



# **Minutes of ImPLI Roundtables**

**Germany - Cologne: 24 July 2011**

**Scotland/UK – Edinburgh: 2 September 2011**

**Italy – Forli: 18 November 2011**

**Czech Republic – Prague: 20 January 2012**

**Belgium/Flanders – Antwerp: 27 April 2012**

**France – Paris: 6 July 2012**



## GERMANY

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### Cologne

Friday, 24 Jun 2011, 14:00 – 18:00: round table (room 403), with simultaneous interpretation English / German (Dorothea Dahl, Kathryn Waldie, AIIC conference interpreters); technical assistance: Stephan Heß, Brähler Königswinter

### Round Table Report

Participants (other than members of partner universities):

Invited guest speakers:

Dagmar Freudenberg, prosecutor, board member of JuristinnenBund (German association of female lawyers), Ministry of Justice of Lower Saxony

Steffen Kuse, Kriminalrat (detective superintendent), Federal State Police Academy of Saxony-Anhalt, Aschersleben

Invited representatives of the profession:

Edith Baltes-Johnson graduate of law, graduate of translation, lecturer of law and translation, staff member of Cologne UAS

Natascha Dalügge Momme, president of ADÜ Nord

Dragoslava Gradincevic-Savic, Deputy President of ATICOM Germany

Christian Kemperdick, lawyer, member of the board of committee of criminal law of Cologne lawyers' association

André Lindemann, President of BDÜ e.V.

Gerhild Luschnat, member of BDÜ (representative of BDÜ Landesverband NRW e.V.)

Irena Rostalski, MA, freelance interpreter working for courts and the police



By way of introduction, relevant information about ImPLI, its objectives, reference to recently adopted EU instruments in the legal sector, and their relevance to T&I was given to invited guests.

## **A. Presentation by Dagmar Freudenberg**

The speaker has been active as a public prosecutor, especially in the field of protecting victims of sexual offences and domestic violence. She is now working in the Ministry of Justice of the Land Lower Saxony in a programme concerned with the protection of victims.

### **I. Investigation procedure (principle of cooperation between police and prosecution)**

Concerning the relationship between public prosecutor and police in German law, criminal proceedings are organised such that investigations into a suspected offence are carried out in cooperation between police and public prosecutor. When a suspect is charged with an offence, the investigation is about establishing whether the suspect has committed the crime in question, and if this has been established, a trial will follow for punishment.

Criminal proceedings are governed by the following principles:

1. principle of legality: if there is evidence that an offence has been committed, there has to be an investigation to find out what has happened and who is responsible.
2. principle of official investigation: investigation is not confined to what witness or victim is applying for, but *ex officio*
3. presumption of innocence: according to ECHR, any suspect or suspect/accused person is presumed to be innocent until sentenced.

The relationship between the police and the public prosecutor is not hierarchical; it is based on the principle of cooperation. Public prosecutor controls proceedings, takes decisions in investigation phase. Police is active for prosecutor and acts to avert danger. E.g. in cases of domestic violence, if an act of violence has been committed and someone is in danger, police has to make sure that the danger is kept to a minimum. In cases of serious crimes, both authorities work together. In such a case, the public prosecutor gets in touch with the police and what is to be done is coordinated.



The EU has passed roadmap<sup>1</sup>, which includes the directive minimum standards on the protection of victims and their access to law. Witnesses from whichever country enjoy all fundamental rights.

## **II. Fundamentals of cooperation with interpreters**

Legal prerequisites: European Convention on Human Rights, which includes provisions on the right to fair trial. It refers to accused persons, and the discussion in Germany is at present whether it must also be applied to victims and witnesses, as stipulated in the directive. So far, provisions in Germany do not explicitly specify the right of victims to have recourse to interpreting and translation.

If a person has been arrested or taken into custody, there is always urgency, and the service of an interpreter is sought under time pressure, which means that interpreters have to be available at short notice. In the case of telephone surveillance, interpreters have to work for many hours and full days, often also during nights.

It is also necessary to have translations of documents in the language of the accused person, and, according to new directive, also in the language of victims.

There is a triangular relationship: the client (the accused/witness/person in need of interpreter), the interviewer (or also the legal expert), and the interpreter. If a client does not speak the language of the interviewer in question, no communication between client and interviewer is possible. As for the role of the interpreter, s/he has to be the ears, mouth and eyes of the interviewee and has to show empathy. The interpreter has to convey also what is said between the lines of interviewees' utterances. The interpreter is also obliged to warn if an interviewee risks to faint or otherwise decompensate.

## **III. Selection of interpreters**

Selection of interpreter is up to police or public prosecutor. Gender is often important and has to be taken account of (especially in cases of sexual offence); religious background, family, national and community structures (in refugee cases) have to be considered when selecting interpreters, not only in the interest of client but also in that of the interpreter.

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<sup>1</sup> Resolution of the Council on a roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings, adopted at the 3096th JUSTICE and HOME AFFAIRS Council meeting, Luxembourg, 9 and 10 June 2011.



#### **IV. Professional criteria**

Interpreters have to have knowledge of legal systems of both countries concerned. Translation of terms is not sufficient, as cultural and legal background may differ. Also, interpreters need to be able to distinguish between general and technical terminology. Stamina, e.g. in cases of telephone surveillance, is required, as well as confidentiality and impartiality. Professional, cultural criteria, as well as tradition, membership of ethnic groups, dialects all have to be taken into account.

#### **V. Rights and obligations of interpreters**

The rights of interpreters are not written down anywhere. However, it appears reasonable that interpreters may ask questions if they have not understood or if something cannot be translated ad hoc. They have the right and the obligation to pass on information if they feel that a victim or a witness is possibly under threat or if something has been said without having been preceded by a question.

If an interpreter feels s/he is not impartial, an assignment may be rejected. The interpreter may also request pauses in proceedings, even if other parties would prefer to continue without any pause, and if the interpreter realises that a witness is close to decompensation or under severe stress, this information has to be passed on to the interviewer.

Interpreters have the obligation to heed the principles of faithfulness and objectivity. They have to translate all and everything. Interjections made without prior questions must also be interpreted.

#### **VI. Organisation of interpreting**

As for the mode of interpreting, simultaneous (if at all, mostly in court proceedings, and in most cases in the whispering mode) is often easier but things tend to get lost. It is not often practiced in interviews. Consecutive, however, takes longer. If more than two languages are involved, consecutive takes a lot of time.

Coordination with interpreter should take place before interview (e.g. agreeing on breaks, how to deal with interjections, how questions can be asked – e.g. signalling with gestures).

#### **B. Presentation by Steffen Kuse**

The speaker is a detective superintendent and works as a lecturer of criminology at a Federal State Police Academy; he is responsible for training police officers in



interviewing/questioning techniques for cases of suspected criminal offences. Questioning covers suspects or accused persons, victims, witnesses, experts etc. This training will be in a course at B.A. level in future.

## **I. Preparation of police interviews by the police officer**

In an interview (questioning), there is an interviewer and an interviewee (accused/suspect, victim, witness, expert); its purpose is to obtain information from the interviewee in an official setting. The interviewee has to be aware of this official character. When an interpreter is needed, s/he is the tool that is to be used by both sides. Tactically prudent, well-founded behaviour also on the part of the interpreter is necessary. Police check evidence (traces, also at place of offence), try to find out whether different descriptions of a crime are given, where contradictions arise and which description is correct, and seeks to obtain new information on what has happened and on accused persons.

Preparation: Information about the interviewee, the crime and its facts is normally given before the interview begins. Interpreter must be involved, must understand the character of legal provisions, objective and subjective facts of a case, procedural provisions etc. Information on the status of interviewee and crime should be part of the information given to interpreters at the outset. As the interpreter must be and feel secure, a risk assessment is made (e.g. interpreter might not be left alone in a room with an accused person, seating decision, no weapons may be left in room).

Coordination with interpreter: Linguistic competence of the foreign language is most important. There have been cases where the language spoken in a telephone call was not the language of the interpreter, with the interpreter just rendering some invented story. Understanding of dialects (also of German dialects) is another prerequisite. Interpreter should also have cultural and ethnic knowledge, advise police officers on potentially embarrassing things (e.g. in the interview room).

Empathy is of importance, as police officers want to find out why an offence has been committed. They want to find out whether something is said in self-defence or is the truth. Interpreter is a tool. Ideally, s/he would be like a black-box. Translation must be literal, word by word. Interpreter should not explain, advise, or counsel the interviewee, and everything said should be translated faithfully. Interpreter also has to sign that the interpretation was correct. (Audience reaction: To establish contact, emotional access to interviewee, a black-box would be absolutely inappropriate, nor would it be in a position to translate correctly, as translation can never be word-for-word.)



## II. Questioning procedure

Normally, an interview or questioning session has four phases:

1. Contact phase: introduction and presentation of all persons present, including interpreter, some preliminary conversation to generate an environment of openness. Interpreter can check whether s/he understands the speaker, has received instructions, interviewee is informed of his/her rights, obtaining data on the person in question.
2. Phase where interviewee can speak freely: Interviewee should have an opportunity to report extensively as freely as possible. The aim is to get as many details as possible which one would not obtain with targeted questions. One person is speaking, the police officer has to try to keep the interviewee on talking, e.g. by short nodding and encouragement. Such encouragement may get lost in interpretation. (Audience reaction: strong objections from professional interpreting representatives.)
3. Targeted questioning: Cognitive interviewing: Police officer tries to get person back into situation, starting with simple factual questions, before one can get to the crime itself. Things may not be uttered chronologically, one tries to change perspective, e.g. with an offender being requested to describe an offence from the point of view of the victim. Sequence of events of a crime has to be worked out.

Tactical problems for interviews with interpreters: police officers are generally distrustful. Suspicion has to do with the fact that interviewee and interpreter might be of the same ethnic origin or nationality. Police officer may lose control as soon as interpreter is involved. Tactical manoeuvring with quick intermediary questions and then going back again is not possible with interpretation, spontaneity is lost owing to time delay. Questions and answers are usually short, which is difficult with interpreters. Working with interpreters, emotions are lost. (Audience reaction: objections: professionals can render all these nuances and details.) Professional interpreters are rarely used, so problems and a lack of emotion, spontaneity is the rule.

Regarding offence-related terminology, interpreter must be acquainted with all types of slang expressions of the criminal milieu in question.

4. Writing of report of interview is done only in German, will then be read out to the interviewee, translated ad hoc, and interpreter has to confirm the correctness of the written version and its coherence with what has actually been said. The introductory phase is not noted down.



Students at police academy have to learn to get a feel for persons with different terminology, for interviewing with interpreters. Photos, other aids can be used.

### **C. Statements by representatives of the profession**

*Gerhild Luschnat:* For several years now, BDÜ NRW has been offering further training courses to members, especially in the field of knowledge of the German legal system. Lecturers are judges, prosecutors and lawyers, and also teachers of Cologne UAS. These courses have proved very successful and are recognised by authorities in Northrhine Westphalia as one precondition for being accepted on a list of legal interpreters. BDÜ NRW is prepared to cooperate even more intensively with police and courts.

*Dragoslava Gradincevic:* ATICOM wants scientific results about what can be standardised with regard to interpreting for the police. Interpreting techniques are offered in ATICOM regularly for legal interpreters, would be helpful if police could indicate what exactly they want. So far, only criterion for selection is price. But interpreters mediate language and culture, make sure that messages are conveyed successfully, and that should be worth the price. In NRW, sworn interpreter list is compulsory, and this worked well at the beginning, but those not fulfilling the prerequisites are still hired. Probably the situation is the same in other Federal states: Recruiters use the old lists and those who have the qualifications do not get assignments.

*André Lindemann:* About quality assurance, the question is how this quality is reached in the first instance to be assured then? What is necessary is initial and further training of interpreters, police officers and interviewers. Article 6 of the EU Directive stipulates that. With training in police academies, interpreters should be involved. Art. 5 of the Directive speaks of verification of interpreter performance, audio or video recordings will have to be used. This helps keep away interpreters who are not qualified.

*Christian Kemperdick:* Supports demand for nationwide German standard. Of course, there are good and poor services in any profession, but the degree at least is the same, which is not the case for interpreters. The yardstick, i.e. the degree should be the same. There are cases where charges were translated incorrectly (threat with violence), as interpreter translated literally, which led to a misunderstanding, and the trial had to be broken off. So interpreting can have an impact on proceedings. In view of the growing internationalisation, it is surprising to see how few regulations exist on interpreting and translation: In articles 185 and 187 of the German Judicature Act, in article 259 of the German Code of Criminal Procedure, in article 6 ECHR and article 103 [of the German Constitution], there are some provisions, but there is no law that lays down what has to be translated. If a witness does not speak German, the interpreter has to translate literally into German. But if German is translated into the foreign language (e.g. for accused person), it would appear that not everything is





translated. The law makes no provisions on that. If interpreter does not manage to translate everything, the interpreter should say so and not wait until somebody interrupts the proceedings.

Lawyers have demanded for long transcripts or recordings of proceedings, as is the rule in international proceedings. In Germany, a witness can speak for days and all that is on the record is that the witness has spoken. No transcript exists. This is all the more deplorable when there is interpretation, and overall, criminal proceedings should be transcribed literally. In this way, it would be possible to check what has been said. There are prospects for audiovisual technology which could be used for this purpose.

*Edith Balthes-Johnson:* Unprepared interpreter can never produce the quality of a prepared interpreter. Police officers have information beforehand, and they try to find out what has happened. The terminology used is often not part of general language, sometimes idioms come up during interviews, and young people use terms differently. But the real difficulty is that of legal expressions, and interpreters should know what elements of a crime a case is about. Legal officers also get informed beforehand, and the confidential character of the information notwithstanding, the same principle should apply to interpreters. Terms such as e.g. robbery are defined differently in the Spanish legal system than in the German meaning. It is impossible to render only words, and it is impossible to render good quality if an interpreter is not prepared.

*Irena Rostalski:* As a practitioner working for the police (sworn interpreter), we feel that it is our duty to provide high quality, to be loyal, objective and impartial, we have taken an oath. This is more important than getting someone who is just around. It is part of our ethics that we translate everything correctly, and it is included in our oath that if we cannot do so, we have to ask for clarification. Our ethical standards also require us to do further training. We have the obligation to contribute to finding the truth.

It is difficult to separate objectivity and empathy. As long as human beings are at work, empathy will always play a role. Maybe in the early stages of an investigation it is difficult to get documents, but at least someone should explain details to us. After all, we are also summoned by telephone rather than in writing. An experienced interpreter will know the basic points, but sometimes the interview is about specific items stolen and their characteristics, and that is information interpreters need beforehand.

In the field of telecommunication surveillance, police do not even know what is important for them. But even where a conversation appears to be private, the interpreter cannot tell what is important for the police. So the interpreter should be informed at least of what charge it is about. Such briefings have to take place regularly so that the interpreter can really get



involved. This is a sensitive field, but it is all the more important that interpreting is done by qualified interpreters.

*Natascha Dalügge-Momme*: As a result of ever poorer remuneration, qualified interpreters are meanwhile reluctant to accept police assignments or refuse them right away.

Quality assurance means training is important, including legal terminology. This should even be included in normal interpreter training. Magdeburg and Hamburg run specific courses where linguists, interpreters and legal experts cooperate, in cooperation with Ch. Driesen.

For court interpreting, the hourly rate is € 55, but for police interpreting, it is much lower. This price difference is not justified as the work of an interpreter in a police interview is as demanding, be it in other ways, as that of a court interpreter.

## **D. Discussion**

It is pointed out that regarding the roadmap adopted by the Council and the directive submitted by the Commission, Germany has entered a reservation on account of the costs of interpreting services if all the requirements, e.g. that victims and witnesses must also have the right to these services, are to be fulfilled.

### **1. Recruitment and professional criteria**

According to Mr Kuse, police start to investigate once an offence becomes known. They recruit interpreters whom they trust. Sometimes recruitment has to be carefully organised, as interpreters may be family members or involved/related in some other way and they will not always abide by the ethical principles of the profession. Individual police officers do not check upon qualification, rather, interpreter is recruited as a function of proximity to the police station in question and immediate availability. List that is kept at regional headquarters is consulted. Personal criteria should include training, sworn interpreters, linguistic competence, knowledge of German legal system; interpreters who are specialised in other fields are felt to be unqualified for police interviews. The command of the German language on the part of the interpreter is also important. Minutes kept should be in the form of a tape, optimally a videotape. If in a trial a different interpreter is used, this can help.

In the experience of the professionals, interpreters are often recruited just around the corner and then sworn in – (they do not even know anything about the oath they take.) What is needed are standards and guidelines specifying rights and obligations, as well as the requirement of (further) training for professional behaviour for legal interpreting. The Kingdom of Prussia in 1845 had adopted a decree saying that one had to resort to an



interpreter if the interviewee did not know any German or Latin. The situation in Germany today is poorer than in Prussia then. It is essential that the directive on EU-wide rules on the rights to interpretation and translation in criminal proceedings be implemented in Germany.

The professional interpreters point out that the list is compiled according to residence of interpreters and prices. Asylum applicants used to be cheapest, and no-one could tell anything about the quality of their work; no quality assurance existed, and no criteria were applied. Now the aim is to get rid of those old lists where a police officer may have acquaintances s/he prefers to use. The result of relevant examinations must be heeded. The professionals strongly recommend recruitment from among the group of sworn interpreters. They may be more expensive and when they work for the courts, payment is better. Of course, the oath should be taken only by qualified interpreters, but in reality, anybody can be sworn in ad hoc.

Tactically planned interviews can be rendered faithfully if professional interpreters are used. However, this would entail higher costs. The trend is for framework agreements with agencies to obtain the service at lower cost, but in these conditions no qualified interpreting can be expected. Qualified interpreters exist but they are not recruited. This is a tragic development which endangers the quality of interpreting and of police interviewing.

Ms Freudenberg points out that so far, there is no general obligation to use sworn interpreters from a list. As court interpreters who are normally sworn interpreters charge higher remunerations, police departments tend to prefer the cheaper non-sworn interpreters. Judges are absolutely independent to choose whom they recruit. This situation is not typical of Germany alone, it is similar in France and some other countries. The public prosecution authority does not normally influence the selection of interpreters by the police. In trials, it is the judge who decides on which interpreter is recruited.

Unfortunately, the professional criteria are not the same in the 16 German Federal states. Legal knowledge is a prerequisite in some but not all Federal states. In Germany, the procedure for being admitted to the lists of sworn interpreters differs from one Land to the other, and the Federal Ministry of Justice is not involved in this field. Telephone surveillance is under the supervision of the police, so it is the local police that select interpreters.

If the language an interviewee understands and speaks has to be identified first, the police assume that those on the list master the language in question. If the interpreter does not understand, s/he has to inform the officer. If s/he says that s/he can understand the interviewee, the officer must be able to rely on that. There is no tool for double-checking. If an interpreter for Russian finds that an interviewee does not speak Russian, this interpreter might help to find out which language it is, so that an appropriate interpreter can be called in. It may be quite complicated if the person in question has no documents. To avoid interpreters being recruited with a language that is not spoken by the interviewee, the suggestion is made



that a paper with flags and names of countries and languages could be presented to such interviewees to make it easier to find out the language in question.

## **2. Preparation, advance information**

Interpreters must always get prepared for their assignments and will always have to have more knowledge than will be used during an interview, otherwise s/he will be unable to find out and inform the interviewer if something goes wrong. Therefore, advance information by the police to interpreters is seen as crucial by all representatives of interpreting profession. This information should include details of the assignment (is the interviewing an accused or witness?), charges brought forward, and expectations of police as to the role of the interpreter. Charges that are read out can last for one to two hours. Interpreters should have these written documents in advance. A legal expert might have worked out a document for weeks, and then the interpreter is expected to translate it ad hoc at high speed. This is simply impossible.

Preparation is also crucial in the case of telephone surveillance where interpreters have to select information and therefore have to know in advance what the police are interested in. Ms Freudenberg is concerned that if details of cases have to be written down for being passed on to interpreters that would result in increased bureaucratic work.

The German associations of professional translators and interpreters emphasise that they are willing to cooperate in order to improve the situation; this requires, however, that the profession is treated as equal partners and not as villains.

## **3. Working conditions**

In police interviews, interpreters generally work alone. Stamina is an absolute requirement. Interpreters are entitled to request pauses, even if the police officer concerned would prefer to go on and finish earlier. The question is, however, how long can an interpreter work if s/he is in a team of one? Is the quality of the interpretation affected when one interpreter has to work non-stop? Would it be a solution to recruit teams of two interpreters? The professionals emphasise that in cases where simultaneous interpreting is used, there have to be at least two interpreters anyway, but the police or judges are rarely prepared to accept that, although it would also mean that time is saved.

On interpreting everything that is said in both directions, professionals think that this is self-evident and is also part of their code of ethics; however, a judge may tell the interpreter not to interpret everything, assuming that it has already been said. This puts the interpreter in an awkward situation. As Ms Driesen points out, interpreting means translating everything, and



if a witness makes a statement and the accused does not understand because the interpreter does not translate everything, this will give the accused grounds for appeal. In monolingual proceedings, an accused or witness may interrupt if s/he has not understood, and this right has to be given also to the foreign person.

#### **4. Character of interpretation**

It is widely held among lawyers, judges and police officers that the interpreter should offer word-for-word renditions. Interpreters are not allowed to render meanings, but only the wording. According to this view, it is up to the legal experts to interpret the meaning of what has been said; interpreters should not interpret, i.e. explain in more detail, what an officer or an accused person or assumed victim has said.

Why is the black-box model of interpreter action so attractive to police officers? They are afraid that interpreters might be biased whereas the police expect them to show absolute objectivity and neutrality, and they do not want to lose control of the situation. The interpreter might say things that the interviewer cannot check and thus pass on information which the interviewer wanted not to be passed on. This view is resolutely repudiated by all representatives of the interpreting profession. A properly trained interpreter will work objectively, will be neutral and will only interpret what has been said. S/he will provide a faithful rendition – it is the expertise of the interpreting profession to distinguish between literal translation and meaning-based interpreting. This expertise should be recognised by the legal profession and police officers.

Ms Freudenberg points out that literal translation is sometimes needed, and interpreter must use the same language register as speaker. Often there are two utterances, and the typical use of words may reveal whether a witness is credible, for instance when children are interviewed. As for the role of the interpreter, the adjustment to language register is the responsibility of the police officer, otherwise the interpreter would come in conflict. With regard to literalness of translation, professionals argue that it is up to the interpreter to judge which interpreting strategy is to be followed. The legal profession has to accept this – however, if non-professional interpreters are recruited, such expertise does not exist. That is why some members of the interpreting profession recommend using the services of trained conference interpreters.

As members of the public prosecution are not necessarily acquainted with different cultures, interpreters are allowed to help here. If someone is interviewed who is not very educated, the question is who adjusts the language spoken by the police accordingly so that the person in question can understand. Is that the role of the interpreter or of the police officers?



Some legal experts think that interpreters should never show any empathy (they would prefer the black-box), whereas others regard empathy as a prerequisite. There will be a difference between victims and suspects regarding the way of proceeding when emotions are to be conveyed. After all, every individual has empathy for others; it is part of communication in general, and police officers themselves cannot liberate themselves from such feelings. Interpreters must have empathy for both interlocutors, it is no use requiring them not to have empathy. The common denominator is quality.

It becomes apparent that police have hardly any information that professional interpreters, especially those who are members of a professional association, abide by their code of ethics.

## **5. Trusting interpreters and their ethics**

Is the interpreter really a necessary evil? It is true that a message will never have the same effect with and without interpreting. However, even in monolingual interviews without interpreting, when different cultures are concerned, the message will never have the same effect. The professional interpreter knows about these differences and will be prepared to explain them. A black-box will not be able to do that.

The mistrust that exists among police officers is obviously the result of poor interpreting by non-professionals. It may also happen that interpreters are criticised by other parties for tactical reasons. The future will not lie in a black-box but in overcoming the distrust on the part of the police and the fears of interpreters that they have. Quality assurance is needed; it is already part of police authorities' work, but it will have to include also working with interpreters. Such QA can help find possible solutions and improvements. Finally, trust can hopefully be established between police officers and interpreters if interpreting is done by professionals who abide by their ethical codes and standards. If this can be achieved, one of ImPLI's objectives will have been reached.

## **6. Training and quality**

All participants agree that interpreters used for police interviews should be properly trained. Qualified interpreters with further training, abiding by quality and ethical standards would be available. Training for police interviews should be included in any initial interpreter training. If conference interpreters are recruited for the police, they should have the additional qualification. As legal interpreting has its own difficulties, standards and requirements, it would be desirable, according to Ms Kalina, to have an M.A. level qualification in this field. Quality standards are essential and must be uniform. If there are compulsory requirements, the police should use only qualified interpreters. What is most urgent is mutual trust, and this round table is a beginning to create such trust. Participants have demonstrated the willingness



to cooperate between police, public prosecution and interpreters. Those responsible could easily be convinced when they see highly qualified simultaneous interpreters at work.

## **7. Shortcomings and future action needed**

It has become clear that serious shortcomings exist when non-qualified interpreters are used. An important factor that prevents optimum interpreting quality in police interviews is cost as the main criterion for recruiting interpreters. If the obligation to provide individuals who are interviewed but do not speak German with the same rights as those who speak German is to be taken seriously, it should be acknowledged that such equal treatment has its price. In a Europe of multilingual communication the understanding that language services are of the utmost importance must trickle down to the level at which interpreters are recruited. The money spent for such measures is certainly money well spent. The EU instruments mentioned during the Round Table should serve as a basis for achieving this.

