



ImPLI

Improving

Police and legal Interpreting

2011-2012

Final Report



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EULITA Code of Professional Ethics

Minutes of Roundtables



Project Presentation and Remit of ImPLI

Improving Police and Legal Interpreting

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

The aims of the Criminal Justice programme, adopted by COUNCIL DECISION 2007/126/JHA on 12 February 2007, include promoting judicial cooperation based on mutual recognition and mutual confidence, promoting the compatibility in rules applicable in the Member States as may be necessary to improve judicial cooperation, improving contacts, exchange of information, best practices and mutual trust.

On 30 November 2009, the Council adopted a resolution on a Roadmap for strengthening the procedural rights of suspected or accused persons in criminal proceedings (OJ C 295, 4.12.2009, p. 1).

Concerning the right to interpreting and translation of suspected persons, a specific directive was adopted: DIRECTIVE 2010/64/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 October 2010 on the right to interpretation and translation in criminal proceedings.

Against this backdrop, the Commission has established a specific Programme which provides financial support for activities aimed at promoting judicial cooperation in criminal matters. This programme is designed to reduce the legal obstacles to more harmonious forms of judicial cooperation by better coordinating investigations and making the existing judicial systems of E.U. Member States more compatible.

Within the framework of that specific programme the Commission launched the Call for Proposals for Action Grants JLS/2010/JPEN/AG, intended to co-finance national and transnational projects, on the basis of the 2010 Annual Work Programme, adopted on 15 January 2010.

The IMPLI project falls within the priority indicated in the Call for Proposals under heading 3.2 (Supporting, or improving the implementation of adopted EU instruments), and more specifically 3.2.2 (Improving mutual knowledge and exchanging best practice), where it comes under section d (Translation and interpretation in criminal proceedings).

Its objectives are to map out the situation in 6 European member states (Belgium, Czech Republic, France, Germany, Italy, UK) and develop synergies between judicial professionals and interpreter trainers so as to define best practices in interpreter-mediated interviews of suspects, victims, witnesses and experts with the following priorities:

- Understanding Police (Customs) & Prosecution interviewing techniques (suspects, victims, witnesses and/or experts)
- Adapting interpreters' training, with a special emphasis on ethics
- Improving cooperation and understanding between police trainers and interpreter trainers

The following priorities and target groups were selected for the project:

A. PRIORITY COVERED BY THE PROJECT

Priority 1: Implementation of adopted EU Instruments

Priority 2: Judicial training

Priority 3: Supporting victims of crime

Priority 4: Interconnection of criminal records

B. TARGET GROUP COVERED BY THE PROJECT

Target Group 1: Citizens of the EU

Target Group 2: Prosecutors

Target Group 3: Police and court interpreters

Target Group 4: Academic & scientific staff

Target Group 5: Judges

Target Group 6: Other legal professionals

With the aim to contribute to the implementation of **DIRECTIVE 2010/64/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 October 2010 on the right to interpretation and translation in criminal proceedings, especially articles 2 and 6**, the ImPLI project has a twofold objective:

- To provide interpreter training institutes with a better understanding of the interviewing techniques developed by the police, customs and prosecution services and thus enhance their training methods,
- to inform police and prosecution services about interpreting techniques and how these techniques can assist them in their work when properly implemented.

The ImPLI partners have chosen to focus on the very first stage of criminal proceedings as it has a decisive impact on all the following ones. They believe that a comparative study of practices in their six countries, as illustrated by six films, will contribute to a better understanding of the strategies of the various parties involved and help improve the quality of interpreters' and interviewing officers' training. Based on of ImPLI's conclusions, joint-training modules should be designed and tested in a future project.

The format of this project consisted of round tables held in each partner's country. Experts representing the police and judicial authorities, professional interpreters and interpreter's trainers were respectively invited to give an introduction to the pre-trial work with interpreters. To facilitate the preparation, each ImPLI partner in command of organising the round table drafted a fact sheet on the specificities of the country. The presentation of the situation of pre-trial interpretation in each of the six member states was followed by a discussion for an in-depth understanding of subtleties.

