudsman made these recommendations to the Minister of Justice with the aim of providing measures to guarantee the quality of the interpreters deployed by the immigration service. The National Ombudsman included the following points in his recommendations:

- Interpreters should be tested in both the Dutch language and the language in which they interpret.
- If training is available in the foreign language concerned, the candidate should be required to follow a training course.
- There should be training for interpreters in the areas of impartiality, procedures and communication skills.
- A complaints procedure should be introduced.
- There should be a guarantee that if a complaint about an interpreter is upheld, the interpreter in question should not be used again.

Source: National Ombudsman 13 February 1995 number 95/94.

3.3. Insufficient professionalism

Alongside the problems mentioned previously concerning quality, integrity and loyalty, there is another problem involving the lack of professionalism within the sector. Interpreting services for non-native speakers were set up in the seventies under political pressure and the sector has been growing ever since. However, a clear professional profile has never been drawn up. There are no agreed professional minimum standards for interpreters. In practice, interpreters tend to promote themselves on the basis of their connections with various existing clients, rather than promoting themselves on the grounds of the quality of their work. In this respect, working for the Ministry of Justice is used as a marketing instrument to acquire assignments outside the world of Justice. If a professional profile exists, it is determined by the interpreters' clients rather than by the interpreters themselves. The public services interpreting sector has no strong tradition of allowing the profession to develop on the basis of learning and education. The rates of pay are the main topic of discussion within the sector. However, the fact that the interpreting sector lacks professional status also means that it is not in a strong position to join the debates on these issues. Discussions on interpreting services are usually held by other parties (intermediaries, clients, trainers, subsidisers). Members of the profession are unable to exert much influence on these discussions. This situation means that real problems regarding the quality of interpreters are not tackled by the sector itself.

Discord within the sector

Discord amongst the ranks is characteristic of the interpreting world in The Netherlands. There are eight different professional organisations operating within the group of interpreters working in the Justice area alone (some 50% of the interpreters working in the (semi-) public sector belong to such a professional organisation. *Source: Research for Policy, 2001*).

This discord within the group does not only mean that the Government lacks a strong, respected partner in the discussions, but it also means that issues such as the development of a clear professional profile and safeguarding quality (professional agreements) are not tackled by the group itself. In 2002, the Ministry of Justice commissioned two investigators to look into the possibilities of establishing a branch organisation from the ranks of the professional organisation, to function as a central partner in discussions with the Government. This would contribute to the overall development of the profession and help to safeguard quality.

3.4. Quality programme

In response to the recommendations of the National Ombudsman mentioned earlier, in 1998 a Ministry of Justice committee advised that a programme should be developed with the aim of establishing safeguards for quality and integrity. The Government accepted this advice and in 2000, all interpreters working for the Ministry of Justice were invited to take part in the quality programme. The basis of the programme is an agreement in which the interpreters state that they wish to meet the quality requirements laid down by the Justice authorities. The most important requirement is that interpreters, who have not been accredited by an acknowledged interpreter training institute, must take and pass, a theoretical and practical test.

Theory test

The theory test comprises four parts:

1. Knowledge of Dutch society and Dutch culture.
2. Knowledge of the culture and society/societies of the country in which the foreign language is spoken. The thinking behind these two parts of the test is that interpreters should have a broad knowledge of, and insight into, the world around them if they are to perform their tasks adequately. This includes a wide general knowledge as well some knowledge of: international organisations, geography, the constitution, economy, the social security sector, education, media, culture and history. For example: the 'social sector' component includes questions on social facilities, marriage and the family, sport, relationships, mental health, social issues, leisure time, emancipation and social work.
3. Knowledge of Dutch law and the more common legal terms. The thinking behind this part of the test is that interpreters working in a legal area should have a basic knowledge of the most important elements of the Dutch legal system. This does not only involve the ability to translate legal terminology, but also the ability to place a term in a legal context. Interpreters should have knowledge of at least three areas of the law for this part of the test.
4. Knowledge of the Dutch health care system and the more common medical terms. The reason for this part of the test is that the Ministry of Justice is also responsible for interpreters in the health care system. Correct interpreting is essential in the health care sector. Interpreters should be familiar with the most common medical terminology and illnesses, as well as having some knowledge of the aspects covered during a preliminary medical examination or intake. Knowledge of the legal side of the health care system and health insurance is also tested.

Practical test

The practical test is an oral examination that is designed to correspond with real-life practical situations. There are three parts to the practical test:

1. Role-play. The role-play comprises an equal number of passages in Dutch and in the foreign language concerned. The passages are of different lengths, but none takes longer than 2 minutes. The role-play passages are based on standard text material and comprise a dialogue with elements from practical situations.
2. Unseen translation. Interpreters are given two fragments of written text to be translated orally after a short reading break.
3. Repeating text without translating (Dutch-Dutch and foreign language-foreign language). This part of the test is to ascertain whether interpreters are able to repeat a standardised fragment of text in the same language.

All elements of the practical tests are taken together. The role-play is recorded on video.

Source: Quality Standards Core team.

The Ministry of Justice commissioned extra training modules to be developed for interpreters to prepare for the various components of these tests. These extra training modules have been designed to help interpreters with an insufficient knowledge of Dutch society and culture to increase their knowledge to the required level. The modules comprise a syllabus and book list which interpreters are expected to study independently. A limited number of hours of practical training are also provided. (Source: *Quality Standards Core Team*.)

Interpreters who have passed the theoretical and practical tests are given priority by the various authorities to do work for the Ministry of Justice.

4. Better positioning of the responsibilities

In mid-2001, the previously mentioned policy on quality came under pressure. The reasons were twofold: on the one hand, the interpreters did not receive the invitation to take part in the quality programme with open arms and, on the other hand, there were serious budgetary problems.

4.1. Insufficient numbers of interpreters prepared to cooperate with accreditation

The interpreters had three basic criticisms of the quality programme.

Acknowledgement of experience

Although the interpreters acknowledged the importance of objectifying quality, they objected to the personal consequences (actually having to take a theoretical and practical test themselves). Particularly interpreters who had been providing interpreting services in criminal cases or asylum procedures for a number of years, saw the compulsory testing as evidence of a lack of confidence in their work. In view of their considerable experience and service records (no complaints), they were of the opinion that they should be granted exemption from the tests. It was striking that these interpreters were often supported by their clients in their objections to compulsory testing. An interpreters' strike in the law courts was given wide support by the judiciary.

Inadequate curriculum

A second important reason for boycotting the quality programme was the criticism of the curriculum. According to court interpreters in particular, the knowledge and skills of an interpreter defined in the quality programme would not be sufficient for him or her to be deployed for interpreting in criminal cases. The court interpreters were supported in their objection by an investigation into the curriculum of the quality programme. This investigation included a comparison of legal terminology used during criminal cases and the syllabus that was to be used to prepare interpreters for the knowledge tests. The investigation found that around 30% of the legal terms used in criminal cases were not included in the teaching material of the quality programme. According to the court interpreters, interpreters of a quality higher than the level laid down in the quality programme were needed.

Rates of pay

A third reason for objecting to the quality programme was the aspect of remuneration. Many interpreters did not consider the rates of pay to be in line with the required quality standards. The lack of adequate compensation for inconveniences such as waiting time and journey time received considerable criticism.

4.2. Budgetary problems

The budgetary problems can mainly be blamed on a lack of control of the costs for interpreting services. Authorities or people employing the services of an interpreter are not individually confronted with the financial consequences of their decision. There is often no direct relationship between the client and the organisation supplying the interpreting services, and there is therefore no direct control mechanism for monitoring quality and efficiency. This has led to serious budgetary problems for the Ministry of Justice.

5. Reconsideration

The abovementioned bottlenecks (the objections of the interpreters to the quality programme and the budgetary problems) led to a period of political reconsideration with regard to the policy on quality prevailing at the time. The outcome of this period of reconsideration is that policy implemented with the aim of achieving safeguards for quality and integrity will be continued, but the emphasis of the policy will be changed. The crux of the changes is to make it clear where the responsibility for the organisation, financing, quality and deployment of interpreting services lies. This renewed policy aims to stimulate all parties involved with the deployment of interpreting services to acknowledge their own areas of responsibility.

5.1. Alignment with integration policy

Making people aware of their individual responsibilities is a clear reflection of the political wish for interpreting services to be brought into line with policy on the integration of immigrants.

The current regulations for subsidising The Netherlands Interpreting and Translation Service are based on policy with regard to minority groups that date from the seventies. In those days, policy was not aimed at integrating immigrants into Dutch society but focused on their personal welfare and ensuring that they were able to retain their own cultural identity. Not being able to speak Dutch was generally considered excusable. Society should be arranged in such a way that immigrants would be able to live their lives on an equal footing with the rest of the population. The creed was: 'integration while retaining individual language and culture.' The thinking behind this policy was that people would have more self-respect if they could retain their own language and culture, and that this would in turn benefit the integration process itself. It was therefore logical that interpretation services were needed for immigrants to be able to make use of the basic social facilities in The

Netherlands, such as the health care service, housing, work, income and welfare benefits.

Discussions regarding the Dutch policy on the admission of asylum seekers have led to drastic changes in attitudes towards the disadvantaged position of immigrants and how best to tackle this problem. Nowadays, nearly all experts are of the opinion that the ability to speak Dutch is essential if immigrants are to lead full lives in Dutch society. The inability to speak Dutch can lead to a situation in which the disadvantaged position of immigrants is more or less passed on from generation to generation. The children of disadvantaged immigrants run the risk of perpetuating their parents' disadvantages if their parents are not equipped to prepare them for the demands that society will make on them. One of the risks is that their achievements at school will not reflect their true potential. This is the first step on the path towards a disadvantaged position in society.

