

THE CONCEPT OF CRIMINAL PROCEEDINGS: THE ROLE OF THE INTERPRETER IN CRIMINAL PROCEEDINGS

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Abstract

The research is devoted to the language of criminal proceedings in terms of involving the interpreter in the process. The purpose of the paper is to analyse the concept of criminal proceedings and the role of the interpreter in criminal cases.

The criminal procedure science in its terminological turnover is of current interest as it implies such a concept as the principle of legal language and it needs a clear and comprehensive interpretation.

Criminal justice is quite a broad term that covers a wide range of different aspects such as the procedure to investigate criminal conduct, to gather evidence, to make arrests, to bring charges against offenders, to secure defence, to conduct trials, to render verdicts and to order punishment. The criminal process is part of the legal system of both National and International law. The European Council Committee pointed out that when one of the parties to the process does not have sufficient knowledge of the language in which proceedings are conducted attention should be drawn to the interpretation and translation problems (Recommendation No. R (81) 7 of May 14, 1981, "On measures facilitating access to justice").

The theoretical aspect of the article is that it focuses on a number of aspects of an interpreter's involvement in criminal proceeding as well as in preliminary investigation of criminal cases. The article also lays particular emphasis on tactics and strategies to cope with translation and interpreting activities, to creatively develop and update interpreting techniques through comprehensive analysis of professional activities findings.

Keywords: to investigate, criminal cases, term, translation, interpreting techniques, to secure, sufficient knowledge.

1 INTRODUCTION

The concept of criminal proceedings and its characteristics, including the language of proceedings is described, as well as the professional competence of court interpreters, their role and functions. Criminal procedure is the process stipulated by criminal procedure rules pertaining to initiation, investigation, trial and adjudication of criminal cases, i.e. this is a system of relations envisioned by criminal procedure rules based on constitutional principles that exist among authorities, citizens and other entities being responsible for criminal case management. Criminal procedure is also known as criminal process. No corrective action can be applied automatically to perpetrators. They can be applied only in the course of action to make it possible to determine all circumstances of what happened to properly qualify and issue a well-founded and law enforcement action. This process can only be executed by national government and is known as criminal proceedings.

The key tasks of court proceedings are as follows: protecting the rights and interests of persons involved in court proceedings. Criminal procedure is the activity of authorized persons stipulated by criminal procedure rules pertaining to solving, investigating of a crime and trying a case in court as well as a system of legal relations entered into by authorized entities and other entities involved in a criminal process. Thus, criminal process is a type of state activity based on the principles of criminal procedure and regulated by criminal

procedure rules, stages and proceedings in the criminal proceeding system. (Bogdan T.M.,2010)

2 METHODOLOGY

The paper presents a review of the of criminal proceeding and describes the specific features of criminal procedure. The research describes the role of participation of the interpreter in criminal proceedings. The concept and the language of criminal procedure are scrutinized in the paper. The role of the court interpreter/translator presents a review based on the analysis of scholarly publications. The empirical scientific knowledge consists of sensory experience and scientific facts. The Conclusion presents the observations made on the basis of the research's findings as well as some recommendations on the basis of the conducted analysis. In the criminal process, the clarification of the criminal legal relationship, as a rule, is aimed at achieving a pronounced public interest in combating crimes. Hence, the imperative method of regulation prevails here.

3 DISCUSSION

Criminal justice is quite a broad term that covers a range of different topics such as the procedure to investigate criminal conduct, to gather evidence, to make arrests, to bring charges, to raise defenses, to conduct trials, to render sentences and to carry out punishment. The criminal process is part of the legal system of the country and International Law. (Haslam E.,2011)

The criminal process is closely intertwined with the judiciary, that is, the branch of legislation that establishes the organization of the judicial system, the structure and competence of the courts. It can be said that these are two sides of the same coin. If the judiciary regulates the organizational, structural side of the judicial system, then the proceedings are procedural, or functional.

Criminal proceedings is a correct legal instrument (or an institution) by means of which the criminal conflict is brought to be solved by the judicial organs (Bogea, 2012).

According to M. Bogea, the criminal proceedings can be discussed from several aspects. The most important of them are the material and procedural (formal) ones.

From the material aspect, the criminal proceedings express the right to bring to justice the offender, that is an equivalent to the right of the state to promote the criminal proceedings born from the violation of the legal norm of incrimination (Bogea, 2012). It means that the right possessed by one of the subjects of the legal conflict (the passive subject of the offence) to impose to the other subject (the active subject of the offence) to respect the breached right. It is realized by means of the competent judicial bodies.

From the formal, or procedural aspect, the criminal proceedings is the legal instrument made available to the lawful ones by means of which the conflictual legal report is deducted before the judicial bodies in order to stimulate the criminal process and achieve its goal (Bogea, 2012). Therefore, the legal action in its substantial sense is the right to legally punish the one who committed the unlawful act. In this formal, procedural sense it is a legal tool provided by law for implementing that right (Mrejeru, 2010).

The criminal proceedings is conducted by courts and include the following participants: the bench (judges), the part of the prosecution, the part of defense, and other participants.

The bench does not relate either to the prosecution or to the defense. This provision emphasizes that the main task for the court is not a punitive function, but the creation of the necessary conditions for the parties to fulfill their procedural duties and exercise the rights granted to them.

