

IMPORTANCE OF INTERPRETER IN A TRIAL PROCESS INVOLVING ALLOGLOT MIGRANTS: COMPARATIVE STUDY

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Abstract

The study aims to analyze from a comparative perspective the impact of the interpreter in the court process with the participation of migrant alloglots, based on the Anglo-Saxon, continental and Moldovan judicial model.

The global changes caused by mass migration lead to a change in the structure of justice procedures, giving court interpreters a key status in the conduct of the legal proceedings. This emerges the need to analyze the relationship between interpreters and defendants on the one hand, and interpreters, lawyers and judges on the other. Therefore the issue of trust and reliability comes to the fore by establishing the intervention of court interpreters and the implications of their interventions for the defendant. However, as practice shows, their intervention is often propelled or hindered by tools, procedural or logistical of the legal system within the state.

In the US, more than 85% of people appearing before courts dealing with migration issues have limited English comprehension or writing skills. Too often, their ability to communicate is hampered by interpreters who fail to interpret crucial parts of court proceedings, lack basic interpreting skills, speak the wrong language or lack the necessary interpreting equipment. The result is that people lose their freedom, families, livelihoods and homes because of simple misunderstandings.

Translation plays a crucial role in today's globalized and interconnected world. This raises a number of fundamental questions: is it a matter that anyone can translate and, if so, to whom and how; is translation a formal profession and, if not, should it become one; if it is a formal profession or if it becomes one, should it be regulated and, if so, why and how. We therefore conclude that qualified translators must ensure the social interest, i.e. provide beneficiaries with protection against mistranslations.

Keywords: *interpreters, translation, professional status and migrants.*

JEL Classification: *[K37, K41]*

1. Introduction

The insights from legal sociology and linguistics prove the impact of language in immigration courts as the power asymmetries and legal outcomes shaped by the language. According to Angermeyer, interpretive practices and the linguistic ideologies that support them can "constrain the ability of non-English speakers to participate fully in court" and alter legal outcomes. In this study, lawyers reveal the profound impact that interpretation and technology have on deportation hearings, with critical implications for due process and case outcomes. Immigrants' abilities to communicate clearly and effectively are paramount to obtaining solace

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from deportation taking into account that an immigrant's voice is often the only evidence they can provide. Once deemed deportable, it is an immigrant's job to file a case for relief from deportation not the state's. Arguments for relief generally depend on judicial determinations of credibility whether or not immigrants are telling the truth and are a key aspect of courtroom communication.

While examining the outcomes of courtroom interpreting and technology on immigrant voices, as described by immigration attorneys representing clients facing deportation it leads to the fact that lawyers overwhelmingly characterize the court as procedurally unfair, highlighting how interpreting, conference calls, and video conferencing literally and figuratively silence immigrants. The findings have important policy implications, particularly as remote hearings continue to proliferate in light of the COVID-19 pandemic. Improving interpreting practices and technology is critical to ensuring immigrants' access to justice in immigration court. In the past year, more than 300 interpreter bookings have been made for cases in federal court and federal circuit court. In the administrative arena, 85% of hearings in the Refugee Review Tribunal, for example, involved an interpreter, and 57% in the Migration Review Tribunal, which together equates to over 11,000 hearings involving interpreters in 98 languages.

The majority of federal court cases where the services of an interpreter were used covered migration matters in which litigants appeared in person without legal representation. Also from the perspective of these litigants, these were proceedings in a foreign court in a foreign country experienced through an interpreter. The impression of justice in our courts that such litigants will take with them will largely be affected by the respect with which they are treated and how well they understand the procedure and are understood. The same can be said of their impressions of administrative justice before the courts and in each of these aspects, the interpreter plays a vital role. The interpreter also plays a great role in ensuring that justice is done. It is a cornerstone of the Australian justice system that everyone who comes before the courts is entitled to a fair trial before a decision-maker who is and is perceived to be independent and impartial. These principles of fairness and equality before the law are fundamental to a democratic society governed by the rule of law, and respect for them is essential to maintaining public confidence in the justice system. For those who do not know the language of our courts and tribunals, or have limited knowledge of it, interpreters make their participation possible and play a key role in ensuring that justice is done and can be seen to be done. So, for example, in case an individual appearing unrepresented at the Federal Court cannot afford an interpreter, the Court provides one free of charge on request. The queries this paper focuses on are how a court or tribunal weighs when the person needs an interpreter, what is the standard of interpretation required by law and, in the case of an administrative decision, when failure to meet that standard will lead to an invalid decision.

2. Anglo-saxon system

The significance of English language proficiency in the UK goes beyond a simple matter of communication. It is linked to nationalism, ethnicity and perceptions of belonging and acquires specific connotations in the context of globalisation and migration. Although, historically, the language has been a recurring feature and closely linked to the formation of the British state and the expansion of the British Empire. Struggles for official recognition and the survival of Welsh, Irish and Scottish Gaelic remained an important part of nationalist political movements to express and claim political and cultural Independence from England. Language is increasingly part of English and British national identity. In a 2007 Mori poll, 60 per cent of respondents considered language as the main attribute of 'being English', and 95 per cent of respondents in a 2013 poll considered being able to Speak English important to being 'truly British'. Proficiency in the majority language has become a central requirement for naturalisation, for eligibility on certain Migration Routes,[9] for accessing unemployment benefits and for certain public sector employment. In the course of public discourse, speaking English is often seen as essential for integration and social cohesion and an expression of the commitment of potential citizens.