Given the knowledge that the inability to speak a country's language will inevitably lead to social and economic deprivation, immigration does not only mean choosing to live in another country; it is a choice that should also include being prepared to learn another language. Living in another country does not free one from obligations. This starting point serves as the basis of the Newcomers Integration Act.

Naturalisation and Integration

Immigrants admitted to The Netherlands come under the integration policy for minorities. This policy aims to combat the disadvantaged position of minority groups in Dutch society for both newcomers and people from other cultures who have been living in The Netherlands for some time. Within the integration policy, the naturalisation process is the first step towards the full integration of newcomers into Dutch society.

Newcomers Integration Act

Since 1998, integration has been regulated in the Newcomers Integration Act. In short, the aim of this Act is to introduce newcomers to the Dutch language and provide them with knowledge and insight regarding social and constitutional relations within our society, as well as giving them insight into the labour market. The Newcomers Integration Act assumes dual obligations: on the part of the Government and the newcomer. The Government is obliged to provide the newcomer with a suitable integration programme, which is tailored to each specific situation. The newcomer is obliged to take part in this programme. Should he fail to do so, he could face sanctions in the form of a fine.

On the basis of the experiences of other countries that have been dealing with the influx of immigrants for many years, there is a growing realisation in The Netherlands that during the often-difficult process of adjusting to the new environment, appealing to the individual sense of responsibility can have a positive effect. In the thinking behind current policy, immigration is seen as a question of investing in one's own development, and this includes the obligation to learn Dutch.

On the basis of this thinking, the provision of free interpreting services is at odds with the policy on integration, as it gives immigrants the idea that they are welcome to live and work in a country (The Netherlands) without having to learn the language. This is not the message that should be sent out to immigrants if Dutch policy on integration and investing in one's own development is to be taken seriously. In the thinking behind current policy, integration and interpreting services can in some ways be seen

as communicating vessels: the more immigrants invest in learning the language, the less need there will be for interpreting services, and vice versa. Bearing this in mind, in future immigrants' rights to Government-funded interpreting services will be limited to situations in which it is evident that public interests are at risk (for example, protection of rights and health care).

5.2. Administrative organisation

With regard to the administrative organisation, the Ministry of Justice plans to give the organisations that hire interpreters more responsibility in terms of deploying these interpreters. These organisations are in the best position to arrive at a list of priorities with regard to requirements. Individual responsibility should not only be reflected in a different attitude to administering the costs (the organisation itself is to manage the budget and will therefore be in a stronger position when making decisions on the quality of interpreting services in the sector and the price it is prepared to pay), but also in more freedom of choice than is now the case. This means that also the position of The Netherlands Interpreting and Translation Service will have to be reconsidered.

5.3. Quality assurance institute for interpreters and translators

With respect to the quality issue, the Ministry of Justice will limit itself to formulating the specific requirements it considers necessary for interpreting in Justice areas. For as far as this is possible, the Ministry of Justice aims to get into line with the regular interpreting and translation training institutes. This means that in future, the Ministry will no longer organise tests and accreditation for interpreters. Instead, the Ministry is planning to hand over the responsibility for accreditation to an independent quality assurance institute, to be set up specifically for this purpose. This institute will be given the following tasks:

- Promoting accreditation by acknowledged training institutes.
- Maintaining a register of accredited interpreters and translators.
- Drawing up a clear complaints procedure, by means of which interpreters/translators against whom a complaint has been upheld can be removed from the register.
- Safeguarding quality by, for example, compulsory continuing professional development and inter-collegial monitoring.

Formally setting down the requirements for accreditation will also mean that minimum requirements (competencies) regarding knowledge, skills and attitude will have to be standardised. Three elements are important in terms of standardisation:

- The necessary training or education.
- Admission to the profession.
- The methods for monitoring the minimum quality requirements in the field.

The formulation and upkeep of the minimum requirements that an interpreter must satisfy (in the form of a prescriptive document with clearly established 'exit' regulations) will obviously require effective contributions on the part of all those concerned: the interpreters, the clients hiring or using interpreting services and the

training institutes. These parties will therefore also be represented in the new quality assurance institute.

5.4. Relaxing the transitional arrangements

The basic premise of the quality programme was that all interpreters would be tested by 2003, unless they had been granted exemption until 2005 on the grounds of their training. This requirement for testing in 2003 has been relaxed and other forms of qualifications will now be recognised – a fact that has also been accepted by the new quality assurance institute. The underlying idea behind this relaxation of the transitional arrangements is that regulations with regard to the safeguarding of quality that have evolved from within a professional group, such as continuing professional development or inter-collegial monitoring, will usually be more acceptable and more easily enforceable than a system of testing that the group considers to have been forced upon them.

This means that accreditation – alongside the quality test developed by the Ministry of Justice – can comprise:

- A regular training course that an interpreter or translator must pass.
- More than five years' experience of interpreting for the Justice authorities, the police or the Royal Netherlands Military Constabulary, combined with participation in a quality assurance system organised by a professional organisation and approved by the quality assurance institute. The new quality assurance institute will continually monitor the level of the training and the quality safeguard.

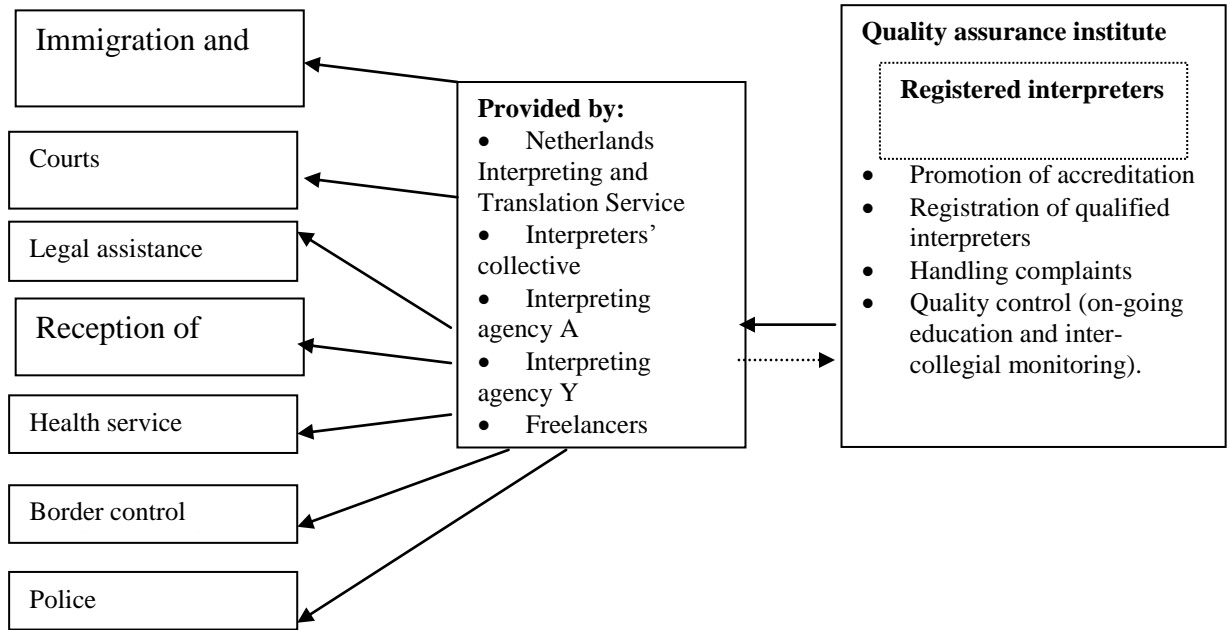
Interpreters with less than five years' experience working for the Justice authorities, the police or the Royal Netherlands Military Constabulary, or who have not undergone appropriate training, will always have to take the quality test as soon as it becomes available.

6. Future situation

The future situation is shown in the following diagram.

Diagram 2

Provision of services _____
Payment for services. -----



CONCLUSION

The purpose of this summary is to provide an overview of the work undertaken, to link conclusions and statements to specific aspects contained in the report and to provide at the same time a response to the EU Commission's Green Paper on *Procedural safeguards for suspects and defendants in criminal proceedings throughout the European Union*.

1 Context

In the EU, people working in the legal services are increasingly involved in:

- judicial co-operation between states
- individual cases which cross national borders
- provision of equal service to all within their frontiers, irrespective of language and culture.

Where there is no fully shared language on these occasions, which is usually the case, it is self-evident that competent legal interpreters and translators are an essential pre-requisite to successful outcomes.

The Green Paper from the Commission, *Procedural safeguards for suspects and defendants in criminal proceedings throughout the European Union*, addresses legal interpreting and translation in Chapter five. In paragraph 5.1 the fundamental right of access to competent interpreting and translation by defendants and suspects is affirmed. In paragraph 5.2.2 (d) it is stated "Member states must make funds available for this purpose". The remaining aspects to be dealt with are contained in the questions asked in the paper and refer to "the levels and means of provision."

2 Background

A system is required, in order to comply with relevant ECHR obligations, to provide legal interpreters and translators who are competent, accredited to equal standards across the EU and easily accessible in the languages needed.