In parallel, the ImPLI partners produced films to better illustrate the diverse situations in their respective countries.

The results of these round tables summarised in this final report and the films should give trainers in both areas (prosecution and police services on the one hand and interpreter trainers on the other hand) the opportunity to become familiar with each other's needs and adapt and/or develop specific curricula.

The final results will be presented at a major conference to be held in Paris. Guest speakers, partners, representatives of the legal profession and of other professional associations and members of the press will be invited. The films will be presented in the context of a report to be published electronically and accessible online, a starting point for new synergies among the various professions as well as for further research projects.



I Thematic Section



1. Police Interpreting and Criminal Proceedings

DIRECTIVE 2010/64/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 October 2010 on the right to interpretation and translation in criminal proceedings

Article 1 Subject matter and scope

1. This Directive lays down rules concerning the right to interpretation and translation in criminal proceedings and proceedings for the execution of a European arrest warrant.

2. The right referred to in paragraph 1 shall apply to persons from the time that they are made aware by the competent authorities of a Member State, by official notification or otherwise, that they are suspected or accused of having committed a criminal offence until the conclusion of the proceedings, which is understood to mean the final determination of the question whether they have committed the offence, including, where applicable, sentencing and the resolution of any appeal.

The right to interpreting: from pre-trial to trial

All the countries represented in the ImPLI project are parties to the European Convention on Human Rights, and make reference to the text of the Convention as one of the legal sources of the right to interpreting in legal proceedings, specifically to Arts. 5 and 6. There are also national legal rules pertaining to the implementation of this right in each country.

In Belgium/Flanders the legal basis for the right to interpreting during investigations can be found in the Language Law of 1935 under article 30, which provides for the use of one's own language before a court and in pre-trial proceedings, with the free assistance of an interpreter/translator.¹ The criminal code also establishes the right to interpreting and translation provided by an interpreter/translator,² and the general regulations about costs in criminal cases set rates for these services. The Belgian Code of Judicial Procedure also contains articles concerning the right to interpreting and translation.³

¹ see also art.30bis, art.31, art.32, art.34

² art.47bis1°, art. 47bis4°, art. 47bis5°, art. 57, art.70bis, art. 184bis, art 407, art. 184bis, art 407, art. 221, art. 2 15, art. 216, art. 218, art. 219, art. 220, art. 223

³art. 127, art. 508/10, art. 691, art. 1231/11

Normally there are no cross-examinations before criminal courts. All pre-trial investigation statements and evidence become part of a file submitted to the court. These elements are examined and debated during the trial, but no “ex novo” formation or construction of evidence can take place in the courtroom. Since the evidence gathered and checked during investigations is the same evidence that is submitted to the court, the efficiency and quality of interpreting in the pre-trial phase is crucial to fair trial.

In the Czech Republic, section 2 of the Code of Criminal Procedure entitles any person before Czech authorities to use their mother tongue. In addition to this provision, section 1 of the Act on Experts and Court-Appointed Interpreters states: "The purpose of the Act is to ensure proper execution of activities of experts and interpreters in proceedings before authorities and in connection with legal acts conducted by natural persons or legal entities". During investigations, evidence is gathered and checked by the police under the supervision of the prosecutor, and is then submitted to court. At this stage the quality of interpreting in the pre-trial phase may be challenged, and if the right to an interpreter has not been complied with, the results of those investigations can be declared invalid by the judge.

In France, under the French Code of Criminal Procedure (art. 19, as amended by Law n. 2011-392 of 14.04.2011, art. 3), an interpreter must be called upon for all criminal matters when someone who does not speak or understand French is questioned following remand in police custody (police station or gendarmerie) or is placed under judicial investigation by an examining magistrate. If this obligation is not complied with, the proceedings are considered null and void. This right is also provided for under art. L111-8 of the *Code de l'Entrée et du Séjour des Étrangers* (Code on the Entry and Stay of Aliens). The right to interpreting is also guaranteed to anyone who wants to report a crime (a victim or witness) and does not speak French.