Another point where information about interpreters' work is lacking is the latter's ethical principles and standards. Police officers must understand and accept that interpreting will always change the way an interview is conducted – the type of discourse changes with any change in interaction – this is corroborated by findings of studies in the fields of discourse and translation research.

The interpreter also has to mediate the way of thinking of a person coming from a different culture. Police officers must abandon the idea of keeping control when working with interpreters, as their renderings in the foreign language cannot be controlled, not only for linguistic reasons but also because concepts and ideas that are put in words are different in different cultures. It is therefore important that the interpreter can be trusted.

So far, police officers are not sufficiently trained in working with interpreters, and future police training such as sketched out by Mr Kuse should include this as an important element. Training for police officials in police academies or universities of applied sciences, run by the police, is Land-specific. There is only one master course at Münster. Police should be trained to cooperate with qualified interpreters in different settings, also in a setting where the whispering technique is used. They should also have a basic understanding of what interpreting is about and why a black-box would never serve their purposes. Conversely, interpreters could be trained in interviewing tactics so that they can implement this know-how in interpreting interviews.

The fact that there are no national standards or internal guidelines (on practices and procedures for work with interpreters) complicates the matter. There may be some guidelines in individual Federal states. It would be desirable to have national standards, so that more



reliability is obtained, and more trust becomes possible. There must be some part in the guidelines for criminal proceedings referring to all this. After the Council's roadmap and the Directive on EU-wide rules on the rights to interpretation and translation in criminal proceedings, and the establishment of EULITA (European Legal Interpreters and Translators Association), German authorities are still reluctant as they feel that this field is part of the responsibilities of individual German Federal states. It is to be hoped that the EU Directive will be transposed and implemented.

One of the objectives of ImPLI is to draw the attention of police authorities to the fact that working with interpreters must be learned and trained. The consequence of this realisation must be more cooperative training for police and interpreters. Police officers must be aware of codes of ethics and standards of professional interpreters.





## SCOTLAND

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### Edinburgh

ImPLI (Developing cooperation between legal practitioners – including law enforcement officers – and interpreters trainers to enhance practices in interpreter-mediated investigative interviews with suspects, victims, witnesses and experts)

Minutes of the ImPLI round table in Edinburgh

Venue: Heriot-Watt University in Edinburgh - Date: 2 September 2011

#### **Participants (ImPLI):**

Edinburgh: Ursula Böser, Christine Wilson

Cologne: Barbara Ahrens, Sylvia Kalina

Paris: Christiane Driesen

Antwerp: Heidi Salaets, Katalin Balogh

Forli: Gabi Mack, Amalia Amato

Prague: Ivana Cenkova, Katy Stifterova

Apologies: ISIT, Sarah Bordes

#### **Invited external speakers:**

Detective Sergeant Stuart Houston, Lothian and Borders Police

Inspector Martin Gallagher, Scottish Police Information and Co-ordination Centre

Detective Sargeant Jane Hamilton, Lothian and Borders Police



Inspector Brian Gibson, Diversity Unit, Strathclyde Police Force

Inspector Ian McKim, former Force Relations Co-ordinator, Strathclyde Police Force

Catherine King, BSL Interpreter

Andrew Beadsworth, Procurator Fiscal Depute, COPFS

**Other attendees:**

DCI David Gailey, Strathclyde Police Force

David Young, Policy Advisor, Scottish Court Service

Detective Inspector Cunningham

Isabelle Perez, Head of the Department of Languages and Intercultural Studies at Heriot-Watt University

**ImPLI round table in Edinburgh**

**1. Welcome and introduction of the speakers**

Introductory film clip (<http://www.cambs.police.uk/help/professionalInterpreter/>) on the pitfalls and challenges of police interpreting.

Detective Sergeant Stuart Houston, Lothian and Borders Police: Policy developments in investigative interviewing and interpreting practice in police settings

Interviewing rules are defined by Case Law.

The Scottish legal system for interviewing: Case Chalmers v. H.M.A, 1954 > Judgement: when interviewing a suspect, it is not the task of the police to direct their endeavors to obtaining a confession to be used as evidence during trial.

Case H.M.A v. Olsson, 1941, involvement of an interpreter. Because an interpreter was not involved, everything was declared inadmissible. Judgement: Evidence must be translated to an accused by a sworn interpreter except where he or his advocate asks that interpretation be dispensed with.



Case Ucak-v-H.M.A, 1999: the suspect thought that the interpreter was not impartial, but rather working for the government.

An important aspect to note is disclosure: Equality of arms for prosecution and defence. Everything has to be disclosed for the defence of a person. I.e. interpreting notes must be made accessible for the defence.

Solicitor access: In Scotland, a new law requires a solicitor to be present at every suspect interview. As a result of this, the time a suspect can be detained before being charged with a crime has increased from 6 to 12 (in some cases 24) hours. This constitutes a change for investigators (interviewing techniques) and interpreters. The role of the interpreter has not changed, but s/he must be aware of difficulties which can arise when the same interpreter interprets the confidential conversation between solicitor and suspect and the ensuing police interview.

Presentation of Inspector Martin Gallagher, Scottish Police Information and Co- ordination center: police interviews

Inspector Gallagher presented case studies of situations which police interpreters can find themselves in.

The overarching principle which informs Scottish Policing is *fairness*

The witness interview: the aim of a witness interview is to establish the facts from the point of view of the witness, including his/her opinion on what happened to present them to the procurator fiscal. In order to achieve this, the interviewer engages with the witness and allows them to produce a free narrative. At this stage the police do not challenge what the witness says and tries to establish the chronological order of events. Verbatim quotes from the witness' memory might be included in the statement.

Suspect interviews: the PRICE model for interviews is used to establish the truth about what happened. In a suspect interview the police try to get the suspect to talk and provide information at first without challenging him/her. The information will then be confirmed with the yes/no questions that spiral in on the event. Finally, the suspect will be confronted with the crime (impact question) or lies told during the interview. This involves a radical change of tone and rapport.

Briefing the interpreter well is of crucial importance: interview strategies, information on the case and persons involved, establish an emergency signal, explain time constraints, ensure that the interpreter is comfortable with the situation.



Discussion after the presentations of DS Houston and Inspector Gallagher covered the following points:

The police noted the positive impact of the use of agencies on professional service. Before the use of agencies, interpreters were occasionally recruited from amongst the general public.

Consequences of solicitor access: extended time frame, suspects tend to not tell prepared stories any more (they are advised by the solicitor not to) and prefer to remain silent.

Telephone interpreting was mentioned as a possibility to avoid problematic situations (alone with the suspect and the solicitor) for the interpreter in some cases.

Discussion on how much information interpreters should receive during the briefing: Po's view is that Interpreters should not become a "second police officer" because they know the exact interview strategy and could be biased. On the other hand the interpreter should not be surprised by the course of the interview because then the interpretation will suffer. The police preference is that interpreters should have more knowledge about the legal context and the rights of everybody involved in police interpreting.

For the police, a "fantastic" interpreter is invisible. For some interpreting practitioners and researchers invisibility might be an indication of lack of quality of interpreting as, depending on the context, the interpreter needs to be able to come in to clarify or point out cultural mismatches.

Disagreement on whether interpreters can be unbiased enough to interpret both the solicitor consultation and the suspect interview.

There are police internal guidelines on working with interpreters, but as a skill subset this is not taught in police schools. More experienced officers supervise and cascade knowledge down to new force members.

In Scotland, the process of procurement will inevitably become more centralized when the eight police forces are merged into one.

Police representatives noted that there is little familiarity with interviewing methods involving interpreters in other countries.

Detective Sergeant Jane Hamilton, Lothian and Borders Police: Police Interviews and training of police officers for investigative interviewing in a multicultural context



Training comprises: 10 weeks, includes 3 days of diversity training (information on people with different cultural backgrounds etc.), 4 days of training including community educational services.

Role plays include elements of diversity, dealing with people who cannot speak English or who have to be notified of serious or grave events which they are affected by.

Initial investigative course: use of PRICE-model: 4-weeks- course, in the 2<sup>nd</sup> week participants receive information on PRICE and also get an input on the use of interpreters. Input includes best case scenario, i.e. including a briefing or dealing with difficult situations.

No role play scenario with interpreters due to a lack of funds. However, there are scenarios which include issues which come up when dealing with people of different cultural backgrounds.

Voluntary course for Family Liaison Officers: specialised post, employed in incidents and situations when serious offences have occurred within the family: 1 week course on how to deal with families who are going through difficult situations.

Courses for Mentors, i.e. contact person for Family Liaison Officers where they can seek advice

Counter-terrorism courses: Three courses, regional course/procedural course: exercises at ports, with people at airports etc.

Prevention course: Aim: enhance engagement with different communities.

Hostage or Crisis Negotiator's course: dealing with people who are threatening to commit suicide or hostage situations. Particular challenge for interpreters, question of safety for interpreters. Again, no role plays with interpreters are conducted.

### **Discussion:**

Police officers learn how to handle interpreters and people with different cultural background through exchange of best practice with experienced officers. There are also courses in diversity training which run about seven times a year. Videos on working with interpreters would be helpful tools for training.



For trainee police officers the most difficult part of conducting an interview is to learn the structure and how to deal with difficult questions. Cognitive interviewing (taught to detectives) is considered to be particularly demanding.

Following budget cuts, the training on working with interpreters is not included in the training of police officers. The solution to this problem might would be to work collaboratively (police, police schools, interpreters, interpreter training institutions) and bring interpreting students together with trainee interviewers.

It would be beneficial if interpreters received some training in negotiation strategies as well to understand the strategies pursued and their sequence.

Inspector Brian Gibson, Diversity Unit, Strathclyde Police Force: Provision and sourcing of interpreters for police settings

Procurement was explained with the example of the Strathclyde Police force: the force has contracts with three different agencies to provide face-to-face interpreting, telephone interpreting and translation and media interpreting. Agencies are required to provide an interpreter within two hours. Qualified interpreters must be used for witness statements, the caution of the suspect, id parades, charging the suspect with a crime.

In order to ensure quality, the police require a DPSI, however, it remains to be determined if this is a high enough standard. The police also require interpreters to produce an enhanced disclosure certificate and a photo id before the assignment. Sometimes full background checks are performed in order to ensure that the interpreter is not biased in any way or involved in illegal activities that would endanger the case.

Telephone interpreting must only be used to facilitate initial contact with the police, but not for evidential purposes. It is also used if no face-to-face interpretation is possible or if it would be dangerous for an interpreter to be at the location (e.g. on the side of a motorway).

### **The discussion covered the following points:**

In addition to the requirement of a DPSI, the police have a test that is carried out to control quality.

The most important quality criteria for interpreters (from the police point-of-view) are adherence to standards, the DPSI, good character (enhanced disclosure, prior convictions of the interpreter can become a problem)



The police are aware of the fact that the DPSI is not a qualification set in stone and that it has to be established whether it is sufficient/appropriate. Noted that there are some interpreters without formal training who work well.

There was a disagreement between different police officers and practitioners on how much interpreters should know about interview techniques. General agreement that interpreters should have knowledge of the Scottish legal system and its procedures.

The police regard it as easier and more cost-efficient to work with agencies as service providers than with individuals. Without the service provider it would be too difficult to overlook the overall demand (large influx of asylum seekers, new languages). Over the last few years the number of agencies has increased significantly. In discussion it emerged that they are considered useful by the police, but viewed as detrimental to quality and working conditions by interpreters due to their commercial orientation.

For the police a register of Scottish Public Service interpreters would not be considered very useful. Qualifications and standards are considered more important and recruitment from a register is more time consuming.

It would be difficult to have a common framework for all public service providers, because in different fields different standards might be required.

**Inspector Ian McKim, former Force Relations Co-ordinator, Strathclyde Police Force: the role of/interaction with the interpreter, the police officer's experience**

It is important for the police to take into account cultural information, also, the dialect, religion, and sex of the interpreter have to be considered.

Training police officers to work with interpreters is crucial.

Before the interpreter arrives at a specific assignment, the police officer responsible should therefore review the guidelines on working with interpreters.

On the arrival of the interpreter, their id and enhanced disclosure certificate are checked. The interpreter should then be informed about the case (however, no excess information should be given), it should be established whether the interpreter is comfortable in the specific situation and any relevant forms should be shown to the interpreter beforehand.

In the interview room, lights, acoustics and seating arrangements have to be considered, the safety of the interpreter has to be guaranteed. The interpreter should be able to ask for breaks,



if necessary. The police should never forget that the interpreter is their only way of communication. Police interviews have to be interpreted consecutively, since everything is recorded.

Agencies should require the interpreters they employ to undergo professional development.

### **Practicing BSL-English interpreter Catherine King: the interpreter's perspective**

The situation for BSL interpreters is different from that of spoken language interpreters. BSL interpreters have fought hard for professionalization in their professional body, therefore issues of quality and payment are less pertinent (BSL interpreters are paid 28£/h).

Interpreters can be contacted through agencies, but there are also lists of independent freelance practitioners. When contact with the interpreter is made, as much information as possible has to be provided: name and collar number of police officer responsible, reason for the interview (so that the interpreter can be prepared linguistically and psychologically), the BSL user's name (to ensure that the interpreter is not biased).

A briefing is vital and the interpreter should be given what is required to do their job properly i.e. "help me, so I can help you". In an ideal interview situation, the police officer who is responsible is present, there is a comprehensive pre-interview briefing, there are no surprises for the interpreter, the interpreter is able to do "footnote interpreting"; sometimes described as "situation interpreting" (CD).and point out cultural differences.

At times, it will be important to explain the differences between languages etc.; therefore, invisibility is not necessarily always good.

The role of the interpreter as currently perceived is downplaying the interpreter's role. The interpreter wants to be a "working partner" and needs the police to accept this Note that "partner" does not imply partiality. However, the police see the interview as a two-part interview (dyad) and do not want to accept its triadic nature. Is the invisible interpreter "best" or rather "dangerous"?

Recommendations: joint training of police officers and interpreters, access for interpreters to interview-related parts of detective training, a shift of perception towards the interpreter as a partner, not a language machine

The discussion after the presentations of Ian McKim and Catherine King covered the following issues:





Community advisors are points of contact between communities and the police force, so that the police can find out more about the culture they are dealing with. Community Advisors attend regular training events.

Agencies do not provide training for interpreters, but the interpreters are individually responsible for their professional development (some professional bodies require professional development). Agencies are also not responsible for providing liability insurance for the interpreter.

Interpreters are less trusted by the police than other professional experts such as doctors. As interpreters are often perceived as black boxes, the police often forget to treat them like professionals

The interpreter is often distrusted i.e. considered an ally of the other party. Queries around whether the interpreter is viewed as the “mouthpiece” or voice of one of the parties - or of both - (rather than a “real person”)? Are interpreters who are nationals of the country more trusted than foreign nationals?

The police generally prefer working in consecutive mode. For suspect interviews this is necessary because the interview is recorded, but the police also prefers consecutive mode for witness interviews (more accurate, less distracting). Consecutive interpreting takes up more time, but this is acceptable since the most important factors are fairness and accuracy.

### **Procurator Fiscal Depute Andrew Beadsworth: Information pathways and pitfalls: from police investigation to trial**

The duties of the crown include adhering to ECHR articles 6 and 14 and the race equality duty (skilled and qualified interpreters have to be provided for suspects, witnesses and their families whose preferred language is not English). The crown also provides interpreting for bereaved families who want to witness proceedings in court, at precognition and for court familiarisation visits for witnesses

Since the police and prosecutors are not very familiar with situations in which interpreting is needed, but interpreting is the everyday work of interpreters, the former should accept advice from interpreters. There is a code of practice for working with interpreters that should be followed (the WGIT code of practice; WGIT Working Group on Interpreting and Translation).

The police informs the procurator fiscal, if interpreters are needed and for what language/dialect. The same interpreter cannot be used in court and for the police interview.



Different authorities are responsible for providing interpreters: the Procurator Fiscal's office provides the interpreter for witnesses, the Scottish Court Service provides the interpreter for the accused, the defense provides the interpreter for defense witnesses.

The system seems to work well, interpreters can be provided fast and people who need an interpreter usually get one. However, there were some cases in which statements taken were not admitted as evidence because of interpreting issues (no interpreter provided, an interpreter was provided for the wrong language...)

A DVD produced by the Procurator Fiscal's office shows good practice examples in court, at the police station, etc. (ImPLI members were provided with a copy of this)

Addition to the presentation by David Young, Policy Advisor, Scottish Court Service: procedure of hiring an interpreter

Scottish Court service provides interpreters for accused persons only. Interpreters are organised via Global Language Services Ltd. Police will organise the interpreter by informal agreement. It works very well. If problems arise during the court interpreting assignment interpreters are asked to report the issue. Quarterly meetings are held to talk about issues.

### **Discussion:**

Cases where good interpretation has expedited cases are not of interest for the media.

Since different bodies are responsible for providing interpreters for the accused, prosecution witnesses and defense witnesses it is possible that several interpreters with the same language combination work at the same trial.

The discussion after the presentations of Procurator Fiscal Depute Andrew Beadsworth and the contribution by David Young covered the following points:

Whether interpreters are informed by the respective agency about the possibility to approach David Young on all kind of issues they are concerned with remains unclear.

In Germany it is in the judge's responsibility to organise the interpreter and a register of sworn interpreters exists which is referred to when choosing an interpreter.

In Scotland, once the interpreter has arrived at court, necessary qualifications have to be presented to the judge who then will decide whether the interpreter is deemed as appropriate or not.



On the issue of agency, the alternative of a society formed by interpreters was put forward. This exists in Germany.

An independent arbiter should come into play to ensure that interpreters can voice concerns without fear of being ostracised.

The possibility was raised that there might only be one service provider for police interpreting in Scotland following the merger of the 8 forces. The impact of a monopoly on interpreting quality, pay and professionalisation was discussed.

There must be an independent body that interpreters can turn to if they are treated unfairly. In Germany this exists, and this professional body acts like a trade union..

**Speakers and attendants were thanked for their contribution and reminded of the time and venue of the ImPLI post round table dinner.**



## ITALY

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### Forlì

ImPLI Round Table, Forlì November 18<sup>th</sup>, 2011. 2.00 – 6.30 p.m.

Professor Delia Chiaro, Director of SITLEC Department, welcomed all participants and expressed her appreciation for the choice of the topic that attracts a lot of attention from the media and on which a lot of research work has still to be done.

Professor Rafael Lozano Miralles, Director of the School of Modern Languages for Interpreters and Translators of Forlì, welcomed the foreign partners as well as the representatives of Italian institutions and civil society and all other participants and briefly introduced the ImPLI project.

Professor Maria Chiara Russo, head of the post-graduate course in interpreting, expressed her appreciation for all the efforts made by ImPLI project partners so that positive results can be achieved in the area of legal interpreting, a complex activity which is neither sufficiently recognised nor appropriately remunerated in Italy.

Professor Gabriele Mack, round table moderator, suggested that all speakers, attendees and observers introduce themselves briefly.

### Participating speakers:

Mrs Marilù Gattelli, Assistant Prosecutor in Forlì

Mr Giuseppe Giove, Regional Commander of the State Forest Corps for Emilia-Romagna

Mrs Annarita Fasciani, Sergeant of the State Police in Forlì

Mr Fabrizio Fratoni, Captain of Arma dei Carabinieri, Forlì

Mrs Flavia Vecchione, Linguistic Expert at Forlì Police Headquarters and Board Member of ANTIMI (National Association of the Interpreters of the Ministry of the Interior)

Mrs Anna Caterina Alimenti, Legal Interpreter and Translator, Lecturer at Libera Università San Pio V, Rome



**ImPLI Partners:**

Lessius-Hogeschool, Antwerp/Belgium:

prof. Heidi SALAETS

prof. Katalin BALOGH

FH Köln – Köln - Cologne/Germany

prof. Sylvia KALINA

prof. Barbara AHRENS

Charles University Prague/ Czech Republic

dott. Katy Stifterova

dott. Dagmar Dencikova (Vice-President, Chamber of Court Appointed Interpreters)

ISIT Paris/France

prof. Sarah BORDES

prof. Christiane DRIESEN

Herriot-Watt-University Edinburgh/UK

prof. Ursula BÖSER

prof. Christine WILSON

SSMLIT Forli/Italia

dott. Amalia AMATO

prof. Gabriele MACK



## **Attendees**

Elio Ballardini, Researcher and Teacher at Forlì Graduate Interpreting Course, specialised in legal interpreting

Francesca Biagini, Researcher and Teacher of Interpreting at Forlì Post-Graduate Course in Interpreting

Christopher Garwood, Researcher and Teacher of Interpreting at Forlì Post-Graduate Course in Interpreting, specialised in legal interpreting

Maria Jesus Gonzalez, Researcher and Teacher of Interpreting at Forlì Post-Graduate Course in Interpreting

Ira Torresi, Researcher and Teacher of Interpreting at Forlì Post-Graduate Course in Interpreting

## **Observers**

Mrs Rosalia Arlotto, Forest Corps Officer

Mrs Cristina Ramolacci, Linguistic Expert at Forlì Police Headquarters

Mr Giovanni Naccarato, Regional Commander, Forest Corps

After a self-introduction by all speakers, participants and observers Professor Gabi Mack gave the floor to the first speaker.

## **Speaker 1: Mrs Marilù Gattelli, Assistant Prosecutor, Forlì**

The speaker explained that she has been dealing with preliminary investigations from 2000. She thanked the organisers for the invitation and stressed the importance of the topic at issue. First of all she explained how the prosecutor's office works. The public prosecutor in Italy is separate from the judge of preliminary investigations as such. The prosecutor deals with the investigative stage of the criminal proceedings on the basis of the Italian criminal code and the Italian code of criminal procedure according to which the prosecutor gathers evidence during the investigation. On the basis of the evidence gathered a judge for the preliminary investigations makes the decision whether or not a case should go to court.



The term “judicial police” (*polizia giudiziaria*) is a very broad term and covers all sorts of law enforcement agencies: state police, carabinieri, the forest/environment police. The public prosecutor can either manage the investigation directly or delegate investigation activities to the judicial police. In actual fact most of the time the judicial police carry out the investigations, but there are delicate cases in which the public prosecutor would intervene directly. So the prosecutor might summon witnesses, listen to people who are detained, and so on. It is precisely in this sort of context that an interpreter might be necessary, for instance when a witness has to be listened to, and s/he does not speak Italian.

Another fundamental point made by the speaker is that an interpreter is needed when the prosecutor - under request by the judicial police and after receiving authorisation by the judge for the preliminary investigations - gives instructions to bug either a person’s phone or some premises. And here there can be a problem of language. This type of scenario is not covered by all foreign legislations, but in Italy this is provided for by law. In such cases the interpreter or translator is essential because otherwise the crucial heart of the investigation could not be carried out properly. In case of telephone tapping or other forms of bugging an on-going involvement of the interpreter is required, for several hours a day, and there are very few interpreters who are prepared to do this kind of work.

The speaker went on raising the question of how can one work out exactly when a suspect or a witness does not speak Italian. Article 143 of the Italian code of criminal procedure states that the defendant who does not speak Italian has the right to an interpreter, without having to pay, to understand the charges against him/her. Conversely, an Italian citizen is assumed to speak Italian according to this provision. But the provision does not say exactly what should be done when the judicial police or authorities are faced with a foreigner. This means that in practice the person to be interviewed is simply asked: “Do you speak Italian?” and “Do you understand Italian?”. Basically the whole procedure is based on that question. If the answer is “No” or if the foreigner says that he or she does not speak Italian sufficiently well an interpreter is appointed.

In Italy only some institutional professional profiles can call on an interpreter during investigations: the prosecutor, the judicial police, the defence counsel, and the judge in charge of the preliminary investigations. The prosecutor can request an interpreter in various instances including:

during the preliminary hearings if a foreigner has to be detained

when a foreign citizen must be interviewed while in provisional custody

when a foreigner is caught red-handed.



In all these cases the interpreter must be present during the interview, otherwise all the proceedings can be considered null and void. It should also be said that the interpreter is becoming more and more important because in contemporary society there are more and more foreigners who are either victims or perpetrators of offences.

The official terminology used to define the status of the interpreter working in criminal proceedings depends on whom s/he is recruited by: the interpreter is called a “judicial police auxiliary” (*ausiliario*) when s/he is appointed by the judicial police. This expression indicates a person appointed by the police and acting as a legal officer. When the interpreter is appointed by the prosecutor s/he is called “technical consultant” (*consulente tecnico d’ufficio*) meaning a technical expert working for the prosecutor’s office. When the interpreter is appointed by the judge in court s/he is called an expert (*perito*) meaning an independent court appointed expert who does not work for one of the parties in the proceedings.

Recruitment criteria used by the prosecutor when appointing an interpreter

How does the prosecutor choose the interpreter? This is the first delicate issue in the Italian legislation. Theoretically, the prosecutor has quite a bit of freedom. The prosecutor can

call upon an interpreter who is a member of staff of the Ministry of the Interior. These in-house interpreters are called linguistic experts and work at police headquarters or police stations all over Italy; or

look at a register that is available at the various courts. This register, however is often not up to date, or does not contain an exhaustive list of interpreters; or

turn to a free-lance interpreter “outside” the register.

Public prosecutors tend to prefer the last option because the in-house interpreters, as the last speaker will explain, who are full-time staff at the police offices only speak the main European languages: English, French and German. Most of the times there are no in-house interpreters available for other foreign languages that are frequently needed: Albanian, Romanian, Chinese, Arabic. So very often prosecutors recruit external interpreters who are called in for any specific action that has to be taken: for instance a detainee who has to be questioned in prison (the judge for the preliminary investigations or the prosecutor are the only ones who can do this, not the judicial police). Since there is often no exhaustive official list, these interpreters are called on an *ad hoc* basis. One important criterion for recruitment is that they should not know the suspect or defendant. So the first point the speaker stressed was





that there is no standard practice which applies across the board when recruiting interpreters. Moreover there is no standard practice to certify their skills.