Becoming full members of the British Society and British values, in the green paper "The Path to Citizenship", the British Government proposed a major overhaul of the citizenship rules, including extending the English language requirement to the applications for permanent settlement. Learning English, along with obeying the law, paying taxes and integrating into the "British way of life" are being distributed as basic preconditions for "earning" British citizenship. As evidence of linguistic nationalism, the renaissance of the most language as a crucial aspect of national identity and belonging over the past two decades has been reinforced by concerns about social segmentation along ethnic and cultural lines as a result of recent migration flows. In this context, monolingualism is portrayed as a unifying force in forging a collective identity. However, attaching such a status to majority the language reinforces hierarchies between languages spoken in a particular society and among their speakers and rationalises linguistic discrimination. As May has explained, the status and value attributed to majority and minority languages are the product of "the differential power relations that underlie the representation of the language and culture of the dominant ethnic or majority ethnic group as that of the civic culture of the nation-state". The symbolic status attached to English globally and within particular societies such as the United Kingdom or United States are linked to historical factors most importantly, colonialism and Imperialism and reflect the geopolitical dominance of English-speaking nation-states and the sociopolitical dominance of English speakers vis-a-vis linguistic minorities within these societies. The hegemony of English in political, economic, and educational structures - "linguistic

imperialism" - in turn perpetuates inequalities in access to power between English and non-English speakers within societies and on a global scale. [6]

In the UK, the most reported languages spoken other than English are Polish, Panjabi, Urdu, Bengali and Gujarati. Since English speakers are commonly identified as migrants, either foreign-born or citizens of foreign origin, language proficiency is a proxy for race and national origin. Language difference, along with class, race, gender and national origin, is an important dimension of current social hierarchies and inequalities. In this context, the inability to speak the dominant language becomes a tangible marker of difference, a stigma attached to the minority language speaker. For court staff and practitioners, language proficiency is a proxy for national origin and during fieldwork, judges, probation officers, defense attorneys, and prose writers pointed to the presence of interpreters as one of the strongest indications that a case involves a foreign national. One magistrate quoted: "Very often it is quite obvious when the person comes before us and they are asked to identify themselves that they are obviously not English." Another magistrate acknowledged however that this assumption can be misleading: 'they have expanding communities, communities in one language and because they have so naturally ... their own language within that community, they may not bother to learn English and that can create a false impression in some ways that you have more foreign nationals than you actually have'. [12]

Meanwhile, not all court participants who ask for an interpreter are foreign nationals. Thus, paying attention to the difference in language and experience of non-English native speakers in courts and beyond can shed light on continuities in the treatment of racialized groups both recent arrivals and more established minority groups and remind us about the socially constructed nature of citizenship status. Detecting to the oppressive nature of hierarchies and the perceived subordinate status of native-born defendants, some defendants attempt to hide their accent or language difficulties. In their studies of police custody in various European countries, Blackstock and his colleagues noted that some suspects were prevented from asserting their knowledge of the local language. [2, pp. 132-136]

In Scotland, for instance, a lawyer mentioned that sometimes detainees "may be indignant at the suggestion that they cannot converse or sub stand English" and refuse to be assisted by an interpreter. In one of the cases they marked, the defendant - a man accused of assaulting a police officer - brought up that he was offended by the plaintiff's reference to the "strong foreigner" accent. "It was very annoying," he protested. "The court might notice my accent, but it's annoying to say that. Even though the appointment of an interpreter to assist defendants in court proceedings are designed primarily as the defendants' individual right, some of them consider it a grievance, a reminder of their outsider status.

Partial interpretation hinders migrant respondents' ability to understand proceedings according to the EOIR Interpreter's Manual, "the interpreter's duty is to interpret in a way that allows the respondent/claimant to understand the proceedings as if no language barrier existed." This policy seems to recognize that

failure to interpret significant parts of the proceedings may compromise the defendant's participation in the judicial process. However, many immigration courts routinely provide interpretation only for parts of their proceedings, leaving migrant respondents unable to understand the other parts. Specifically, interpretation is generally provided only for statements of non-English speaking respondents and witnesses and for questions or statements put to them directly by the court or lawyers. As a result, migrants may not be able to understand the testimony of English-speaking witnesses and exchanges between the immigration judge, Department of Homeland Security attorney and advocate. Many respondents who appear pro se and therefore cannot even rely on their lawyers to tell them what is going on, may leave the proceedings clueless as to what just happened, and may not be able to respond to testimony presented by other witnesses. New York Immigration Court observers have found that prosecutors' statements in court are usually not interpreted. One observer noted that one respondent "looked confused" as the judge and attorneys spoke to each other because "hardly anything" was interpreted during the exchange. [1]