In Germany the right to interpreting in criminal proceedings is guaranteed by art. 3 of the German Basic Law (*Grundgesetz GG*) and section 185 of the Federal Law on the Constitution of Courts (*Gerichtsverfassungsgesetz GVG*). It is also laid down in section 259 of the Code of Criminal Procedure (*Strafprozessordnung StPO*) and is further referred to in the Guidelines for Criminal Procedure and rule n. 181 of the Administrative Fine Procedure (*Richtlinien für das Strafverfahren und das Bußgeldverfahren RiStBV*). The Federal Constitutional Court (*Bundesverfassungsgericht*) issued a ruling on 27.08.2003 that provides for the right of a foreigner to have an interpreter at any stage or instance of criminal proceedings, thus including the investigation phase.

The right to interpreting applies to individuals who are suspected, indicted or brought before court as defendants. However, provisions in Germany do not yet explicitly specify the right

of victims to have recourse to interpreting and translation. Germany has in fact entered a reservation regarding the Directive of the European Parliament and of the Council (64/2010), on account of the costs of interpreting services if all its requirements are to be fulfilled (e.g. that victims and witnesses must also have the right to free interpreting).

In Italy the term used for persons under investigation changes according to the different phases of the proceedings: first the person is a suspect, then s/he technically becomes a person investigated, and when the public prosecutor puts his/her name in a register s/he becomes a person accused, and finally a defendant in a trial before the judge. Anyone under investigation who does not speak Italian has the right to an interpreter under the Code of Criminal Procedure (art. 143-147 and art. 61) and a ruling of the Italian Constitutional Court (no. 10/1993). So despite the different terms, the right to interpreting for the defendant applies both in the pre-trial and trial phase. Article 143 of the Code of Criminal Procedure does not explicitly mention victims and witnesses, but it applies to them as well on the basis of the right to defence of an accused person who needs to understand the statements and charges brought against him/her. If a foreign witness or victim who does not speak Italian is interviewed by the judicial police or public prosecutor without an interpreter, their statements may be declared null by the court.

In Scotland, the first case where the issue of interpreting was raised was *H.M.A v. Olsson* in 1941, when an interpreter was not provided to the defendant and the proceeding was declared inadmissible. The judge ruled that evidence must be translated to an accused by a sworn interpreter except when her/his lawyer asks for interpretation to be dispensed with. The law regarding interpreting comes from two sources: (1) common law, of which *Olsson* is an example, and (2) statute, in that the Scotland Act 1998 (section 57) and the Human Rights Act 1998 (section 3 and 6) have both incorporated the Convention of Human Rights into Scottish law.

This short overview of rights to interpreting in the pre-trial phase shows that all of the six countries involved in the ImPLI project have specific legal provisions for the right to interpreting. Failure to comply with these provisions can lead to the invalidation of investigations and pre-trial proceedings, while poor quality interpreting may lead to a violation of the principle of fairness (ECHR) or to challenges in court that may lead judges to declare the pre-trial proceedings inadmissible.

Use of the same or different interpreters in pre-trial proceedings and in court; interpreters as witnesses

With regard to the use of the same or different interpreters in the pre-trial proceedings and in court, the situation varies considerably from country to country. This issue is closely linked to the possibility for the same interpreter to work for different parties in the proceedings and to be called as a witness in court. The six countries involved in the ImPLI project have different rules and practices in this respect.

Although there is no national ruling on this issue, the judicial authorities **in Belgium/Flanders** try to avoid interpreters working for a suspect and their lawyer also working in hearings before the police, the investigating judge, and the courts. They consider that to rely upon the same interpreter would infringe the principle of fair trial according to art. 5 and 6 of the European Convention on Human Rights. For practical reasons however, in the pre-trial phase the same interpreters are in fact used in meetings between lawyer and suspect, in police interviews, and during hearings by the investigating judge in 99% of cases. Since there is no recording of police interviews, in Belgium/Flanders usually interpreters are not called as witnesses for their own interpreting in court, nor are they called to act as experts to check another interpreter's work in court.