The role of interpreters can be very delicate and important, particularly during the preliminary stages of the investigations. For this reason a number of practices have been devised. With the contribution of the police station in Forlì there is now a list of interpreters and translators; it is not an official list but it is a very useful one, drawn up taking into account also the reliability and availability of the interpreters before putting them on the list.

Usually it is very difficult to find an interpreter of a rare language, particularly when dealing with very urgent proceedings. In that case the judicial authority simply has to make do with whoever happens to be free because there are certain acts which have to be seen to immediately. The persons who work as interpreters exclusively in the legal sector are not able to follow any training courses as such because they do not exist yet in Italy.

If some progress has to be made certain conditions or standards should be defined and agreed between the schools and the judicial authorities. This would really help.

Although there is no official statistical data, on the basis of the speaker's personal research in the office of the judge for preliminary investigations in Forlì about sixty interpreters are appointed in one year.

#### Interpreters' remuneration

Another weak feature of the Italian legal system pertaining to the use of interpreters is the interpreters' pay. The speaker said she felt a bit embarrassed to talk about this because the sums are so paltry, and it appears to be obvious that they need to change. She expressed the hope that the EU Directive - which is due to come into force - will change the situation. In Italy there is only a single text laying down the fees – it is a decree that goes back to 2002 (DPR 115/2002 about expenditure for justice) and is linked to a law issued in 1980 stating that the fee of the interpreter is proportionate to the time spent at work. According to this law the interpreter is a separate category from a doctor or say an accountant who are called on by the judicial authorities. Interpreters are paid by two-hour slots. The fee for the first two hours is Euro 14.68, for all the following two-hour slots the fee is Euro 8.15. It is unbelievably low but unfortunately this is the current state of play. This remuneration is clearly not sufficient. Obviously it is very hard for qualified interpreters to say that they wish to do their job for the judicial authorities on an on-going basis. They might do it occasionally. For rare languages the people who are available often do not have qualifications and yet the prosecutors have no option but to recruit them. The only requirement is that the person called upon to act as an interpreter must have no criminal records. Otherwise prosecutors have no other way or means



to reject an interpreter. They have no power to change the interpreter's fee. They lack alternatives and they can only call on people who are prepared to do the job despite the low fee. This is a problem that should be solved urgently and for which some rules would be necessary, so that the remuneration of the interpreters would be proportionate to their function which is so important.

## Documentation and information provided to the interpreters

### The report

There is no provision stating exactly how documentation should be produced. Generally speaking the judicial police, the judge for preliminary investigations and the prosecution should make verbatim minutes of interviews or interrogations, but this is not always the case. Since there is no set rule as to how a report has to be drawn up, this really depends on the person in charge. So an interview might or might not be recorded. Only when the person under investigation is in provisional custody is there an obligation to record the interview. In this case if there is an interpreter working for the judicial police or the prosecutor everything is put down in writing. The report then is read out in the language of the suspect with the help of an interpreter before it is signed by the suspect. But there is no set rule about how exactly this should be done. Decisions are made on a case-by-case basis.

Information for interpreters. What sort of information should be given to the interpreter before the interview takes place? What does the interpreter need to know on a particular case? The scene of the crime? The type of offence? The procedures? The rights of the victim? The interviewing techniques? During the preliminary investigations if you wish to ensure that the quality of interpretation is sufficient- and we know that the interpreter's role is quite multi-faceted, the interpreter is not there just to translate, there is more than that – then it would be appropriate to provide the interpreter with a certain amount of information on the case at hand. Moreover the way the interview is going to be conducted should be explained to him/her. But again, everything here is left to the individual, and not all the people work in the same way. The assistant prosecutor said that she personally had always given information to the interpreters and she believed that this is appropriate. Interpreting mode and interviewee's preference concerning the interpreter

The prosecutor and the judicial authorities in general also decide what type of translation/interpreting is necessary. Usually the first person pronoun is used in the written report but in oral translation sometimes the third person pronouns are used too. for instance a woman who is a victim of sexual abuse might ask for a female interpreter. Whenever possible the request is complied with. Unfortunately this is not always possible because, as mentioned before, there are cases when one has to act quickly or there are other contingencies.



## Position/role of the interpreter

In court, during a trial, the role of the interpreter is clear because s/he can just confine her/his role to interpretation only. In the early stages of the investigations the judicial police or authorities have to work out exactly who the person is, whether there are any sort of links between the interpreter and the suspect, what exactly the situation is all about. The preliminary phases of investigations are very sensitive so the role of the interpreter is even more important. Should the interpreter be an ally of the judicial police and authorities? May be not an ally, but interpreters should cooperate. What is even more important is that during the preliminary investigations the interpreters should not create problems and they should not be perceived as a risk factor by investigating authorities.

The interpreter is also important from the legal point of view, because if a foreigner who does not speak Italian is not assisted by an interpreter the proceedings can be declared null and void. This case is becoming more and more frequent because defence lawyers are beginning to realise that they can challenge a decision by the judge and win their case on the grounds that there was no interpreting as required by law. What happens quite often is that during the initial stages of the investigation, the foreign person who has committed a crime does not say anything about his/her knowledge of Italian and consequently the judicial police or authorities do not appoint an interpreter because they assume that the person speaks and understands the language. Then, at a later stage, the defence counsel declares that the person under investigation does not speak Italian and this automatically invalidates all the investigations carried out before.

Ideally the same interpreter should be appointed for the whole investigation period because s/he knows what has been going on before – obviously without influencing the investigations – and what the context is, which obviously makes things much clearer. But the interpreter working for the judicial police should not be working also for the defence.

## Directive 2010/64/EU

This Directive deals with the right to interpretation and translation in criminal proceedings. This Directive will have to be transposed into Italian legislation by October 2013. It is still not known by most people working in the sector and thus it is not taken into account. The transposition of the Directive will have an impact on the current situation since it should provide for certain rights and options which are not available to the person under investigation at the moment. Currently the Court of Cassation for criminal matters does not recognise the right to the defendant to an interpreter for the reading out of the sentence handed down by the Court. The person has the right to a free interpreter during the proceedings but when the final sentence is read by the Court the foreign defendant is not supposed to understand. This too will change with the transposition of the Directive.



Some other important features of the Directive:

it refers to what happens when those under investigation do not speak Italian. Probably videoconferencing, Internet, telephone interpreting will have to be used;

it refers to sufficient or at least adequate quality of interpreting;

it refers to a register of independent and qualified interpreters;

it also refers to the need to train prosecutors and judicial staff. Before concluding the speaker reported about a case that highlights the substantial role of the interpreter in criminal investigations. In May 2006 in Rimini, outside a bar alongside the sea, a 35-year old man was found dead. This man had worked for a voluntary association and was very well known in the area. He had been killed without any apparent reason and there were no witnesses. So this was a difficult case. The speaker was assistant prosecutor in Rimini and not in Forlì at the time. The police started their investigation and identified a German girl who the night before had been robbed by two rather violent foreigners, probably Romanians, who had beaten her up and taken her mobile. The right code of that phone had to be found in order to tap the phone. It was late at night and the only interpreter found by the police was an external interpreter. This is just an example of the fact that when the judicial police has to move swiftly it can just count on who is available. This interpreter helped the police and translated the telephone call between the girl and her family to have the phone code. The judicial police then decided that the phone had to be tapped and the investigation started immediately. An interpreter was appointed because the conversation on the phone was in Romanian. The interpreter was known to the police, she was reliable and had worked for them for some time. The interpreter listened to the call and realised that the two Romanians were talking about the murder. She also understood that these two people were trying to run away. She understood what was going on because she had heard about the case. So she informed the police who then informed the prosecutor. The two Romanians were caught and brought to the police station. They were two young men, in their early twenties and it was 4.00 or 5.00 o'clock in the morning and the interpreter had kept working without looking at the clock. At the police station there were the two suspects, the police officers, the interpreter and the speaker. The two young men were questioned and although they knew a little bit of Italian, in such a delicate situation an interpreter was appointed. The two suspects confessed and in the meanwhile the interpreter had already transcribed the three or four phone calls which were so important. The two young men were eventually arrested and sentenced to a thirty-year prison term. If an interpreter had not been available at that particular moment in time the case could have not been closed so successfully. To conclude the assistant prosecutor said she believes that the role of the interpreter is essential, particularly in the preliminary stage of investigations and she expressed her hope that the Italian legislator – when transposing the



Directive – will avail this opportunity to give the professional profile of the interpreter the relevance and importance it deserves.

## **Debate**

Mrs Alimenti noted that in the reported case information was essential but she also stressed that the speaker is unique in providing the interpreter with information. In her long career, only once had she been given information about a case in advance. This was because it was a very important trial about a murder occurred in Via Poma, in Rome - and the hearing where she was supposed to work was about DNA testing techniques to be used to identify the person who had committed the murder. So the assistant prosecutor in Forli, Mrs Gattelli, is really an exception, also because she realises that interpreters are not experts in everything under the sun. Mrs Alimenti reported about a case of a car accident where the prosecutor had to establish whether it was a failing of the car or a failing of the driver and he had appointed two consultants who were experts in car engines. She had not been informed about the topic at issue and she was expected to know and be able to translate all the terms pertaining to car engines. She obviously did not know how to translate the different parts of the engine of a car and she had complained and explained that interpreters cannot be expected to be an expert in every field.

Mrs Gattelli answered to this comment by saying that perhaps some prosecutors believe – and they are probably wrong – that giving information to the interpreters may influence them. But since she believes that interpreters are professionals, giving them information does not mean influencing them and this must be done especially when there is a need for them to prepare on certain technical aspects and also to grasp certain overtones or undertones of the discourse which otherwise they may not be prepared for.

## **Speaker 2: Mr Giuseppe Giove, Regional Commander of the State Forest Corps for Emilia-Romagna, Bologna**

Commander Giove's presentation focused on the impact of the transposition of EU Directive 64/2010 on Italian legislation about judicial police activities.

The legal provisions guaranteeing the right to an interpreter in Italy and the impact of the EU Directive 64/2010

The speaker thanked the School for inviting him. He announced that his task would be to illustrate the role of judicial police during criminal proceedings and the impact of the Directive. In Italy judicial police acts on its own initiative to fight against criminal activities, investigates crimes and offences, tries to establish the evidence and to avoid that a crime is



repeated and then puts everything into the hands of the prosecuting office. The procedure to follow to resort to an interpreter and appoint one is not always clear. In Italy there is a specific guideline – article 143 of the Code of Criminal Procedure - stating that a defendant who does not speak Italian must be assisted by an interpreter in order for the proceedings to be fair and in order for the defendant to have the right to defence. In Italy the term used for the person under investigation changes according to the different phases of the investigative proceedings: first the person is a suspect, then technically speaking s/he becomes an investigated person and when the public prosecutor puts his/her name in a register then s/he becomes an accused person, who then becomes a defendant before the judge, in a trial. So the first problem for the judicial police is: *quid juris?*

In determining the tasks of the judicial police the legislator has stated that their activity is relatively free but at the same time he has set some goals. Moreover the activities performed by the judicial police do not always determine the final outcome of the proceedings because in Italy the judicial system is an adversarial one where the evidence is formed during the proceedings in Court.

Judicial police, according to article (1)57 of the Code of Criminal Procedure has the task to prepare reports about all the investigative actions and acts it performs, and this includes preparing official minutes and reports that comply with legal rules. When a person is under investigation (and is therefore not yet a defendant) the problem arises about when to use an interpreter and how. A lot has been written on this and there is a lot of case law because, as already said, the Code of Criminal Procedure establishes the right to have an interpreter for the defendant, but not for the person under investigation. This means that the person under investigation is not entitled to the same level of guarantees as the defendant in court, which seems to be unfair. So there have been rulings handed down – at times even contradictory ones – that try to provide guidelines about the right to an interpreter during the initial phases of criminal proceedings since our law does not specify all the details about that. The judicial police bases its action also on these rulings. So a first point made by the speaker was that there is a need for clearer and more detailed legal rules about the right to interpreting.

For the activities of judicial police, the term “interpreter” appears for the first time in article 149 of the Code of Criminal Procedure referring to the case of “accompaniment” to ascertain the identity of a person, which may be necessary when papers or photographs are not sufficient for identification purposes. In this case the judicial police is allowed to take the person to the police station for identification and keep the person in investigative detention for 24 hours. In this case, if the person is foreigner s/he is entitled to use an interpreter.

Similarly to what happens to the person under investigation t- who is called with different names according to the stage of the proceedings s/he is in - different terms are used to define interpreters on the basis of who appoints them. When working for the judicial police the



interpreter is called a “judicial police auxiliary” meaning a person appointed by the police and acting as a legal officer. When the interpreter is appointed by the court s/he is called “court appointed expert” when appointed by the prosecutor s/he is called “technical consultant/expert”. Moreover Italian legislation does not distinguish between interpreters and translators, while the EU Directive does.

Against this backdrop it is important to understand what has happened over time: in compliance with the rules descending from the European Convention on Human Rights and the International Covenant on Civil and Political Rights, Italian Constitutional Court issued ruling no. 10/1993 stating that it is not possible to overrule the right to defence of a person who does not speak Italian and that translation must be provided also to the person who is not yet a defendant but is still under investigation. This way the guarantee of the right to interpreting was extended to anyone under investigation and was no longer confined only to defendants.

In this context EU Directive 64/32010 says a number of important things. We all know that directives have to be transposed and this may take some time, but in some cases Directives can be implemented directly because what they specify is so strong that we cannot wait for the Member States to transpose them in their national legislation. What does this Directive say? First of all it clearly states when and how an interpreter should be used. It defines the object and the scope of implementation and it says that an interpreter should be used in criminal proceedings or in any proceeding in which the person knows that s/he is under investigation. So it goes beyond the restriction of article 143 of the Italian Code of Criminal Procedure that was the object of so much legal debate among Italian judges in the past.

The speaker went on saying, jokingly, that he would need an interpreter to understand paragraph 3 of article 1 of the Directive because it states that “Where the law of a Member State provides for the imposition of a sanction regarding minor offences by an authority other than a court having jurisdiction in criminal matters, and the imposition of such a sanction may be appealed to such a court, this Directive shall apply only to the proceedings before that court following such an appeal”.

Basically this paragraph refers to minor offences for which a sanction can be imposed by an authority other than a court having jurisdiction in criminal matters. Yet, in Italy only a judge sitting in a Criminal Court can judge a crime. Italian legislation includes petty offences – misdemeanours – but they too fall under the jurisdiction of the criminal court judge. This is an important aspect that could be called a critical point. To illustrate this point the speaker made the example that follows. In Italy the Corps of Forest Rangers tries to ensure that international conventions are complied with - for example in case of illegal trafficking of endangered species. When they come up against an administrative offence, is it necessary to



have an interpreter in order to guarantee the right to defence of the person being interviewed? This was a first doubt that can be raised.

There is also another case that requires some thinking. In Italy there is a difference between criminal and administrative offences. For criminal offences the prosecutor has the burden of proof whereas for administrative offences it is the opposite: it is the suspect who must prove that s/he was not guilty of that offence. On this point the European legislator probably refers to joint crimes where the jurisdiction of the criminal court judge prevails over the jurisdiction of the administrative court judge.

In Italy administrative offences fall under the jurisdiction of local authorities (municipal authorities, provincial authorities, prefect) but if an offence infringes both administrative rules and criminal law, for instance, the criminal court judge will have jurisdiction for that offence. When reading this Directive the case in the example may become a problem: should the right to defence, which includes the right to interpreting, be extended also to people who commit administrative offences when these offences entail a criminal offence and therefore fall under the jurisdiction of a criminal court judge?

This is an issue that the Italian legislator will have to deal with when transposing the EU Directive into the Italian legislation by October 23<sup>rd</sup> 2013.

Costs associated with the transposition of the EU Directive 64/2010 and the interpreter's profile The Directive also provides that the Member States must ensure, without delay, interpretation for suspected or accused persons who do not speak or understand the language of the criminal proceedings concerned. Moreover the Directive establishes that Member States must ensure that a procedure or mechanism is in place to ascertain whether suspected or accused persons speak and understand the language of the criminal proceedings. This means that the decision to use an interpreter will no longer be left to personal judgement of judicial police officers or prosecutors. In addition to this, according to the Directive, suspected or accused persons have the right to challenge a decision finding that there is no need for interpretation and, when interpretation has been provided, they have the possibility to complain that the quality of the interpretation is not sufficient to safeguard the fairness of the proceedings. These same provisions also apply to translation. All these provisions entail costs and that is going to be a real problem when transposing the content of this directive. There are also other aspects associated to the implementation of this Directive: the quality of translation and interpreting and training. Member States will have to request those responsible for the training of judges, prosecutors and judicial staff involved in criminal proceedings to pay special attention to the particularities of communicating with the assistance of an interpreter. Finally the Directive contains a non-regression principle providing that Member States cannot transpose the provisions of the Directive in a way that limits or derogates from the spirit of the Directive. As far as the judicial police activities are





concerned, so far it is not completely sure how interpreters should be used. For example during investigations sometimes the judicial police use methods and tools that are invasive of the person's rights, for instance searches, seizures, urgent fact finding. For these activities the Italian code provides for the possibility to be assisted by a lawyer. There is no obligation to ensure that the person under investigation is assisted by a defence lawyer, but the person being investigated has the option to be assisted by a counsel. Therefore if the judicial police makes a search or a seizure of some property of a foreigner, it is not clear whether an interpreter must be appointed to guarantee the right to defence. If one gives the Directive the broadest interpretation, an interpreter should be appointed, but the decisions of Italian courts state the opposite. Basically in Italy the decisions by the courts make a distinction between actions that require the presence of a lawyer and therefore of an interpreter, and the cases where the assistance of a lawyer (and an interpreter) is an option. This is a very delicate aspect because it can cause an infringement of the individual's rights. The problem will have to be solved in a more general manner because the right to interpreting or translation cannot be linked only to certain stages or actions of the proceedings. It is necessary for the interpreter and the translator to be involved in the entire criminal proceedings and these should be understood in a broader sense than the different actions and acts that occur after a crime is reported (*notitia criminis*). Clear indications are necessary in this respect, so that the question about whether or not an interpreter should be appointed is not left open. The judicial police need to know if there is an obligation to appoint an interpreter and how to appoint the interpreter. It must be also clear whether the judicial police should refer to the police headquarters to find an interpreter or whether the interpreter must be selected from a list or a register of experts, or in another way.

Here the question arises about what is an interpreter: is the interpreter an expert? This is the case for the court appointed expert who is defined as a person with scientific knowledge who presents some facts and these facts are questionable because medicine or technical knowledge are not always hard science. Conversely, according to the speaker, there is only one way to interpret something: one word cannot be translated by one hundred different words. The speaker said he believes that the interpreter could be called a *tertium genus* (a third party), someone different from either the scientific expert or the court appointed expert. Interpreters should be given a special definition and be listed in a different register (from the register of experts) that ensures quality.

The speaker went on suggesting a possible wording to transpose the Directive on this point into the national legislation: "All state authorities, when they issue administrative or judicial provisions or orders, have the obligation to ascertain, also using an interpreter, whether or not the alien person understands and speaks Italian and what language the person speaks; if the alien person does not speak and understand Italian the provision or order concerning that alien person must be translated into the mother tongue of that person or into another language the person speaks and understands well enough". If Italy passed a law along those lines a lot



of problems would be solved. Of course there is the issue of costs and that could be an obstacle to the transposition of the Directive in the form mentioned above. Undoubtedly there is a need for clearer rules, as Mrs Gattelli said, and the transposition of this Directive can help a lot in this respect.

## **Debate**

Prof. Wilson asked for one point of clarification: the speaker made a distinction between Italian citizens who are de facto supposed to know Italian and foreigners. Are foreigners people who are not residing in Italy? And what happens to asylum seekers who are not Italians but are residents in Italy?

Mr Giove: there is one article in the Italian code about language minorities. For Italian citizens and foreigners who have acquired Italian citizenship we assume that they speak Italian. This is a problematic situation but the judicial police works on the basis of the assumption that an Italian citizen speaks Italian unless the contrary is proven; here there is the principle of the reversal of the burden of proof: the citizen has to prove that he or she does not speak Italian. Then, as the code provides, the judicial authorities or the prosecutor will have to check whether this person speaks or understands Italian or not with the help of an interpreter.

Mrs Vecchione referred to the article of the Directive quoted by Mr Giove about minor offences and the need for an interpreter. Being an interpreter for German she knows that there are differences between legal systems in the classification of offences. One offence may be considered a crime in Italy but in Germany it might be subject to just a fine. This example refers to a far more wide-ranging issue: the harmonisation of criminal law. What is an administrative offence in Italy might be something different in another country. It is a legislative problem.

Prof. Driesen expressed her appreciation for the presentation and for the fact that the speaker knows about the Directive (in Germany not many judges and prosecutors know about it). She went on expressing astonishment about the fact that the speaker mentioned many points about the Directive that are already settled by the Human Rights Convention, namely in articles 5, 6.1 and 6.3 clearly stating that if someone is apprehended by the police he or she has to be informed in a language he or she understands. Since the Convention dates back to the 50s Italy probably already has some legal rules that transpose this Convention into Italian legislation. Moreover there are rulings on the implementation of that Convention that provide for the obligation to use competent interpreters.



Another point mentioned by prof. Driesen pertained to the different views in different countries about the role of the interpreter who is sometimes seen as a mouthpiece, sometimes as an expert. In France an interpreter is considered as an expert but definitely not in Germany. To be an expert in Germany you have to bring material to the proceedings: If you are a translator, then you are an expert, if you are interviewed to give a report about cultural aspects, then you are an expert and you have to take a special oath because you bring something new to the proceedings. But if you are an interpreter you are not an expert because you are not supposed to bring anything new to the proceedings. There is a debate on this point in all European countries. It is a matter of philosophy and this is why what the speaker said about the interpreter's profile and definition was so useful, because it went to the core of the problem.

Mr Giove: said that he would answer only to the first part of the question and leave the second part to Mrs Gattelli. The Italian Constitutional Court ruling no. 10/1993 tried to fill the gap in the rules about interpreting in the Italian Code of Criminal Procedure. So the Constitutional Court has given a very broad interpretation of the context where the interpreter should be used.

Mrs Gattelli said that Italian case law had changed recently, particularly when a person has to be appointed to transcribe any tapping or bugging. In Italy there are different terms indicating a person who is called upon to assist the prosecutor or the court during criminal proceedings: the prosecutor appoints "technical consultants/experts" (*consulenti tecnici d'ufficio*) to assist him or her, while persons appointed by the courts to act as independent experts are called "*periti*". Recently there was an objection made by a defence counsel who said that the judge could not appoint the same interpreter the prosecutor had appointed. This interpreter had transcribed tappings and the court issued a ruling saying that this person had acted as a "*perito*" (an expert who is appointed by the court) who is not just a mouthpiece. So in our case law the interpreter is recognised as a more complex profession, someone who provides added value, who contributes to the proceedings. There is no statutory rule, there is just case law. In Italy case law does not set a precedent that becomes binding as in other countries. Rulings by courts, however, set some principles that then have to be included in Italian legislation. But so far there is no statutory rule so there is a need to have something clearer which would make the work of prosecutors easier. With clear legal rules the judges would know what to do and so would prosecutors.

Mrs Alimenti added that many judges in Italy do not appoint the same interpreter because the interpreter appointed by the prosecutor is considered a consultant/expert working for one of the parties in the legal proceedings whereas the "*perito*" (an expert appointed by the judge in court) must be an independent expert. Similarly the same interpreter cannot work for the defence and for the prosecutor in the same proceedings.



**Speaker 3: Mrs Annarita Fasciani, Sergeant of the State Police, Forlì**

Sergeant Fasciani specified that she works for the Police Headquarters in Forlì and she is part of a patrol unit. Her unit deals with a number of offences against individuals: murder, stalking, sexual violence, offences against children and adolescents including paedophilia. Most of the investigation activities she carries out are either delegated by the prosecutor's office or are autonomously initiated by her unit. Very often in order to carry out investigations, if foreign citizens are involved in an offence, her unit resorts to an interpreter. Although Forlì is a very small town, there are many citizens of different nationalities who live in this town and the use of interpreters has become more and more frequent.

The Police Headquarters in Forlì can avail of two linguistic experts, who are civil servants and work as in-house interpreters for the Ministry of Interior. Their working languages are English, French and German. For the other languages there are a number of ways to recruit interpreters, but there is no institutional practice, nor are there formal instructions or guidelines as to what should be done.

In Forlì, in order to recruit external interpreters, the Police drew up a list of foreign citizens who declared that they are available for interpreting. Sometimes they are citizens who have already worked for the Aliens' Office or have helped asylum seekers. This list was drawn up because in the past it had been difficult to find an interpreter quickly, particularly in emergency situations. The criteria applied to choose these foreign citizens to put on the list were described as follows: these citizens were selected with the help of one linguistic expert, Mrs Cristina Ramolacci, who assessed their knowledge of written and spoken Italian and their legal translation and interpreting skills. Then the police office checked whether these people had criminal records or whether they were related to people having criminal records. When an interpreter cannot be found on this list, or there is no interpreter on the list for the language required, the police office turns to an agency in the Forlì area. The agency is asked to produce a cv of the interpreter who will potentially be assigned the job. In all the cases where interpreters are used, they are appointed and called "police auxiliaries", meaning a person appointed by the Police acting as a legal officer according to article 143 paragraph 4 and article 379 of the Italian Code of Criminal Procedure.