The Grotius programme therefore supported two consecutive projects to promote progress. The first (98/GR/131) involved institutions with experience in the field from Belgium, Denmark, Spain and the UK, led by the Institute of Linguists UK. It was a two-year project, aimed at developing a clear structure to meet the need. Its recommendations were accepted by the Commission and published by the Lessius Hogeschool in Antwerp under the title *Aequitas: Access to Justice across Language and Culture in the EU* (ISBN 90-804438-8-3).

The purpose of the second, one-year, project (Project 2001/GRP/015) led by the Lessius Hogeschool in Antwerp, has been to disseminate those

recommendations. This has been done through incremental consultation, starting with a core of institutions from Belgium, Denmark, The Netherlands and the UK, plus the Czech Republic; then involving five more countries at a second meeting and culminating with a conference in Antwerp in November 2002, attended by legal and LIT delegates from all member states and two candidate countries. The process was accompanied by an evolving web-site on <http://www.legalintrans.info>

The present publication (*Aequalitas: Equal Access to Justice across Language and Culture in the EU*), to which this summary is attached, contains the main contributions from that culminating conference. Those contributions consider the original recommendations, enrich them and take them forward. In the process, they respond to many of the questions asked in the Green Paper.

3 Requirements (Chapters 1-3)

Three lawyers set out the legal framework. Each of them adds important elements arising from their own specialist expertise including: the relationship between language and the law, a detailed examination of existing ECHR law and thoughts on further extension of relevant legislation.

Identical and minimal EU standards and regulations must be integrated into national legislation and harmonise existing national practice in the areas of :

- training, skills and structures of LIT
- code of conduct and good practice
- national planning and EU co-ordination to achieve implementation of the minimum standards and regulations.

Particular attention should be paid to the following:

1. Every interrogator or judge should ascertain the language competence of the defendant to follow the proceedings. In the case of an interpreter being used, a formal mechanism should be established to ascertain that there are no communication problems between interpreter and defendant and that everyone knows how to work through an interpreter. Training of the legal services should be provided and guidelines drawn up. Any attempt to impose the language of the court on the defendant must be seen as an infringement of the rights of the defence. (GP Question 9)

2. The fundamental principle stands that everything that is said and asked by the court or any party involved, during the investigation as well as the trial phase, must be interpreted. Parity of arms is nonexistent if only some parts or some conversations or questions are interpreted. (GP Question 10)

3. Complete independence and impartiality can in principle best be seen to be guaranteed by employing different interpreters during the investigative and trial phases. It would also firmly secure the right to a fair trial and parity of arms. However, fully professional, qualified and certified interpreters who for specific reasons – scarcity of interpreters, external circumstances, etc.- happen

to find themselves involved in both phases or on both sides, would - as bound by their code of conduct – provide an equally independent and impartial interpreting service. In these cases tape-recording, which should anyway be introduced and imposed throughout the system as an indispensable quality-monitoring mechanism, would provide extra guarantees. (GP Question 11)

4. Any document used in the procedure that requires understanding, response or action on the part of the defendant to have the benefit of a fair trial and parity of arms, must be translated. (GP Question 12)

5. The courts in most EU member states already provide for sanctions when the rights to interpreting or translation are infringed upon, ranging from the inadmissibility of certain evidence to acquittal. The sanctions by ECHR are additional but crucial in those cases where member states have apparently failed to provide for adequate legal interpreting or translation. (See Chapter 3) (GP Question 20)

4 Possibilities (Chapters 4 and 5)

In these chapters linguists look at possible approaches to developing what is required. Legal interpreting (in both spoken and signed languages) and translating need to become regulated professions, in the same way as lawyers and others in the legal services are, to protect their clients, themselves and the interests of justice.

The necessary elements which make up a nationally, and internationally, consistent regulated profession are spelt out in terms of standards, selection, training, accreditation, registration, continuous professional development and training of trainers. The elements also constitute a framework for growth and improvement of standards.

Particular attention is drawn to the following:

1. The member states should draw up national registers of legal interpreters and translators. Those registers should be based on a system of accreditation, itself the outcome of a training process and sustained by but also subject to continuous professional development initiatives, all of those steps based on common EU standards as described in *Aequitas*. (GP Question 13)
2. When member states agree to use the same EU standards for accreditation of legal interpreters and translators on their national registers, it is obvious that also the formats of the registers should be harmonized so they can easily be exchanged and consulted on a EU basis. (GP Question 14)
3. It is necessary that all EU member states implement a time framework and national plan to provide for the training of their legal interpreters and translators. These training structures must be based on commonly agreed and held EU standards – again as described in *Aequitas* – thus identifying and guaranteeing clear levels and competences. (GP Question 15)

4. It is also essential that member states be urged or obliged to implement in their national plan for providing quality legal interpreters and translators a remuneration scheme that is fair and equitable. This is a prerequisite to attract highly qualified and motivated people into the legal system and retain them so they can provide continuity, expertise and training to future colleagues. (GP Question 17)

5 Synthesis (Chapters 6-8)

Legal interpreters and translators are joining a multi-disciplinary team of professionals, which includes lawyers, judges, police officers and probation officers. Therefore there has to be an informed synthesis between the legal interpreters and translators and other disciplines, of codes of conduct, good practice conventions and working arrangements leading to mutual trust and to mutual respect and recognition of roles.

While the content of the legal interpreters and translators' codes are accepted, the mechanisms of the accompanying disciplinary procedures are discussed between a lawyer and linguists.

Therefore:

1. As legal interpreters and translators are essential professionals in the legal system, there to secure a fair trial and parity of arms, the regulation of the profession – training, accreditation, certification and CPD – should be structured in close co-operation with the Parliaments and Ministries of Justice of the member states. Accreditation and certification - on the basis of training and quality - should be the responsibility of an independent and interdisciplinary body consisting of trainers, professionals and the legal services and established by the Ministry of Justice. (GP Question 16)

2. The legal interpreters and translators' profession and national associations should draft their code of ethics, taking into account internationally established best practices and models. This should be done in consultation with the legal services as to the legal implications of certain rules and regulations and with the Ministry of Justice so the code can be made an essential part of a chartered or regulated statute of the certified legal interpreter and translator. The regulation of professional ethics must also specify the disciplinary and appeal procedures in case of a breach of the code of ethics. (GP Question 18)

6 Models for implementation (Chapters 9 and 10)

While many member states have started developing what is required, all have some way to go. Each state will therefore have to plan and implement incremental strategies to manage change, according to their own national systems and leading to common standards.

A general model is proposed for consideration and there is a most useful description of an approach by one member state, by way of an example.

It is noted that the legal system is leading the way in this matter and that other essential public services, such as healthcare and social services, could build on the foundations laid to improve their service to the same client language groups and thereby potentially provide economies of scale.

In this respect:

1. It is important to ensure that the legal interpreter and translator profession is made more attractive. A number of strategies should be implemented:
 - the EU Commission should continue its efforts to stimulate and enforce quality standards in this field
 - member states should be stimulated and enforced to regulate the profession, i.e. provide training, an accreditation and registration scheme, a professional statute
 - member states must be stimulated and enforced to establish professional working conditions for legal interpreters and translators, including fair remuneration for their professional services, and
 - member states must be stimulated and enforced to provide interdisciplinary training of all those working in the legal services on how to work best with legal interpreting and translation. (GP Question 19)

7 Conclusion

The dissemination and consultation process was positive. Project participants from all member states and the candidate countries present accepted the recommendations. There are inevitable details that will have to be discussed further and taken forward in the light of experience. But this project and the Conference have certainly succeeded in building a solid network of colleagues and experts in the field of legal interpreting and translation eager to take the profession forward.

There were; however, serious reservations as to whether member states would make available the necessary commitment and resources for this purpose, at an adequate level and within the time frame, to realise practical implementation.

It is therefore of the utmost importance that the Commission and DG JHA in particular continue their valuable work and efforts in this field. 'Grotius' indeed cannot be the end, as is signalled by the Commission itself by initiating a new framework programme called AGIS that shares many of the Grotius aims and concerns. We are convinced that the same desire not to leave the cause of legal interpreting and translation half finished, pervaded the delegates at the conference and we hope that the two Grotius projects and the ongoing Consultation process presently at the stage of the Green Paper, will be an inspiration to continue the work that still needs to be done in the field of legal interpreting and translation.

May 1st, 2003.

Appendix One

EUROPEAN COMMISSION
DIRECTORATE-GENERAL JUSTICE AND HOME AFFAIRS
GROTIUS PROGRAMME PROJECT 2001/GRP/015

Aequitas: Equal Access to Justice Across Language and Culture in the EU

Conference
Lessius Hogeschool
14, 15, 16 November 2002

Aims of the conference

- To consult with, and gain insights from selected legal and interpreter-translator representatives of each EU member state and one candidate country, on establishing equivalent standards in legal interpreting and translation in the EU and in each member state, particularly on inter-disciplinary working arrangements between the legal services and legal interpreters and translators, 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 disseminate the achievements of Grotius I project 98/GR/131 to all member and candidate states;
- To work together on the development of a quality trajectory (as exemplified in Appendix 1 to the Grotius I report *Aequitas*), to take the process forward in ways which achieve common standards while responding to national needs and conventions.

Outcomes

The anticipated outcomes include:

- A consensus on the basic principles of and approaches to equal access to justice across language and culture, particularly concerning equivalent standards in legal interpreting and translation in the EU
- Enhancement of the recommendations by suggesting strategies for a quality trajectory to be implemented in the member states
- 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
- Further development of the web site, in the light of comments and advice received from conference participants and web site users and with the agreement of the participants to start the process towards developing the web site into a comprehensive European information resource on Legal Translation and Interpreting, including teaching materials, terminology, codes, working arrangements, legal procedures etc., possibly becoming the nucleus of materials for a European M.A. in Legal Translation and/or Interpreting.