Freelance interpreters carry out In the Czech Republic interpreting in most proceedings. There is no restriction concerning the phase of the proceedings or the parties involved. Thus the same interpreter can work pre-trial as well as during trial for the same case, and can interpret for the suspect even if they have worked for that suspect before. In court, the same interpreter works for the judge, the prosecutor, the defendant and his/her lawyer (unless more than one foreign language is involved and several interpreters are needed to cover all the language combinations). In this respect, the Municipal Prosecution Office has published its opinion that using the same interpreter in both the pre-trial and trial phase is the best way to proceed, because the interpreter is familiar with the case, its circumstances, the individuals involved, etc., thus allowing the interpreter a better orientation and quality of interpreting. On the contrary, where in-house interpreters are involved ⁴- who are staff members of investigative authorities – they are subject to a condition of impartiality defined by law, which states that they may only work for the authority employing them, and that they must not have met the suspect/defendant before. In court they cannot interpret in cases where their employer (authority) has an interest, nor can they interpret for the suspect or defendant. In

⁴ There are only 25 in-house interpreters in the Czech Republic.

general, therefore, in-house interpreters are excluded from court proceedings unless the case has been investigated by a different authority from the one they work for as members of staff. In court, challenges can be made to pre-trial interpreting, and both freelance and in-house interpreters can be called as witnesses.

In France and in Germany, there is no legal rule forbidding the same interpreter working on the same case at all stages or for all the parties involved. Interpreters can work both for the police and prosecution during investigations and then for the same case in court, and both for the prosecution and for the defence in the same case. Interpreters are not usually called as witnesses except when their interpreting in the pre-trial phases is challenged. They may however be called as experts where the performance of a colleague is in doubt.

In Italy, different terms are used to refer to interpreters on the basis of who appoints them and according to the stage of the proceedings. When working for the judicial police, an interpreter is termed a “judicial police auxiliary, i.e. a person appointed by the police and acting as a legal officer. When appointed by the public prosecutor s/he is termed a “technical consultant/expert”, and when by the court, an interpreter is termed a “court-appointed expert”. There is a consensus, but no legally binding rule, that an interpreter working for the judicial police or the public prosecutor should not also work for the defendant or her/his lawyer, since in the Italian adversarial system this would mean working for opposite parties in the trial. Interpreters who have translated during investigations can be called as witnesses concerning their own work during trial. When they are called to assess a colleague’s performance they act as “court-appointed experts”.

In Scotland, various authorities are responsible for providing interpreters: the Procurator Fiscal’s office provides interpreters for prosecution witnesses, the Scottish Court Service provides the interpreter for the accused, and the defence provides interpreters for defence witnesses. This means that it is possible that several interpreters with the same language combination may work at the same trial.

The police usually inform the Procurator Fiscal if an interpreter is needed, and for which language/dialect. In general the same interpreter cannot be used in the police interview and in court, as the interpreter at the interview could be called as a witness, and this might lead to unfairness. It is still open to debate whether an interpreter can be sufficiently unbiased to work both during consultation with the defence lawyer and in the ensuing police interview with the suspect.

In general, the systems in place in the countries involved in the project seem to work well for European languages. However, there have been cases in which statements taken have not

been admitted as evidence because of interpreting issues (no interpreter was provided, or an interpreter was provided for the wrong language), as well as cases in which poor interpreting compromised investigations. For non-European languages/dialects the situation is different. In all the countries there is a lack of interpreters for languages/dialects of lesser diffusion, also due to the fact that the need for those languages changes according to migratory flows. In some countries training institutions offer training for newly needed languages (e.g. Germany), while in others (e.g. Italy) the number of trained interpreters is insufficient even for languages spoken by large migrant communities (Chinese and Arabic, for instance).