Participants in criminal proceedings on the part of the prosecution include:

- Prosecutor;
- Investigator;
- Head of Investigative Body;
- Bodies of Inquiry;
- Head of the Inquiry Department;
- Head of the Inquiry Body;
- Investigator;
- Victim;

- Private prosecutor;
- Civil claimant;
- Representatives of the victim, civil plaintiff and private prosecutor.

Other participants in criminal proceedings, like the judges, do not stand on the side of prosecution or defense. They are sources of evidentiary information or are involved in providing technical or other assistance and certifying the course and results of investigative actions. None of them, with the exception of a witness, should be interested in the outcome of the case.

The principles of the criminal process are fundamental, guiding legal norms determining the nature of the criminal process, the content of all its institutions, and expressing views on the construction of a procedural order that ensures fair justice in criminal cases, the effective protection of the individual, his / her rights, freedoms, and the interests of society and state from criminal encroachments.

The basic system of Principles of criminal proceedings includes:

- 1) Legality in the proceedings in a criminal case;
- 2) The administration of justice only by the court;
- 3) Respect for the honor and dignity of the individual;
- 4) Inviolability of the person;
- 5) Protection of individual rights and freedoms in criminal proceedings;
- 6) Inviolability of the home;
- 7) The secret of correspondence, telephone and other negotiations, postal, telegraphic and other communications;
- 8) Presumption of innocence;
- 9) Competitiveness of the parties;
- 10) Providing the suspect and accused with the right to defense;
- 11) Freedom of assessment of evidence;
- 12) The language of criminal proceedings;
- 13) The right to appeal procedural actions and decisions

Within the framework of this thesis the principles of competitiveness of the parties (adversarial proceedings); providing the suspect and accused with the right to defense; freedom of assessment of evidence; the language of criminal proceedings are the most important.

The function of defense against prosecution – the other party – the accused, as well as his / her legal representative, counsel, civil defendant, his / her legal representative and representative.

Competitiveness of the parties is manifested in the following provisions:

Criminal proceedings are carried out on the basis of adversarial nature of the parties;

The court is not a criminal prosecution body, it does not stand on the side of the prosecution or on the defense side;

The court creates the necessary conditions for the parties to fulfill their procedural obligations and exercise the rights granted to them;

The parties to the prosecution and defense are equal before the court.

The accessibility of the language of legal proceedings is thus one of the common judicial institutions that unite its separate types (along with the adversarial nature of the parties, the equal access of the parties to justice, the independence of the court in dealing with cases, etc.)

The right of a person subject to criminal prosecution to be promptly informed in detail in a language he / she understands, the reasons for their arrest, the nature and basis of the criminal charge against them, and the right to use the free assistance of an interpreter, if he / she does not understand the language used in court or does not speak that language, is enshrined in the International Covenant

on Civil and Political Rights adopted by the General Assembly of the United Nations on 16 December 1966 and the European Convention on Protection of equal human rights and fundamental freedoms, adopted by the European Council of 4 November 1950.

Having investigated the principle of the language of legal proceedings and the institution of participation of an interpreter in a criminal trial the criminal procedural science contains such a concept as the principle of the language of legal proceedings. (Gonzalez R., Vasquez V. and Mikkelson H., 1991)

The principle of the language of legal proceedings, tested by time and law enforcement practices, firmly established in the system of principles of the criminal process, strengthening the interconnection of its components, and thereby contributing to the systemic integrity and self-sufficiency that affects the effective observance of constitutional rights and freedoms of participants in criminal proceedings, contributes to achievement of the purpose of the criminal process. (Shlesinger M., Pöchhacker F., 2010)

The criminal procedure science in its terminological turnover contains such a concept as the principle of the language of legal proceedings, but it needs a more clear and comprehensive interpretation. The European Court of Human Rights acknowledged that “the guarantee provided for in Article 6 (3) (e) of the Convention does not extend so broadly as to include the requirement that a written translation of any documentary evidence be provided to the accused in the criminal case or official papers attached to the case materials.” This Convention standard specifies an “interpreter”, not a “translator”. Provision of linguistic assistance to the accused in oral form may meet the requirements of the Convention.

Martina Bajčić and Katja Dobrić Basaneže argue that the profession of court translators and interpreters unfortunately has an old image and erroneous beliefs that, for example, any person with good knowledge of two languages can master the activity of legal translation and interpreting. The profession should get rid of these beliefs. They say that hiring bilinguals with no training in court interpreting and without legal competence has been the everyday reality of some EU Member States. However, professional translators and interpreters know that court translation requires not only linguistic, but also legal knowledge, because the legal language is closely intertwined with the legal system. The translator / interpreter needs to take many factors into account, including the situation, institution, text genre, legal actors, and type of legal action performed in order to achieve the same legal effects when translating legal texts or interpreting in court (Bajčić and Dobrić Basaneže, 2016, p. 2).

4 CONCLUSION

The principle of the language of legal proceedings, tried by time and law enforcement practices, has firmly established itself in the system of principles of the criminal process, strengthening the interconnection of its components, and thereby contributing to the systemic integrity and self-sufficiency, which affects the effective observance of constitutional rights and freedoms of participants in criminal proceedings, contributes to the achievement of the goal criminal process. If the person in charge of the criminal prosecution does not speak the language of the proceedings, this circumstance in the procedural literature is regarded as indicating the complexity of the investigation both for organizational reasons and because of the additional period necessary for the preparation of written translations.

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