The judicial police can resort to external interpreters or in-house interpreters to perform a number of activities and produce some documents that are part of the investigation activities: collecting summary information, interviewing suspects at the presence of their defence lawyer, interviewing children witnesses with support, producing full transcriptions of conversations tapped on the telephone or in other ways. In all these instances the interpreter is requested to produce a very close or even verbatim translation of what is being said, as literal as possible. Depending on the case at hand the interpreter might or might not be given information beforehand. Sometimes the interpreter is asked to translate the questions and the



answers without knowing anything about the investigation. In some cases the interpreter is not even informed of the crime that has been committed. This is part of the investigation technique, and not a sign of lack of trust on the interpreter. The police thinks that in some cases it is useful for the interpreter not to know anything about the person being interviewed, but this is an exception - usually the interpreter is informed about the type of offence and s/he is told whether the person to translate for is a witness or a potential suspect.

When the police is not in a very urgent situation and the circumstances allow for this, they prefer to have a sound recording of the interview. In many instances this has proven very useful, particularly when an external interpreter was recruited: if there are any doubts and the investigation is particularly complicated, the translation can be cross-checked by calling on another interpreter. In the past this was the case for investigations involving Chinese nationals, for several reasons. First of all the Ministry of Interior has very few in-house interpreters for this language, and they are in great demand. Secondly there are serious difficulties in finding an interpreter who is not part of the local Chinese community and is not closely related to the other Chinese nationals. In Forlì the Chinese community is very closely knit. In those instances all interviews are recorded and then another interpreter from another cities appointed to cross-check the translation provided by the first interpreter.

In some instances the judicial police called cultural mediators to act as interpreters, but they have a different professional profile, and often know the person under investigation, and this can lead to a very personal interpretation of what is being said during the interview. In the speaker's experience, cultural mediators sometimes did not act as a "third party", i.e. they were not neutral, whereas the role of the interpreter presupposes neutrality.

During interviews the interpreter is requested to produce a literal translation of what is being said. If need be, some points of clarification are asked about cultural differences or the register used by the interviewed person, but for the purpose of writing a legal document/report the translation must be literal. When the story of a victim is told, especially a victim of sexual abuse, the role of the interpreter becomes even more important because the interpreter can really help the police understand what happened. (S)he can also help the victim who is being interviewed relax, so that this person can explain the traumatic events that occurred. For women who are victims of abuse the judicial police always tries to find a female interpreter, so that the victim can feel more at ease, and this too can help in reconstructing events in greater detail.

## **Debate**

Prof. Russo asked whether there have ever been cases in which no interpreter could be found, and if so what happened? Were the judicial proceedings not carried out then?



Sergeant Fasciani answered that if the police cannot find an interpreter and the person who must be interviewed cannot speak Italian, the proceedings simply cannot be carried out, as the questions and the answers must be fully understood by the person who is being interviewed. For sure the police in such a case will not write down a report, because the information got from a person without an interpreter would not be truthful.

Prof. Russo asked a second question about how frequently this happens in Forlì.

Sergeant Fasciani answered that it did not happen very often, but this was precisely the reason why they drew up the list of interpreters asking them when they are generally available to work. This way it is easier for the judicial police to know when to call on whom. Moreover they tried to have more than one person for each language on their list.

Prof. Wilson asked whether in case of a rare languages telephone interpreting can be used and if it is allowed.

Sergeant Fasciani answered that in case of an emergency the police use anything, obviously, but the report cannot be written on the basis of telephone interpreting only. Telephone interpreting is used sometimes when the squad is out on the street and there are fights, for instance, and a witness does not speak Italian. In this case an interpreter is called on the phone from the list and asked to translate what the witness is saying, but to write the report and interpreter must be present.

Mr Ballardini said that according to Italian legislation, but also in other countries, the interpreter is not obliged to translate into his/her mother tongue and asked to what extent does this make things easier or more difficult.

Mrs Gattelli answered that the law does not say that the interpreter must work only into his/her mother tongue and that the person under investigation must necessarily use his/her mother tongue. The law states that a person under investigation has the right to interpreting into a language that s/he knows well. In many cases English or French can be used, and this makes it unnecessary for the prosecutor and the judicial police to find an interpreter of a rare language.

Prof. Kalina: the role of cultural mediators was mentioned. Is there a difference between the role of cultural mediators and interpreters? Are they the same persons? And if so, how do they know whether they are acting as cultural mediators or as interpreters?

Sergeant Fasciani said that on the basis of her experience, the difficulty in working with cultural mediators acting as interpreters is that cultural mediators very often see themselves



as allies of the person to be interviewed; often they are already acquainted with the past history of the person and frequently tend to take the side of the interviewed person. So mediators sometimes also “mediate” the description of the events, and the translation is not always faithful. It happened recently that the police started writing a report with the help of a cultural mediator, but then they realised that the cultural mediator was adding his own personal justifications for what the interviewed person had done. At least this was the impression the judicial police got from the translation. So the person was interviewed again with an interpreter to understand whether he was saying the same things or what they had heard during the first interview had been “mediated” by the cultural mediator.

Mrs Amato added a point of clarification for the foreign colleagues. There is a difference between cultural mediators and interpreters in Italy. The cultural mediator is defined by a law in Italy (Turco-Napolitano Law) and there is a description by the National Council for Economy and Labour of the tasks to be fulfilled by cultural mediators. They are supposed to do a lot of different things - almost a mission impossible. Mainly the cultural mediator is supposed to be a sort of liaison officer between non-Italian citizens and Italian public offices and services. There is also a language dimension in their profile, but the main role of cultural mediators is to ensure that individuals from other nationalities have access to Italian public services. Cultural mediators are also trained in a different way from interpreters. In practice very often cultural mediators are members of a community of foreigners, and many of them come from the countries of origin of migrants and are there to build bridges between migrants and the Italian state. So their role is quite different from the one of the interpreter.

Another point is that cultural mediators so far have not been trained by Italian universities. Local authorities deal with their training and organise training courses together with associations of migrants and other types of voluntary associations, with no involvement of universities. The latter have continued to train Italian nationals in foreign languages, mainly Western European languages, but not as cultural mediators.

Mrs Vecchione remarked that Mrs Fasciani had explained the role of interpreters very well and she had said that in exceptional situations cultural mediators are called on. She specified that cultural mediators are never used when a formal, official report has to be signed. This is not allowed. Cultural mediators are called upon only as last resort, when no interpreter can be found for a rare language.

Mrs Alimenti added that in some municipalities there is a register for cultural mediators and in order to be eligible to be listed in that register you have to be a foreign national because you have to speak a minority language. Mr Grasso - the public prosecutor who is in charge of the national anti-mafia law enforcement agency in Italy - recently issued a circular stating that the role of cultural mediators in preliminary investigations could be important, and there was a debate about this. Also the assistant head of police in Bologna, Mr Maffei, maintained



that the role of the interpreter could be fulfilled by cultural mediators. But he did not consider all the problems deriving from this statement: cultural mediators play the role of advocates while interpreters have a totally different professional profile and they should obviously not defend the position of a person under investigation.

Mr Garwood said that some thesis written by SSLMIT students were based on questionnaires sent to lawyers and judges. The results of these surveys show that judges and lawyers prefer to use cultural mediators because they have at least some knowledge of the Italian legal system, whereas people working as interpreters (or calling themselves interpreters) for Chinese, Arabic or Albanian very often lack that knowledge. They are not trained at all, and produce a lot of damage when translating in the courtrooms. There is an abuse of the term interpreter in these cases: sometimes these people do not even speak Italian very well.

Mrs Ramolacci added a few points. First of all the main problem in Italy is that there is no national register of interpreters. This has been a problem for a long time. Various attempts have been made to create this register, but with no success so far.

Mrs Ramolacci then mentioned Martelli law applying to migrants as an example of legal provisions that do not solve the problem. This law states that expulsion orders for irregular migrants must be translated into English, French and/or Spanish. Very often the translated texts are handed to people who do not speak any of these languages, since they are citizens from Senegal, Albania, Romania and other countries where those languages are not spoken. Many lawyers have used this law to make appeals against these deportation orders on the grounds that they were not translated into the three languages as provided for by the law and they won the appeals. Yet this is just a formal issue that does not change the substance of the fact that the people concerned by these orders often do not understand the content of the expulsion order because they do not speak any of the languages it is translated into. The speaker hopes that the Directive can fill the legislative gap concerning translation and interpreting to the benefit not only of interpreters but mainly of foreigners involved in legal proceedings.

The speaker then referred to Mr Giove when he said that a word has only one possible meaning. She expressed her disagreement saying that on the contrary a word can have many meanings depending on the context. Particularly for telephone tapping this is a very serious problem. In certain cases people are arrested because one word is translated in a certain way instead of another. There was a blatant example of this just a few days earlier (the case of a young Moroccan who was arrested and charged with the murder of a teenager on the basis of a wrong translation of a phone conversation in Arabic. Fortunately the mistake was found a short while later).





Mrs Ramolacci agreed that the same interpreter cannot work for the prosecutor and the defence attorney because ethically speaking it is not right. However in Italy there are lawyers who speak foreign languages very well and they do act also as interpreters. Again the problem here is the lack of a national register of interpreters. If an engineer is called for an expertise, he cannot work for both parties in the proceedings, and there is a protocol to follow for his/her appointment. The interpreters instead are also appointed to sign translations that are done (often badly done) by other people, and if one of the parties complains for the poor quality of the translation and claims a compensation for damage the judge has to make a decision, and the reputation of the translator who signed a bad piece of work s/he had not done is at stake. This is unfortunately the situation because this sector has not been properly regulated, but hopefully a solution will be found in the future.

Prof. Driesen asked for more information about recordings of police interviews. In some countries this is not allowed. According to her, this is an excellent solution to crosscheck the interpreter's performance and ascertain whether the interpreter worked well or not.

The speaker also said that she was under the impression that the term interpreter is not understood by everybody in the same way. The speaker added that she works for both national and international courts, and there is a common practice to have all the information about the case to interpret for. At the international courts, if she is called upon to interpret an expertise - say on a supposedly Italian violin that turns out to be a XVII century German violin later transformed into a XVIII century Italian violin - she is provided with all the necessary information. Without preparing for such an assignment it would be impossible to translate. Interpreters are not medical doctors, and if consecutive interpreting is needed for a post-mortem, it is impossible to provide good quality without preparation.

Speaking about being neutral or not, prof. Driesen stated that when she interprets she has no time to take side since she is too busy interpreting, and in order to do a good job having information beforehand is essential. The interpreting profession started with the Nuremberg trials: the interpreters had the necessary information then, and the same applies today. Moreover to be an interpreter you have to be properly trained and be a professional. This job has little to do with the professional profile of a cultural mediator. Cultural mediators obviously can be very helpful, as experts for instance, but not as interpreters. Prof. Driesen recalled her own experience with a cultural mediator for Urdu who was also the head of the local Urdu community in a case about a young woman who wanted to go to university. In his capacity as mediator he tampered with data and did all he could to prevent this young lady from going to university, because he was a friend of this young lady's father. This young lady was lucky because she met prof Driesen who fought for her case. But this is the problem with cultural mediators: they belong to a local migrant community that tends to reproduce the same situation as in the village they come from. Conversely, young women who come to Western



countries want to get rid of that culture. This is the danger of using cultural mediators instead of interpreters.

## **Coffee break**

### **Speaker 4: Mr Fabrizio Fratoni, Captain of Arma dei Carabinieri, Forlì**

Captain Fratoni thanked the organisers of the round table and expressed his appreciation for the ImPLI project. The project is of great interest for the Carabinieri because about 65 per cent of the offences perpetrated in Italy are investigated by Carabinieri and many crimes are committed by foreigners. Unfortunately this is on all newspaper and it can also be seen from the prisons' population that is composed by an extremely high number of foreigners as detainees.

The Carabinieri have to investigate and proceed against a lot of crimes and, as stated in the Directive 64/2010, interpreting must be provided without delay. This is quite complicated also in terms of time schedule. The Directive mentions suspected persons, accused persons and also their relationship to the defence counsel. The previous speakers already concentrated on this issue that raises a series of problems also in the activities carried out by the Carabinieri when they act in their role of judicial police of their own initiative. Mention was made by previous speakers of searches, seizures and investigations that must be carried out in great urgency: evidence must be found about the crime and the crime scene has to be examined in order to make a careful reconstruction of the events. This is an essential activity because the Carabinieri must give indications to the prosecutor and to the judge of preliminary investigations as to how the event took place, where and when. All of this must be translated if the person involved is a foreigner.

Another aspect that the speaker felt was important to stress is to define protocols or guidelines about how to check if the person being interviewed or being suspected understands and speaks Italian. Another important aspect in the implementation of the Directive is article 2 paragraph 6 which provides for the possibility to use communication technologies such as videoconferencing, telephone, Internet in order to make the interpreter communicate with the judicial police officers as well as the suspect or victim or witness. The Directive paves the way to the use of these technologies for interpreting purposes. It remains to see how the Italian Legislator interprets this and how this remote mode of communication can operate in practice, in judicial police activities. Another point the speaker mentioned is that unfortunately the Directive does not mention the right to interpreting and translation for the victim. This is essential instead and the speaker expressed the wish that the legislator does not neglect those who are subject to crime and go to the police station or to the Carabinieri to report what happened. Foreign citizens report the crime in their mother tongue and in Italy there are now huge communities that speak what used to be rare languages, like



Chinese. Within these communities, also for cultural reasons, women are victims of offences more often than men. The Directive does not mention victims but the Italian legislator - when transposing the Directive - should also concentrate on them, as they play a central role in investigative activities. If a victim does not report an offence because of language barriers or if that report is not clear about the offence (for instance domestic violence or rape) it is difficult to carry out investigations. This is a fundamental aspect for the judicial police activity because the Carabinieri and the police are usually the first to come into contact with the victims.

As of July 2010 a European emergency call service – 112 – was established. In case of a crime anybody can dial that number and the call is diverted to the competent police force. This is a very important service and it will require special training for police forces too. Training is essential in this sector and should also include working with an interpreter in the preliminary stages of the criminal proceedings, including when a victim reports a crime by telephone. This is essential to provide an increasingly better protection of victims which is the mission of any law enforcement agency.

**Speaker 5: Mrs Anna Caterina Alimenti, Legal Interpreter and Translator, Lecturer at Libera Università San Pio V, Rome**

Mrs Alimenti started her presentation mentioning *Grotius I*, *Grotius II* and *Agis* projects she participated in and which in the last decade have contributed to raise awareness in EU Countries about the need for qualified interpreters and translators in legal proceedings as part of the wider European debate about access to a due process. To ensure this, the profession must be regulated. University courses are necessary to ensure that there is a standardization of training for all interpreters wishing to work in the Member States of the European Union. That is why the project *Building Mutual Trust* was set up with the aim of laying down the foundations for a common training course for legal interpreters as well as all the legal professions involved in legal proceedings in Europe. This will hopefully enhance judicial cooperation among the member States of the European Union and create a genuine European justice area based on the same principles. The member States involved in this project have undertaken to define a model designed to help organising training courses for court interpreters and translators as well as to ensure on-going training to trainers and other professions working in the judicial proceedings. All this will have to be done by October 2013, the deadline for the transposition of Directive 64/2010.

The speaker then went on to illustrate a summary of some research work carried out by the students of LUSPIO university for their final dissertation. Mrs Alimenti explained that she used to teach “social interpreting” at this University. These individual research projects had a common denominator: their object was to see how the court interpreters/translators are considered by judges, lawyers and the interpreters themselves. The Court of Rome is the



largest court in Europe but has a great deal of shortcomings when it comes to interpreters and translators, according to the speaker's 20-year experience there.

Two questionnaires were drawn up: one for court translators and interpreters and one for magistrates, be they prosecutors or judges. These two sets of questionnaires should be looked at together because they were both drawn up to investigate these two categories and see whether they had the same view as to the role of the interpreter. The same methodology was applied in both studies which also made comparisons possible on certain aspects, e.g. how the three categories interact, what the expectations of one professional profile are as opposed to another and what respondents had to say about the fact that interpreters have no code of ethics. It is true that interpreters should have proper training and the appropriate skills to practice their profession in a proper fashion, but it is equally true that lawyers and judges must assess the ability of the interpreter to make sure that the person availing of her/his services is being treated fairly and also to ensure that everything proceeds as smoothly as possible in court. If a questionnaire had been drawn only for lawyers, or only for magistrates or only for interpreters, an objective picture of the situation would not have come up, whereas the objective of both studies was to see whether the current legislation on the interpreters' professional activity is such that they can actually provide sufficient quality.

The questionnaires were presented and administered orally, in the form of an interview. There was no pre-defined written explanation for the questionnaires in order to avoid influencing the respondents. As Mr Garwood said during the previous debate, some of the people working as interpreters at the Rome Court were in fact not trained at all, they did not know how to answer to some of the questions, they could not indicate whether they used consecutive, chuchotage or what other interpreting mode they used. The oral interview was useful also to take note of the comments made by the interviewed persons. This is something that cannot be collected with written questionnaires. Most of the magistrates were very interested in this research study and felt that it was useful to make people more aware of the problems it dealt with.

Out of 100 magistrates contacted for the purpose of this study, 67 were interviewed and answered to the questionnaire. One magistrate during the interview underlined the central role played by the interpreter in the courtroom, defining it the voice of the defendant, an essential element for the court case to proceed properly. It was also said that during legal proceedings the role of the interpreter is crucial for the actual wording of the ruling handed down, because the defendant's gestures and behaviour can be assessed directly by the judge but not what s/he says unless there is proper interpretation. One magistrate said that the profession is still not recognised as it should be and that because of the low fees not all the people who work as interpreters provide sufficient quality, though there are interpreters who are deeply committed to their job. Reference was also made to the fact that it is difficult to find qualified interpreters.



One of the questions asked to magistrates concerned the skills that interpreters should have to fulfil their task in the best way. 58% of the respondents said that bilingualism is essential for interpreters (bilingualism in this case meant an excellent knowledge of a foreign language learnt during an appropriate training) and 25 % of the respondents said that biculturalism is essential to ensure communication in court. 75 % of the interviewed magistrates said that it is absolutely essential for interpreters to be familiar with the legal systems and the legal terminology of the two languages involved in the proceedings. Only 8% of the respondents however said that it is important for interpreters to be familiar with other specialised language such as medical or scientific terminology. It was also said though that the knowledge of specialised language could be useful in cases of international rogatory letters.

Another objective of the questionnaires was to assess whether or not there is a possibility for interpreters to communicate with the parties involved in the legal case before the hearing: 58% of magistrates said that interpreters should be given the opportunity to talk about the case with the parties and/or with the judicial police whereas 42% of respondents had an opposite opinion.

Another question concerned how interpreters are recruited (to which multiple answers could be given). The information collected shows that there are various ways and channels to recruit interpreters: 38 answers reported that magistrates contacted translators or interpreters that they knew personally, they had already worked with and appreciated their skills. 33 answers indicated the Court Register as the source to recruit interpreters, and in 22 cases the answers said that the magistrates rely on what colleagues tell them. One magistrate included a comment saying that he just chooses the cheapest interpreter.

Another aspect investigated by the questionnaire concerned the question about whether or not professional negligence on the part of interpreters or translators can jeopardise the legal proceedings. 63 magistrates answered to this question almost unanimously: 62 said yes, only one said no. One judge of preliminary investigations added a comment saying that the interpreter should be a third party in the legal proceedings and if the interpreter has to do his/her job properly s/he should translate faithfully what is being said and should be respectful of his/her profession because a greater awareness of the authority of the interpreting profession results in a more professional work by the interpreters.

The speaker referred to the same case as Sergeant Fasciani, about a wrongly translated telephone conversation that had been tapped leading to the apprehension of wrong suspect. This person was on his journey to Morocco and in order to arrest him a boat was stopped, the person was taken to the police headquarters, and only after four other people had translated that same conversation it came out that the arrested person had nothing to do with the murder the police was investigating. It then transpired that the first translation was the exact opposite



of what that person had said. This shows that very often the police are not using qualified people.

Another aspect the two studies tried to investigate was how to improve interpreting and translation services in the legal proceedings. Magistrates were asked whether they thought it appropriate to organise training courses in order to achieve better interaction between magistrates and interpreters, and the questionnaire suggested that they could be involved as well. Out of the 61 magistrates who replied to this question, 31 said that these courses would not be useful. It should be noted, however, that they thought these courses were designed for interpreters only and that magistrates should not be involved. The same question about joint courses was asked to lawyers, and again the answers showed little interest on the part of this category.

A final interesting point that emerged from the first of the two studies is that some magistrates stressed the lack of homogeneity in the interpreters' and translators' skills. They reported about a high variability from excellent to poor. The same question was put to the lawyers who mainly said that for the interpreters to accomplish their tasks properly they have to be in contact with the parties in the legal proceedings. But according to the speaker's first-hand experience, in real life there is not much interest shown in this interaction. The speaker organised a course at the criminal Chamber in Rome, and the magistrates and lawyers who attended the course were not interested in its content, but only in the credits to be gained (in Italy professionals need to get a certain number of training credits in order to remain members of their professional associations).

The questionnaires designed for the interpreters also contained some questions about their role and how they saw their profession. Interpreters were also asked to describe their work and professional experience and how they assessed their own work, what sort of training course they had attended and how they managed their daily work in court. Here too a multiple answer system was used. Translator/interpreters interviews expressed mainly dissatisfaction: they complained about the lack of recognition of their profession by Italian institutions, and about inadequate financial compensation. Their gross fee was already mentioned during the round table: Euro 8.15 for every two hour-slot, with a maximum of four slots per day. Interpreters and translators, who are self-employed, then have to pay their taxes on this gross amount. So in the end they are paid less than a cleaning lady.

Overall what emerged from this survey is that there is no homogeneity in terms of training and awareness of the interpreters' role in the legal proceedings and this is certainly something that does not help fairness in legal proceedings.



The speaker concluded by saying that after 40 years of work as an interpreter in the courtroom, she still finds her job fascinating despite the fact that it is the Cinderella of all legal professions.

**Speaker 6: Mrs Flavia Vecchione**, Linguistic Expert at Forli Police Headquarters and Board Member of ANTIMI (National Association of the Interpreters of the Ministry of the Interior)

Mrs Vecchione opened her presentation saying that she represented the other side of the coin compared to the previous speaker \_ Mrs Alimenti - who is a free-lance court interpreter, since she was going to speak on behalf of linguistic experts who are members of staff of the Ministry of the Interior and work as in-house translators/interpreters. She explained that she works at the police headquarters in Forli. Linguistic experts (who are hired to do both interpreting and translation) do not only work in investigation activities and judicial proceedings but also in the administrative proceedings where migrants are involved, but since this subject was not the topic of the round table, the speaker explained that she was not going to illustrate it.

Mrs Vecchione went on saying that she spoke on behalf of ANTIMI (Italian National Association of Translators and Interpreters of the Ministry of the Interior [www.antimi.org](http://www.antimi.org)). ANTIMI was established in 2002 and it gathers about half of the linguistic experts (as their professional profile is called within the Ministry) who work all over Italy as full time staff of the Ministry of the Interior.

In-house interpreters and translators working for the Ministry of the Interior: selection, facts and figures

The linguistic experts (who work as in-house interpreters and translators of the Ministry of the Interior) are about 250 in number all over Italy. They were all selected in different periods, mainly in two or three public competitions held in the mid-80s where candidates had to present their cv and sit an exam. Also in following competitions the same selection procedure was applied. According to the speaker it is fairly debatable how interpreters were selected because the exams were based primarily on written tests: one composition in Italian on a general topic and two translations of the same text into the two foreign languages each candidate had applied for. The candidates who passed the written test were shortlisted and had to pass an oral test consisting of a very brief general interview with the examiners. This is not considered by the speaker as a criterion suitable to select specialised interpreters.

Linguistic experts work either at the headquarters of the Ministry of Interior, in Rome, or at the police headquarters, police stations and other police offices throughout Italy (including Air, Sea and Land Border Police). About 75% of linguistic experts work in these local



offices, while the remaining 25% work at central level in Rome. The languages they cover are 11. The large majority of linguistic experts work in English, French, German and Spanish whereas a small number of them cover Albanian, Arabic, Chinese, Portuguese, Russian, Slovenian and Turkish. Arabic, Chinese, Slovenian and Turkish linguistic experts, however, can be counted on the fingers of one hand.

#### Tasks of linguistic experts

The task of all linguistic experts is basically legal translations and police interpreting. This is requested almost exclusively by local law enforcement agencies and in particular police headquarters, where linguistic experts mainly help mobile squads, D.I.G.O.S. (Police Branch for General Investigations and Special Operations) U.P.G.S.P. (Office for General Prevention and Public Rescue), Aliens'/Immigration Offices and the Crime Prevention Division. The other local offices at a provincial level that use linguistic experts are the so called special police agencies: 1) Traffic Police; 2) Mail and Communication Police; 3) Border Police (Air/Sea/Land); 4) Railway Police. In Forlì, for instance, linguistic experts work both for the police headquarters, where they are based, and for the police station in Cesena (a small town near Forlì), for the Air Border Police and the Traffic Police.

#### Situations requiring interpreting

Linguistic experts work as interpreters in a variety of situations where foreign citizens can be involved as: 1) under investigations; 2) witnesses; 3) victims.

The typical situations of police interpreting are the following:

Reports and private prosecutions where foreigners are involved (concerning thefts, physical abuse, property damage, and so on). It is the case of people who report all sorts of offences to the police.