Recommendations

- **Countries having an asymmetry in the right to interpreting between the defendants on the one hand and the victims and witnesses on the other hand should introduce provisions to ensure equal rights to all these parties involved in criminal proceedings.**
- **States should be more reactive and if possible pro-active in providing training for interpreters of languages of lesser diffusion and languages needed as a result of changes in migratory flows.**
- **Considering the codes of deontology established by recognised professional associations (e.g. EULITA) to which qualified interpreters adhere, authorities should refrain from restrictions on the ground of "bias" or "impartiality". Qualified interpreters should be free to work in all stages of criminal proceedings and for all the parties involved.**



2. Interpreters' Recruitment and Status

Art. 5 (2) and Art. 5 (3) of Directive 2010/64.

Directive 2010/64/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 October 2010 on the right to interpretation and translation in criminal proceedings deals with recruitment under the heading “Quality of the interpretation and translation”. It proposes the establishment of a register or registers of interpreters and translators who must be “independent”, “appropriately qualified” - Art. 5 (2) - and “observe confidentiality” - Art. 5 (3).

The differences in the legal systems of the countries involved in the ImPLI project (e.g. common law vs. statutory law) and in the organization of their criminal justice systems are reflected in the mechanisms and channels for interpreter recruitment. The latter also mirror the professional status, role perception and existence of professional associations.

Demand for interpreters

Demand for interpreting in the investigative phase is by nature unpredictable or can be foreseen only in some circumstances (i.e. when police/prosecutors know in advance they are going to interview people who do not speak/understand the local language, or when tapped telephone conversations must be transcribed). Assignments in this field are often characterized by urgency (given the short periods of detention after which a person must be charged or released), unusual working hours (even late at night) and long shifts.

General trends in figures about the involvement of aliens in criminal proceedings can be drawn from official statistics (e.g. *Polizeiliche Kriminalstatistik* for Germany), but they are not available for all countries. According to the European Sourcebook of Crime and Criminal

Justice Statistics 2010, police statistics are available for the Czech Republic, France and Germany; prosecution statistics are also available for Belgium and Italy. On the whole, demand seems high, given the 2006 percentages of aliens among suspected offenders (Czech Republic 6,7%; France 20,7%; Germany 22%), and of aliens convicted of criminal offences (Belgium 18,2%; Czech Republic 5,8%; France 11,9%; Germany 22,8%; Italy 26%).

An additional difficulty in obtaining an exhaustive overview of the situation is the lack of comparability of the information available in terms of number of assignments, days or hours paid to interpreters, number of cases or people needing assistance.

Status of police interpreters

Generally speaking there are two categories of people acting as interpreters: in-house and freelance interpreters.

- In-house interpreters work as staff or on contract and often act also as translators. In Italy there are about 250 and they are employed by the Ministry of the Interior, mostly at regional level; in the Czech Republic they amount to 25 and are employed by the Ministry of the Interior and the Customs Administration; in Germany a small number of interpreters work as members of staff, e.g. for *Zollkriminalamt* and *Zentraler Sprachendienst Zoll*. However, there seems to be a tendency to avoid or delay new recruitments (Italy) and not to replace retiring or leaving interpreters (Czech Republic). In both cases the effect is a downwards trend in the number of in-house interpreters in the countries involved in the project. In some cases in-house interpreters can also work as freelance when out of service, e.g. in France, Czech Republic, or in Italy (after being granted an authorisation).
- Freelance interpreters cover the majority of police interpreting needs in almost all countries participating in the ImPLI project, with the exception of Italy. With regard to freelance interpreters, there are some important aspects to be mentioned in this context. Since the term “interpreter” in all the countries studied may be used by anybody regardless of certificates or qualifications, and since there are no general binding requirements for police interpreters, in case of urgency (which, as already mentioned, is very common) practically anybody may be recruited as an interpreter without prior checks on qualifications. This means that both well-trained professionals and persons without any formal qualification or experience are allowed to work as police interpreters. Secondly, in all the countries involved in the project the rates for police interpreting are lower than for conference or business interpreting. Since remuneration and working conditions are worse, qualified conference

interpreters (working mainly with the languages of major diffusion) avoid taking up assignments for the police. For many languages of lesser diffusion universities do not offer a curriculum, so there are no interpreters with formal training.

