

# **INTERPRETERS IN THE COURTROOMS AS THE KEY PARTICIPANTS AIMED AT REDUCING LANGUAGE BARRIERS IN THE COURSE OF TRIAL- CRITERIA SET FOR IDENTIFICATION OF INTERPRETERS` COMPETENCE**

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## **Abstract**

This article explores challenges faced by interpreters in courtrooms where the burden of providing information in a rigorous way and decoding it is on them. An interpreter in a courtroom is considered as the key figure in protection of rights of any person who does not have knowledge of the relevant language. Interpreter in a courtroom acts as a mediator and provides assistance aimed at eradicating communication barriers. By contrast, very little is known what concrete requirements except holding a university degree in «Interpreting» towards potential candidates who are to be involved in interpreting activities in courtrooms should be applied in Russia; the practice of establishing competence demands is very differentiated when compared with the English system. In addition to all above mentioned tasks, this paper gives details regarding peculiarities in applied terminology in court proceeding based on some cases having been handled in Russian federal courts involving foreign citizens. Various types of problems in the interpretations have been analyzed using different techniques and methods. Among the key findings are significantly higher number of interpreting problems and decline in interpreting performance in so-called judicial interpreting activities. The clear understanding of above mentioned issues may help to improve the quality of interpreting activities in a courtroom. It will prompt creation of special teaching facilities or associations in collaboration with universities and higher educational establishments aimed at educating students and graduates of translation and interpreting programs, thereby by developing a trained work force for Russian courts.

**Keywords:** interpreters in a court room; legal terminology, quality, interpreting competence, communication barriers, parties to proceedings, interpreting performance.

## **1. INTRODUCTION**

The modern world is suffering from rapidly developing linguistic pluralism. Migration processes pose a new challenge to the judicial systems around the globe. New issues connected with protection of human rights of linguistic minorities arise, as the language barriers significantly influences cases' outcome and impedes the process of achieving justice. Parties to the proceedings, without the knowledge of the language used in a course of a trial, are considered to be vulnerable. For instance, a defendant might be charged with a crime which does not constitute a crime in his or her motherland. Moreover, such defendants may not understand the basic principles of the legal systems on the territory where a crime has been committed.

Failure to express ideas by the defendant in the required language does badly affect the trial as a whole and has negative impact on the perception of the defendant by the judge or jury.

Every individual's rights of defense at trial must be taken into consideration and ensured. However, if the accused person does not have a clear understanding of what charges are brought against him or her, consequently problems regarding implementation of his or her rights will arise out of it. Experts claim that it is difficult to achieve justice if there are some gaps in understanding. An access to competent assistance is

impeded due to the lack of qualified interpreters with legal backgrounds.

Potentially, translators and interpreters in a courtroom are held liable for incorrect interpreting of facts related to materials. As for Russia, the responsibility for intentionally incorrect interpretation is provided for according to article 307 of the Criminal Code of the Russian Federation.

**The goals are the following:** to identify pitfalls which may arise while providing interpreting services in courts; to analyze the key concerns regarding competence and quality of the interpreting work accomplished within legal proceedings along with other assignments; to reassess the linguistic competence of all parties to proceedings.

**The research hypothesis** states that for successful achieving goals while providing interpreting it is a matter of great importance to transfer both: a form of speech and its content; this condition differentiates interpreting in a courtroom from other types. Standard and basic interpreting skills are insufficient for interpreting in a course of a trial or interrogation of the defendant.

**The research methodology** design derives from the goal. The above goal requires understanding the current problems in the process of interpreting and what measures should be undertaken in order to liquidate them. The necessity to understand cultural aspects and differences between judicial systems and its consequences, mainly the usage of inappropriate terminology and wrong ways of expression must be taken into account. Especially terminology mistakes in criminal proceedings can harm more severe and a crime may fall into the other category of crime which can lead to other punishment.

## **2. TYPES OF TRANSLATION AND ITS ACCURACY IN BILINGUAL COURTROOMS**

In Russia the tendency to hire interpreters while handling cases with participation of foreigners has been growing. Information provided by the Russian company «Translex» which offers translation services has proven that the linguistic support to facilitate the participation in court proceedings is highly demanded especially in arbitration ones. This company specializes in linguistic support of cases including business matters. "The top 5 cases involving the participation of foreign companies are being heard in the following arbitration courts: The London Court of International Arbitration, the International Arbitration Court, the International Commercial Arbitration Court for Russian Chamber of Commerce. Such cases represent labor disputes where the key participants are expatriates, foreign specialists or deals with Russian business participation overseas. As for category of cases, they mostly presuppose disputes related to foreign investments and Russian business participation abroad.

The workload is carried out mostly in a written form, so translation is more preferable in commercial disputes, judges as a rule do not need oral testimony. If we speak about trials in courts of general jurisdiction where interests of foreign citizens are presented, then it is worth taking into account consecutive and simultaneous types of interpreting.