Minutes of appointment of a defence counsel and choice of domicile (by the investigated person). In Italy there is an obligation for all persons who have committed a crime or are caught red-handed to appoint a defence counsel for the police interview and to choose a mail address and inform the Italian judicial authorities about it.

Summary information interviews (very often foreign citizens are heard as witnesses to report the events and circumstances of the crime they witnessed according to article 351 of the Italian Code of Criminal Procedure). In this case linguistic experts work as interpreters during the interview and then they do a sight translation of the minutes of the interview





(written in Italian) so that the interviewed person can understand the content and sign the minutes.

Summary information interviews with investigated persons with the presence of a defence counsel (this activity can be carried out by the judicial police also on their own initiative and without a delegation by the judicial authority, as it is the case for searches and seizures according to article 350 of the Italian Code of Criminal Procedure).

Police interviews with investigated persons under delegation by the public prosecutor.

Voluntary statements by the investigated persons (article 374 Italian Code of Criminal Procedure). This is the case of a person under investigation who spontaneously goes to the police office and reports the event/s related to the offence or crime.

Service of deportation orders concerning foreigners who irregularly cross Italian borders or overstay their visa or residence permit. This is a very frequent case where interpreters are used because in 2009 a law was passed (no. 94 of 15/07/2009) making irregular migration a criminal offence.

### Interpreting Techniques

Simultaneous interpreting is never used. One of the most frequently used interpreting modes is dialogue interpreting in face-to-face interviews involving two or more parties usually including: a judicial police officer, a foreigner and a defence counsel - when mandatory by law, as mentioned above - and the linguistic expert who interprets. This interpreting mode implies more than translation between two languages and the interpreter also plays a dialogue coordination role and acts a “moderator” between the parties.

Another frequently used interpreting technique is short consecutive (without note-taking). The need to translate speakers turn by turn or even shorter stretches of talk is due to the very nature and pace of interviews where questions are often very specific and targeted and require an immediate answer followed by another question asking for details or specifications that have to be immediately translated to the interviewing officer in order for the interaction to go on. This obviously rules out the possibility to use a long consecutive.

Telephone interpreting is not frequently used. The police resort to this interpreting mode only when for different reasons it is not possible to have a face-to-face interview with the foreign citizen and the interpreter - because it is very late at night or because of geographical distance, as mentioned by previous speakers. This interpreting technique is only used as initial step to collect general information about an event where foreign citizens might be



involved as victims or perpetrators of a crime and in order to explain to them the procedure provided for by Italian law for that particular crime. This happened to the speaker with the traffic police patrolling the motorway. The speaker was called on the mobile phone and was asked to help the police understand what a foreigner was saying. At times foreigners need to be informed that what they did is considered a crime in Italy and they have to choose a defence counsel, and this has to be done immediately, over the phone if need be, otherwise the judicial procedure would be blocked.

Sight translation is frequently used, as mentioned before, mainly to read the minutes/reports of an interview to a foreign citizen who has to sign them. This is a difficult task because the foreigner often asks the interpreter to translate the written text word for word and to explain what the acronyms mean.

In case of telephone tapping, as mentioned by Mrs Gattelli and Alimenti, the linguistic experts are requested to listen and summarise them or to transcribe a conversation in full when the investigating officers believe that the content is very relevant for the investigation. This type of activity may be particularly difficult because there can be background noise or a poor sound quality that make the conversations hardly audible. Also the content can be difficult to understand because of lack of context, or because the people on the phone may use a coded language that requires some briefing to the interpreter who otherwise will not understand what is being said. If for instance the people being tapped use the word “chalk” to say cocaine, the interpreter has to know.

### Linguistic Experts' Skills

Linguistic experts need to have both language and non-language skills. The language skills include the knowledge of legal terminology pertaining to the criminal justice systems of the countries where the working languages of the linguistic expert are spoken. The speaker stressed that lexicon knowledge necessarily entails the knowledge of the legal system. She made the example of a case when the interpreter has to explain to a foreign citizen that s/he can opt for a plea bargain during a summary trial. If the interpreter only knows the term and the foreigner is not familiar with it, s/he will not understand the option being offered. So it is important not only to master the legal jargon but also to know what it stands for in order to be able to explain the different Italian legal and judicial procedures to foreigners.

Another linguistic skill is the knowledge of the different registers and dialects or language variations. For languages that have many dialects or local variations this skill can only be considered as desirable but it is very difficult to actually acquire it.



Last but not least, linguistic experts need to master all the interpreting and translation techniques mentioned above.

Non-language skills include communication skills such as the ability to act as a moderator or dialogue coordinator between the parties involved in an interaction and the knowledge of culture-bound aspects: for instance knowing that the perception and representation of space and time may be different in another culture or continent and that some concepts that are commonly used in Europe may not be so common in other countries (the speaker made the example of the concept of family name in Nigeria).

Then, as previously mentioned, linguistic experts also need to have knowledge about possible differences between the criminal justice system in Italy and the one in force in the foreigner's country of origin. The Italian law sets an obligation for any person who has committed a crime and has to be interviewed to appoint a defence counsel. This is something that the interpreter usually has to explain to foreign nationals who obviously object to this procedure because they simply do not know any lawyer in Italy but may instead have a lawyer in their own country.

Another essential skill that is necessary to work in police interpreting is stress management in order to cope with psychological and emotional stress caused also by the asymmetry of the interaction: a person under investigation may feel intimidated or put under pressure by the police officer, or a victim of a physical or sexual abuse may be traumatised or scared. In all these cases it is essential for an interpreter to be able to remain calm and this way contribute to avoid tensions during the interaction.

#### Cooperation between linguistic experts and judicial authorities

Most linguistic experts were hired as full time staff by the Ministry of the Interior about 25 years ago. Their tasks when working for the Ministry of the Interior were described before.

Most linguistic experts, however, have been helping also judicial authorities for about 20 years. In order to do this work they need to receive a yearly authorisation by the Ministry of the Interior. In this capacity they could be seen as competitors to the free-lance interpreters.

They can cooperate with judicial authorities mainly in two ways:

A "police auxiliary" (a person appointed by the judicial police acting as a legal officer) according to article 348 paragraph 4 of the Italian Code of Criminal Procedure. In this case they may be asked to go to the prosecutor's office for a specific task: for instance to listen to and transcribe telephone conversations that were tapped.



As a court appointed expert or as a prosecutor appointed expert/consultant. As Mr Giove stressed during his presentation, there is not yet a clear definition of the profile of linguistic experts when they work for the judicial authorities. When the judge appoints them for an interpreting or translation task they are called court appointed experts (*perito*) whereas when they work for one of the parities in the criminal proceedings, for instance for the public prosecutor, they are called experts/consultants (*consulente tecnico d'ufficio*). In both cases they are free to accept or reject the assignment, but in order to be able to work for the judicial authorities they need to be authorised by the Ministry of the Interior and have to perform their work outside working hours.

It is important to highlight that linguistic experts essentially work during preliminary investigations (interviews with the prosecutor, detention orders to be serviced to arrested people, examination of witnesses, judicial police activities deriving from international rogatory letters) and in some cases they work during special criminal proceedings such as summary trials or writs of summons which are the two most frequent proceedings involving foreigners who need an interpreter.

The interpreting techniques used when working for the judicial authorities are basically the same as the ones used during judicial police actions except for whispered interpreting that is never used during judicial police interviews (since a written report must be prepared). This interpreting mode is mainly used when the judge/public prosecutor/counsel make their final statements or pleadings and the interpreter translates them to the benefit of the foreign party in the proceedings.

### Critical issues

Training - Apart from the initial competition to select and hire linguistic experts, they were rarely offered training opportunities. Basically they self-trained themselves on the job. Except for occasional refresher courses on general topics or on terminology, there is a complete lack of training initiatives/events designed to offer in-depth knowledge about criminal law or criminal proceedings in Italy or in foreign countries or to explore the legal, ethical and professional aspects of police and legal interpreting.

### Professional practice and code of conduct

More than 25 years after the first linguistic experts were hired by the Ministry of the Interior, in some parts of Italy there is still some reluctance by the police and other law enforcement agencies to consider linguistic experts as an essential help to perform their institutional duties. As a consequence, linguistic experts are asked to perform different tasks from what they signed up for. This reluctance derives from a mistrust in the interpreters and from a lack



of knowledge about their profession. Fortunately, in Forlì the linguistic experts work with police officers who know and understand what their job is, but in many other places there is still some mistrust and prejudice towards interpreters who are often called upon when there is really no other solution available.

In most cases, when linguistic experts work for the judicial authorities they are not given preliminary information about the subject of the examination/hearing. This entails the risk of jeopardising the interpreter's work and to cause a damage to both parties involved in the proceedings, as Mrs Alimenti stressed during her presentation. Interpreters are left to find information by themselves. They may try and find information going to talk to the clerk of the court where the proceeding is going to take place but sometimes it is impossible to get information even about the type of crime being the object of the proceedings. Yet interpreters are expected to be conversant with any topic being discussed in court: from medicine to the engine of an airplane. Often interpreters are told that information is confidential because there is secrecy of investigations. In other cases the police fear that the interpreter could be a defendant's ally or side with the defendant, or not neutral. The other parties in the proceedings, the defendants and their counsel, have the opposite prejudice: they tend to think that interpreters who are hired by the Ministry of the Interior are on the side of the police and the judicial authorities and they are not impartial. Moreover, in other cases the interpreter is considered as an inconvenience, a necessary evil that one would do away with if it were possible to communicate without interpreting.

## **ANTIMI**

In light of the above mentioned criticalities, ANTIMI was established to try and help solve them. This National Association of Translators and Interpreters hired by the Ministry of the Interior has set itself a number of goals including:

Protecting and valuing the job of linguistic experts in the various contexts where they work, including the legal/judicial settings and not only the police activities:

Promoting the exchange of professional experience and knowledge organising joint workshops with other professional associations;

Establishing and strengthening relations with academic and research institutions to promote the integration and interaction of theory and practice.

As of 1<sup>st</sup> November 2011 ANTIMI is a full member of EULITA (European Legal Interpreters and Translators Association). This European Association protects and promotes the rights of



legal interpreters and translators and pursues the same goals as ANTIMI. The speaker concluded her presentation giving the contact details of ANTIMI's President and of ANTIMI.

## **Debate**

Prof. Driesen asked for a copy of the written text by Mrs Alimenti.

Mrs Alimenti answered positively and added that apart from the text she read she could also provide another text she had prepared for an ANTIMI meeting.

Prof. Mack suggested that all the speakers, if they wish, can provide the organisers with their written texts that will be attached to the minutes of the round table.

Prof. Salaets would like to have the complete results of the surveys presented by Mrs Alimenti.

Mrs Alimenti specified that the results are part of some thesis written by LUSPIO students and data and percentages were extracted from these thesis.

Prof. Böser asked a question to Mrs Vecchione who said that she worked full time for the Italian Ministry of the Interior. Is not there a code of conduct to guide her in her profession? After so many years of service, maybe there is an institutional practice. It would be interesting to hear whether the perception of the speaker is that what is done in the ministry is coherent: for instance all cultural items are dealt with in the same way by all her colleagues. To what extent they are left free to develop an interpreting style or approach?

Mrs Vecchione answered that Prof. Böser really pointed her finger to a core issue that is also one of the main reasons why ANTIMI was established. ANTIMI members would like to establish and disseminate protocols because throughout the years of service linguistic experts have never received guidelines or standards to use in their professional practice. They exchange experience and have established a network to manage and carry out large translation projects with a short deadline, but that was done on their own initiative. Through this network they are trying to set some standards for translation work but unfortunately they are still a far cry away from establishing a code of conduct of a set of institutional practice. The only rule they have to comply with is they cannot carry out translation or interpreting assignments that clash or can cause damage to the professional activities they perform as members of staff of the Ministry of the Interior. But this is the only rule. There is no standardised practice nor code of conduct when they work as legal translators and interpreters.

Prof. Böser expressed her surprise that over the years no standard practice had emerged.



Mrs Vecchione answered that some common practices were developed informally, they are not formalised or codified and there are no checks carried out by the Ministry, simply out of lack of interest for the profession of linguistic experts. Moreover establishing standards or a common practice is not a deeply rooted cultural habit in Italy. ANTIMI is trying to do this but it is a long process.

Prof. Wilson asked two questions: the first related to the training of the legal professionals the speaker works with. Often when interpreters work with people who are not used to communicating through an interpreter and the interpreters end up training other practitioners on how to work with them, even if not in an open way, quite subtly. Mrs Wilson asked the speaker whether she felt that there was some progress made in that respect.

Mrs Vecchione answered that there has been some progress, but it was left to individual initiatives, to the ability to establish good relationships with the people one works with, but nothing is officially or formally established as a rule. The speaker's personal experience is positive: she believes that in her office they were able to improve communication with the police and also with the interviewed people trying to have a softer attitude during the interviews. But once again this was their own initiative and not a standard practice or guideline.

Prof. Wilson asked her second question relating to working conditions for interpreters. Is there a requirement for breaks – for instance in order to recover concentration when it is going down - but also in terms of safety for the interpreter: for instance physical safety of the interpreters in the interview rooms. Mention was made of having to go to highways in case of car accidents. In this case, in Scotland police officers would prefer to use telephone interpreting than to have an interpreter at the road side because of the interpreter's physical safety. What is the Italian situation?

Mrs Alimenti answered that there are no safety measures to protect interpreters. She had been threatened twice in the past. This is a complaint she expresses at every meeting also with judges. When interpreters are appointed as court appointed experts, the written document of appointment contains the name, family name, date and place of birth, address and telephone number of the interpreter. This way any interpreter can be easily identified. Chinese interpreters in Rome are now requesting to be left anonymous because they have serious problems with the migrant Chinese communities. In Spain, not only the interpreters, but also police officers have a number instead of their personal details included in the written reports, so that they cannot be easily identified. Judges and police officers in Italy enjoy various forms of protection, interpreters have no protection. This is an extremely important aspect but it is falling on deaf ears.



Mrs Alimenti then went on to answer to the previous question about working conditions and she added that whenever a new judge or prosecutor comes into office it is very difficult to make him/her understand how to work with an interpreter and make them accept minimum working standards. Especially with young newly appointed judges it is very difficult to make them understand when an interpreter is needed. Sometimes defendants say that they can speak Italian even if their knowledge of the language is very poor and the judge sends the interpreter home without even paying for the time spent travelling to the court and without refunding any travel expenses. Some people say that clients have to be educated but there are about 100 public prosecutors in Rome, you simply cannot start it all over again every time a prosecutor comes into office.

Mrs Vecchione answered that the situation for linguistic experts of the Ministry of the Interior is not so terrible as for free-lance interpreters. Linguistic experts work at police headquarters or police stations and this means that they are more protected than free-lancers. It happened to the speaker, however, that an investigated person upheld in custody was aggressive towards her but a police officer was there to prevent any attack. She was never threatened by suspects or defendants.

Mrs Ramolacci recalled of one or two cases in the past when her colleague in Rimini had been threatened by some defendants who were accused of exploiting prostitution, but the police protected the interpreter and nothing happened. Sometimes defendants have aggressive reactions in court but the police is there to keep everything under control and prevent any attack.

What Mrs Ramolacci finds more stressing is interpreting for the victims of physical or sexual abuse. It is an emotionally stressful experience and it is difficult not to side with the victim and remain neutral.

Mrs Stifterova asked a question about standard formats or procedures for phone tapping. Are there specific guidelines about transcriptions? Is the original transcribed and then translated?

Mrs Vecchione explained that the conversation is tapped and recorded as it occurs. Linguistic experts sit in front of a computer and they have to do two things at the same time: they have to listen to it and write it in the target language. They are never asked to transcribe the conversation in the original language and then translate it. Sometimes police officers may interrupt the linguistic expert while s/he is listening in order to ask questions about the conversation. If the conversation is particularly relevant for the investigation it is transcribed in full.





Mrs Stifterova explained that tapped telephone conversations in the Czech Republic are presented as evidence in court and the person being tapped has the right to check the transcript. So there is a need to have the transcription also in the original language.

Mrs Vecchione answered that she did not know in details what the law provides for when transcripts of tapped conversations are used in court.

Mrs Gattelli explained that the defendant has the right to get copies of the tapped conversations in the original language and listen to them using his/her own interpreter. Moreover, the defendant has the right to request that a new translation of the conversation into Italian be done by an independent expert who is not the same person who transcribed the conversation in the target language for the judicial police or for the prosecutor's office. This way there is a guarantee for the defendant who can actually ask to have a copy of the tapes containing the recordings of the tapped conversation, then the defendant can appoint his/her interpreter to translate the conversation. In addition to this, if the case goes to court, the defendant can request the judge to appoint an expert to translate once again the same conversation.

Prof. Driesen addressed a question to Mrs Gattelli since from the previous presentations it seemed that there is mistrust towards translators and interpreters. Do not they have to take an oath when they work for criminal proceedings so that the amount of mistrust can be reduced? Her second question was addressed to Mrs Vecchione and related to the possibility for linguistic experts to cooperate with free-lance interpreters and work together with them. A final question concerned whether ANTEMI was envisaging to organise further training or classes with universities about interpreting techniques, or to invite lawyers or other members of the legal profession to hold seminars or lectures.

Mrs Gattelli welcomed the question because she felt that this perception interpreters have about mistrust on the part of judges and prosecutors does not always mirror the real life situation. Magistrates have very limited funds earmarked for interpreting services and yet if they do not appoint interpreters during investigations some of their actions can be declared null and void. Moreover very often they have to call interpreters on a short notice and according to normal practice the court clerk calls the interpreters. More than a lack of trust there is a lack of funds and clear rules and this often has an impact on the relationships between interpreters and prosecutors. The lack of formalised procedures creates misperceptions and communication problems. There is also a lack of training that has an impact on this relationship. When Mrs Alimenti reported that during the survey one judge stated that he would recruit the cheapest interpreter, this raised some astonishment on the one hand, but on the other it can be easily understood if one takes into account also the budgetary controls and inspections that prosecutors receive to check how they spend their budget. The speaker expressed the wish that the Directive bring a completely new mind-set. Interpreters



are not a necessary evil, they are an opportunity. It is not a question of mistrust but rather of lack of funds, rules and training.

Mrs Gattelli went on saying that an oath is taken by interpreters in court and that judges are also aware that interpreters are bound by the secrecy of investigation and they trust interpreters when they appoint them. Unfortunately the lack of clear rules leaves the issue of trust in the hands of the individuals and it should not be so. This issue should not be left to personal discretionary power and the same goes for the issue of safety. Interpreters go to court and back home using their own means of transport, so their physical integrity is not fully guaranteed outside court.

Mrs Dencikova addressed a question to Mrs Gattelli. She receives regularly rogatory letters from Italy and sometimes they are handwritten. She was told that the police have no computers in Naples, she wanted to know whether this is true.

Mrs Gattelli answered that it might be true. Even if it is difficult to believe the prosecutor's offices have a small budget, often they have an insufficient number of computers or printers. Nevertheless people should avoid certain types of practice if they respect the dignity of the institutional role they have.

Prof Mack expressed her regrets to close the round table on a negative note and she stressed that on the opposite some examples of good practice were described in the sector of police interpreting in Forlì. Also some attempts to make progress were illustrated and are under way. May be the IMPLI project will allow the participants to leverage on these good practices to start developing standards and protocols that could harmonise a number of activities that cannot be left to individual discretionary choices.

**The moderator went on thanking all the participants and those who helped organise the round table, the technicians and the interpreters.**



## CZECH REPUBLIC

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### Prague

Minutes of the IMPLI Round Table in Prague

Venue: Faculty of Arts of Charles University in Prague

Date: 20 January 2012

List of attendees of the IMPLI Round Table held in Prague on 20 January 2012

#### **Participants from the IMPLI partner universities:**

- 1) Gabi Mack (University of Bologna, Forlì)
- 2) Amalia Amato (University of Bologna, Forlì)
- 3) Katalin Balogh (Lessius University Collegen, Antwerp)
- 4) Heidi Salaets (Lessius University Collegen, Antwerp)
- 5) Sylvia Kalina (Cologne University of Applied Sciences, Cologne)
- 6) Barbara Ahrens (Cologne University of Applied Sciences, Cologne)
- 7) Sarah Bordes (ISIT, Paris)
- 8) Christine Wilson (Heriot Watt, Edinburgh)
- 9) Ursula Böser (Heriot Watt, Edinburgh)
- 10) Ivana Čeňková (Faculty of Arts of Charles University, Institute of Translation Studies)
- 11) Katy Stifterová (Faculty of Arts of Charles University + Chamber of Court-Appointed Interpreters of the Czech Republic)



- Christiane Driesen (ISIT Paris) – only 21 January 2012 (working meeting of IMPLI partners)

**Invited external speakers:**

JUDr. František Novotný, Faculty of Security and Law, Police Academy of the Czech Republic

JUDr. Lenka Bradáčová, PhD., President of the Association of Prosecutors of the Czech Republic, Deputy Regional Prosecutor in Ústí nad Labem

PhDr. Stanislav Hájek, Psychologist of the Customs Administration

Ing. Pavel Kajnar, Deputy Director of Customs Administration Office for Prague, D1 Motorway

**Partners:**

Eva Gorgolová (Chamber of Court-Appointed Interpreters and Translators of the Czech Republic – KST ČR)

Heather Badiová (Chamber of Court-Appointed Interpreters and Translators of the Czech Republic – KST ČR)

Jana Klokočková (Chamber of Court-Appointed Interpreters and Translators of the Czech Republic – KST ČR)

Roman Hujer (Chamber of Court-Appointed Interpreters and Translators of the Czech Republic – KST ČR)

Dagmar De Blasio Denčíková (Chamber of Court-Appointed Interpreters and Translators of the Czech Republic – KST ČR)

Kateřina Filgasová (Union of Translators and Interpreters - JTP)

Klára Bojarová (Association of Conference Interpreters - ASKOT)

PhDr. Renata Vystrčilová (Judicial Academy)



Nad'a Dingová (Czech Chamber of Sign Language Interpreters - ČKTZJ)

Radka Faltínová (Czech Chamber of Sign Language Interpreters - ČKTZJ)

**Other attendees (students, doctoral students, graduates of the Institute of Translation Studies :**

Jana Ďoubalová

Ondřej Klabal

Jana Sojáková

Irena Sedlačíková

Julia Marešová

**Interpreters:**

Nad'a Abdallaová

Libor Ott



## **Programme:**

- 1.30 pm                      Opening of the Round Table
- 1.40 pm – 2.40 pm      JUDr. František Novotný: Teaching how to Conduct an Interview
- 2.45 pm – 3.30 pm      JUDr. Lenka Bradáčová, PhD.: The Interpreter's Role from the Perspective of a Prosecutor
- 4.00 pm – 4.50 pm      PhDr. Stanislav Hájek: The Methodology of Interviews and **the Work** of the Interpreter from the Perspective of a Psychologist
- 5.00 pm – 5.50 pm      Ing. Pavel Kajnar: Practical Experience with Interviews Conducted through an Interpreter
- 6.00 pm – 6.15 pm      Closing and Summary of the Round Table

## **Introduction:**

Professor Čeňková welcomed and introduced all the participants, speakers and guest, as well as outlined the course of the afternoon.

## **Presentation by František Novotný, Teacher at the Police Academy of the Czech Republic: Police Interviews**

The presentation followed the PowerPoint presentation, which is attached to the minutes of the round table.

The discussion after the presentation by František Novotný covered the following points:

Police often engage interpreters at the last minute and it is, therefore, impossible for them to acquaint themselves with the file, and prepare for the interview. One reason for this is the legal time limit of 48 hours during which a high number of procedural steps must be taken.

There is a general agreement that preparation with the interpreter prior to the interview would be helpful, but is not always practicable.

In dr. Novotný's view, the interpreter is a barrier and conveys only the verbal element. This is often caused by lack of technology. If simultaneous interpreting was used, the interviewer



could be looking directly at the interviewed person, and thus get the non-verbal message. Instead, it is very often the case that the interviewer is looking at the interpreter. Another advantage of simultaneous interpreting (or chuchotage) could be that the interviewed person would be speaking without being interrupted, which is considered to be more convenient by the police.

Most police officers tend to use the same interpreters, so the interpreters are familiar with the interviewer's style.

Training as to how to conduct an interview through an interpreter should be included in the curricula for training would-be police officers. The Chamber of Sign Language Interpreters offered cooperation in this respect, and its representative stressed that such fora as the round table are an ideal place to agree upon a mutual cooperation. It was suggested that techniques for interviewing through interpreters be included in training courses for would-be police officers. However, it was mentioned that retraining the police officers who are already practising would be difficult. Prof. Čeňková suggested devising a new subject called Strategies and Tactics for Interviews through Interpreters.

According to a survey conducted by dr. Novotný, police officers assess interviews through interpreters to be as difficult as interviews of minors, which are generally deemed to be very demanding. It was added, however, that interpreting for police is also difficult for interpreters, because there is a high fluctuation of police officers, and therefore they are not experienced enough.

The method of interpreting, i.e. after what segments (after sentences, blocks etc.), is decided as part of the record-keeping of the interview.

The Czech Criminal Procedure Act makes no distinction between an interview of a witness or of a suspect.

Experience from various countries was mentioned. One interpreter said that for her the best experience was cooperation with French investigating judges, who were perfectly prepared, had control over the situation and the cooperation with interpreters was almost perfect.

The police are not interested in the interpreting technique as such, i.e. whether the interpreter decides to take notes, or not, and the police do not need to keep the notes of the interpreter after the actual interview.