Recruitment system

Due to a federal system or other forms of devolution or decentralisation of powers, in most countries there are differences in local recruitment procedures. Wherever there are public registers for sworn or court interpreters (either at national level, as in the Czech Republic or in Germany since 2010, or at regional level, as in Belgium and Scotland), the police and public prosecutors generally engage interpreters from these lists; in other cases they use lists held by different courts (e.g. in France) or drawn up by themselves. In Belgium, some initiatives have been undertaken to establish a national register of sworn interpreters. So far, these initiatives have not led to any significant developments. These differences, however, are to be overcome with the transposition into national legislation of the EU Directive 2010/64/EU providing for registers to be set up in all EU member states.

Accreditation criteria

Accreditation criteria still vary broadly in the countries participating in the ImPLI project (for more details see the specific country reports). In most countries there are at least some regulations providing for police or court interpreting, including prerequisites (e.g. qualifications, no criminal records, disclosure certificate etc.) that need to be fulfilled to be included in a list or register. On the other hand, registers and lists are often compiled simply on the basis of what the candidates declare, without any specific criteria, standards or exams (Germany, Italy). Only in France, renewal of registration (after 2/5 years) requires documentation of continuous professional development.

Interpreter selection

Responsibility for the recruitment of interpreters generally lies with local police authorities or public prosecutors. Recruitment through agencies is becoming more and more frequent, and in some countries (UK/Scotland) there has been a significant increase in the number of commercial service providers. After initial difficulties with quality, in Scotland more and more centralised procurement contracts have become very stringent now, and the system seems to work well (from the police point of view), while interpreters still express many reservations. In Scotland telephone interpreting is often outsourced even at international level.

Interpreter recruitment through agencies can be problematic as it adds a filter between the

service user and the interpreter which could threaten the latter's independence, as well as entailing a further reduction of the already low fees.

In the Czech Republic, interpreters are either contacted directly by the interviewing police officer or via the 'operational centres', 24/7 supporting units operating on regional level.

Selection criteria, besides the necessary language combination, include cost (Germany, Italy, Czech Republic), proximity/immediate availability, membership in a register (never mandatory), trust stemming from personal experience/acquaintance with recruiters after a former assignment (Germany, Italy, Czech Republic); in special cases also gender (e.g. in case of sexual offences), origin, or knowledge of a specific community/culture are also used as selection criteria.

When acting under time pressure, the police authorities often choose unregistered ad-hoc interpreters. Case-law shows that often this solution is not accepted by courts (e.g. UK/Scotland, Belgium/Flanders, and Czech Republic). However, this emergency option for less widely spoken languages with few or no qualified interpreters available is often applied also to languages of major diffusion. Often interpreters are chosen simply on the basis of personal acquaintance.

Issues related to the services required, offered and obtained

In all the countries under study, a big gap between needs perceived and description of the service required was found. There is a large (and sometimes rather imprecise) set of requirements relating to interpreter services formulated by professionals using them (police, prosecutors, lawyers), ranging from a robot/conduit/black box model of verbatim translation to an empathic human being who lends his/her ears, mouth and eyes to the interviewee and also conveys what is said between the lines. On the other hand a clear contradiction also emerged between the vast, but often unsatisfactory, offer of unskilled interpreters as opposed to the shortage of qualified interpreters, especially for languages of lesser diffusion. This often leads to the recruitment of bilinguals, cultural mediators, or language facilitators to work as interpreters without any specific interpreting qualification.

From this perspective as well the sensitive aspect of service costs can be considered in a more articulate way. Firstly it is important not to lose sight of the different viewpoints involved: the public interest ('fair trial'), the needs and constraints of the administration of justice (availability, costs), the interests and concerns of individual interpreters and their professional associations. Interpreting rates are indeed a hot issue, especially in difficult times for public administrations due to the economic downturn. But there are also other issues: for instance, the question of how to recruit interpreters while safeguarding minimal

standards – in other words, what should be considered under the given circumstances as “adequate linguistic assistance” – see recital 17 of the Directive - or interpretation having “a quality sufficient to safeguard the fairness of the proceedings” (Art. 2 (8)). This must be borne in mind especially when considering the intermediary role of agencies in recruitment.