In another, for example, the prosecutor started arguing his case even before the Russian interpreter joined the proceedings by phone. Observers in New York noted several cases where only the last sentence of a lengthy oral decision was interpreted for the respondent. In some cases, defence lawyers requested a more detailed interpretation of the proceedings. In at least one case involving observers, the request was denied. After the defence lawyer asked the interpreter to translate his exchange with the judge about the respondent's criminal history, the judge replied "as soon as we're set up" and continued in English. Failure to interpret the entire proceeding is a clear violation of the Executive Order warned that Title VI requires recipients of federal funding - and by the Executive Order itself - to "accept reasonable measures to ensure meaningful access to their programs and activities by migrant persons, a migrant person who cannot understand all statements made in an immigration proceeding about his or her future certainly does not have "meaningful access" to that proceeding. According to the National Association of Judiciary Interpreters and Translators, "everything said in open court must be interpreted," so that the defendant can "truly be present and actively participate in her defense." Similarly, he stated that the obligation to provide meaningful access requires "every effort . . . to ensure competent interpretation . . . during all hearings, trials, and motions at which the migrant person must and/or may be present." [14]

Inconsistent interpreter quality hinders migrant respondents' understanding of the proceedings, and the Prejudice Testimony Civil Rights Division has stated that "quality assurance is critical in protecting access for individuals who have limited English proficiency." Court interpreters must possess sufficient knowledge of the languages in which they will be working, familiarity with court protocols and ethics expectations, and the ability to effectively convey the meaning, style, and tone of the original source. For staff interpreters, the Civil Rights Division recommends "incorporating interpreter certification and evaluation exams into the

migrant plan." In situations where migrants face "serious consequences" such as as deportation not just any evaluation process will suffice; agencies must provide "the highest quality language services." Moreover, quality assurance can't stop at certification. The Civil Rights Division emphasized that "evaluation and monitoring are also key components to quality assurance." [10]

Unlike the federal district courts, it does not require that its court interpreters be certified by the Administrative Office of the U.S. Courts. Nor does it use the certification exam developed by the Consortium for Language Access in the Courts, which is used by most state court systems. Instead, Immigration Court Interpreters are vetted internally either by the Language Services Unit or through a proprietary process developed by Lionbridge Global Services, a private language contractor. Nor does Lionbridge appear to have made public any information regarding the content, reliability or validity of the screening processes used by the Language Services Unit or Lionbridge. This lack of public disclosure is contrary to the standards in place for the administration of competency assessment tests, including forensic interpreter aptitude assessment tests. Standards for educational and psychological testing, which are followed by other federal agencies, emphasize the importance of providing supporting documentation for testing. This allows members of the public and other test users to assess the quality of the test and properly interpret its results. The National Center for State Courts cautions that a court interpreter competency assessment test should "have been vetted by independent researchers or committees of professionals (including legal professionals, language specialists, professional interpreters, and testing experts) who have published studies describing their content, test administration procedures, and scoring practices in detail." [13]

In spite of the lack of publicly available data on the Lionbridge screening process, it did state that the Lionbridge court interpreter exam is the functional equivalent of the Consortium exam. At least two state court systems are not convinced. The New Jersey Office of Court Interpreting warns courts in that state that "the testing that Lionbridge conducts is not equivalent to endorsement testing by the New Jersey Administrative Office of the Courts, certification testing by the Consortium for State Court Interpreter Certification or certification testing by the Administrative Office of the United States Courts. There is no research establishing how close or far the Lionbridge test is from these established standards." Also, the Hawaii Courts consider those interpreters who have passed the Consortium exam to be certified, while "interpreters who pass a Lionbridge oral exam are recognized at a skill level below certification." Doubts about the adequacy of immigration court interpreter review are raised by ongoing reports that the quality of interpretation provided by immigration court interpreters is inconsistent. In some cases, it appears that interpreters may not have the necessary skills to meet the rigorous requirements of legal interpretation. Sometimes they can translate incorrectly. In other cases, they inject personal opinions or comments into the interpretation. Although summarizing, paraphrasing, and opinions on statements are prohibited by the Code of Professional

Responsibility for Interpreters, observers in New York have noted several instances of such behavior. One interpreter reportedly rendered "Yes" as "No, I don't want to appeal." The New York Student Law observed a particularly disturbing incident. [6]

Court observers also found that interpreter lateness and failure to appear were common and problematic. In one New York case, an interpreter returned from lunch 20 minutes late to the frustration of the judge, who had already arranged for a telephone interpreter to take over. Another observer in New York noted that the interpreter was in the hallway during the proceedings, making plans with another employee to go to the courtroom. Instead of calling her, the judge spoke to the respondent in very loud English. The interpreter then filled in the respondent after she had returned to the courtroom. A problem is that the Immigration Court does not have a clear standard for which mode of interpretation should be used in a given situation. Court interpreters usually express verbal communication between English and the target language either simultaneously or consecutively. Each mode is appropriate in some situations but not others. In federal courts, for example, interpreters are required by law to give witness testimony consecutively and all other testimony simultaneously. Immigration courts, by contrast, seem to provide interpreters with conflicting instructions on modes of interpretation.