Implementation will require that the key people in all member states be given the opportunity to go through a process of:

- Gaining an understanding of what is being recommended, including the opportunity to challenge it and to suggest improvements
- Consulting with the relevant bodies and individuals within their own countries
- Reaching a consensus on the main elements, while accommodating any necessary national variations
- Establishing which of the recommended activities already exist in their own countries e.g. training programmes for legal interpreters and translators at the level suggested
- Planning and managing the necessary changes, which will bring about over time the implementation of any activities not yet addressed, aimed at EU consistency
- Making positive use of collaborations and mutual support between member states.

It is recognised, from the outset, that the process of implementation of equivalent standards by different member states will involve different starting points, different approaches and different time-scales.

The equivalence of standards envisaged does not necessarily mean the same but rather the identification of common targets, which each state may reach according to their individual systems and conventions.

It is anticipated that these can only be achieved in incremental stages, which are carefully planned over a period of time. Co-ordination between member states, however, would produce quicker and more useful results.

We repeat, the outcomes are 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 series of processes carried out by different legal agencies. The integrity of each process affects the integrity of the whole.

By the end of the conference, it is envisaged that there will be a broadly based plan of practical action to take the matter forward, which will contribute toward a decision and implementation framework.

PROGRAMME

The programme is divided into four sessions:

- 1 **Requirements:** legal framework and principles
- 2 **Possibilities:** what language and legal skills and structures can be utilised to meet those requirements
- 3 **Synthesis:** establishing complementary skills and structures between legal and language professions e.g. complementary codes of conduct, good practice standards in this field
- 4 **Models:** potential incremental steps which can or should be taken over time, according to individual states' traditions and conventions, to implement the recommendations to reach a common EU standard.

It is recognised that different member states are at different stages of development in this area and that, to date, none of them has achieved the ideal. Costs, for example, are a major source of concern to all and cost-effective solutions are sought, bearing in mind the significant potential costs of errors and appeals.

Each of the four, moderated, two-hour sessions will be divided into three stages:

- One or two introductory **keynote** 30-minute talks to set out the subject and the thinking behind it.
- A number of 10-minute formal **responses** from a range of perceptions and countries, which enhance and/or challenge aspects of the keynote talk.
- **Discussion** aimed at advancing the debate through suggestions for improvements and additional insights.

Thursday 14 November

From 4 pm on: Registration: Lessius Hogeschool, St. Andriesstraat 2, 1st floor.

18.00 Opening session

Welcome by the Conference Chair: Professor Dr Erik Hertog

Mme Gisèle Vernimmen, DG JHA, Head of Unit Judicial Co-operation in Criminal Matters

Ms Anne Verbeke, on behalf of the Regional Centre Europe of FIT

Dr Paul Pauwels, Head of the Department of Translation-Interpreting of the Lessius Hogeschool

Reception at Lessius – 4th floor

Friday 15 November: Requirements

9.30 Session 1

Requirements: the principles and existing international and EU legal framework, fundamental and citizens' rights. Equality before the law, irrespective of language and culture, is an accepted legal principle in member states. It underpins ECHR. Furthermore, EU and domestic legislation provide a legal framework through which to implement legal principles and to ensure their observance. Are current EU and domestic legislation adequate, in respect of legal interpreting and translating and the delivery of legal processes across cultures? If not, what more could be usefully added?

Moderator: Yolanda Vanden Bosch (Belgium)

9.30 – 10.10 Keynote talk:

Hermine Wiersinga (The Netherlands) and
Brecht Vandenberghe (ECHR)

10.10 – 11.00 Respondents:

Armin Frühauf (Germany)
Britta Tichy-Martin (Austria)
Sophy Thomas (UK)
Jan Passer (Czech Rep.)

11.00 – 11.20 Tea/Coffee – 1st floor

11.20 - 12.30 Discussion

Lunch

14.00 Session 2: Possibilities

Possibilities: what language and legal skills and structures should be utilised in LIT to meet these requirements?

To put into practice what is required, a range of legal and language skills are needed, as well as administrative structures to develop and support them. Previous work has shown this to be possible and cost-effective. Examples of good practice have been tried and tested in a number of member states over the last twenty years. These were brought together in a previous Grotius project, whose recommendations have been accepted by the Commission and published as *Aequitas: Access to Justice across Language and Culture in the EU* and which can also be consulted on www.legalinttrans.info.

What skills and structures can or need be developed to meet the common targets?

Moderator: Liese Katschinka (Austria)

14.00 – 14.30 Keynote talk:

Bodil Martinsen and Kirsten Woelch

Rasmussen (Denmark)

14.30 – 15.20 Respondents:

Helge Niska (Sweden)
Lorraine Leeson (Ireland)
Mira Kadric (Austria)
Carmen Valero (Spain)
Francisco Magelhaes (Portugal)

15.20- 15.40 Tea/coffee – 1st floor

15.40 - 16.30 Discussion

18.00 Reception at the Antwerp town hall.

Saturday 16 November

9.30 Session 3: Synthesis

Synthesis: establishing complementary working arrangements and structures between the legal and language professions, e.g. on codes of conduct and good practice standards.

The legal system comprises a number of different disciplines, such as police officers, lawyers, judges, probation and prison officers. They are all trained to understand, recognise and support each other's role, code of conduct and expertise, while retaining the independence and agreed good practice standards of their own professions. This balance and diversity gives strength to the process and promotes its smooth delivery.

Legal interpreters and translators are the newly formalised professions to join the legal multi-disciplinary team. How best can the necessary inter-disciplinary complementary conventions and good practice strategies be applied?

Moderator: Flavia Caciagli (Italy)

9.30 – 10.10 Keynote talk:

Christiane Driesen (Germany) and Maria Bottis (Greece)

10.10 – 11.10 Respondents:

Amanda Clement (UK)
Alessandro Dagnino (Italy)
Ivana Bacik (Ireland)
Ari Wiren (Finland)
Danuta Kierzkowska (Poland)
Georges Moukheiber (France)

11.10 - 11.30 Tea/Coffee – 4th floor

11.30 – 12.30 Discussion

Lunch

14.00 Session 4: Models for Implementation

Models for implementation: potential incremental steps of a comprehensive quality trajectory, which may be taken to reach a common EU standard, through the conventions and traditions of individual states.

The management of change, to meet new social situations and attendant legislation, is carried out differently in different cultures. Satisfactory and consistent solutions to this particular challenge will not be achieved overnight. Those solutions will involve a range of government departments and professions at regional, national and European levels – as well members of the public who speak languages other than the languages of the country. There is a perception of complexity and difficulty. A properly planned, co-ordinated and incremental approach, within a sensible time-scale, can take matters forward.

In what order might the various necessary activities be tackled?

Moderator: Carmen Valero (Spain)

14.00 – 14.30 Keynote talk: Ann Corsellis (UK)

14.30 – 15.20 Respondents:

Hans C. Warendorf (The Netherlands)

Mary Phelan (Ireland)

Zuzana Jettmarova (Czech Republic)

Elena de la Fuente (France)

Kaarina Hietanen (Finland)

Rob Blextoon (The Netherlands)

15.20 - 15.40 Tea/Coffee – 4th floor

15.40- 16.30 Discussion

Musical Farewell: The Arion Quartet: Olga Zolotareva, Laurent Tardat, Stefaan Bataille and Sergio Agreda De Ro.

Closing Address

19.30 Formal closing dinner

Appendix Two

Delegates to the Conference

Austria

Mira Kadric

Trained to become a translator and interpreter (Serbian, Bosnian, Croatian) at the University of Vienna. Wrote her thesis on court interpreting and became a certified court interpreter for the above-mentioned languages. Teaches sight translation, translation methods, court interpreting at the Translators'/Interpreters' Institute of the University of Vienna, and works as a court interpreter and with other agencies. She has published on general translatology, court interpreting and has translated children's books.

Liese Katschinka

Graduated from the University of Vienna (diploma as translator and interpreter). She has been working as a free-lance conference interpreter (German, English, French) and certified court interpreter (English), as well as sci-tech translator throughout her professional life. Has been actively involved in a number of national and international professional associations (currently Vice-President of the Austrian Court Interpreters' Association, Chairperson of the FIT Committee on Court Interpretation and Legal Translation, Member of the AIIC Court and Legal Interpreting Committee), has organized several seminars and conferences on court interpreting and is actively involved in the elaboration of quality standards for translator and interpreters.

Dietmar Koller

Studied law and translation/interpreting in Vienna and Prague. Has 12 years of experience as a translator and court interpreter for the Czech language. He has been teaching Czech and consecutive interpreting at the T/I Institute of the University of Vienna for 10 years. In addition, he has been working as a judge at the District Court Vienna 'Innere Stadt' for nine years (penal law, briefly also family law).

Britta Tichy-Martin

Studied law at the University of Vienna, did her post-graduate work in the Vienna Civil law court district, took her judge's examination in October 2001 and was appointed judge for the District Court Korneuburg. She was assigned to the Federal Ministry of Justice as of 28 January 2002, where she is responsible for matters relating to lawyers, notaries public, expert witnesses and certified court interpreters.

Belgium

Nancy Colpaert

Studied Law at the University of Ghent and practiced law between 1994 and 1999. Since 1999 employee of the Federal Ministry of Justice, Brussels, Department of Criminal Law.