The court interpreter conveys the meaning of a word or group of words in the source language by the language means of the target language. According to Gonzalez, the translation process can be divided into the following 5 stages:

1. Auditory perception of speech source language
2. Understanding the message by analyzing and interpreting what was said
3. Instant and conscious discarding of the word order of the original language
4. Retention of mental representation of the message
5. A statement in the target language that fully conveys the meaning of the original message [1]

The main role of a court interpreter would be to create the same conditions for a non-English-speaking person as if it were a native English speaker during a trial. In this case, the translator must not act in favor or to the detriment of a non-English-speaking witness or defendant, that is, the translator has no right to develop, change, omit or add something new to the meaning of the statement.

All colloquial, slang, obscene expressions should be transmitted as they are used by the speaker. When a translator deals with expressions that do not have a literary equivalent in the language of translation (for example, a gross insult), he or she has the right "to use an equivalent unit of the English language, literally translate or repeat the expression so that the participants of the court asked the speaker to explain the meaning of the expression" [2]. Professor Holly Mikkelson suggests the following solution in this situation: "Translator should use the so-called "dynamic equivalent" - a lexical unit that will have the same effect on the

recipient of the target language as the original statement - on the recipient of the source language" [3]. For example, a qualified interpreter is not about to transfer the meaning of "weed" into the Russian language directly like "grass" in criminal case connected with unauthorized use of drugs (article 228 of the Criminal Code of the Russian Federation), he or she will choose a term or its analogue which reflect its meaning as a drug substance or even will try to identify and criticize what substance exactly has been used by the defendant due to the fact the punishment will be depend on this fact.

Some certain circumstances arise when interpreter is needed for the purpose:

1. To interpret defendants` testimony
2. To facilitate communication and be some kind of a mediator between defendant and his or her lawyer
3. To provide clear understanding and to decode information for the alleged violator/offender depends on a trial.

Qualified court interpreters use all three types of interpreting: consecutive, simultaneous, sight translation and they never interpret summarily - by omitting details and describing circumstances generally. This way of interpreting at random, summarily, is chosen by an unqualified interpreter and it is unacceptable and abhorrent to allow such flawed mechanism to exist especially in criminal proceedings because in this case the interpreter selects the semantic units of the statements, it happens when some challenges in providing simultaneous and consecutive types of interpreting remain.

Simultaneous interpreting is widely used and presupposes transferring information simultaneously, that is, when the speaker provides information, the interpreter must reproduce the speech at the same time.

The full understanding of the language used in the course of any trial is critical, especially in criminal one, where fundamental right to freedom is at stake. Therefore, it cannot be considered as an exaggerated demand to provide a person for whom English is not native with adequate assistance aimed at facilitating trial`s understanding by using the services of an interpreter, even if he or she is able to communicate in everyday life. Misunderstanding or incomplete understanding by the defendants of the speech used in the trial may adversely affect the outcome of the trial and fails to benefit from the proper administration of justice.

Dr. Rosann Duenas Gonzalez, an expert in applied linguistics claim that legal English has not much in common with the English language used for everyday communication. Legal language is a separate unique language. English used in courts require linguistic competence and intellectual understanding. Colloquial English should not be evaluated as a criterion on the use in the course of a trial without having to apply it precisely and taking into account due diligence and professional skills. Witnesses who do not fully know the language of the court may represent a threat to administering justice. First of all, the main reason is that judges or magistrates believe that the presence of an interpreter will significantly complicate the interrogation process. Secondly, judges do not have the knowledge necessary to determine the level of language proficiency, and therefore tend to overestimate it.

The process of communication by means of using a foreign language has characteristic features leading to a reassessment of the level of language proficiency:

- 1) Listening skills have been developed better than speech ones. In other words, a person is able to understand complex sentences that he is not able to compose. In addition, a person can understand a question according to some keywords or tone of voice instead of recognizing its structure. Therefore, it is not necessary to assess the level of language proficiency on the basis of the complexity of the questions asked (it is more appropriate to assess the complexity of the answers received).
- 2) While answering the questions raised by a native speaker, a person for whom this language is considered as the second language, frequently uses the words and question constructions, in the structure of answering to this question.
- 3) Even a person who speaks a language at a lower-intermediate basic level is fully capable of fully participating in a conversation on general topics that contain frequently used and heard words and phrases. It is possible to detect the inferiority of language proficiency only if you switch to a topic unfamiliar to a person, as a result of which the predictability of replicas disappears.

In combination, these three above mentioned factors frequently do not adequately describe the concept of language proficiency and its level. As a result of this, a witness who testifies in court without an interpreter is exposed to linguistic and paralinguistic interrogation techniques using the linguistic vulnerability of the

witness

### **3. COMPETENCE AND REQUIREMENTS SET TOWARDS INTERPRETERS.**

In general, no universal qualification criteria for an interpreter are set. Some forensic translators develop the necessary skills through special courses, while others increase their professionalism on their own. Bilingualism (a high level of proficiency in two languages) is only the minimum requirement of an interpreter. The translator should be able to interpret from 120 to 180 words per minute [6]. Moreover, the translation should be "accurate, objective and complete, consistent with the speaker's style, level of his language and reflect the purpose of his statement" [7]. A court interpreter must be fluent in the specific legal language of both languages used, as well as knowledge of the legal systems of the countries in which these languages are used. In addition to professional knowledge, a court interpreter requires interpersonal skills to communicate effectively with judges, lawyers, defendants, and witnesses.