It was stressed that quality interpreting should ensure the right to fair trial and mentioned the lack of experience and qualification on part of the interviewers and the interpreters as a possible cause of trouble.

The importance of interpreting the cautions of the interviewed person's rights was stressed.

It was mentioned that sometimes the cautions are already translated beforehand into the most frequent languages, so they do not need to be interpreted.

Jana Klokočková, an interpreter with many years of experience, said that she knew the cautions almost by heart, but was reprimanded by a police officer for taking too long to interpret them in comparison with her colleagues. She was told that they take less time, because they only interpret the important things. An important issue was raised whether the interpreter, or the interviewer for that matter, should choose the important parts or whether it is to be read and interpreted in full.

The Czech legal order is formalistic and if the caution is not read and interpreted correctly, it makes the whole procedure legally invalid. The problem is that the Czech caution is a very long and unintelligible text full of references to laws, which is difficult to understand even for Czech people, but at its end they have to say that they have understood it. The problem, obviously, grows worse when such a text is to be interpreted.

Dr. Bradáčová's Dutch experience with cautions: I did an interview through a videoconference with a Dutch judge who said: "Stand up and I will give you a caution. You have two possibilities. Either you raise your hand and say I swear to tell the truth. If you mind swearing, then there is second option. You can say As God wills, I will tell the truth. And if you mind this, then there is the first option. The person said 'I swear' and the judge replied 'Excellent, you have been cautioned'.

In dr. Bradáčová's opinion it is conceivable that the caution be adapted to the condition, be it the intelligence or the current circumstances, of the cautioned person. It was stressed, however, that this should be done by the police officers, not by the interpreters. There is also another option available: reading the caution as it is, and then explain it in plain language, thus a contact is established as well.

Cautioning of victims was mentioned as a very sensitive issue.

It was said that in some Western countries they had reached the conclusion that people should be addressed in language that they understand, not in legal language, only then is the





communication effective. A parallel to Interpreting Theory and the pragmatic function of interpreting was drawn.

To sum up, unintelligible cautions are not quality cautions.

It was mentioned that in some cases, when a language close to Czech is involved, or if the person has some knowledge of Czech, the interpreter is engaged, but is used only if the interviewed person has trouble understanding. This was contrary to the savings in the police sector. The practice differs region by region, but generally if the person knew Czech, an interpreter would not be engaged.

Section 2(14) of the Criminal Procedure Act: Investigative, prosecuting and adjudicating authorities conduct the proceedings and make their decisions in the Czech language. Any persons who state that they are not fluent in the Czech language are entitled to use before these authorities their mother tongue or a language in which they state they are fluent.

The right to have an interpreter might be waived if the person speaks Czech. An important point was raised if people who have undertaken their business in the Czech Republic for some time and had to pass an exam in Czech in order to get their trade licence really need the interpreter, and whether this is not rather a luxury. However, this is an issue to be discussed by the law-making bodies

The law provides for many options of interpreting, such as only translating the fundamental documents etc. The various options might exclude or complement each other. It is essential to realize, that under Czech law the term interpreting comprises both oral and written translation

### **Presentation by Lenka Bradáčová, President of the Association of Prosecutors of the Czech Republic and Deputy Regional Prosecutor: The Interpreter – An Important Figure in the Criminal Proceedings**

The Czech criminal system presents certain particularities. One of them is that the criminal proceedings are divided into two basic stages, which is not necessarily the case in other countries, such as in Germany. The division is very important in the Czech Republic because the procedural rights in the stages differ to a great extent.

Preliminary stage – police and other competent authorities obtain evidence. The prosecutor is in charge of this stage and ensures that the police comply with its obligations and the rights of all stakeholders concerned are observed. Generally, the prosecutor prepares the case for the court stage. This stage is further subdivided into an examination and an investigation



phase. In the former, the person against whom the proceedings are conducted is referred to as the suspect, in the latter the person is referred to as the accused. It is important to realize that the examination phase is very often held in camera and the person in question does not know about it taking place. The dividing point between the two is the moment when the police or the prosecutor decides to start the prosecution and the suspect is informed thereof, and also advised as to his or her procedural rights. Furthermore, this is usually the moment when the interpreter is engaged, and the decision to start criminal prosecution is usually the first procedural measure which is interpreted. However, the examination phase does not have to turn into investigation, i.e. the case is discontinued (e.g. due to lapse of time, the wrong person having been suspected etc.). At the end of the preliminary stage, an indictment is drafted.

Court stage – the person is referred to as the accused.

Personal experience:

The police officer conducted an interview in a very monotonous way, mainly the monologue approach. After an hour we did not even get to the beginning of the actual offence. It was clear that the witness was lying (we had other evidence), so I took over. In the end the witness admitted how it was. At the end she said she wanted to go to the toilet and I said that I would go with her. Her defence lawyer said that usually the nicer one of the two accompanies the people to the toilet. So that's what it is about – emotions. Preparation is essential. It becomes obvious when the police officer is not prepared.

Munich experience (a case in which 300 kilos of hashish was smuggled from Syria): The people apprehended in Germany were interviewed in Germany. Even I was afraid during the interview because it was virtually conducted by the interpreter. She did not threaten the suspects, but she copied the emotions of the police officer so well, that it was very effective. She had been working for the German police for a long time, she had perfect knowledge of the case, of the people involved, knew what approach would be adopted. It took 8 to 9 hours. When we asked a question, she asked us to explain it to her, and then tried to get the result. What usually happens is that we ask an unintelligible question, the interpreter does not understand it, translates it word by word, and the recipient has no idea whatsoever. That's what happens when the interpreter is not acquainted with the case and the police officer is not experienced.

In important cross-border cases, there should be some preparation done by the police and the interpreters (how long it would take, if it would be done in blocks, if simultaneously etc.).



In Germany, the police tend to use the same interpreters. It is a question whether this is the right approach.

The interpreter must be engaged even if the police officer speaks the language of the interviewed person. They also ensure quality and impartiality of the case.

In the Czech Republic it is possible to engage an interpreter not listed in the official register, so called *ad hoc* interpreter.

If classified information is to be touched upon in the proceedings, the interpreter must be cautioned and a report thereof must be entered in the file.

A problem that arises when translating transcriptions of wire-tapped conversation is the usage of slang expression. Sometimes, the police draft a glossary for the interpreters. Translation of such transcripts is usually time-consuming, and therefore very expensive.

These days, international cooperation is an essential part of each prosecutor's work and is very intensive.

There is also a substantial time pressure upon the interpreters.

Czech lawyers tend to draft all documents, even those intended for use abroad, i.e. translated, in a very complicated way, using long sentences etc. In other countries there seems to be a tendency to use more intelligible language. Lawyers should be trained to write documents intended for use abroad in a clear and simple manner. In case of difficulty understanding the Czech, the interpreters and lawyers should communicate more intensively, clarify, rephrase etc. The problem is that some judges and prosecutors still perceive the interpreter as a foreign element, not a qualified intermediary. There should be efforts to change this approach and perception.

The discussion after the presentation by Lenka Bradáčová covered the following points:

It was suggested that a meeting with the police president or the supreme prosecutor be organized to discuss the issues of clarity and style. It was hoped that if a methodological guideline is issued, it will be observed.

It was also proposed that an order to provide interpreters with contact details and more information about the case be issued.



The difference in legal discourse across countries was mentioned and a question was raised whether it is the job of the interpreter to simplify it, or not. I was also said that such simplification could place the foreigner in a better position in comparison with Czech people, for whom the discourse is also difficult to understand.

The importance of distinguishing between spoken and written texts was stressed.

Dr. Bradáčová suggested that if the text is unintelligible, the interpreter should ask for clarification or rephrasing, and said that such an option is perfectly viable and not to the detriment of anybody's rights.

A problem with Vietnamese interpreters: they interpret a short question for 15 minutes, then a 15-minute answer follows, and the interpreter replies just *Yes* or *No*. An issue of the credibility of interpreters arises, see below.

The responsibility for simplification should stay with the police officer. The purpose of interpreting is understanding, therefore clarification should be part of it. In Scotland, for example, cautions are delivered verbatim and then the police officer asks if the person in question has understood. If not, they explain the meaning in plain language.

An initiative to include courses of Creative Writing in the training of would-be judges and prosecutors was mentioned. It was suggested that courses of Creative Speaking be considered as well, and stressed that the writing courses put special emphasis on drafting documents intended to be used abroad, because these are highly specific.

It was stressed that interpreting was not only about conveying meaning, but also about cultural knowledge, which is also an important element. It was said that in this sense interpreters recruited from among immigrants do a very good job, but that all good interpreters should be aware of the main differences. For example, in Italian there are three types of birth certificates, so the interpreter should specify which one the Italian person is expected to bring.

Interpreters are also a sort of link between the interviewed person and the police body, especially in cases when victims of human trafficking are interviewed, and the interpreters are sometimes the only people who are trusted, and are told a lot of things. This role should not be underestimated, because it can contribute a lot to the success of the interview.

**Presentation by Stanislav Hájek, Psychologist of the Customs Administration:  
Psychological Aspects of Investigative Interviews**



In the Czech Republic, the Customs Administration has the status of an investigative body, and forms part of the security forces, so its experience with interpreting interviews is also relevant for the round table, even though it deals predominantly with financial and fiscal matters.

The term *Investigative interview* comprises all types of interviews (not only submissions, interviews sensu stricto etc.).

Each situation is affected by the people involved, because no two persons are the same (this applies both to interviewers and to the interviewed persons).

Ideally, there should be special interviewing rooms, which would, among other things, also comply with psychological parameters, i.e. blacked-out windows, no distracting objects etc. In the police environment, this is not always the case.

Customs officers are taught how to work with interpreters. It is a new phenomenon in their work, which is, however, becoming more and more common, especially in connection with drug trafficking.

There is a question whether the interpreter should be part of the environment of the interviews, or not. Ideally, they should. In fact, however, interpreters interfere with the procedure, not in a pejorative sense, but due to lack of experience.

The systemic pressures are not often used effectively because interviewers are not trained sufficiently in the field of investigative communication.

There is a need for coming up with new strategies and tactics.

Dr. Hájek stressed that the requirements for interpreters (see the presentation) are based on his intuition only, and also stem from the requirements for interviewers.

Speech anticipation, as used in the presentation, means the impact of the words on the recipient; if the communications is not to be distorted, it must take the recipient into consideration. It is therefore not anticipation in the interpreting theory sense of word.

Intercultural knowledge is of paramount importance. For instance, if a Muslim female is interviewed and a male interpreter is engaged, the woman will not communicate with the interpreter.



One assumption behind a good interview is that the interviewed person should not learn more (about what the interviewer knows about him or her) than the interviewer learns during the interview.

If time permits, interpreters should be acquainted not only with the details of the case, but also with the personal characteristics of the interviewed person.

The seating arrangements should never be haphazard and the interviewer should have a complete view of the interviewed person.

Interpreters should have sufficient time to adapt to the environment of the interview, to the seating arrangements, and solve other practical details, such as seeing where to leave their coat etc.

A problem with the credibility of interpreters from and into Vietnamese (see also below) – a third person must be checking up on the interpreter. The interviewed person often tries to influence the interpreter, threaten him or her, appeal to his or her affection (“*you are my compatriot*” etc), or they just chat.

**The discussion after the presentation by Stanislav Hájek covered the following points**

Strategies used in the interview depend on the interviewer’s knowledge of the suspect, so the interviewers should gather as much information as possible. Interpreters should be informed about such strategies beforehand, because only then can all parties involved play their role effectively. If interpreters are informed about the strategies, then they are not surprised when the interviewer starts shouting and speaking loudly, or, vice versa, very quietly. This is a strategy used frequently because it is often effective to respond to the interviewed person by counteracting, i.e. the interviewer will start speaking more quietly when the interviewed person starts shouting.

Sometimes the interpreter learns something about the interviewed person, which could be helpful for the interviewer, e.g. the fact that the interviewed person belongs to a certain social group. However, there might be a security problem for interpreters, especially if the two languages in question are similar (such as Czech and Polish) and the interpreter might be threatened, or even attacked later. In such situations, interpreters should inform the interviewers about such facts, but a find a way, which would not compromise their security. If interviewers refuse to cooperate, their superiors should be contacted.

There is also an issue whether the interpreter should replicate the non-verbal communication of the interviewed person, because if interpreters do so, the interviewer might receive it



twice, from the interviewed person and from the interpreter. It was recommended that the interpreter not replicate the body language, because it might turn into parody, and more importantly, interpreters cannot have everything under control (they have their own emotions), so they should concentrate on conveying the verbal element only.

Interpreters should learn how to control their body language, not to show their emotions with respect to the interpreted communication. It is advisable to find out how we behave non-verbally and learn some tricks to control such behaviour, such as sitting on our hands.

It was clarified (see the presentation), that in Czech courts interpreters do not sit directly on the left side of the judge, but rather to the left of the judge because they often interpret for the accused person which is positioned there. It was said, however, that this is not observed in all court hearings and that sign language interpreters are often on the left of the judge.

**Presentation by Pavel Kajnar, Deputy Director of the Customs Administration Office for Prague, D1 Motorway: Practical Aspects of Communication with Interpreters**

In Pavel Kajnar's opinion, interpreters are a special community of people, who learn throughout all their life, then enter a room where the uneducated interviewers sit and the interpreter is to be blamed for the failure of the interview, whereas the interviewers are fine and the burden lies with the interpreter. In fact, Mr Kajnar said he liked working with interpreters because they are clever people who help his work.

The vast majority (95%) of the communication with foreigners which the Customs Administration undertakes is with Asians, Russians, and Ukrainians. There are very few English, or other European, cases.

Nowadays, the Czech Republic is a transit country with a strong Asian community, which is often involved in criminal activities.

A lot of interviewing work takes place outside the office, i.e. a lot of field work when interpreters are often needed. For example, if a truck is stopped, it is necessary to find out whether any goods have been unloaded already.

Interpreters are used when the customs officers are not able to communicate themselves.

Some customs officers do not like working with interpreters very much, because interpreters change their style of work and some methods cannot be used (cross examination, colour of voice of the interviewer, seating arrangements). Of course, it depends on the way the



interpreter is involved. Sometimes, however, the interviewers themselves have very little to tell the interpreter.

Interpreters are contacted through operational centres, very often at night and other unusual times. At the centres they have already developed a system so that they know who likes to work with which interpreter.

It is a good idea to caution the interpreter beforehand as to how he or she should interpret (using the first person, direct speech) and inform the interpreter, that misinterpretation could result in criminal prosecution, loss of authorization, or getting on a blacklist never to be used again.

Signs that interpreters do not work properly:

The length of interpretation is not proportionate to what the interviewer said (one question is asked, and the interpreter talks for a long time).

Facial expressions.

The interpreter and the interviewed person obviously communicate without the interviewer.

If anything like this happens, the interpreter is warned and advised that he or she might be recorded.

Ideally, enough Czech interpreters who have mastered the exotic languages would be available.

What to do when we have doubts about the quality and credibility of interpreting:

Have a third interpreter hidden and check.

Record the interview and have it translated.

With the Vietnamese, it is effective to use interpreters from different parts of the country, because people from the North and from the South will not cooperate with people from the Central part of Vietnam.

Stricter rules for interpreters are to be introduced in the Czech Republic. An interpreter charged with misinterpretation might even be imprisoned.





Personal experience:

Once we needed an interpreter into Chinese and we engaged an old professor who was studying Czech here. At first, I wanted to know some details about the interviewed person. He said about three sentences, and the old professor became terribly angry. She said that he was lying, that he was from a different province and so on. The whole interview took some 7 minutes and the suspect owned up to everything. The irony is that the interpreter is only paid for the time of the interview, so the lady could charge for one hour's work.

We got a report that intellectual property rights were infringed. We went to the shop in question and apprehended the people there. It was a Vietnamese community and the shop assistant proposed that his brother should do the interpreting. So we agreed, and immediately separated them so that they could not communicate. My colleague, who had got a Fast-track textbook of Vietnamese for Christmas, phoned someone and said a sentence in Vietnamese. Then everything went fine and when we finished, he said that the sentence meant something like this "This year's rice harvest will be bad due to bad weather".

The discussion after the presentation by Pavel Kajnar covered the following points

Checking whether the interpreter is related to the interviewed person (see the second story above). It was stated that sometimes it is not possible to exclude the possibility that people within a community might know each other. Furthermore, sometimes when someone is caught red-handed (such as in this case) and the police have enough evidence, the interpreter cannot be of much help anyway.

An example from Britain was given that due to cost factors related to interpreting, some avenues are not pursued as often as others because involving an interpreter would be costly. With respect to the Czech Republic, the Customs Administration saves enormous amounts of money for the government, so the proceedings are not limited in this respect.

Some customs officers still regard interpreters as a problem and prefer gathering more evidence to using an interpreter. It is, however, personal, because others, such as Mr. Kajnar, prefer discussing the case with the interpreters, including what is expected of them.

A question was raised whether all interviews should not be recorded, because it would also be helpful for good interpreters to defend themselves, as more and more defence lawyers (e.g. in the United Kingdom) tend to blame interpreters for any problems. In the Czech Republic, there is a difference between the preliminary stage and further stages of the proceedings, which are naturally recorded. In the preliminary stage, it involves some



complications (entering it into the record, explaining to the superior why a translation is needed), but it is used if doubts arise.

The interpreter should avoid getting entangled in the situation. They might want to help the interviewed person (for example, they answer that the person was not somewhere), but the interviewers might have evidence to the contrary. Then the suspect is confronted and the interpreter says that he or she has misheard. This constitutes good grounds for recording the interpreter. Furthermore, lies tend to accumulate, and once interpreters start lying, it is not usually difficult to get to the truth.

Interviewers should prepare for the interviews, such as browse all the accessible registers to find basic information about the interviewed person. Then the interviewer is able to ask simple questions such as *What is the name of your grandfather?* to check upon the credibility and reliability of both the suspect and the interpreter.

Closing

**Prof. Čeňková thanked everyone and invited the participants to an informal but official dinner.**



## BELGIUM/FLANDERS

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### Antwerp

Minutes of the ImPLI round table in Antwerp

Venue: Lessius University College in Antwerp

Date : 27 April 2012

#### **List of attendees:**

##### **Present (ImPLI)**

- Heidi Salaets (Lessius University College, Antwerp)
- Katalin Balogh (Lessius University College, Antwerp)
- Gabi Mack (University of Bologna, Forlì)
- Sylvia Kalina (Cologne University of Applied Sciences, Cologne)
- Sarah Bordes (ISIT, Paris)
- Christiane Driesen (ISIT, Paris)
- Christine Wilson (Heriot-Watt, Edinburgh)
- Ursula Böser (Heriot-Watt, Edinburgh)
- Ivana Čeňková (Faculty of Arts of Charles University [Prague], Institute of Translation Studies)
- Katy Stifterová (Faculty of Arts of Charles University [Prague] + Chamber of Court-Appointed Interpreters of the Czech Republic)
- Stephanie Buyck (minutes secretary)
- Dominique Van Schoor (minutes secretary)

##### **Absent with notification:**

- Amalia Amato (University of Bologna, Forlì)
- Barbara Ahrens (Cologne University of Applied Sciences, Cologne)



### **Invited external speakers:**

DIRK ROMBOUITS, former chief inspector of Police and trainer at police school, retired  
YOLANDA VANDEN BOSCH, lawyer, guest professor at Lessius

PAUL VAN SANTVLIET, examining magistrate

ABDES EL-AJOURI, legal interpreter, Managing Director Linguix

### **AGENDA**

13.30 WELCOME & INTRODUCTION (Katalin Balogh & Heidi Salaets)

13.45 DIRK ROMBOUITS former chief inspector of Police and trainer at police school, retired)

*Best practices in interpreter mediated questioning: point of view of the police*

14.30 YOLANDA VANDEN BOSCH (lawyer, guest professor at Lessius)

*Best practices in interpreter mediated questioning: point of view of the lawyer*

15.15 Coffee break

15.45 PAUL VAN SANTVLIET (examining magistrate)

*Best practices in interpreter mediated questioning: point of view of the magistrate*

16.30 ABDES EL-AJOURI ( legal interpreter, Managing Director Linguix)

*Best practices in interpreter mediated questioning: point of view of the interpreter*

17.15 – 18.15 Final discussion



## **Round table introduction**

**Katalin Balogh and Heidi Salaets welcomed and introduced the participants. All participants also briefly introduced themselves.**

**Dirk Rombouts** is a former chief inspector who focused on interpreter mediated police interviews in the second part of his career and was involved in the legal interpreting programme at Lessius. He also was trainer in the police academy: he taught interviewing techniques to future policemen and explained them how to work with an interpreter. Since he has retired, little or no attention has been devoted to the matter, which shows that things often depend on one person only.

**Yolanda Vanden Bosch** is a lawyer and also guest professor at Lessius in the training programme for future legal interpreters and translators. She trains also lawyers and magistrates on how to work with an interpreter

**Paul Van Santvliet** is an examining magistrate in Brussels who was involved from the beginning in the creation of the training for legal interpreters at Lessius, because he noticed that there were some serious problems regarding the quality of legal interpreting and he wanted to change this. He continues sending so called “sworn interpreters” (without any training) who did a bad job to Lessius for extra tests and training

**Abdes El-Ajouri** is a legal interpreter Arabic-Dutch, trainer of Rifian language at Lessius. He will talk about working conditions of the legal interpreter (working with the police and in pre-trial) and explain how difficult it sometimes is for an interpreter to do his job properly, because legal professionals do not collaborate or ask the interpreter to do other things besides interpreting

### **1 Presentation by Dirk Rombouts:**

- In Belgium it is virtually impossible for an arbitrary person (e.g. a Chinese restaurant owner, a Polish nurse or a family member of a Turkish suspect) to be appointed legal



interpreter out of the blue – apart from one exception in legislation. Particularly in Antwerp, great efforts are put into giving legal interpreters proper training.

- An additional example was given of a case in Arnhem (NL) where the mother-in-law of the suspect was asked to interpret for the suspect (who spoke Turkish). Since she was not a sworn interpreter and since there were enough legal interpreters for Turkish available (so there was no need at all for using a family member as interpreter), the court rejected this procedure and decided to exclude the evidence.
- Police officers demand some flexibility from the interpreters: sometimes it is necessary to work overtime, because it is not always easy to provide a correct preliminary estimate of the duration of an interview. They often prefer to work with interpreters who are on stand by all the time because taking quick action is essential in the first phase of the investigation: a suspect can be arrested for 24 hrs at the most and in this time span he also has the right to have a confidential conversation with his lawyer (as prescribed by the Salduz law).
- Having an interpreter mediated conversation requires more patience and effort, but the clock is always ticking for the police force, in particular during the first interview. Both the interpreter and police officer should always keep in mind the ultimate goal of the interview: revealing the truth.
- Police officers should learn about interpreter mediated questioning in more detail: they should learn how to work with an interpreter (instead of simply being told “This interview technique can be used with an interpreter”).
- In general, the Antwerp police are pleased with the quality of the sworn interpreters and they do not see them as an ‘obstacle’. The data resulting from Mr Rombouts’s survey were quite comforting.
- Before starting the interview, police officers tend to brief the interpreter on the substance of the case, but no investigative details are given because this might enhance subjectivity. They however do not tend to reveal anything about the interviewing technique that will be used (e.g. the type of questions) because they do not believe this to be relevant for the interpreter. But precisely this knowledge on interviewing techniques can be extremely useful for interpreters! E.g.: important to respect silences (suspect might be making up a lie; the interviewer or interviewee must break the silence, not the interpreter!)
- The interpreter introduces himself before starting the interview to inform the participants about his role. This way, his function is clearly demarcated. The interviewee learns what the interpreter can (not) do and is for instance discouraged from having a private conversation: even a simple day to day conversation should be avoided.
- When interpreters disclose extra or confidential information after the questioning, this will probably not happen spontaneously but mostly because the police officer asks for it. Especially when the same interpreter is used for the 30 minute-confidential conversation with the lawyer and the first police interview, there is the risk of the police asking the interpreter for additional information. Interpreters need to be firm on this point and



respect the confidentiality principle: never disclose any information to third parties (not even lawyers of police).

- Legal interpreters need to be familiar with jargon (e.g. a rifle is not the same as a gun!).
- If an interpreter has been involved in the case from the beginning, this familiarity comes in handy, certainly when the case is made up of several phases (e.g. a drug case).
- If the interpreter is threatened, he should react firmly and interpret the threat so that the police officer will hear about it and can take appropriate action.
- In the case of a conflict of interests between the interpreter and interviewee, the former immediately has to communicate this to the police officer: this decision should be met with a lot of respect. The police should do the same when an interpreter refuses the assignment because of lack of expertise. It is therefore best that interpreter always checks beforehand what the case will be about.
- Interpreters who frequently work for the police risk becoming ‘a friend of the family’: they might be asked to do things which they are not entitled to (e.g. get the officer a cup of coffee or even keeping guard over the suspect). When the police officer leaves the room, interpreters should follow in his footsteps and immediately leave too.