Doris Grollmann

'Études de traduction (français-anglais)' à la Fachhochschule für Dolmetscher und Übersetzer de Cologne (RFA). Traductrice indépendante, assermentée auprès des tribunaux de première instance de Bruxelles et de Liège pour l'allemand, le français, le néerlandais et l'anglais depuis 1979. Présidente de la Chambre Belge des Traducteurs, Interprètes et Philologues a.s.b.l. - Belgische Kamer van Vertalers, Tolken en Filologen v.z.w. depuis six ans et responsable de la commission des traducteurs jurés auprès de cette même association depuis 1990. Coordinatrice des projets 'Interact.J' et 'Certificat de traduction et d'interprétation juridiques'. Co-auteurice de la "Proposition de reconnaissance et de protection du titre de traducteur assermenté et d'interprète assermenté" déposée par la Chambre belge des traducteurs, interprètes et philologues. Participant au projet no. 98/GR/131 du programme Grotius.

Erik Hertog

Professor in the Department of Translation and Interpreting of the Lessius Hogeschool in Antwerp, Belgium. He teaches British and American Cultural Studies and Conference 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 coordinates the second project. His main publications are in the fields of English literature, Cultural Studies, Conference and Legal Interpreting.

Annick Rosiers

Studied Law at the University of Antwerp and graduated 'cum laude' in 1982 with 'European Law' as an Optional subject. Appointed in the Court of First Instance in Antwerp as a Clerk of the Court in 1983, Attorney of the State in 1991, Judge in 1993 and Examining Magistrate (1995 - 1999).

Yolanda Vanden Bosch

Partner in the law firm Van der Mussele-Vanden Bosch, Antwerp, and a member of the Antwerp Bar. Secretary-General of the Association of Flemish Jurists. Associate Professor at the Lessius Hogeschool Antwerp. She participated in the first Grotius project on 'Aequitas: Access to Justice across Language and Culture in the Eu'. She is involved in the Court Interpreting pilot projects in Antwerp and Belgium, and the author of different publications on court interpreting and the European convention on Human Rights and of the first study on 'Belgian Law and Court Interpreters and Translators', nominated by the King Baudouin Fondation in 1997.

The Czech Republic

Kateřina Martonová

Has an MSc (Eng.) from the Czech Technical University in Prague. She is a freelance translator and interpreter for corporations, governmental agencies, financial

and legal advisers, public relations, etc. Appointed court interpreter in 1983, she does legal translation and interpreting for individuals, companies, police, court and prosecution.

Membership: Union of Interpreters and Translators (JTP, member of FIT) and its Court Interpreters' Section; Chamber of Court Interpreters (KST); FIT Committee for Legal Translation - observer.

Initiated three important projects in the Czech Republic: A course in the basics of Czech law at Charles University's Faculty of Law; Czech Language Workshops for translators; and professional liability insurance cover for translators.

Zuzana Jettmarová

Degrees: Diploma in translation and interpreting (Charles University), PhD. in Slavic Studies (Charles University), MSc. in Applied Linguistics (Univ. of Edinburgh). She is a free-lance translator and interpreter (1976-1983); teacher in the Institute of Translation Studies, Charles University (1981 -); 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.

Barbora Bartáková

Degrees: M.A. in History (Charles University); Law Studies (Faculty of Law, Charles University, with a thesis on Community law). International scholarships: University of New Orleans, LA, (2000), Humboldt Universität zu Berlin (2001). Profession: member of the European Integration Department at the Ministry of Justice of the Czech Republic. Responsible for co-ordination of preparation and implementation of Phare projects, screening of the Czech legislation to ensure compatibility with the EU law, revisions of Community law translations, communication strategy.

Jan M. Passer

Master of Law (Charles University, Prague), Master of European Law (University of Stockholm). Internship at the Court of Justice of the European Communities. Judge at the District Court for Prague 2 and Member of the Czech Association of Judges. Lecturer at the Faculty of Social Sciences (Charles University)

Denmark

Otto Bisgaard

Judge at the District Court of Aarhus. Chairman of the National Board of Patients' Complaints of the Danish Public Health Authorities. External examiner at the University of Aarhus. Member of the Court Administration's working group on court interpreting. The group was formed in 2001 for the purpose of identifying legal and practical problems related to court interpreting in Denmark. Member of the National Committee established in relation to the first Grotius project. Initiator of meetings between the legal services and the interpreters attached to the District Court of Aarhus.

Hanna Ege

MA in Law (1991). Member of the Board of Refugees. Special Consultant/Deputy Manager, the Integration Office of the Danish Ministry of Home Affairs (1994-96). External Lecturer at the Danish School of Administration. Head of the Court Administration (independent authority responsible for the administrative conditions of the Danish courts). Head of the working group on court interpreting established in 2001 by the Court Administration for the purpose of identifying legal and practical problems related to court interpreting in Denmark.

Bodil Martinsen

MA (LSP) (Interpreting and Translation) in French. State-authorized interpreter and translator and free-lance court interpreter and translator. Associate Professor at the Department of French, the Faculty of Modern Languages, the Aarhus School of Business (ASB). Head of the Department of French. She teaches interpreting, including court interpreting and her main research interest is in community interpreting, in particular court interpreting. Member of the Aarhus Centre for Interpreting (at the ASB) which takes a particular interest in matters related to Community Interpreting. She participated in the first Grotius project on 'Aequitas: Access to Justice across Language and Culture in the EU' and is in charge of the website in the second Grotius project.

Kirsten Woelch Rasmussen

MA (LSP) (Interpreting and Translation) in French. Associate Professor at the Department of French, Faculty of Modern Languages, the Aarhus School of Business (ASB). State-authorized interpreter and translator. Member of the Senate of the ASB and Director of Studies (MA Programmes). She teaches French linguistics, French legal language and translation of legal texts. Her main research is in legal discourse and discourse analysis. She is a member of the Editorial Board of the journal *Hermes* and member of the Centre for Science Communication and Mediation (at the ASB). She participated in the first Grotius project on 'Aequitas: Access to Justice across Language and Culture in the EU' and is in charge of the website in the second Grotius project.

Finland

Kaarina Hietanen

Sworn translator in German-Finnish-German. Free-lance translator and interpreter. Chairwoman of the Committee of Experts to further develop Finnish Interpreter Training, 1992-1993. Member of the Examination Board for Further Qualification for Community Interpreters, Chairwoman 1996-2001. Lecturer at the University of Tampere, Department of Translation Studies, preparing a Doctoral dissertation on Certified Translation as part of Document Management in trans-cultural Activities.

Tuija Kinnunen

Master of Arts, 1997, University of Tampere. Researcher at the University of Tampere, student in Langnet, a national graduate school for language studies in Finland. Freelance translator 1996, Translation Co-ordinator 1997-1998 at Berlitz International Translation Services in Helsinki, Project Manager 1998-1999 at Alpha Communications/Translations in Tampere. Research interest: translation of legal texts, especially laws; preparing a doctoral dissertation on Interpretation and Translation of Laws. Member of the Finnish Association of Translators and Interpreters.

Ari Wirén

District Court Judge, Finland (Helsinki District Court). Presenter at the Court of Appeal in Helsinki 1983-1987 and 1991-1996. District Court Judge at the Helsinki District Court 1987-1991 and 1996. Associate Lawyer in two separate law offices 1984-86 and 1992-1995.

France

Elena de la Fuente

Traductrice technique libéral. Interprète. Enseignante à l'ESIT, Université de Paris III, Paris VII et Paris X Nanterre. Expert traducteur-interprète près la Cour d'Appel de Versailles (depuis 1985). Collaboratrice externe de plusieurs Ministères et organismes français, organisations internationales et grands groupes d'entreprises, groupes bancaires, études de notaires, cabinets d'avocats, etc. Vice-présidente de la SFT (le Syndicat National de Traducteurs). Rédacteur en chef adjoint de la revue *Traduire*.

Monique Rouzet Lelièvre

Graduated from the Ecole Supérieure d'Interprètes et de Traducteurs in Paris in 1977 (French-English-Spanish). Worked as a salaried translator in the United States and France, became self-employed in 1983 specializing in legal translation. Was appointed Expert Traducteur Interprète (court interpreter and sworn translator) in English by the Court of Appeal in Versailles in 1985 and Expert Traducteur (English) with the Cour de Cassation in 2000. Works for legal departments of multinational companies and for both French and foreign jurisdictions and governmental agencies. Vice-President of U.N.E.T.I.C.A (Union Nationale des Experts Traducteurs Interprètes près les Cours d'Appel).

Georges Moukheiber

Germany

Gert Burmeier

Studied Law at the University of Regensburg. Became Public Prosecutor in Landshut/Bavaria (1998-2001) and is since 2001 employee of the Federal Ministry of Justice, Berlin, for criminal procedures and prosecution.

Christiane J. Driesen

Doctorate in Science of Interpretation and Translation with a dissertation on Interpreting in the Criminal Courts in the Federal Republic of Germany. Court interpreter, conference interpreter (private market, European Community institutions, Courts of Justice, Council of Europe, European Patent Office, International Tribunal for the Law of the Sea). Professor at Magdeburg-Stendal Hochschule, setting up a course in court and legal interpreting and public health interpreting, organizing continuing professional development training in court and legal interpreting, preparing an MA course in conference interpreting. Coordinator of the AIIC Committee for Court Interpreting. Organizer of introductory courses on legal procedures. Since 1992 Vice President of the FIT Committee for Court and Legal Interpreting and Translation and co-organizer of East-West seminars.