Recommendations

- **As demand for cost-effective police interpreting is growing, it would be advisable to map out requirements more precisely and match them with interpreter qualifications, experience and reliability based on objective criteria in order to meet identified needs.**
- **In view of the establishment of registers in all EU member states, it would be advisable to agree on common minimum accreditation criteria for police and legal interpreters, involving institutions, users and professional interpreter organisations. These criteria should include basic and further training in specific interpreting techniques, knowledge of interviewing techniques and legal background, and compliance with a Code of Ethics.**
- **In the countries where there are in-house interpreters, they should be involved in the process of defining criteria and setting standards.**
- **Where central procurement systems through commercial agencies are in operation for police interpreting, the involvement of experts in the field of public service interpreting should be sought in the tendering process as well as in any on-going quality monitoring arrangements.**
- **Existing best practices in recruitment should be disseminated, e.g. the use of 24/7 operational centres (Czech Republic), or co-operation between professional associations and judicial entities in procurement matters (Scotland).**



3. Working Conditions

Articles 2 (1) and 4 of Directive 2010/64/EU

Remuneration

The research work carried out in the different countries involved in the project suggests that price and quality of interpreting services are interdependent. When an interpreter is needed at the police premises, in most cases it is for an emergency/urgent case, so that the service of an interpreter is sought under time pressure, which means that interpreters have to be available at short notice.

Often, individual police officers do not check up on an interpreter's qualifications but recruit the person they need on the basis of immediate availability and his/her proximity to the police station in question. Although the recruitment of sworn interpreters is highly recommended, police departments tend to prefer non-sworn interpreters because in many countries they accept lower rates and ad-hoc swearing in is always possible.

Moreover, there is a notorious lack of funds, which means that in most cases the only selection criterion is price. As a result, poor remuneration often means poor quality since qualified interpreters do not accept police interpreting assignments under such conditions. Poor quality of unqualified interpreters is also one of the reasons for the mistrust among the police as far as working with interpreters is concerned.

In some countries, a trend towards framework agreements with agencies in order to save costs on the police side was observed. Agencies, for example, are obliged to send an interpreter within 2 hours' time. Working with agencies is easier and more cost-effective for the police authorities. Even though this circumstance seems positive for the police, in some

cases it results in unclear selection criteria and even less remuneration for interpreters because of the agencies' profit margins.

In all the countries involved in the project, remuneration for legal interpreting tends to be very low and may also depend on the language combination and the urgency of the case. In the six countries under study interpreters are paid on an hourly basis. Hourly rates differ considerably from country to country and in states with a federal structure, e.g. Germany, even between federal states. Travel costs are usually paid, waiting times not always (e.g. not in Italy).

Working hours and initial organisational matters

Interpreters can be called at any hour of the day, very often at night or at 4 or 5 o'clock in the morning. According to the recruitment procedures, free-lance interpreters are either contacted directly or through agencies or operational centres.

Stamina is required, since in police interviews interpreters usually work alone. Assignments can last up to 8-9 hours with only one interpreter. Another investigative activity that makes working times unattractive is telephone tapping, where interpreters have to work for many hours in a row and sometimes even for full days, often also during nights. They are, however, entitled to ask for pauses, even if the police officer(s) would prefer to go on.

Upon the interpreter's arrival, his/her identity is checked; in some countries a certificate has to be presented.

Another aspect highlighted by interpreters during the discussions with experts is the crucial importance of briefing the interpreter. S/he should be informed about interview strategies, the case and the persons involved and present during the interview, and any relevant documents should be shown to the interpreter beforehand. Time constraints should also be explained. Unfortunately, this is not the case in most countries participating in the project: in most assignments, the interpreter does not receive sufficient or any briefing at all because of the police's misunderstanding of the interpreter's work. Very often, the police also fear that too much information revealed to the interpreter before the interview might have an impact on the interpreter's neutrality when it comes to interpreting.