Benchbook Judge, staff interpreters must transmit communications simultaneously. The Manual Interpreter, however, states that simultaneous interpretation "is used only in exceptional circumstances." This contradiction in policy is significant because consecutive and simultaneous interpretation are not interchangeable. The latter requires special equipment and training to be effective. Because the simultaneous interpreter speaks to the parties at the same time, the speech must be channeled directly to the individual migrants, usually through a headset. Without this hardware, simultaneous interpretation often becomes cacophonous and hard to understand. Observers in New York noted that the court did not have the necessary equipment for effective simultaneous interpretation. One observer noted that "[the immigration judge] was very noisy, so it may have been difficult to just focus on hearing the interpreter." In a different case, the respondent "kept looking back and forth from interpreter to judge" out of confusion as both were addressing her simultaneously. [4]

While it should be fully recognised the invaluable assistance that interpreters provide to non-English speaking litigants and the courts, there are shortcomings in the system that are not easily overcome. Although there are 112 accredited languages and various accreditation standards in those languages, over 300 languages are spoken in Australia, including indigenous languages. In addition, federal courts generally prefer interpreters accredited to the "professional interpreter" standard. However, interpreters are not always available at this level. Indeed, even to talk about 300 languages is to mask the complexity of the problem, given the prevalence of dialects in those broad descriptions of language. For native speakers of English, it can be difficult to appreciate the extent of differences

between dialects in other languages. When we think about the differences between Australian English and American or British English, we usually point to a few different words, but at the end of the day we know that a "jump" is the same as a "sweater" and that "fry" is a "chip". [4]

In many other languages, differences occur not only in certain words or accents, but also in grammatical structure and tense usage. For example, in Italian, while the distant past tense is used in standard written Italian to refer to events that have occurred historically, speakers of some dialects originating in southern Italy use it even when referring to events that may have just happened. In contrast, the use of the distant past tense in speech disappeared in many northern dialects hundreds of years ago. Such differences occur in other languages and dialects and it is not hard to imagine the impact that a misinterpretation of time can have, for example, on applicants describing when the relevant events took place. [11]

Normally, courts and tribunals will accept a request for an interpreter from a witness or litigant who has difficulty speaking English. In migration proceedings, whether before a court or tribunal, applicants are required to show whether they need an interpreter and the language and dialect in which the interpreter should be knowledgeable. But this requires self-assessment and it cannot be assumed that a person necessarily assesses their level of competence, especially in a specialised setting such as a court or tribunal. The seriousness of the difficulties that interpretation in a legal context can pose can be illustrated by those cases where the often-used phrase "execution of a warrant" has been interpreted as "execution" in the sense of carrying out a death sentence. Indeed, the specialised language of court proceedings indicates a need for education, and perhaps even separate accreditation, for interpreters who routinely interpret in this context.

Applicants and witnesses could accept that they were in need of an interpreter. This is, for example, a particular problem in some indigenous communities where there is a cultural tendency to agree to answers to questions from people in authority or to avoid upsetting the questioner. This problem has been prevalent enough that the Kimberley Interpreting Service, Western Australia's only indigenous language interpreting service, has developed guidelines for determining whether someone needs an interpreter. As well as asking the person if they understand, this involves, for example, stretching word traps to reveal potential areas of miscommunication. Solicitants from other cultural backgrounds may also be circumspect to admit that they need an interpreter for a variety of different reasons. In addition, in at least one somewhat unusual case, an interpreter was requested in a language the claimant did not even speak. In that case, despite requesting a Portuguese interpreter before the Refugee Review Tribunal, it quickly became apparent that the claimant did not speak Portuguese. Rather, it appeared that he had asked a Portuguese interpreter to effectively "corroborate" his claims in support of a protection visa as a citizen of Angola, where Portuguese is spoken. [11]

Cases like this, however, seem rare, and the risk that a person would attempt to rely improperly on an interpreter must be weighed against the serious injustice

and violation of fundamental human rights if a reasonable request for an interpreter is rejected. In this regard, it is important to bear in mind that proficiency in English in ordinary day-to-day interactions will not necessarily adequately prepare the individual to understand what is being said in the particular setting of a legal proceeding. It is not a question of whether a person can speak some English, but rather whether their English language skills are sufficient to enable them to understand the case against them and present their case or evidence to the court or tribunal.

3. Continental system

In the "Statistical Classification of Economic Activities in the European Community" (NACE) we find "Translation and interpretation" listed as a separate category alongside "Specialised design activities", "Photographic activities" and "Other professional, scientific and technical activities". This classification is taken up in some of the national lists (in Croatia, Poland, Portugal and the United Kingdom, for example) and should, in principle, apply throughout the European Union. The International Labour Organisation has an international standard Classification of Occupations in which translators and interpreters are classified in the major group "professionals", major sub-group "other professionals", minor group "social sciences and related professionals" as a unit group "philologists, translators and interpreters". This classification has been reported as being used in Austria. [3]

There are, however, reports of other classification systems used alongside international ones. In Portugal, for example, the National Statistics Office uses the Código de Actividades Económicas (Code of Economic Activities), which corresponds to NACE (European Classification of Economic Activities). At the same time, there is a Classificação Portuguesa das Profissões, where translators are in the group "Philologists, translators, interpreters and other linguists". The Spanish public administration includes translators and interpreters in the category "Técnico Superior de Gestión y Servicios Comunes" (Advanced Technician for Management and Common Services). Translators occasionally appear as a category in other types of lists. For example, in Norway, translators (together with authors) are mentioned in regulations describing different types of employment contracts. In the UK, we are told that "translator" appears in the drop-down menu when searching online for a home insurance quote. There are no reports of other major official classifications of translators, other than those used for tax and social insurance purposes, mentioned below. What is the specific legal status of educational qualifications when translators are recruited or employed? Here we are not concerned with the broader question of how much subjective value various people place on educational qualifications - our concern is whether such qualifications are strictly necessary. [9]

There is no country that that requires any academic qualification to work as a translator or indeed any kind of formal qualification required to use the term

"translator" or its equivalent generic terms. Almost anyone can be called a "translator". More technically, the general title "translator" is virtually unprotected. There are, however, a few exceptions. In Denmark, a distinction is made between the generic term *oversætter*, the traditional translator, and *translatør*, the authorised translator, which denotes a status that is indeed officially protected. Similar terms and distinctions are found in Norway and Sweden. A more generalized exception, without the use of two separate terms, is in field or authorized or authorized translation, where different countries have different ways of protecting who can translate. This aspect is explored in more details below.