Armin Fruhauf

Vorsitzender Richter am Landgericht in Oldenburg/Nds. Langjährig tätig als Richter in Straf- und Zivilverfahren, in der Justizverwaltung und in der Aus- und Fortbildung von Juristen, so. Z. B. Lehrtätigkeit an der Universität in Bremen, in der Referendarausbildung und als Regierungsberater in Südamerika, derzeit Referent im Bundesministerium der Justiz in Berlin (Referat: Verfahrensrecht der freiwilligen Gerichtsbarkeit und des Familienverfahrens).

Bernhard Meixner

Studium der romanischen und slawischen Philologie in Paris und Bonn. Ausbildung zum Diplom-Übersetzer an der Universität Mainz (Germersheim) in Französisch und Italienisch. Seit 1982 im Bundesministerium der Justiz tätig als Überprüfer und Übersetzer (Schwerpunkt: Übersetzungen in die französische Sprache, Stellungnahmen der Bundesregierung vor dem Europäischen Gerichtshof für Menschenrechte, deutsch-französische Mediation in Familienrecht Sachen, Auslieferungs- und Rechtshilfeverkehr, Vorträge, Reden usw.), Stellvertreter der Leiterin des Sprachendienstes im BMJ.

Greece

Maria Canellopoulou Bottis

Lawyer. Athens Law School. LLM Cambridge Law School, LLM Yale Law School, PhD Athens Law School. Faculty Fellow, Harvard University, Center for Ethics and the Professions, 2000-2001. Lecturer, Ionian University, Dpt. of Foreign Languages, Translation and Interpretation. Member of Advisory Board, *European Journal of Health Law*.

Spyros St. Geracaris

Recognized member of the Corfu Bar Association as licensed lawyer in 1985. Managed private law practice including civil, criminal and corporate law. Admitted to practice before the Courts of Appeal (1992). Has taught Summer Session Seminars on 'French-Greek legal terminology' for the European Union's translators at the Ionian University, Dpt. of Foreign Languages, Translation and

Interpreting. Has taught law courses in English at the 'Centre International de Glion-Greece'. Elected member of the Council of the Corfu Lawyers Bar Association in 1999.

Katerina Plascassoviti

National expert for the evaluation of inter-regional cooperation proposals and projects, European Commission Directorate General IV, Expert Sector (1995-1996). Manager (1996-1997) of the Development-Programs Division of the Corfu Municipality Development Enterprise. Consultant of the Municipality's funded Research and Development programmes coordinated and implemented by the Enterprise (1995-1996). Head of the inter-regional cooperation pilot-project 'Regions and Cities for Europe-Rebuild' (1992-1995). Administrative Coordinator of the Postgraduate Programme 'Science of Translation'. Ionian University, Dpt. of Foreign Languages, Translation and Interpreting, Corfu. External Expert for the evaluation and assessment of proposals and projects of the 5th Framework programme European Commission Directorate General XII.

Georgia Kostopoulou

She holds a Masters Degree in the Science of Translation from Dpt. of Foreign Languages, Translation and Interpreting, Postgraduate Studies Programme, currently a PhD candidate at Heriot-Watt University in Edinburgh. Her research is the field of Translation Pedagogy and Corpus Linguistics. Member of the associate teaching staff of DFLTI since November 2000 teaching 'Translation English into Greek' and 'Language Specific Workshops- English'. She also works as a free lance translator. From 1997 to 2000 an in-house translator in 'Phrasis' (Translation and Interpreting Agency (Athens and Corfu)) and responsible for coordinating and guiding translation teams in complex translations projects and the quality control and revision of external translators' work. Since September 1997 a member of the Phrasis EU projects team carrying out translations commissioned by the European Union Translation Services. Publications in the field of translation didactics, terminology and IT applications.

Ioannis E. Saridakis

BA in Translation, PhD in Translation Science in 1999. From 1994 to 2000 Manager of the 'Phrasis® Translation, Interpreting and Desktop Publishing Services' (Athens and Corfu). Management of translation projects, projects aimed at implementing and deploying IT infrastructures in support of major translation tasks and framework contracts for the provision of translation services for the Translation Service of the European Parliament, the European Commission (SdT) and the Translation Centre of the Bodies of the European Union. Lecturer of Technical Translation EN-EL and IT Applications in Translation in the Dpt. of Foreign Languages, Translation and Interpreting, Ionian University. Research in the field of translation, terminology and IT applications.

Ireland

Ivana Bacik

Is Reid Professor of Criminal Law, Criminology and Penology, Trinity College Dublin and a Practising Barrister, Dublin Circuit. She was called to the Irish Bar, July 1994 and to the English Bar, Middle Temple, November 1992. She studied at Trinity College Dublin, 1985 - 1989, LL.B. Degree (Law), and at the London School of Economics (1990 - 1991). She was a Member of ESRC Research Priorities Board Competition Panel (assessing applications for funding under 'Pathways Into and Out of Crime' heading), London, November 2000 - March 2001; Expert Adviser to the Council of Europe on Drafting of Kosovo Criminal Code, October 2000 - Jan 2001. She is a Member of the Middle Temple Inn of Court, London; Member, King's Inns, Dublin; the Irish Women Lawyers' Association; the Irish Penal Reform Trust; Trinity College Dublin Centre for Gender and Women's Studies; the Irish Family Planning Association; the Irish Council for Civil Liberties. She is Editor of the *Irish Criminal Law Journal* and is the author of various publications on human rights.

Mary Devins

Was educated in University College Dublin and the Incorporated Law Society of Ireland and practiced as a Solicitor until she was appointed a District Court Judge in October 1998. She was Vice Chairman of The Evaluation Tribunal and of the Criminal Injuries Compensation Tribunal, a member of the Rent Tribunal and also a member of the Minister for Justice's Advisory Group.

Lorraine Leeson

Is currently the Director of the Centre for Deaf Studies at the University of Dublin, Trinity College. She holds a PhD. and an M.Phil in Linguistics. In addition to training student interpreters, she is also a practicing registered qualified interpreter (Irish Sign Language/ English), who has worked with the Deaf community for the past 12 years.

Christelle Petite

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Free-lance translator and interpreter. Legal/technical translator for the Universities of Florence, Catania and Palermo, for corporations, lawyers and private individuals. Court interpreter since 1987. Legal translations and interpreting for the Court and the police of Siracusa. She is President of the Sicilian section of AITI (Italian Association of Translators and Interpreters (member of FIT) and member of the National Board of Directors. Coordinator of the National Committee of Court Translators and Interpreters of AITI. Member of NAJIT.

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Degree in Law from the L.U.I.S.S. University, Rome. Appointed lawyer in 1996, worked in Rome till 1997. Appointed magistrate in 1997. Judge in criminal procedure and labour law for the Court of Catania and, presently, in Nicosia.

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Law Degree from the University of Palermo. Master in Teaching of Law and Economics; PhD in Administration Law (from La Sapienza University) Rome. Appointed barrister in 1993. Judge for the Court of Caltanissetta, for Civil and Labour Matters. Professor at the University of Catania. Teaches Public Employment and Public Finance. Has several publications on law and public administration matters.

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The Netherlands

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Was born in Istanbul (1963). Studied Political Science and Public Administration at the Free University of Amsterdam. Became an interpreter at the Bureau voor Rechtshulp (Legal Advice and Assistance Centre) 1983-1995, and at the Tolkencentrum Noord-Holland (Interpreters Centre of the Province of North Holland) 1990-1994 for Turkish and Armenian. Coordinator for Recruitment and Selection at the Interpreters Centre of the Province of North Holland 1994-2000. Now Executive Manager of the Stichting Instituut van Gerechtstolken en -vertalers (SIGV).

Rob Blekxtoon

Was born in Overschie (1934). Between 1961-1964 he was a Trainee with Asser c.s., Barristers at Law, Amsterdam and from 1964-1971 a Partner with Schut c.s., Barristers at Law, also in Amsterdam. From 1972 to the present he has been a Judge and Vice-president of the Amsterdam District Court and from 1985 to the present Presiding Judge Extradition, Division Amsterdam District Court. He is preparing a practical handbook on the European Arrest Warrant

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Was University Lecturer Penal Law, Faculty of Law, University of Utrecht 1980-1993, Judge in the District Court of Rotterdam 1994-1998 (Investigating Magistrate in 1997/1998) and Vice-president District Court of Rotterdam 1998-2001. He is now a Judge in the Appeal Court of The Hague. He was Member of the Advisory Board of the Journal of *Law & Society* (Oxford/Cardiff 1991-1993), Member of CERN (Paris, 1993), Member of delegation 'Cooperation in Criminal Justice Matters Israel-The Netherlands' (Israel 1997).

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Spain

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Ann Corsellis

Vice chairman of the Council of the Institute of Linguists. Vice Chairman of the board of management of the National Register of Public Service Interpreters. She coordinated a ten-year project to develop a model and to pilot courses, assessments and good practice for interpreters working in the public services. Subsequently acted as Principal Consultant to a six-year project aimed at the wider adoption of the model. Worked in partnership with a probation service to develop competencies in working with linguists and across cultures. Chaired Advisory Committee on Sign Language Interpreting. Coordinator of the first Grotius project on legal interpreting and translation. Lay magistrate and member of the Magistrates Association. Member of the Government's national Trials Issues Group Interpreter Working Group.