A court interpreter's responsibility is expanded and includes not only accurate and legally equivalent translation. The interpreter should be aware of the court rules/norms aimed at accurate and clear record of proceedings. This includes how the interpreter identifies himself on the record by acting as "an interpreter" rather than as, literally speaking, some kind of "voice" of a witness or defendant. Also, there is high probability that an interpreter may deal with an "uncontrollable" witness, in this case the interpreter must be able to follow the judge's instructions to control such a witness. Sometimes an interpreter has difficulties involved in transferring the meaning of some witness statements.

The interpreter should have an unbiased position, so it is one of the main criteria to accomplish. For digesting the information in an appropriate way, it must be transmitted in the target language precisely. In case when the interpreter fails to catch what have been said he or she is entitled to ask to repeat statements to eradicate misrepresentation which otherwise may arise. Common guideline regarding providing interpreting is: never ever assume anything or invent something; it is better to speak up that you do not know the meaning of the word or term, it is normal when even a professional interpreter stumbles across something new. The provider will never be upset concerning it if the interpreter sincerely asks for help to explain the content of the said phrase. Also, it would be wise to create adequate and comfortable working environment for interpreters involved in the procedures, it presupposes that judges also should respect interpreting activities and understand that it is better to announce the court's ruling at a reasonable speed because from qualified interpreting activities depend the process of administering justice.

Certification for legal interpreters is under development in Russia. Some kind of polls have been conducted in which employers actively participated. The main question was what characteristics the interpreter should have. The opinion has been polarized some companies which provide services of legal interpreting claimed that the interpreter should be a master upholder in linguistics or interpreting for public services, others argue that such specialists should have something more including legal background, so even receiving the second higher education. Well-established criteria are absent. Demands vary from company to company. Undoubtedly, experience play the key role.

### **4. WAYS OF ERADICATING BARRIERS AND RECOMMENDATIONS.**

It is worth denoting that the shortfall of qualified court interpreters is a long-term issue. Unqualified court interpreters are unable to convey the "true voice" or other words authenticity of the witnesses' messages and therefore do not allow the participants of the trial to adequately assess the behavior and testimony of the witness and do not allow the defendant to use the services of his lawyer. Mistakes made by an interpreter in a courtroom can have serious consequences and affect fundamental human rights, including the fundamental right to freedom. Court interpreting is a relevant area of interpreting which combines consecutive, simultaneous types of interpreting, as well as sight translation. Standard skills of an interpreter are not enough for successful performance of court interpreting due to the fact that court interpreting imposes higher requirements to the technology of translation: while interpreting the testimony of a defendant or a witness, the transfer of the statement's form is as important as the transfer of meaning, which fundamentally distinguishes court interpreting from other areas where interpreting is applied. Practice has shown that even interpreters who are successful in other applied fields of interpreting fail to meet the requirements set toward both: judicial interpreting and translation due to unpreparedness and ignorance of important specific features needed for this field. Only through establishing special facilities for training and certification of translators and interpreters, aiming at enhancing professionalism and providing examinations for obtaining a court interpreter certificate, many of the current problems including the shortage of professionals could be solved in such a way. The other problem is the participation of an interpreter in a courtroom who does not have sufficient knowledge of the language of legal proceedings. Judges are usually

reluctant to appoint interpreters, as the participation of an interpreter slows down and complicates the judicial process. There is also a re-evaluation mechanism of level language proficiency, as a result of which a witness or defendant, to whom the court has not provided an interpreter, has difficulty in providing evidence and cannot fully participate in the trial. Providing a competent interpreter is a prerequisite for fair justice, therefore, it is necessary to create guidelines for the justice authorities regarding solutions to problems associated with providing interpreters to representatives of linguistic minorities.

In order to eradicate challenges and improve interpreting there is a necessity to create special trainings for young potential interpreters within the framework of educational establishments. Possible ways of enhancing communication and handling challenges is participation into moot trials and going through traineeships in courtrooms. Interpreter should also be trained never to interact with clients and stakeholders before the trial session due to the legal risks involved. Interpreter need clear guidance on these along with other important legal concerns.

## **CONCLUSION**

To our opinion, more and more trainings should be established and due to the reason that competent interpreters are needed especially in legal settings. The voice of an interpreter may become a voice for justice. However, it is unclear how many years it might take to establish a generalist certification in the Russian Federation, meantime it is also growing clear that both types interpreting and translation are in urgent need of greater collaboration between justice departments and educational establishments.

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