It should be noted, however, that even in this subfield there is no complete title protection: the age of immigration has created a demand for many language combinations for which no training or certification is available, and in those particular combinations virtually anyone can translate them. A more agreed upon exception would seem to be Slovakia, where Appendix 2 of Act No. 455/1991 on the licensing of professions was amended in 2007 so that translation, interpreting and teaching became licensed professions. This means that in order to submit an invoice for a translation, the translator must be a qualified professional translator with a degree in either Translation and Interpreting or the languages concerned. There are, however, several ways of moving this and we would hesitate to argue that this constitutes full protection of a professional title. There have been other moves to protect the title "translator". In 2009, the Ordre des Traducteurs, terminologues et interprètes agréés du Québec made an attempt to ensure that only members of the Order could call themselves translators in Quebec. The move was not successful, but the existence of such an attempt is of interest in itself. Why should the Order, which was founded in 1940, has waited 59 years to seek protection? The timing would seem to point to recent discontent among professionals, possibly related to electronic translation aids and new ways of signaling status. [9]

Recruitment of translators by intergovernmental institutions despite the fact that there is no general protection of the title of translator, is there some kind of implicit protection operative in the way official institutions find and hire translators? To become a translator in the European Commission's Directorate-General for Translation, a candidate must be successful in an open competition that can last between five and nine months. Candidates must have two foreign languages and "a university degree, not necessarily in foreign languages". Candidates do not require a degree or diploma in translation. The lack of a degree or diploma in translation seems to be accepted practice for most intergovernmental organisations. A survey of IAMLADP Member Organisations in 2008-2009, with responses from the European Union Commission DGT, IAEA, ICC, ICRC, ILO, ITU, OECD, UN (ESCWA, UNHQ, UNOG and UNOV), World Bank, WIPO and WTO, reports as follows: findings on the criteria for admission to examinations and tests show a universal requirement for a Level I university degree, but not for a

specific translation qualification, which is required by relatively few organisations but seen by many as an asset.

Experience seems to be less of a requirement for larger organisations, where entry level admission depends on success in the exam, with experience being recognised in the grade or step awarded. All organisations test translation into and not from the mother tongue (or main language), and testing of accurate writing in an exam seems to be limited to the UN in this group of respondents. Most organisations test the ability to translate from at least two foreign languages and other expertise is occasionally an alternative to a second source language. In terms of academic qualifications, the only clear exception seems to be the OECD, for which "candidates are required to hold a first degree in any foreign language or other specialisation and a master's degree/diploma in translation". [11]

IAMLADP documents reveal that there is basis for trying to recruit translators from students in other fields (law, economics and international relations). According to Lafeber, "many heads of service believe, based on experience [with recruits who have passed demanding entrance exams], that people with degrees in subjects other than foreign languages often make better translators." However, "only students on master's courses in translation or interpreting get internships or work experience, which can be a passport into a job at many organizations." Surprisingly, the eligibility requirements for employment as a translator at the International Criminal Court (Interpretation and Translation Section of the Court and the Office of the Prosecutor, Language Services Unit) make no reference to the need to be a sworn, certified or otherwise authorized translator. [14]

Recruitment of translators by national governments. Not many national governments display special sine qua non requirements for hiring government translators, at least outside the various justice systems for which sworn or certified translators are required. In many cases, a university degree in translation is reported to be required, but further research suggests that this is not the case in a strictly legal sense. For example, the German government is reported to require a Diplom Übersetzer degree (and more recently a Master's degree in translation) as a minimum requirement, but this is a matter of standard practice, not of any law. Nevertheless, a Master's degree in translation is said to be required in Hungary, but there is doubt whether this requirement is always respected by the all ministries, and it is clear that the requirement is not respected for some of the smaller or exotic languages for which there are few translators available. In Spain, a detailed survey of 136 public administration translators shows that they work at many different administrative levels and with different access requirements, often a four or five-year university degree (Licenciatura), but not necessarily in translation. A notable exception is Greece, where there have been changes in this respect. Until recently, applications for translator posts in the public sector, published in the National Gazette, required candidates with a high school education diploma, i.e. an "Apolytirion" from a High School. Following legal action by members of the

Panhellenic Association of Professional Translators Graduates of the Ionian University (ΠΙΕΕΜΠΙΠΙ), recent calls for candidates with higher education (ΠΕ). This description includes 1) graduates of the School for Modern Languages, Translation and Interpreting, Ionian University of Corfu and 2) graduates of universities abroad who hold a university degree in translation recognised by the National Academic Recognition Information Centre (Elenic NARIC, ΔΟΑΤΑΠ). This is a case where an association attached to a particular translation school was able to ensure that a translation degree was required in order to work as a translator for the government. However, the Greek Armed Forces require a university degree in translation or foreign languages from candidates for permanent translation posts (Law 2913/2011, Presidential Decree 300/2002). [5]

Besides Greece, there were not identified any cases where government translators strictly require a university degree in translation. Moreover in Greece, the up-to-date situation seems to be the result of direct pressure from the Panhellenic Association of Professional Translators Graduates of the Ionian University, rather than a requirement enshrined in law.