## 2 Presentation by Yolanda Vanden Bosch:

- The Belgian language legislation prescribes that the entire legal procedure should be executed in one language only (Dutch, French or German).
- There is no specific law and no national register for sworn interpreters. Because of this, initiatives are needed (awareness raising, lobbying, suggesting law proposals etc.) to address members of parliament & the Ministry of Justice and draw their attention to the shortcomings in legislation.
- Legal interpreters qualified in ‘classical’ languages (such as French, Spanish or English) and who are more likely to have a qualification earn less than interpreters working with ‘exotic’ languages (like oriental languages) – the latter often have no degree in interpreting/translation or have received little or no training. In general, the remuneration for police/court interpreters is much lower than the one on the private market.
- Lawyers need to ensure the proper application of procedures. They have to act as an active guardian of their client: check whether an interpreter is needed to ensure that the client is given the necessary legal information in his native language so that he can understand why he is arrested / questioned. Even if an interpreter is present, the lawyer should verify the comprehension of his client (e.g. when technical/legal jargon is used). If a foreign speaker is denied an interpreter, the rights of the defense are compromised and the lawyer has to lodge an objection to it immediately. A lawyer should also check whether the interpreter is independent – if not (e.g. when a police officer assumes the



role of interpreter) the lawyer again should act straight away! At the end of the legal proceedings, the court will verify the procedural quality but during the proceedings, it is the lawyer's task to monitor quality.

- Awareness raising and training for legal professionals (lawyers, magistrates...) and the police force is crucial, but since there is no real training program in Belgium (offering uniform explanations on how to deal with interpreter mediated conversations), everything depends on individual initiatives. Appropriate training for all participants - interpreters as well as legal professionals and police - is extremely important: this element was also stressed in the directive.
- It would be good to establish some kind of special assistance service for interpreters where they could talk about difficult or emotional cases.
- For the Belgian government, there is still a lot of work to do to guarantee high-quality legal interpreting:
  - compulsory additional training courses for the interpreters
  - protect the profession of (court) interpreter
  - complaints procedure (also against interpreters)
  - more straightforward way of contacting interpreters
  - increase knowledge about new techniques: Skype (what about privacy?) & videoconferencing
  - provide leaflet or audio file to interviewees, explaining the basic principles of working with an interpreter (they can consult this while waiting at the police station for example, and so they will understand more easily what the interpreter says when he later on introduces himself before the start of the interview).

**The discussion after the presentations by Dirk Rombouts and Yolanda Vanden Bosch covered the following points:**

- If the police talks about legal interpreters, they mean certified/sworn interpreters whose names are included on a list. In Belgium there is no national register, the list of interpreters Dirk Rombouts referred to was a list for the legal district of Antwerp: every police station in the judicial districts Antwerp, Turnhout & Mechelen can consult this database to look for an interpreter in a particular language. National legislation is needed for a national register.
- Hopefully one day there will be a specific law for legal translators / interpreters in Belgium. But with every new government, the work starts all over. At the moment there is no particular bill under consideration at the federal level. The points of view of the Dutch-speaking and French-speaking people in Belgium also differ on the





following point: does an interpreter need to specialize in legal terminology first or not, before he/she can become a certified and sworn legal interpreter? Another problem here is that the Belgian language laws are often used as a starting point for legislation on interpreting & translation, but it is of course best to create completely separate laws on the subject.

- A participant asked a question about the way interpreters introduce themselves at the beginning of the interrogation (which is already a common practice for about 10 years), mentioning that different interpreters possibly introduce themselves and define their job in different ways. Dirk Rombouts explained that in the legal interpreting course at Lessius, interpreters are taught one standard introduction: “I am impartial, I do not belong to the police force, everything that is said here is confidential, I will not have any private conversations, the police officer is in charge of the interview, I will translate everything without omissions, additions or modifications , using the first person singular, so you can address each other directly.” It was then mentioned by a participant that maybe there should be a standard written introduction that all interpreters can read out loud or sight translate at the beginning of the interrogation. This way interviewees would notice that these are not the interpreter’s own words. It was also suggested that maybe the police should introduce the interpreter.
- An interpreter has to interpret everything, but where should we draw the line? Can the interpreter give the police “extra” information about, for example, the accent of the suspect? While listening to the suspect, the interpreter can for instance derive from his accent that the person is lying about his place of origin. In fact, the interpreter is not really adding anything because this information is included in the language itself. However, if the interpreter provides this information during an interview, he no longer acts as an interpreter but as a language expert or even a witness. In Germany, the police can ask the interpreter to consult him as an expert, but at that point the interpreter stops being an interpreter and exclusively assumes the role of expert. The suspect has the right to remain silent, and this right is compromised if the interpreter interprets more than what is said. Particularly lawyers would not allow this to happen. An interpreter should only translate intentional language, while an accent or dialect all belong to the unintentional side of language. The same applies for facial



info or gestures: interpreters are not supposed to explain these, except when they are acting as language or cultural expert.

- The expectation of literal translation is not humanly possible for interpreters, because two languages never function in exactly the same way. Sometimes interpreters are forced within a paraphrase. Technical aspects can often be translated literally because they are univocal (e.g. a wheel is not an engine) (versus the German expression “Mach’s gut!” which should not be translated literally as “Do it well” but as “Have a nice day!”). Sometimes expressions have different meanings in different cultures, and therefore a literal translation is impossible. Latin expressions for example do not always mean the same in French as in German: exactly the same words are used in different ways. Ideally, we need to pin down what ‘literal’ implies, but it is of course difficult to give a straightforward description.

The interviewee has the right to ask for a literal transcription of the interview (also in the foreign language). This again is a right that can never be compromised! In that case, terms that cannot be translated literally need a notification in the record.

- Rates of pay for police interpreters and court interpreters are equal in Belgium.

### 3 Presentation by Paul Van Santvliet:

- Good-quality interpreting is essential to guarantee justice: a foreign suspect has the right to gain insight in the legal proceedings instituted against him. The reason for his arrest among other things should be communicated to him in his mother tongue so that he can fully grasp the situation. (Compare this to an interpreter who only translates the conclusion of the judge “You remain in jail” without conveying the rest of the conversation: the suspect is completely kept in the dark!)
- In Belgium each district decides how to work with interpreters, so different systems exist across the country: Antwerp for example has an extensive register, while Oudenaarde has a smaller one and Neufchâteau has none at all. As a result it is hard to monitor quality and there is often a lack of accountability. Professionalization is needed; but national initiatives on this part are no priority to the Ministry of Justice.
- The legal interpreting course at Lessius:
  - entrance exam necessary:
    - reveals that a lot of candidates are not sufficiently proficient in Dutch;
    - everybody has to take this entrance exam (even native speakers)
  - no language specific training because it is too expensive



- combines extensive legal modules with role plays and interpreting techniques
- final open-book examination on law and legal terminology: future interpreters are not supposed to learn all legal information by heart, but they should at least be able to consult it and to recognize the procedural stage they are in.
- To avoid misunderstandings (linguistic ones only!) it is best for the interpreter to give a literal translation and provide further explanation on the exact meaning: e.g. difference between “boss” used as a plain title (= +/- employer) and as a word referring to the leader of a criminal organization.
- The deontological code signed by sworn interpreters is not legally binding.
- If the language spoken in the examining magistrate’s office is not an official procedural language (i.e. Dutch, French or German), everything said or done is null and void! This means that the examining magistrate cannot decide to speak English for example, to be able to address the suspect more directly.
- A correct translation of very specific legal terminology is crucial, together with thorough knowledge of the foreign country. (e.g.: in a case of fraud, using the term ‘abgabebetrag’ in the translation was necessary before the International Rogatory Commission in Switzerland could intervene)
- In delicate matters (like rape) it is important that the interpreter does not disrupt the silences, for example by rephrasing the same sentence, because it would break the questioning.
- Proficient interpreters are needed: e.g. for a financial case, someone with an intimate knowledge of accountancy.
- Particularly because of the 24 hrs limit, it is more convenient if the interpreter already knows about the case, because there is often no time for an extensive explanation: the briefing of the interpreter is therefore kept very short.
- Putting the interpreter behind the suspect does not work. Positioning him between interviewee and interviewer - while of course keeping a respectable distance - works best.
- While waiting for appropriate legislation, a possible solution would be to hire a number of legal interpreters and employ them on a daily basis, because then you can more easily ask for a degree and better guarantee the quality

**The discussion after the presentation by Paul Van Santvliet covered the following points:**

- Before 2000, the decision whether or not to certify a legal interpreter was very arbitrary (even though interpreters had to present their credentials beforehand).
- According to Unizo (organization of Self-Employed and Small and Medium Sized Enterprises in Belgium) the profession of legal interpreters cannot be protected if



there is no law. At the moment anyone can call himself a sworn interpreter or translator (even though certificates are issued to prove this), but the profession is not protected as it is the case for lawyers, for instance. Without a law it is not possible to sanction someone if they use the title of sworn interpreter unjustly. National legislation must therefore imply the protection of the profession.

- The deontological code that legal interpreters (in Antwerp) are supposed to sign is available online.
- The Ombudsperson mentioned is part of the BVT service and the court of first instance. Paul Van Santvliet started this because he received many complaints, for example from interpreters who weren't paid in time, or who complained that the judges spoke too fast. The service then contacted the colleague to sort out the problem. When he received complaints about the interpreters, he asked for a second translation or a second opinion at Lessius. If an interpreter repeatedly was not able to deliver good-quality work, sanctions were imposed.
- For the entrance and final exams for legal interpreters at Lessius, up till now the organizers were always able to find somebody to assess the language proficiency of the candidates, even for those speaking a more 'exotic' language. It is also important to find somebody who knows something about the legal system.
- Sometimes a sworn interpreter is not available for a certain language (e.g.: rare language spoken in the Maldives), in that case a standard language (EN, FR, DE) is used for the questioning. But this rarely occurs, most of the time an interpreter is found.
- Video / audio recording of proceedings is an important issue. It could be very useful if there are complaints about the quality of the interpretation. The defence can then ask for a second translation. When wiretaps are used, for example, they can be listened to again to verify. But in most cases police or court interviews are not recorded (there are some exceptions such as murder/rape cases or cases where minors are involved).
- It was clarified that when Paul van Santvliet said that the BVT service "manages the list", this means purely the administrative aspects (updating the personal details of interpreters included on the list, like their address or phone number).



- In Belgium, the examining magistrate gathers evidence on a case and then hands it over to the district attorney/public prosecutor who decides whether to institute legal proceedings or not. Then the raadkamer (court chamber) decides whether to prolong detention or not and whether to take the matter to court or not.

#### 4 Presentation by Abdes El-Ajouri:

- Interpreters do not only translate a language, but also ‘translate’ a culture (a religion even) and meta language.
- Linguistics is often still subordinated to jurisprudence. Ideally, both should have complementary functions.
- The tension and confusion between interviewee, interviewer and interpreter is the result of fear or ignorance. Participants often don’t know what each other’s role is exactly.
- The interpreter sometimes is subordinate to the questioners because he financially depends on them. When the interpreter is then asked or he himself spontaneously offers to do something that is ethically unacceptable (e.g. from getting a cup of coffee to participating in a line-up) it is difficult to refuse. Moreover, interpreters and legal professionals establish some kind of personal relationship over the years of close collaboration, which makes it even harder to refuse. But in such cases an interpreter needs to be firm and give priority to the ethical & human perspective over personal ties.
- Police officers prefer to work with interpreters who are available all the time, but are these really the best interpreters? Isn’t it possible that these interpreters are always able to be on standby because they do not get a single assignment from other customers...
- An interpreter is not supposed to interfere, but how far can he go in providing extra information?

If the interviewee’s words can be unintentionally misleading (and certainly when this misunderstanding can have an impact on the investigation), the interpreter can add some linguistic background information. Questioners want to unmask errors and lies: when an interviewee mentions the name of a street that does not exist (simply because he cannot pronounce certain foreign sounds due to his native language), this can be looked upon as a lie – so as an interpreter you need to provide some explanation on the phenomenon. (Another example: “afternoon” in Rifian = after 8 PM: a literal translation is problematic here, because the Belgian police would otherwise assume another time span: between 1 and 5 PM)

- Insisting on a literal translation of written legal language is not the ideal way to communicate with uneducated people. They have the right to receive some explanation (on for instance sections of a law) in a less formal language.
- An interpreter might be perceived as discordant, for example when he has translated an unintentional confession even if the interviewee deliberately asked him not to do it. The



interviewee then might think the interpreter sides with the police and therefore demand another interpreter. For some interpreters being taken off an ongoing case feels like the bread being taken out of their mouths. And so the option not to interpret unintentional slips of the tongue becomes very attractive.

- Linguistic footnotes of an interpreter can be very useful, particularly in case of a wiretap where a lot of code and unclear language is used.

**The discussion after the presentation by Abdes El-Ajouri covered the following points:**

- There is no protocol or directive for adding linguistic/cultural comments, footnotes, etc. when using a transcript to translate a wiretapped phone call. The interpreter is first supposed to listen to the telephone conversation and then provide a synthesis (however, this does not function as official legal proof!). The detective then decides whether the information is relevant or not, and if this is the case a re-transcript is needed. A literal transcript is then made, including every hesitation and slip of the tongue - but there are no specific rules for making this transcription. Mister El-Ajouri takes the liberty of adding linguistic comments while always signalling that this is linguistic/cultural comment added by the interpreter.

Because of the fear of a possible breach of procedure, interpreters are asked to transcribe everything in written language, but in Rifian not everything can be rendered in written form (you can compare it for example to transcribing Chinese characters in Dutch). In that case, interpreters often resort to phonetic writing, which is unconventional and not always easy to understand. This way, a lot of money and effort go to waste, also because not every element can be used as valid legal proof.

- There is a disturbed relationship between jurisprudence (the law) and language (applied linguistics and the interpreter). Jurisprudence feels superior, creates “fear” for the law. For a beginning interpreter it can definitely feel like they are subordinate and have to listen to the police/judge/... because these represent the law. It should be stressed that police officers/judges/... are also under the law. It is therefore important that training in legal aspects is part of the training for interpreters: it will help them feel more confident. But legal professionals should also become more aware of the role of linguistics within



an interview setting. A lot of linguistic problems (typical of an interpreter mediated interview) can be solved by the field of translation studies but legal experts not always realize this. These professionals are often afraid of the legal consequences of mistakes and prefer a literal rendering, but they must be conscious of the fact that “a word is more than a word” in any language.

- COC = Centrale OndersteuningsCel voor sociaal tolken en vertalen (Central Support Cel for PSIT), Flemish coordination organization which stands up for the 9 STVD's (PSIT services) in Flanders and tests and grants a certificate to public service interpreters

**Conclusion:**

**Katalin Balogh and Heidi Salaets thanked the speakers, participants, partners and interpreters.**



## FRANCE

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### Paris

Minutes of the ImPLI roundtable in Paris

Venue: ISIT in Paris

Date: 6 July 2012

#### List of attendees

##### Invited external speakers

Thierry Depraetere (French Interior Ministry, former police officer [officier de police judiciaire])

Nicolas U (Chinese-French interpreter and translator)

Fabienne Schaller (Ministry of Justice, in charge of negotiating and transposing international criminal standards)

Sylvie Monjean Decaudin (Associate Professor, Expert près la Cour d'Appel de Bordeaux)

##### ImPLI Partners

Katalin Balogh (Lessius University Collegen, Antwerp)

Heidi Salaets (Lessius University Collegen, Antwerp)

Amalia Amato (University of Bologna)

Gabi Mack (University of Bologna)

Ivana Cenkova (Charles University, Prague)

Sylvia Kalina (Cologne University of Applied Science, Cologne)





Barbara Ahrens (Cologne University of Applied Science, Cologne)

Ursula Böser (Heriot Watt, Edinburgh)

Sarah Bordes (ISIT, Paris)

Christiane Driesen (ISIT, Paris)

### **Other attendees**

Mariana Cojan-Negulescu (PhD; SFT Member; USR Member; SGDL Member; conference interpreter; sworn translator; Expert, Cour d'Appel de Paris; Sworn expert, Cour de Cassation; Vice-president, CETIECAP)

Teresa Intrieri (SFT, Experts committee)

Cécile Le Bourdon (SFT, interpreting committee)

Maria Lebret-Sanchez (expert translator – Cour d'Appel de Versailles; President, UNETICA)

### **Excused**

Monique Rouzet-Lelievre (Sworn translator, Cour de Cassation; expert translator-interpreter, Cour d'Appel de Versailles)

### **Interpreters**

David Shearer

Christopher Davies



## **Agenda**

14:00 Welcome and introduction

14:30 Thierry Depraetere (French Interior Ministry, police officer)

15:00 Nicolas U (Chinese-French interpreter and translator)

15:30 Questions and answers

16:00 Coffee break

16:30 Fabienne Schaller (French Ministry of Justice, in charge of negotiating and transposing international criminal standards) – Presentation of the measures aiming at transposing Directive 2010/64

17:00 Sylvie Monjean Decaudin (Associate Professor, Expert, Cour d'Appel de Bordeaux) – Building bridges between research and practice

17:30 Questions and answers

18:00 Conclusions

19:30 Dinner with speakers and guests



## **Introduction:**

**Sarah Bordes welcomed the participants and recalled the main objectives of the European project ImPLI (Improving Police and Judicial Interpreting):**

Identify the current state of affairs in the six partner countries

Outline the perspectives

Draft a report

Produce six short films, one per country

Behind the ImPLI Project stands the Directive 2010/64/EU, adopted on the 20<sup>th</sup> of October 2010: With the directive come new rights to interpretation and translation during criminal proceedings.

Sarah Bordes introduced the four guest speakers, outlined the agenda for the afternoon and asked all participants to introduce themselves.

## **Presentation by Thierry Depraetere (French Interior Ministry, police officer – officier de police judiciaire):**

Mr Depraetere adopted a practical point of view for his intervention: that of a policeman or police officer needing an interpreter. Interpreters are called in for hearings or police questionings, and must translate all information given to the defendant on his rights and obligations. The hearing or questioning is however only a short part of the whole proceedings (investigation, proceedings, etc.).

Mr Depraetere underlined that the police officer's questioning approach is different according to the interlocutor:

Witness: not actively involved, required to provide information on an (alleged) offence. The policeman needs to be clearly understood; the role of the interpreter is straightforward.

Victims (rape attempt, attempted murder, burglary): the victim is affected, might be traumatised. The police officer undertakes a phase of fact-finding, adopts a different approach, one step at a time; questioning often assumes the form of a discussion, and the interpretation must be faithful.



Defendant (accused person): the police officer has great interest in obtaining information, nevertheless this phase is often a sort of chess game between the police officer and the accused person, who might not be inclined to give information. The task of the interpreter is significant: s/he must remain neutral, not act as a policeman, not take sides and be aware that the police does not intend to use the interpreter as a lever to obtain information.

Mr Depraetere then mentioned the difficulties encountered when the need for an interpreter arises: by definition, this need is not predictable and the police officer must abide by complex procedures (time limit, several constraints).

**Who?** The police officer consults the jurisdiction's list of sworn interpreters (with language combinations), and recruits according to availability. Interpreters listed with a court of appeal are more reliable. Some interpreters listed with the police forces are "language graduates", called for minor offences or witness statements: for instance when the witness has a vague understanding of French. Most of the interpreters are trained professionals, however sometimes untrained interpreters are also on the lists, especially for rare languages.

**When?** The policeman's job is 24/7 as crimes are committed 24/7: the interpreter must be available! This can be bothersome, real professional constraints are involved.

**Role of the interpreter** within the police procedure? The interpreter is expected to be as neutral as possible, not expected to defend a party. Sometimes the circumstances are dramatic (rape, murder); the interpreter must not be *part of the prevailing emotions*, not take sides. Police forces have their own ways of conducting hearings, and the interpreter must respect them and stay neutral. For instance, an immediate confession is not always the policeman's goal; the questioning and criminal proceedings can be very long.

Case of **telephone interceptions**: they require great flexibility and can be difficult. For instance, in cases of drug trafficking, a group might be wiretapped and whenever a foreign person calls in, an interpreter is needed (this takes place outside business hours, difficult to find available interpreters, but the police is bound hand and foot too!).

The pitfalls to be avoided when dealing with an interpreter were mentioned:

The interpreter must not start doing the investigation (some of them are passionate, they understand the dynamics of the hearing and tend to anticipate the police officer); neutrality is essential, the interpreter is there to get the message across between both sides.



The interpreter should not be used as a lever: the policeman does not speak the defendant's language, the interpreter does. The situation where the defendant tries to gather sympathetic support from the interpreter must be avoided.

It can be difficult to prevent the defendant from trying to get the interpreter on his side. The suspect does not feel comfortable and will try everything to find sympathy.

Psychologically, the suspect is fragile as s/he is accused of something. This can be tricky both for the police officer trying to extract a confession, and for the interpreter.

In some cases, a feeling of closeness with the investigators might develop, but it must stay a robust working relationship. For instance, in cases of drug trafficking, the defendant, in his first statement, will lie: it is part of his/her strategy, but also of the police's strategy. The initial statement will subsequently be used to prove that the defendant was lying. The interpreter might realise that one side or the other is lying, and will sometimes be tempted to underline it, but should not: the defendant must not feel a weak point in the dynamic.

The interpreter should not be in a hurry. Mr Depraetere experienced cases where the interpreter seemed in a great hurry to reach the truth and was keen to do the officer's job for him!

To conclude, Mr Depraetere underlined again how important it is for the interpreter to be neutral. During the whole procedure, the hearing will be used, quoted and referred to; it must therefore be robust. If a person who does not speak the language is involved in the proceedings, there can be no misunderstandings on the part of the defendant, as this could have devastating consequences and compromise the final result.

Mr Depraetere said he was delighted to be part of this meeting and have the opportunity to exchange with professionals.

**Christiane Driesen thanked the speaker and launched the debate. The discussion covered the following points:**

Maria Le Bret-Sanchez: It was a pleasure to hear that preference is given to interpreters on the register, however the reality is different. Often, untrained interpreters are called in instead of trained one, and not only for rare languages. Even for "common languages" (English, German, Italian, Spanish, etc), persons with no legal exercise of the profession and no professional or on-the-job training are recruited. Of course, the question of availability plays a role, but it is not the only issue



Mr Depraetere replied that they use the list of registered interpreters, which is a hallmark of quality. When a need arises, the police officers draw on the list and try to find an interpreter as soon as possible. It is not within the competence of the police to determine whether an interpreter is trained or not.

Teresa Intriери: We can monitor the official list, even though we are aware that parallel lists exist. For the Court of Appeal for instance, you do not have to be qualified to interpret! Numerous persons on the list have other professions and no formal training. SFT tries to provide technical as well as psychological training (it has happened that interpreters burst into tears as they were not ready psychologically!).

Mr Depraetere is aware of the psychological impact that the terminology used by the police can have. For instance in case of rape, the victim is required to provide a great amount of details, which can shock someone who is not prepared! Yet the details are often significant, the police officer must go to the heart of the matter, but this is not easy for him/her or the interpreter!

Teresa Intriери: on neutrality, some judges or police officers appreciate interpreters who take very little time to interpret; but sometimes it is necessary to explain the context to the person you are interpreting for, translating words is not enough, they must understand the procedure: the interpreter must therefore be a linguist but also have some legal training.

Mr Depraetere replied that the interpreter must stick to what is expected of him/her, according to context the interpretation may be longer, but the officer normally has a red thread s/he wants to follow and the interpreter must respect it.

Ursula Böser: during the six ImPLI roundtables, we heard that police officers do not want the interpreter to take over. Another difficulty is when a kind of loyalty develops between the suspect and the interpreter. When does the interpreter have the right to intervene to some extent? And what would be an ideal way of solving this issue?

Mr Depraetere replied that this comes back to the quality of the interpreter, who is there to translate whatever the suspect says. If the police recognises that the suspect tries to develop some complicity with the interpreter, they must get him back on track. The interpreter stays on the periphery, he is neutral and should be gravitating around the suspect and the police officer. The fact that the interpreter speaks the same language as the suspect can induce a sense of trust but must not contaminate the proceedings.

Mariana Cojan-Negulescu: added to Mrs Böser's statement that an interpreter must not speak in his/her own name. The interpreter is considered by all judicial stakeholders as a vector by



which interpretation flows and should never voice his/her own opinion. Sometimes, the interpreter is asked whether s/he believes the suspect is telling the truth; Mrs Cojan-Negulescu stated that the interpreter should never give his/her opinion.

Mariana Cojan-Negulescu also commented on the register of interpreters; to feature on the list, an application must be sent in, and will be examined by the committee of the Court of Appeal. Most applicants to the Court of Appeal or Cour de Cassation in Paris have higher education degrees from European universities.

Christiane Driesen returned to phone tapping: in Germany, phone interceptions are often used, and the interpreter involved must be available at all time. The interpreters who signed up for this service and cover the phone tapping must be available to interpret live. A team is set up. The remuneration is adapted to the constraints.

Sarah Bordes: phone tapping is constraining for the interpreter who in France is often on his own. For rare languages, it might be difficult to find interpreters, but maybe, for more common languages, a team of two could be set up to make sure someone is always available? While the first available interpreter starts working, the police should have enough time to find a second colleague.

Mr Depraetere replied that, in the ideal scenario, a team is set up. However facts happen very quickly and the police needs immediate availability. It is interesting to hear about the German approach; in France it is extremely difficult to find such availabilities. As for remuneration, the French Ministry of Justice is responsible, and of course, quality of the interpretation will be in line with remuneration!

Mariana Cojan-Negulescu underlined the problem of getting used to the terminology, sounds and codes of phone tapping, everything is said in codes, unspoken language, it is not a translation per se! The interpreter needs a little time to adapt and will not be able to provide good interpretation from one minute to the next.

Christiane Driesen: in Germany, phone tapping interpretation is done live, in the police's offices. The police will go and collect the interpreter with a police car to bring him/her as soon as possible into action.

Mr Depraetere confirmed that interpreting phone interceptions requires understanding of the person's mindset; non-verbal language, codes, intonation can be of great use and must be picked up. A good cooperation is required between the police and the interpreter; police officers tend to call in the same interpreters again and again, because they know how they work.