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Caroline Morgan is a member of the Judicial Cooperation in Criminal Matters 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 went to work at the European Court of Justice in Luxembourg and at the International Court of Justice in The Hague as a *juriste-linguiste*. She then taught public international law and international criminal law at LSE. She has been at the European Commission since 2001. Ms Morgan has an LLM in Criminal Justice and specialises in fair trial rights and the protection of the rights of individuals in criminal proceedings.

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Appendix Three: Responses to the DG JHA Consultation Paper on Procedural Safeguards in Criminal Proceedings

I. Response by the participants in Grotius I Project 98/GR/131 and Grotius II Complementary Measure 2001/GRP/015 particularly regarding equal access to justice across language and culture and equivalence of standards in legal interpreting and translation.

1. Introduction

All member states recognise the fundamental principles of equality before the law, which are enshrined in the European Convention of Human Rights, the Charter of Fundamental Rights of the European Union, several landmark decisions by the European Court of Human Rights, and in a range of EU and national legislation and initiatives. These include equality before the law irrespective of the language and culture of individuals and groups.

Freedom of movement within Europe and migration into Europe have resulted in

- multi-lingual populations within each member state
- in civil and criminal cases which cross national frontiers
- and in the need for judicial co-operation between states in such matters as the prevention of terrorism and drug trafficking.

The aim of the Treaty of Amsterdam is to create an area of freedom, security and justice within the European Union. An essential pre-requisite to achieving that aim is reliable communication, for the quality of all decisions and actions depends upon the quality of the information and communication through which they are mediated.

Reliable and accessible means of communication are required where there is no adequately shared language. Currently there is an uneven and inadequate provision of legal interpreters and translators, to the detriment of the professional good practice standards of those working in the legal systems, of members of the public and of the judicial process as a whole.

Legal interpreters and translators are often employed without prior nationally consistent objective testing of their understanding of the legal system and its terminology, of their interpreting and translation skills and whether they belong to a professional body requiring them to observe a code of ethics and good practice. There are indications that the cost of consequent mistrials and appeals and simple inefficiency due to miscommunication outweigh the resources required for putting in place what is needed.

2. Grotius Project I

Grotius project 98/GR/131, involving university training institutes, representatives of the legal services as well as professional legal interpreters and translators, was dedicated to establishing equivalent standards, in EU member states, for legal interpreters and translators in respect of their:

- selection, training and accreditation
- code of ethics and guides to good practice
- inter-disciplinary working arrangements.

This project involved participants from Belgium, Denmark, Spain and the United Kingdom. Their recommendations have been accepted by the Commission and are published in book form under the title of *Aequitas: Access to Justice Across Language and Culture in the EU* (ISBN 90 804438 8 3, published by the Lessius Hogeschool and available from erik.hertog@lessius-ho.be). The text is also available on the website our Danish partners are setting up as part of the project: <http://www.legalintrans.info>

The recommendations also recognise that having reliable legal interpreters and translators to provide a channel of communication is not enough on its own. It is the responsibility of the professional disciplines of the legal systems to adapt their own training and good practice standards to use that channel of communication properly and to provide an equal and effective legal service.

These interdisciplinary and interdependent skills are needed at all levels, and in a range of situations, which include e.g.:

- judicial co-operation between member states, as called for by the Tampere European Council, through, for example, fighting organised crime, preventing drug trafficking and combating the trade in human beings and the exploitation of children
- judicial co-operation where individual matters cross national frontiers
- safeguarding the implementation of international conventions, resolutions and covenants, particularly ECHR, Articles 5 and 6 in particular where defendants, witnesses or victims do not have an adequate command of the language of the legal system they find themselves involved with.

Again, as a foundation for further discussion, one might want to consider the following framework of skills required in the legal services.

1 The skills to manage the delivery of a legal service across language and culture.

Difficulties arise where the inter-lingual, inter-cultural component has not been brought overtly into the management planning at the outset. As a result activities fail because the necessary management of underpinning communication and cross-cultural aspects have not been properly addressed at the outset. Whether the tasks

involve working with legal services of other countries, or delivering legal services within a country, those in charge should possess sufficient skills to plan, organise and supervise what is required. Often it is not possible to predict demand. Therefore a wide range of people likely to be in charge of tasks should be aware of what might be needed at a macro or micro level. The management skills include the ability to:

- identify the relevant factors of the other language speakers which will have to be taken into account, such as:
 - language (s) spoken
 - numbers of people and geographical spread
 - degree of fluency in language of own country
 - degree of understanding of own legal system
 - role and background of individuals from other legal systems
 - background of groups, or individuals, who are members of the public
- provide relevant information about own legal systems
- gather sufficient background understanding of the legal systems and perceptions of the other party(ies) to aid communication
- plan the processes to be used, plotting the points where communication, additional information and actions will be needed
- select, employ, deploy and co-ordinate the people with specialist skills which will be needed, such as legal interpreters and translators and bilingual professionals
- establish and co-ordinate lines of communication, accountability, support strategies and supervision
- plan and supervise budget
- put in place appropriate quality assurance mechanisms and evaluation strategies
- identify, record and disseminate good practice
- initiate, implement and supervise improvements.

2 The skills to work with interpreters and translators include the ability to:

- recognise when an interpreter or translator is needed
- identify the language/dialect required
- select a suitable interpreter or translator
- put in place appropriate contracts/letters of agreement before the assignment

- recognise the interpreter's or translator's role, expertise and code of conduct
- contact and brief an interpreter or translator appropriately
- prepare properly for an interpreted exchange
- during an interpreted communication
 - create and maintain a clear communication framework
 - encode clearly and unambiguously
 - listen intelligently
 - accommodate interpreting techniques by speaking at an acceptable pace and providing suitable spaces for consecutive interpreting
 - respond appropriately to interpreter interventions e.g. asking for clarification
 - seek adequate information from the other party
 - provide adequate information to the other party
 - clarify next steps at finalisation of event.
- while working with a translator
 - provide information required, e.g. clarification of terminology or ambiguities in the text
 - allow sufficient time for translation
 - agree how the text is to be presented
- be aware of cross cultural and non-verbal factors
- complete necessary administrative matters at the end of the assignment
- reflect on how to improve performance
- share good practice

3 **Skills involved in working across cultures includes the ability to:**

- retrieve general information about the linguistic and cultural background of the speakers of other languages, before meeting them
- provide relevant background information to them, if possible beforehand such as the purpose of the hearing/meeting, the procedures to be followed and the people who will be involved
- during an exchange retrieve relevant information about the individuals, respecting that stereotyping can be misleading and everyone is different
- clarify what is happening and do not assume that people from other countries are familiar with the structures, processes and personnel of own legal system
- adapt service, where possible and necessary, to situations
- be aware of the bicultural nature of the interchange when making assessments and decisions
- record and report objectively any relevant cultural dimensions and share these with colleagues who may need them to perform their own tasks effectively.

4 Skills to work as a bilingual professional

There is a welcome increase in the number of members of the legal services with skills in a second language and understanding of a second culture. They should be supported and not exploited for there are dangers in allowing them, for example, to take on tasks beyond their professional competence simply because they speak the language needed – often to an unknown degree of competence. Both their professional and linguistic skills should be developed to a level, which enables them to perform tasks which may be required of them. This ranges from police officers able to give directions to tourists to senior officers working with officers from other countries; from lawyers with school level second language skills able to greet clients in their own language to lawyers able to take instructions in that language.

The relevant headings are:

- selection criteria for training include linguistic and professional competences and potential
- incremental in-service training on;
 - languages
 - cultural factors
 - professional e.g. relevant law
- assessment and accreditation
- continuing professional development
- employment e.g. contracts, job descriptions and possible increased rewards for additional skills
- strategies for supervision and informed support, to prevent isolation and over burdened work load
- strategies for feed back and improvement of service.

3. Grotius Project II

The EU Grotius programme has now granted further funding for one year to disseminate the recommendations arising from the first phase in a Complementary Measure 2001/GRP/015 and to give an opportunity to linguists and legal services in all member states to offer comment and improvements and to begin to work towards agreed common targets.

The core participants for this phase come from Belgium, Denmark, the Netherlands, the UK and a candidate country, the Czech Republic.

The main reflection and consultation process will take a two-pronged approach: via a conference in November 2002 in Antwerp, and the further development of the website into a major consultation tool for legal interpreting and translation.

AIMS OF THE CONFERENCE

- To consult with, and gain insights from, selected legal and interpreter-translator representatives of each EU member state on the developments which

have been made on establishing equivalent standards in legal interpreting and translation, particularly on inter-disciplinary working arrangements between the legal services and legal interpreters and translators, 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 disseminate the achievements of Grotius project 98/GR/131 to all member and candidate 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.

BACKGROUND

European and domestic legislation require equality before the law, irrespective of language and culture. While this important concept is accepted in principle, the practical implementation of it presents a series of challenges for each member state.

Freedom of movement within Europe, inward immigration and asylum seekers have brought about an increasingly multi-lingual and multi-cultural population. As a result, adequate skills and structures are needed to support such activities as:

- judicial co-operation between member states, in such matters as the prevention of terrorism and trafficking in drugs and human beings
- equal standards in the administration of justice to everyone, whatever their language and cultural background, within member states
- arrangements where civil and criminal cases cross national borders.

By the end of the conference, it is envisaged that there will be a broadly based plan of practical action to take the matter forward, which will contribute toward a decision framework.

OUTCOMES

The anticipated outcomes include:

- a consensus on the basic principles of and approaches to equal access to justice across language and culture, particularly concerning equivalent standards in legal interpreting and translation
- 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 Legal Translation and Interpreting, including teaching materials, terminology, codes, working arrangements, legal procedures etc., 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.