Previous research on legal translators Directive 2010/64/EU aims to ensure access to quality translation and interpretation in criminal proceedings. Although, it has very little to say about who has good expertise to translate: 'In order to promote the adequacy of and efficient access to interpretation and translation, Member States shall endeavour to establish a register or registers of freelance translators and interpreters who are suitably qualified'. The Directive does not address any signal of what "suitably qualified" might mean, although it would seem to explain why some countries have paid attention to their translator lists. Information on translation and interpretation in justice systems can be found in the various research projects led by Professor Erik Hertog in Antwerp Reports on these projects are now available through EULITA (the European Association of Legal Interpreters and Translators), established in 2009. Within this framework, a major survey reported as Status Quaestionis was conducted in all EU countries except Luxembourg. It asked a wide range of questions about the use of translators and interpreters in criminal proceedings. Information came from 194 respondents, 18 of whom were from government sources. The report intriguingly shows the differences between responses from "government sources" and those from "professional sources" - official claims often do not correspond to lived realities, and professionals are sometimes unaware of official regulations and instruments. The report also gives scores to different countries for how well they are reported as performing on the many points involved. [12]

An overview of how these questions were answered is reproduced showing scores based on responses from professionals (government sources were missing for many countries in this case). The map essentially reveals the central body of countries scoring average or above average for how they regulate the legal translation profession, with a periphery of countries (Ireland, Portugal, Greece, but also Belgium) scoring below average. Here we outline case studies of how the

different signalling mechanisms also interact in Germany, Romania, Slovenia, the United Kingdom and Spain as external comparator countries USA, Canada and Australia. The case studies broadly address the following questions: - What is the relationship between academic training and professional certification with respect to the recruitment of translators? - What has been the historical development of these signalling mechanisms in the field of translator qualifications? The general language policy of each country is based on the main features of academic qualifications, professional associations and specific systems in place for sworn or certified translators. In each case, we offer some tentative conclusions about how academic and professional signals are working, especially in relation to the size of each potential market. [2]

The United States, Canada and Australia were selected as bases for comparison because all have benefited from a strong focus on accreditation and certification schemes in recent years. Germany is an important case study because of the specific weight of the German economy in Europe, its successful export orientation, its high levels of foreign language proficiency, the presence of immigrant languages and a well-established and generally successful system of translator training and association.

The official status of the German language (Hochdeutsch) is not only legal, but also deeply cultural. Deprived of a unified state until 1871, German culture was identified with language more than with institutions. Further, at least since Goethe and Schleiermacher, the development of the German language has been to happen through relations with other languages, especially through translation as a way of enriching the German language. The result was a very influential body of translation theory, based on substantial respect for the difference of foreign languages and a very dynamic translation culture. Training for translators The Contemporary Translator training system in Germany gained momentum immediately after the Second World War: university institutes in Heidelberg (actually since 1930), Germersheim (1947) and Saarbrücken (1948) now have a large number of translation students, and the system has grown to include at least 22 tertiary institutions in Germany offering a wide range of specialist bachelor's and master's programmes. It is estimated the number of students in these programmes totals about 6,850, 85 which could mean that about 1,000 graduates enter the market each year. [10]

The traditional model in this system is to train translators through a full first cycle and second cycle curriculum (i.e. what today is called Bachelor's plus Masters), as opposed to the second cycle model developed in France, for example. The system was designed to produce a fully trained translator (and/or interpreter), rather than a subject matter expert who can also translate. The German federal government has been interested in developing the institutes, apparently because of its role as an employer of graduates. In 1965 it expressed "detailed views on the entry qualifications, academic objectives and courses of university institutes". Since the early 1980s, this university system, from traditional centres in Heidelberg,

Germersheim and elsewhere, has produced a radical rethinking of the professional role of the translator and, consequently, of the training of translators. There was a shift there from philological studies to practical training. What became known as Skopos theory postulated that the translator's goal was not to produce an equivalent text, but to satisfy the client's communicative purpose. This paved the way for a more situational and industry-relevant way of training, although the new theories were for many years the subject of considerable academic debate. [9]

Germany translators' board has the following translators' associations, listed here in chronological order of their establishment: VdÜ: The Verband deutschsprachiger Übersetzer literarischer und wissenschaftlicher Werke (Association of Translators of Literary and Scientific Works) was founded in 1954. In 1974 it joined forces with the Verband deutscher Schriftsteller (VS) (Association of German Writers), so that its members also became members of the writers' association. In 2011, the VdÜ claimed to have "more than 1200 members". It provides its members with information, development courses, advice and legal assistance and sees its ongoing struggle as improving the financial position of translators in relation to publishers. BDÜ: Bundesverband der Dolmetscher und Übersetzer e.V. (Federation of Interpreters and Translators) was created in 1955 by merging two existing federations: the Deutsche Dolmetscherbund (DDB, 1952) in the south and the Bund Deutscher Dolmetscher-Verbände (BDDV, 1953) in the north. (Note that both of these earlier associations called their Dolmetscher identity, "interpreters" and that the BDÜ puts "Dolmetscher" first in its name.) The BDÜ is now an umbrella organization comprising 14 regional associations. An individual translator cannot be a general member of the BDÜ, only of a regional association.