Cécile Le Bourdon was wondering whether a preparatory phase exists for phone tapping, the interpreter who is already there could brief the person who takes over in order for the relay to be effective.

Thierry Depraetere also underlined that the recordings must be transcribed in full, which is time consuming. Officially, the interpreter cannot write the transcription; s/he only works orally (in one case, the entire procedure was annulled because the interpreter had signed the transcription, which was not part of his job description).

Mariana Cojan-Negulescu underlined that police interpreting is a very different world to conference interpreting: the language used is different, the culture, the level of education, etc.

Christiane Driesen thanked the speaker and the participants and closed the debate. The floor was then given to Nicolas U.

#### **Presentation by Nicolas U (Chinese-French translator and interpreter)**

Mr U introduced himself: he is not on the experts list but has been working for more than ten years. He hopes to reach an agreement between interpreters on the register, those who are not, those who do not want to be, those who have skills but are not on the list because their application was turned down (due to nationality perhaps).

Chinese is more than a language and more than just China, it includes the whole Chinese world: 40 million Chinese around the world, numerous dialects, rich culture, and a vast Diaspora.

Mr U started working for the Border Police in Roissy airport and was responsible for gathering information, used to granting or refusing visas. He was called in when no interpreter was available, for urgent matters (hearings or phone calls). He was faced with various situations, and confirmed that the interpreter tends to sympathise with the person he is interpreting. He also recalled that the Chinese immigration networks are very powerful, but they are only paid on result (if the person reaches the French territory).

Mr U followed training in Chinese and took translating and interpreting courses at INALCO. He is a teacher at ISIT, Paris.

Mr U has had the opportunity to exchange with numerous experts, paralegals and interpreters. One lesson learned was to always tell the truth (for instance, the interpreter must say if s/he has not understood something) and remain neutral.





Mr U then started working for specialised departments, who tend to be mistrustful of interpreters and who were checking the quality of his work. He underlined that the interpreters must never consider themselves as “junior police officers”.

Mr U has chosen not to live in the Chinese community and has encountered persons he had been working for while in custody, or had interviewed in prison; these persons often recognise him (he mentioned a young man he interpreted for at the Fleury Merogis prison, who had good memories of Mr U’s intervention). However, he affirmed he would not try to interact with people he worked for once back in the community.

In Mr U’s opinion, training should not be legal but psychological, about police methods (for instance, in seek-and-detain operations, all officers wear a bulletproof jacket, but the interpreter is never offered one; the situation can be impressive and scary for someone not used to it or unprepared). The interpreter must learn on the job, but a training of some sort would help prepare interpreters for what awaits them.

Cooperation between sworn interpreters (on the register) and others would be appreciable. Mr U also reminded that sworn interpreters and translators are supposed to respond positively and immediately if called in by the Court.

Christiane Driesen thanked the speaker and launched the debate. The discussion covered the following points:

Teresa Intrieri made various comments:

Since 2004, it is mandatory for interpreters on the list to undergo training. Every year, under French law, they must report on their activities for monitoring purposes. When a colleague is on the list, this means s/he has no criminal record. In some cases, people not on the list were called in to interpret and had a criminal record!

When an interpreter is needed urgently, today, Internet and search engines are available. Unfortunately, the Ministry of Justice keeps using old lists that were never updated.

Moreover, there are huge differences between legal and conference interpreting: conference interpreters work in a booth, with proper equipment. In a noisy courtroom, the legal interpreter must translate for the defendant but cannot always hear the judge or the lawyer. Each Court of Appeal should be fitted with interpreting booths, headsets and microphones. Simultaneous interpreting would also save time. At the moment, consecutive interpreting is used in courtrooms; gradually whispering is also being used; however some judges refuse to have the interpreter talking simultaneously!



Maybe a roster system (similar to doctors) could be used, to always have an interpreter available; this would require a greater workforce but would possibly solve numerous issues.

When interpreting, the pronoun “I” should be used for transparency purposes.

There is a difference between police and court interpreting; maybe two separate lists of interpreters would be preferable. In a court setting, training is required.

Christiane Driesen underlined the lack of knowledge of practices in other countries. In Canada, a trial was quashed because a judge prevented the interpreter from whispering. In the USA, headsets and microphones are used to facilitate interpretation. Interpreting is interpreting, be it in international courts, national ones or police offices! The Nuremberg example should be followed, and France was party to the Nuremberg trial! We should all have greater awareness of the practices in other countries and learn lessons.

Maria Lebret-Sanchez commented on various points:

Rosters were set up in the past and did not work out. Most associations count approximately 150 members, who might be members of two or three other associations as well. 2000-3000 persons claim to be able to interpret; it is therefore extremely difficult to understand who is properly qualified.

Concerning remuneration, Mrs Driesen quoted decent pay levels in Germany. France ranks lowest. A 100% increase in interpreters pay was obtained a few years ago during a group on judiciary costs, showing how low the fees were beforehand! Numerous themes are discussed (ethics, code of conduct, recruitment) but never pay scales! A meeting with the ministry was suggested in order to discuss fees. Moreover, fees are paid belatedly (in some cases, more than a year!).

In a working group, UNETICA presented a report with 90 proposals destined to the future French president. Well-known judges supported this report; they have themselves difficulties finding interpreters, because people do not want to work for ludicrous amounts. In order to have competent persons in the profession, we must be ready to pay them properly!

Nicolas U agreed, at the beginning he worked for 18,49 Euros per hour. Now better fees have been agreed: 42 Euros for the first hour, 30 Euros for the subsequent ones, plus extras.

Sylvia Kalina asked whether the same rates apply for court and police interpreting.

Nicolas U: the same rates apply, regardless of police or court premises.



Sylvia Kalina: on the procedure, when working in police interviews, the interpreter might take notes; does s/he then have to hand them over to the police officer, or destroy them?

Nicolas U: most interpreters take notes and are not required to destroy them.

Mariana Cojan-Negulescu: notes are not allowed for security reasons, for the interpreter's own protection! The interpreter who has taken notes stands to be exposed, and the information to be passed on. Interpreters must therefore turn to simultaneous interpreting, also because consecutive slows the proceedings down. If notes have been taken, the judge will probably not directly ask the interpreter to destroy them, however it is his/her duty!

Nicolas U: notes can be taken, for instance when the defendant uses a dialect, Mr U writes a transcript, and destroys the notes once finished.

Mariana Cojan-Negulescu bemoaned the fact that no written ethics are available yet for the interpreters, which would allow better definition of what is allowed and what is not.

Thierry Depraetere: the police work with the interpreters on the basis of mutual trust, without connivance. In cases of drug trafficking for instance, huge amounts of money are involved; the interpreter is potentially a vulnerable link in the chain as s/he could give information and might be subject to threats.

Mariana Cojan-Negulescu underlined the importance of calling persons who are professional interpreters. She also asked what sanction applies if connivance develops.

Ursula Böser (to Cojan-Negulescu): you say note taking is not allowed, as consecutive is perceived to slow down the process. Are other reasons put forward for not allowing notes, since this will have an impact on the quality of the interpretation provided?

Mariana Cojan-Negulescu: in Cour d'Assises, everything is oral, and if consecutive interpreting were to be used, proceedings would take too much time. Interpreters must therefore be able to provide whispering interpreting; they must also have a good memory (the sentences used by the judge can be long and complicated) and be psychologically prepared.

Nicolas U: the interpreters on the official register have had their criminal records checked. However, this does not completely rule out the problem referred to earlier: the interpreter must remain neutral. Mr U was once part of a search of premises, the suspect approached him and asked him not to translate the Chinese documents; as a professional, he put an end to the discussions and informed the head of the operation, but other colleagues could have reacted differently, on the list or not.



Teresa Intrieri: ethics exist, in order to become a member of SFT, you must sign up to an ethical code. CNCEJ (Conseil National des Compagnies d'Experts Judiciaires) encompasses all French entities that require interpreters or translators, and has a code of conduct.

Maria Lebret-Sanchez: UNETICA also has a code of conduct.

Christiane Driesen: a code of ethics, defined by the profession, is different to a code of conduct or code of good practices, which members of EULITA sign up to.

Sarah Bordes: sanctions were mentioned. From a legal point of view, is there a difference between an incident due to the interpretation provided by an interpreter registered on the official list and someone who is not.

Maria Lebret-Sanchez mentioned decree 23 of December 2004 that defines sanctions for experts.

Mariana Cojan-Negulescu: if the fault is serious, the matter will be brought to a criminal court. For minor faults (poor interpretation, behaviour, suspicion of connivance), the *expert* can be exposed to certain consequences, such as being written off the list.

Teresa Intrieri: in application of the decree mentioned earlier, there is a two to three years trial period to ensure the applicant respects confidentiality. If a green light is given, the person will be on the lists for five years. Of course, this does not apply to persons who are not on the lists.

Christiane Driesen thanked all participants and proposed a coffee break.

### **Coffee Break**

Sarah Bordes introduced Fabienne Schaller and gave her the floor.

### **Presentation by Fabienne Schaller (Ministry of Justice, in charge of negotiating and transposing international criminal standards): Presentation of the measures aiming at transposing Directive 2010/64.**

Mrs Schaller spoke on behalf of the Ministry of Justice, where there is a lot of effervescence at the moment with the transposition of directive 2010/64 that enshrines the entitlement to translation and interpretation during criminal proceedings.



2010/64 was the first directive adopted by the Council and the European Parliament in accordance with the ordinary legislative procedure of the Lisbon Treaty. The directive was adopted with a qualified majority, in conformity with the co-decision process.

The European Commission will be monitoring the transposition process in the member states.

The transposition of this directive creates new rights, which can be invoked if France does not respect the deadline for transposition (October 2013). Due to the parliamentary agenda, delays in transpositions have been accumulating. Decrees will follow the adoption of the bill. The directive will probably be transposed through a regulatory procedure.

Firstly, a bill, voted by the French parliament, will ensure France complies with the new directive.

Secondly, decrees to accompany the law will be adopted. Mrs Schaller spoke about the need to create working groups within the Ministry of Justice, and will make sure interpreters' and translators' associations will be invited to take part to the meetings on the implementing decrees.

### **Guidelines of the new directive:**

Entitlement to translation and interpretation

At the moment, France does not comply. The French "Code de procédure pénale" does not include mandatory and systematic translation of documents in criminal proceedings. Translation is mandatory only if a judge issues a ruling to that effect.

The law must be modified, but another significant aspect for the Ministry is to budget the transposition. The Ministry of Finance will be involved, and will make sure that the parliamentarians are aware of the costs. For instance, if a five-volume file must be translated, the costs will be significant; the transposition will have a real financial impact.

Financial projections are required. However the Ministry of justice is struggling to provide a proper evaluation of the transposition's budgetary impact.

The law will enshrine entitlement to translation or interpretation, in accordance with the directive: "member states shall ensure that suspected or accused persons who do not speak or understand the language of the criminal proceedings are provided, without delay, with interpretation during criminal proceedings before investigative and judicial authorities,



including during police questioning, all court hearings and any necessary interim hearings”, in order to safeguard the fairness of the proceedings. The service must be provided free of charge to the suspect!

The directive raises new questions: budgetary, but also, how to determine whether or not someone understands the language? What does “without delay” mean? What documents are considered “essential”?

The four questions above will be subject to debate. The first bill will not provide real answers; the answers will come later, through decrees and other decisions in order to safeguard the fairness of the proceedings, inspired by the European Convention for Human Rights.

The entire scope of the directive must be covered (“reasonable delay”, “without delay”; “suspect”, “accused or suspected person”)

Also, all types of hearings under criminal law must be covered.

Interpretation must be provided free of charge. But when does this apply? If the suspect wishes a private encounter with his/her lawyer, the right to interpretation according to the directive does apply. It also applies if the encounter aims at preparing the defence. The right to free interpretation outside the courtrooms or police stations must be defined, perhaps only limited to the preparation of the defence? Or a flat fee could be applied, at the expense of the interpreter!

The transposition touches the public finances. Rough debates are to be awaited in Parliament! How can we limit the right to interpretation without violating the defendant’s rights (since the absence of an interpreter, according to the ECHR, is a violation of the defendant’s rights!)? The Ministry of Justice will arbitrate upon this but the prime minister will have to make the final decision, after consultation of the Ministry of Finance for the financial aspect.

The Interior Ministry will have to manage the presence of interpreters during hearings. Some material contingencies are to be resolved; the French Prime Minister will have to arbitrate.

The project as outlined today has a very large scope: we must limit it, taking into account the various constraints, without any prejudice to the entitlement to interpretation and translation.

An exchange on best practices in Europe would be appreciable.



A procedure to determine whether or not someone speaks or understands the language and therefore needs interpretation or not must be developed. At the moment, nothing is provided for checking whether the person speaks French or not. The directive provides for the right to lodge an appeal against a decision concluding that interpretation was not necessary. The principal of a right to lodge an appeal is mentioned, and will be applied through decree. At the moment the law is very vague, it enshrines the right to lodge an appeal but concrete modalities must still be determined.

The point mentioned above could potentially generate numerous legal arguments, but we do not have yet enough information on the difficulties possibly arising from the transposition.

What criteria are to be used to determine whether or not someone speaks or understands French? Some French-speaking persons are difficult to understand (accent, dialect). Someone might speak perfect French but with an accent, a judge might therefore ask for an interpreter and can find himself in a delicate situation. Also, what does “speaking or understanding the language” mean? Normal language or judicial language?

The questions raised must be worked out! Should the person pass a test (forms, questionnaires, multiple choice questions)? For rare languages, might not approximate French be more efficient than a non-qualified interpreter?

Another issue is the quality of the interpretation services, which raises various questions: training, register, improved list, etc. This aspect is easy to write into the law but difficult to implement. How can we guarantee a good, concise and precise enough interpreter, which is a prerequisite for equity and a fair trial?

The directive underlines that interpretation must be of sufficient quality to preserve the rights of the defendant. Provisions are made to replace the interpreter. Another interpreter can therefore be engaged if the first one does not provide sufficient quality. What is considered as sufficient quality?

In the second subparagraph, a party is entitled to make a request, then the judge gives his ruling (under article 137); there is a risk of seeing appeals against appeals and so on. The Conseil d’Etat might not approve it.

No provisions are made yet as to the replacement of the interpreter in police settings. What happens if the quality of the interpretation is challenged? Will a judge have to rule? In that case, will the interpreter himself be considered as a defendant?



To ensure quality of interpreting, in France, interpreters should have some form of status, qualification or training, be recognised. Do we work with one or several lists? One nationally? Or rather several local lists, regional or jurisdiction-based?

What are the criteria for quality interpreting? This will be stipulated by decree: it might be necessary to identify diploma, courses, certifications, and mutual recognition between countries? Also, the implementation of those criteria must not elbow out persons who have been practising for over 20 years without the right qualifications. Maybe we need a uniform system, Europe-wide.

On standard and quality: in emergencies, police and judges might have, on an exceptional basis, to call in someone who is not on the list but has the appropriate languages. Maybe quality will be substandard in case of emergency? Today in some tribunals, not enough interpreters are available and when someone is urgently needed, the authorities call the first available! Possibly, a legal recourse could be introduced, to call people even if they are not qualified when working on an urgent basis.

The regulatory framework will have to take into account the use of new information technology (conference call, videoconferencing): such new technologies can only be used if the physical presence of the defendant is not absolutely necessary to ensure a fair trial. Interpreters will have to adapt. In some cases remote interpreting could even be used.

The remuneration of the interpreters must be written down as provisions in the legal texts, since the State will be financing interpretation and therefore paying the interpreters. A flat rate applicable to all would probably be the best solution.

The budgetary side of the question is not for the Ministry of Justice to decide, but for the Ministry of Finance.

To conclude, Mrs Schaller reiterated that herself and the Ministry of Justice were available to present their projects to the profession, even if some are still confidential, and wish to work hand in hand with the interpreters on the necessary decrees.

Christiane Driesen thanked Fabienne Schaller. Mrs Sylvie Monjean-Decaudin was introduced and given the floor.





**Presentation by Sylvie Monjean-Decaudin (Associate Professor, Expert près la Cour d’Appel de Bordeaux): Building bridges between research and practice.**

The title of Mrs Monjean-Decaudin’s presentation is well worded! The translation is a bridge between two languages, two cultures and also between research and practice. What direction should be taken? Research towards practice or vice-versa? Or should it constantly be shuttling from one to another?

Mrs Monjean-Decaudin worked for 10 years in Spain as a legal translator; she also gave courses to students and lawyers. She then became a legal translator in Bordeaux and decided to go back to university to deepen her knowledge of legal translation. She obtained a two-fold PhD, on Spanish law and on French law.

How to link practice and research? The subject of Mrs Monjean-Decaudin’s thesis was to put into theory the role of the translator: what is his/her purpose, who is s/he translating for, what is the function of the translation? How does the judge perceive translation?

The judge plays a central role in translations provided during criminal proceedings. The judge will request the translation, use it and officially recognise it.

The magistrate might ask for documents to be translated during the investigation phase. The magistrate has two ways to task the translator (since the decree adopted on October 19<sup>th</sup>, 1984):

Through requisition: the judge can choose an interpreter on the official lists or another translator.

Through expertise order (“ordonnance d’expertise”): the judge must appoint a translator on the official list, and if not, provide grounds for his or her decision.

The judge can be the recipient of the translation: he issues an order to translate documents for his own use. The language of the translation determines its functions. A translation into French will be used by the judge or the judicial authorities. If the document is translated into a foreign language, it will be a tool for judicial cooperation, safeguarding the rights of the suspected or accused person. The language question can also enlighten the role of the translator: whom is s/he translating for?

The judge will also recognise or not the translation through official validation. The judge has the sovereign power to decide whether or not the translation is authoritative.



Translations can be more or less perfect. The case law contains numerous imperfect translations (mistakes, omissions, words or paragraphs that were not translated), on which the judges have based their rulings.

For instance, a ruling was issued on September the 2<sup>nd</sup> 1997, following a request for extradition from Italy; the translation was imperfect but the judge decided the translation was sufficient, as it did not hinder him in understanding the request and its reasons.

This also applies to execution orders.

Another example: a European arrest warrant was issued in March 2008 by the Court of Appeal in Pau, the exact place where the offence was committed had not been translated; the Court considered this omission did not hinder the execution of the European arrest warrant.

A bad or insufficient translation can be challenged, the judge will rule whether a new translation is needed or not.

The judge always has the last word on an imperfect translation.

The European directive 2010/64/EU is the first text to introduce the notion of quality of interpretation and translation. It is inspired by the European Convention on Human Rights and the case law of the ECHR. The directive also clearly underlines the difference between translation and interpretation. The entitlement to translation and interpretation becomes more visible and concrete with substantial rights and procedural rights.

Until now, the ECHR recognised only the right for the indictment to be translated; now all documents must be translated: measures depriving an individual of his/her liberties, accusations, indictment, judge's ruling.

European arrest warrants used to be issued in the language of the country requesting the extradition; now the warrant will also have to be translated into the language of the person subject to proceedings for the execution of such a warrant.

The new directive contains a few dangers, restrictions:

“Translate only relevant paragraphs”: who will decide? Can an incomplete translation still safeguard the rights of the defendant? One is innocent until proven guilty: the understanding of the proceedings must be fully guaranteed.



An oral summary of the documents is acceptable. This would be a significant responsibility for the interpreter or translator! Will interpreters and translators be told by the judicial authorities what they have to translate, be given a written summary they must translate? Fundamental rights of the defendant must always be guaranteed!

If a defendant was refused the right to translation or interpretation, s/he will have the possibility to lodge an appeal. An appeal can also be lodged if the quality of translation or interpretation is considered not sufficient.

Details must be provided; the directive mentions quality without defining it! Also, the quality of the interpretation or translation is not the same as the quality of the interpreter or translator! The directive refers to the quality of the work, not of the expert.

The judge will validate the quality: a link must be created between the judges and the interpreters and translators to improve their training. However, the persons who ask and use the translations (magistrates, judges, clerks, police officers, etc.) must be made aware of the difficulty of legal translating or interpreting. Legal translation is extremely complicated, it requires a comparative analysis of different countries' laws: the translator must investigate, study comparative law. Various parameters play a role in the quality of interpretation: training, knowledge but also time allowed to execute the translation!

Mrs Monjean-Decaudin wishes to create a centre for judicial translation studies, in order to work hand in hand, in a pluri-disciplinary way, and be able to study comparative law and translation thereof. How is legal language and legal thinking translated? Is there a method? Are tools available? Access to an approved terminology base would be very helpful for interpreters and translators. Translation is not automatic and experts must be provided with the right tools in order to execute properly their work.

Sylvie Monjean-Decaudin concluded by saying that the new directive aims at protecting every person's basic rights, but interpreters and translators also wish to be able to take pride in their work.

Christiane Driesen thanked the speakers and launched the debate. The discussion covered the following points:

Maria Lebret-Sanchez: UNETICA has drafted a proposal on regulations for quality standards and the recognition of professional experience: the document might answer some of the questions raised during the afternoon and will be sent to all participants.



Teresa Intrieri: In April this year, Italy charged AITI (Associazione Italiana Traduttori e Interpreti) to define who is entitled to call themselves interpreters and/or translators. AITI must also define the languages and fields of expertise. Has the Italian State transferred the responsibility onto AITI? The situation must also be monitored in the different countries; numerous networks exist. On quality, if a self-declared expert does not provide sufficient quality, his work can be refused and a new expert called in; however this is only possible with experts on the list.

Maria Lebret-Sanchez: in accordance with article 60 of the code criminal proceedings, judges may call a person who is not on the list, the person is sworn in and becomes an expert for that particular hearing. There is a difference therefore between being on the list and ad hoc sworn in experts.

Sylvie Monjean-Decaudin: the function and the person must not be confused. When a judge orders an expert mission, he must provide grounds for calling a non-expert to perform it. However in 99% of cases, translations are requested through requisitions.

Maria Lebret-Sanchez: a requisition to translate can be sent to a person not on the list, the person is sworn in for those particular proceedings.

Sylvie Monjean-Decaudin: through requisition, the judge orders a translation, which becomes a sworn translation. The translator must be sworn in for this particular mission, but this does not make him an expert. On the contrary, an expert does not need to fill in an additional document (“I certify that this translation is in conformity with the original document”) when handing in his/her translation.

Christiane Driesen: other points have not been raised yet, especially the question of understanding or not the language. In the countries where ImPLI is active, centres for linguistics and interpretation cooperate with the justice to draft a scheme to define what understanding a language means. Numerous legal experts are not aware of what knowing another language really means; a pluri-disciplinary commission could be very useful to that effect.

Mariana Cojan-Negulescu: a suspect facing a judge will have, beforehand, been confronted with police officers. Police officers can telephone an interpreter and ask him/her to speak with the suspect and give an opinion on how well the suspect understands the language. Also, the rights of the suspect in preventive custody can be given by phone. In those cases, the interpreter must be on the official lists. As to the question of replacing an interpreter whose work lacks in quality, how to assess subjectivity? If the suspect is not willing to cooperate



and associates the interpreter with the judge, s/he might take a strong dislike to the interpreter and could therefore challenge the quality of his/her work!

Amalia Amato: if the work of an interpreter is challenged, another colleague can be called in to cross check the first interpreter.

Mariana Cojan-Negulescu: this will however double the costs!

Christiane Driesen: the first objective is to improve quality! In Germany for instance, if doubts emerge on the quality, a second interpreter will be called in to cross check. This might cause frictions between colleagues but needs to be done.

Ursula Böser: during the ImPLI roundtables, we constantly come back to the fact that legal discourse is a construction between all participants. The problem with police interpreting is that access to authentic data is limited. Interpreters struggle to actually understand the above-mentioned construction. When policies are designed, an access to authentic data is essential. What about Mrs Monjean-Decaudin's research, what data was used?

Sylvie Monjean-Decaudin: the data used included existing texts (EU, French national law, etc.), legal frameworks (what is framed by the law when it comes to interpretation and translation), and data on the Cour de Cassation and other courts. A great amount of literature is available (theoretical and practical). Legislation and reality are not always the same.

The purpose of the thesis was to study the entitlement to translation (in a given set of proceedings). When does the law require translation, for whom, why, what does the law stipulates? Theoretical underpinnings are necessary in order to understand how the law and the judges perceive translation. In France for instance, a judge will assimilate a literal translation to be faithful to the original document!

Nicolas U raised a question concerning translation and interpretation being mentioned in the draft bill, however only for accused or suspected persons, no mention of the victims is made.

Fabienne Schaller: the directive adopted for the victims is not finalised yet, the European council and the European parliament have come to an agreement, and the text will go to first reading. The directive will, hopefully, be issued soon.

Nicolas U: in judicial proceedings, the courts do not take into account interpreting for victims. An interpreter is not remunerated when interpreting for a victim, unless legal aid is provided to the latter. Also, on quality: the length of the assignment must be taken into



account; an interpreter might be working for nearly 20 hours in a row, how is quality to be appreciated? Last point, what is the situation when interpreters work with customs officers?

Fabienne Schaller: harmonisation is ongoing to also apply the criminal code to the customs.

Nicolas U: the procedures for border police for instance are very different...

Fabienne Schaller: this question must still be worked upon. For now, it is still under the criminal code, and the directive does not apply. The proceedings have to be criminal for the right to interpretation and translation to be applied.

**Christiane Driesen closed the debate and thanked all speakers and participants. Their input was valuable and light has been shed from different angles. The findings of ImPLI's work will be presented on Friday, the 7<sup>th</sup> of September 2012 in Paris (ISIT); hopefully all the contacts established will be sustained. Christiane Driesen invited all attendees to the September conference and invited them to an informal dinner.**