

EULITA / TRAFUT WORKSHOP

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Session IX: Training for effective communication through legal interpreters and translators (Article 6)

→ A lawyer's perspective on interpretation and translation in criminal proceedings

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In April 2012, EULITA and the ECBA jointly agreed upon a “*Vademecum for magistrates, prosecutors, attorney's and legal interpreters*”, containing guidelines to achieve a more effective communication with legal interpreters and translators.¹

We hereby provide you with an overview of how these guidelines are being applied in Belgian criminal proceedings and where there remain opportunities of improvement. The following content is a short outline of the evaluation of those guidelines in Belgian criminal proceedings. It will be elaborated during the discussion in Session IX.

1. **Selecting the interpreter**

The Belgian (Antwerp) courts dispose of lists of legal (sworn and court certified) interpreters for all foreign languages. We have never experienced the unavailability of an interpreter capable of translating to the language of the defendant.

However, it remains rather difficult to obtain the assistance from an interpreter in view of meetings with the client to prepare his defense as far as some rare languages (Pashtu, Farsi,...) are concerned, due to a small number of sworn interpreters for certain languages.

2. **Information on interpreting**

Interpreters do not have access to the file, nor the opportunity to prepare a file (hours spent on the preparation would not be rewarded). Nevertheless, there are some exceptions, e.g. one of the interpreters who is permanently appointed by the Court of Appeals in Antwerp has access to all files and frequently prepares complicated cases by studying the case file.

It is recommendable to give the opportunity to all interpreters to take insight of the case file and to install a system of rewarding the time spent on the preparation of the file.

¹ <http://www.eulita.eu/relevant-documents> => VADEMECUM.

3. Seating in the courtroom

Interpreters do not have the opportunity to take notes in most court rooms. They are provided with a good view and (mostly) acceptable acoustics. The interpreter is sitting next to the defendants and will most likely translate by way of whispering simultaneously during the oral pleadings.

Ideally, the interpreter should be seated in a separate room and communicate to the defendants through earplugs in order to avoid acoustic disturbance, which is not the case in Belgian court rooms. This would also resolve the practical problem of simultaneously interpreting for a (large) number of defendants.

4. Short presentation of the actors in the proceedings

This is rather an exception than the rule in Belgian court cases. Most cases (depending on the President of the court) will be started without any introduction or clarification about the different actors in the court room, which might cause confusion. It is understood that the defense lawyers have informed their clients properly. Prior to the hearing, we make it a point to inform the client as well as possible in relation to the events that will happen at the court hearing and the people that will be present.

5. Written texts presented at hearings

In most cases, any document that would be presented at the court hearing itself will be either read out slowly and fully interpreted or even shown to the interpreter so he gets the opportunity to translate. In this respect, we refer to part 2. In most cases the interpreter has not seen the document beforehand and must translate on the spot.

However, procedural documents (indictments, writs,...) will be notified to the defendant prior to the hearing, which allows him to have it translated.

6. Interpreting the hearing to the foreign-language parties

The interpreters will be sitting next to the defendants and translate the entire hearing by way of whispering. This method causes acoustic disturbance.

We are in favor of a system which allows the interpreters to sit in a separated room and communicate through earplugs (bidule) with the defendant(s).

7. Interrupting an interpretation

When interpreters are involved, courts tend to take more control of the oral discussion at the hearing in order to facilitate the interpreter while doing his job. Parties (Prosecutor, attorney's,...) are often requested to talk more slowly and to pause regularly in order to allow the interpreter to provide a sufficient translation.

8. Breaks

It happens that a particular case is argued for several consecutive hours without a break, but this is the exception. If an interpreter would ask for a short break, this would be allowed by the court in order to avoid jeopardizing the quality of the translation.

9. No transfer of judicial tasks to the court interpreter

We have never experienced that an interpreter had to do more than just translating the events and sayings at the court hearing.

10. Cultural competence of legal interpreters

We have never experienced the necessity of obtaining information about specific customs of an ethnic group during a court case.

If however this would become required at a particular hearing, most judges would probably organize a break to deal with such questions and to clarify such matters before continuing the actual oral pleadings and further deal with the case.

11. Conclusion

The Belgian legal bodies have made efforts to comply with the Vademecum and guarantee interpretation and translation as effective as possible. However, lack of means and a limited budget for the justice department are the main reasons that the Vademecum is not being applied entirely and it seems rather unlikely that all points of attention will be applied in Belgian courts.