On its website, BDÜ claims to speak for about 7. 000 translators and interpreters, including members of the Assoziierte Dolmetscher und Übersetzer in Norddeutschland (DÜ Nord), Fachverband der Berufsübersetzer und Berufsdolmetscher (ATICOM), Verband der allgemein beeidigten Verhandlungsdolmetscher und der öffentlich bestellten und beeidigten Urkundenübersetzer in Baden-Württemberg (VVU), Verein öffentlich bestellter und beeidigter Dolmetscher und Übersetzer Bayern (VbDÜ) and Verein beeidigter Dolmetscher und Übersetzer Leipzig e. V., Leipzig. It is a member of FIT (as indeed are some of the other associations with which it is allied) and of nationality organisations which share its interests. It is a registered lobbyist of the organising parliament. BDÜ publishes an important newsletter (MDÜ), regularly organises further training courses, offers legal advice and insurance and publishes books on various aspects of translation and interpreting. The regional associations also organise seminars and at local level have group meetings and networking. ADÜ Nord: Assoziierte Dolmetscher und Übersetzer in Norddeutschland (Associated Interpreters and Translators in Northern Germany) was founded in 1997 from the former regional associations in Hamburg and Schleswig-Holstein. [3]

He is affiliated to BDÜ, but is an independent member of FIT. It was reported to have 348 members in 2011 (FIT). Its services include continuing

education seminars and advice on financial planning, translation tools, legal tax issues and marketing. The ADÜ North website provides a breakdown of its membership in 2007: about 70 percent women; about 92 percent self-employed; mostly between 40 and 50 years old (only 2.7 percent are under 30). ATICOM: The Fachverband der Berufsübersetzer und Berufsdolmetscher (Union of Professional Translators and Interpreters) is affiliated to BDÜ but is an independent member of FIT. It is reported to have 180 members (POTRIVI). According to its website, it offers group insurance, legal assistance and discussion groups.

VÜD: The Verband der Übersetzer und Dolmetscher (Association of Translators and Interpreters) was founded in 1990 and is an independent member of FIT. In 2011, it was reported to have 150 members (FIT). It offers its members a newsletter, an intranet discussion forum, as well as job postings (surprisingly, not limited to the intranet) and a searchable database of translators and interpreters. QSD: Qualitätssprachendienste Deutschlands is an association of translation companies, founded in 1998. A member of the EUATC, in 2011 had about 24 member companies. One of its main initiatives is to offer internships for graduates of translation and interpreting programmes. There are also the various regional associations that are brought together within BDÜ. The overall situation is one where the main federation, BDÜ, claims to speak for 7,000 members and thus has a strong voice. At the same time, a number of regional and more specialised associations, each with less than 600 members, are likely to be able to promote more active involvement on the part of their members and offer more specialised services.

Between these two levels we find VdÜ, which focuses on literary translation and is affiliated to the German Writers' Association. The major associations were founded in the 1950s; others date back to the 1990s. If we can judge by the membership profile of ADÜ Nord, membership is mostly over 40 and can constitute a body of established professionals. This might explain why we find initiatives to create younger, more interactive associations such as the Deutscher Verband der Übersetzer und Dolmetscher (DVÜD), "eight translators and a lawyer", founded in 2011 and visibly in tune with virtual technologies. [13]

The situation in Germany seems superficially certain: the training institutions are solid; the associations operate at two different levels, allowing them both strong representation and local interaction; translation companies are interested in professional training; and if one puts the various regimes for sworn translators into mobility and remuneration issues, the main translators' associations are still large enough to raise a collective voice in protest. One might however doubt the extent to which these various features represent a single phenomenon. Training programmes in major languages, such as the association of translation firms, seem geared towards using translation for export and for European relations, while many of the needs in the courts and for sworn translators in general concern immigrant languages in which professionals are not always trained. At the same time, most established associations have generally adapted poorly to new media

communications, and younger translators may be looking for new ways to build status.

Attention should also be paid to the number of specialists involved. According to Parker's (2008) very abstract calculation, the potential translation market in Germany is 4.27% of the world total, which could represent about 14,219 professional translators and interpreters. If BDÜ speaks for about 7,000 professionals and 1,200 from VdÜ are added, there are estimated about 8,200 actual professionals who are members of associations. This would mean that about 57.6 percent of all professionals are members of associations, which is a very healthy situation. At the same time, academic training institutions would seem to produce about 1,000 new translation graduates each year, in a market that would not appear to be growing at a similar rate. This is partly confirmed by an internal BDÜ survey conducted in 2010, where 39% of BDÜ members, most of whom are self-employed, report an annual turnover of less than €17,500, and 42% say their workload was below capacity in 2009. The majority of the latter group had less than five years in the profession. Indeed, BDÜ estimates that there are around 40,000 translators and interpreters in Germany, the overwhelming majority of whom are self-employed and many of whom would appear to be underemployed or employed in translation on a part-time basis. [3]

There are 21,516 persons registered in the German register of sworn translators and interpreters, a number which is considerably higher than our estimate of 14,219 as the potential number of professional translators and interpreters. One can only assume that many of the sworn translators and interpreters are also engaged in other professional activities. According to an informant who spoke in 2003, "Germany boasts about 10,000 sworn translators and interpreters. That is 10 times more than is needed" (Zänker, cit. Stejskal 2003a: 17). Status symbols do not have to correspond to substantial livelihoods for all.