Implementation will require that the key people in all member states be given the opportunity to go through a process of:

- gaining an understanding of what is being recommended, including the opportunity to challenge it and to suggest improvements
- consulting with the relevant bodies and individuals within their own countries
- reaching a consensus on the main elements, while accommodating any necessary national variations
- establishing which of the recommended activities already exist in their own countries e.g. training programmes for legal interpreters and translators at the level suggested
- planning and managing overtly the necessary changes, which will bring about over time the implementation of any activities not yet addressed, aimed at EU consistency
- making positive use of collaborations and mutual support between member states.

It is recognised, from the outset, that the process of implementation of equivalent standards by different member states will involve different starting points, different approaches and different time-scales.

The equivalence of standards envisaged does not necessarily mean the same but rather the identification of common targets, which each state may reach according to their individual systems and conventions.

It is anticipated that these can only be achieved in incremental stages, which are carefully planned over a period of time. Co-ordination between member states, however, would produce quicker and more useful results.

The outcomes are 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 series of processes carried out by different legal agencies. The integrity of each process affects the integrity of the whole.

PROGRAMME

The main programme is divided into four sessions:

- 1 **Requirements:** legal framework and principles
- 2 **Possibilities:** what language and legal skills and structures can be utilised to meet those requirements
- 3 **Synthesis:** establishing complementary skills and structures between legal and language professions e.g. complementary codes of conduct, good practice standards and interdisciplinary working arrangements in this field
- 4 **Models** for implementation: potential incremental steps that can be taken over time, according to individual states' traditions and conventions, to reach a common EU standard.

5. Conclusion

The participants in the Grotius projects welcome the statements made by Commissioner Vitorino on a number of occasions on the need for qualified and certified legal interpreters and translators, and support the efforts being made by the Judicial and Home Affairs Directorate to promote the process in member states to meet that need.

It is self-evident that qualification and certification of legal interpreters and translators must be preceded by selection and training and by the training of trainers and examiners. Subsequent professional good practice must be supported by a commonly agreed registration process and code of ethics, structure for supervision, mentoring, continuous professional development and quality assurance and enhanced by interdisciplinary working arrangements between the interpreters-translators on the one hand, and the legal services on the other. There is, after all, a concomitant need for parallel developments within the training, assessment and good practice standards of the legal services, which will enable those working in them to work effectively with interpreters and translators and across cultures.

The development of a national professional interdisciplinary body affiliated with the Ministry of Justice in each member and candidate member state, would protect and maintain the quality and integrity of the interpreters and translators, while equivalency of standards among member states would support developments and judicial co-operation within the EU.

Many of us have been attempting, over a number of years and with varying degrees of success, to put in place what is required in our own countries. We have been hampered not only by a shortage of resources but also by an absence of recognition of the importance of this field and of a structured framework.

This has led to a long-term marginalisation, which has produced an emergency situation. Much of that situation is hidden because those in the legal system are often not aware of, and other language speakers cannot communicate, what is needed in reality.

The management of change, and particularly management of the rapid social change in the multi-lingual and multi-cultural make-up of contemporary Europe, demands a robust and clear approach based upon a careful continuing consultation process. The recommendations arising from the Grotius projects provide according to us a most useful starting point. But guidance and a firm lead from the DG JHA are urgently needed to take matters forward.

After all, justice, which safeguards the fundamental freedoms of individuals and states and which goes to the heart of the Europe of the new millennium as envisaged at the Tampere summit, deserves and should require the highest standards of service across languages and cultures.

On behalf of the Grotius projects,

Ann Corsellis, Institute of Linguists, Coordinator of Grotius project I
Prof. Dr. Erik Hertog, Lessius Hogeschool, Coordinator of Grotius project II

April 2002

II. Statement of the FIT Committee for Legal Translators and Court Interpreters Concerning the EU 2002 Consultation Paper on Procedural Safeguards for Suspects and Defendants in Criminal Proceedings

The International Federation of Translators (FIT) is an international federation of associations of translators and interpreters. It is an NGO that was founded nearly 50 years ago and maintains formal consultative relations with UNESCO. FIT set up a Committee for Legal Translators and Court Interpreters to deal with the specific issues of this profession.

The FIT Committee for Legal Translators and Court Interpreters organized its 6th International Forum in Paris, France, from 12 to 14 June 2002. On that occasion, participants discussed the initiatives of the European Union with regard to procedural safeguards. Since the work of court interpreters, in particular, plays a major role in connection with procedural safeguards, the FIT Committee for Legal Translators and Court Interpreters adopted a resolution, which was subsequently endorsed by the FIT Regional Centre Europe and the FIT Statutory Congress, held in Vancouver, Canada, from 3 to 5 August 2002.

The FIT Committee for Legal Translators and Court Interpreters would like to bring the resolution to the attention of the EU Commission, especially the Directorate General for Justice and Home Affairs. The resolution reads as follows:

"On the occasion of the 6th International Forum of Legal Translators and Court Interpreters, held in Paris 12-14 June 2002, the Committee for Legal Translators and Court Interpreters of the International Federation of Translators (FIT), adopted the following resolution.

With reference to

- The European Convention for the Protection of Human Rights and Fundamental Freedoms, particularly Article 5 par. 2 and Article 6 par. 3
- Article 29 of the EU Treaty
- Articles 6 and 31 of the Treaty of the European Union
- A number of Recommendations or Resolutions by the Council of Europe, such as e.g. Art. 3 of Resolution 78(8) or Recommendations Nr R(81)7 and (97)6
- The 2000 Charter of Fundamental Rights of the European Union, particularly Article 47
- Several landmark decisions by the European Court of Human Rights, such as e.g. *Kamasinski v. Austria* (19 December 1989).

With reference to

- The Vienna Action Plan adopted by the EU Council in 1998
- The Commission Communication of 14 July 1998 'Towards an Area of Freedom, Security and Justice'
- The Tampere Council of October 1999

- A number of EU Council Framework Decisions, such as e.g. the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings or the Council Framework Decision on the European arrest warrant and the surrender procedures between Member States of December 2001
- The Grotius I and II Criminal Programme, particularly Grotius I project 98/GR/131 and Grotius II 2001/GRP/015 on Legal Interpreting and Translation.

And responding to a number of DG Justice and Home Affairs documents, particularly

- The 2002 Questionnaire for Member States on Procedural Safeguards
- The 2002 Consultation Paper on Procedural Safeguards for Suspects and Defendants in Criminal Proceedings

The FIT Committee for Legal Translators and Court Interpreters urges that:

1. In order to ensure the conditions necessary for the exercise of a fair trial for foreign nationals or persons who do not speak the language of the court, all possible measures should be taken by the EU as well as the national authorities to provide for competent, qualified legal translators and court interpreters.
2. The FIT Committee for Legal Translators and Court Interpreters supports the idea of a national institution in each Member State to work in tandem with the respective Ministry of Justice, that would issue a diploma or certificate of competence in legal translation and/or court interpreting, that would monitor the structure for the registration/admission of legal translators and court interpreters, as well as the professional good practice and code of conduct of legal translators and court interpreters, together with adequate quality assurance and continuing professional development measures, and that would also look after proper working conditions, including decent remuneration.
3. The FIT Committee for Legal Translators and Court Interpreters urges that the interdisciplinary nature of legal translation and/or court interpreting should be taken into account and that an interdisciplinary training be provided for both legal translators/court interpreters and the legal services.
4. The FIT Committee for Legal Translators and Court Interpreters welcomes the statements made by Commissioner Vitorino on various occasions regarding the need for qualified and certified legal translators and court interpreters and supports the efforts of the DG Justice and Home Affairs, and particularly of the Grotius Criminal Programme projects on Legal Interpreting and Translation, to promote the process of implementation of equivalent standards in the Member and Candidate Member States.

Paris, 14 June 2002"

The FIT Committee for Legal Translators and Court Interpreters takes a keen interest in this subject and looks forward to being able to contribute its views and expertise to the forthcoming activities of the DG Justice and Home Affairs in this connection.

Dipl. Dolm. Liese Katschinka, Chairperson FIT Committee for Legal Translators and Court Interpreters

III. Position de la Commission Interprétation Juridique et Judiciaire de l'Association Internationale des Interprètes de Conférence (AIIC) concernant le document de Consultation EU 2002 concernant le respect des droits de la défense dans la procédure pénale.

Fondée il y a un demi siècle l'AIIC a institutionnalisé les principes d'exercice de notre profession directement issue des l'interprétation judiciaire, lors des procès de Nuremberg. A l'occasion de ces derniers, les droits de la défense furent respectés en particulier grâce à la qualité professionnelle des interprètes.

Choquée du fait que subsistait deux poids deux mesures entre la qualité de l'interprétation judiciaire au niveau national et international ou selon que « l'on était riche et puissant », l'AIIC créa la présente Commission pour contribuer à harmoniser la qualité des professionnels de l'interprétation.

Notre Commission organise des séminaires de perfectionnement et d'initiation aux divers systèmes judiciaire tous les deux ans, depuis sa fondation (Paris, Londres, New York, Luxembourg, Vienne etc...ouvert à l'ensemble de la profession.

Notre Commission participe au projet GROTIUS et lutte depuis 1985 pour que les exigences éthiques soient les mêmes au sein des juridiction nationales et internationales.

Nous nous réjouissons donc de l'initiative de la Commission à laquelle nous souhaitons participer.

Hambourg, Septembre 2002

Christiane J. Driesen, Coordinatrice