4. The case of the Republic of Moldova

The Law 264 regulates the status, authorization and organization of the activity of interpreters and translators involved in the activity of the Superior Council of Magistracy, the Ministry of Justice, prosecutorial bodies, criminal prosecution bodies, courts, notaries, lawyers and bailiffs. In cases where there are no authorized interpreters and/or translators from/into the languages for which interpretation and/or translation is requested or authorized interpreters and/or translators cannot be contracted to perform interpretation and/or translation, the bodies indicated in paragraph (1) may use persons who know the languages from/into which interpretation and/or translation is to be provided but who are not authorised.

The right to work as an interpreter and/or translator for the bodies referred to in Article 1 paragraph (1) is held by the person who: holds an authorization issued

under the terms of this law. The person who meets the following conditions may obtain the authorization:

a) has a bachelor's or master's degree or an equivalent document proving the specialization in the language or languages for which he/she applies for authorization or has a bachelor's or master's degree or an equivalent document in law proving teaching skills in the foreign language for which he/she applies for authorization;

b) has at least two years' professional experience in the field;

c) has knowledge of the spoken and written State language;

e) has no criminal record.

f) has passed the attestation examination.

The interpreter and/or translator is obliged to preserve the confidentiality of information which has come to his/her knowledge in connection with the performance of his/her professional duties, even after his/her employment has ended. The interpreter and/or translator shall not be bound by this obligation in cases where the law or the persons concerned release him/her from this obligation. The interpreter and/or translator shall not be bound by the obligation of confidentiality and shall be obliged to report to the competent authorities if the information which has come to his knowledge in connection with the performance of his professional duties relates to a criminal offence. [7]

The Ministry of Justice is responsible for issuing and withdrawing the interpreter's and/or translator's licence, suspending and terminating the interpreter's and/or translator's activity. The procedure for issuing, suspending and withdrawing the interpreter's and/or translator's authorization, the requirements for their continuous training shall be laid down in a regulation approved by the Government. According to the Law on the Regime of Foreigners in the Republic of Moldova, if the applicant does not speak the state language, he/she shall be provided with an interpreter who speaks his/her mother tongue or another language understood by him/her. to provide him/her with an interpreter free of charge for the whole period of examination of the application; the interview note will be signed by the applicant, by the official who conducted the interview, and in case of the presence of an interpreter, also by the interpreter; in case of an unaccompanied minor, the interview note will be signed also by his/her designated representative, and in case of a person for whom a legal guardianship measure is in place - by his/her temporary guardian, curator or, where applicable, guardian. [8]

5. Conclusion

Language is an issue that barely appears in the criminal justice literature. Despite its central importance in the legal process, the linguistic aspects of its interactions have been largely ignored. In general, criminal justice scholars have taken for granted the existence of the monolingual court.

However, as this article shows, multilingualism is increasingly an important feature of contemporary courts and the justice system more generally. In the context of highly diverse court demographics, language proficiency intertwined with race and national origin has become an important marker of difference within the courtroom. Language difference and the need for an interpreter is the most tangible indicator of a defendant's outsider status. Relying on an interpreter is conceived primarily as an individual right of non-English speaking defendants and is intended to place them on an equal footing with their English-speaking counterparts. However, as we have argued, reliance on an interpreter in the courtroom can sometimes exacerbate the distinction and reinforce the subordinate status of non-English speakers in court proceedings. Interpreters are reluctantly (and often poorly) accommodated in the courtroom. Their perception as 'necessary evils' reflects wider institutional arrangements around language services and politics outside the courtroom. An example of how the logic of austerity and managerialism work in concert with a lack of concern for the unpopular with minorities, new contractual arrangements in language service provision have exacerbated long-standing problems of disadvantage for non-English speakers.

The presence of interpreters draws attention to the deficient implementation of fundamental fair trial rights, particularly in relation to non-native defendants. If the criminal process is to be conceived as a communicative process, whereby people are called to account for their alleged wrongdoing and are therefore addressed as responsible agents rather than objects of investigation, such a model is drastically challenged when it comes to non-English speaking participants. Rather than facilitating their effective participation, the presence of interpreters sometimes hinders it and makes the communication effort more difficult. The services provided by interpreters are integral to the ability of courts and tribunals every day to deliver justice. One of the important aspects of this conference is to draw attention to the significance of that role and to discuss ways in which interpreters and courts can work better together.

The courts continue this important conversation through initiatives such as the Judicial Council for Cultural Diversity (JCCD). Only through continued collaboration between courts, interpreters and bodies such as the JCCD and the Australian Institute of Court Administration in seeking solutions to issues such as those raised here, can we provide a judicial and administrative system that truly gives people from culturally and linguistically diverse backgrounds the procedural fairness to which they are entitled.

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