Disclosure of personal data

Disclosure of personal data is a highly sensitive topic in the case of freelance interpreters working for the police and courts since they work on the basis of individual assignments and are not members of the official legal and judicial bodies. The disclosure of personal data of

the interpreter comprises several relevant aspects:

- introducing the interpreter at the beginning of the interview,
- mentioning the name of the interpreter in all case-related documents (minutes, etc.),
- making interpreters' list or register open to the public.

In the initial phase of an interview or a questioning session, all persons present are introduced. Experience has shown that often the other people present are introduced to the interviewee only; the interpreter has to ask for an opportunity to introduce him/herself, his/her specific role and task to all people present. It was also reported that the police sometimes does introducing the interpreter. During such an introduction, personal data of persons who are present but are not members of the police force and are therefore not protected by their status should be handled with special care, since interpreters who work for the police are to be regarded as normal citizens as soon as they leave the police premises.

Introducing an interpreter can be done without revealing any personal data in order to protect him/her as a person. For instance, Belgian interpreters have been using standardized formulas for introducing themselves for over 10 years now. One standard introduction is: "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."

Another crucial question is whether the interpreter's personal data are to be mentioned in official documents related to the case. Interpreters can be easily identified in this way and thus have no protection, a different situation from that of police officers who enjoy various forms of protection due to their official status.

Any reference to their actual names entails safety risks for interpreters involved in police and legal interpreting since they become easily identifiable. Registers/data bases of sworn interpreters, which are accessible via the Internet, very often include full personal details, such as name, languages and address, which may entail a safety risk because the interpreter can then be identified and localised without any problem.

Safety and Security

The safety of the interpreter has to be guaranteed at any moment of his/her assignment with the police and also beyond. As mentioned above, this refers to disclosure of personal data,

but it also includes the interpreter's physical integrity in the actual interpreting situation.

Police officials should be aware of the interpreter's safety: When preparing a police interview, a risk assessment has to be made since the interpreter must be and feel secure; e.g. the interpreter must not be left alone in a room with an accused person, seating arrangements in the interview room have to be carefully considered and no weapons must be left in the room. All necessary measures and arrangements should be made in order to guarantee the interpreter's safety and security.

Remarks by a suspect, witness, victim, etc. that offend or threaten the interpreter are not acceptable. If the interpreter is threatened, s/he should react firmly and interpret the threat so that the police officer can take note of it and undertake appropriate action. If interviewers refuse to cooperate, their superiors should be contacted.

In the countries participating in the project, telephone interpreting was mentioned as a possibility to avoid problematic situations for the interpreter, such as being left alone with the suspect and the solicitor. However, telephone interpreting is regarded as appropriate only in limited situations, e.g. if it is too dangerous for an interpreter to be physically present at a location. This might be the case in emergency meetings, roadside incidents, street riots, fights, etc. In most countries, this is an exceptional procedure used only for short informal questioning on-site; but for interviews at the premises of the police, an interpreter must be physically present to translate and in some countries also to sign the police report.

As for recruitment, safety aspects should be taken into account. Belonging to an ethnic group may play a role when it comes to recruiting an interpreter. If the interpreter belongs to the same ethnic group as the person under investigation, s/he might encounter difficulties in the group in question, especially when the interpreter's personal details are disclosed during the interview. In Italy, this aspect has become very evident in the last few years: Chinese interpreters in Rome are now requesting to remain anonymous because they have received threats from the migrant Chinese communities. Therefore the way in which the interpreter is selected is crucial, not only in the interest of the suspect/victim/witness but also in that of the interpreter.

Welfare

Interpreters working for the police have to be able to cope with emotional stress caused by the situation and the case they work for: 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. Thus, stress management is regarded as an essential skill in police interpreting.

Nevertheless, whereas police officials are entitled to psychological support when having dealt with psychologically stressful cases (e.g. child abuse, war crimes, sexual or physical violence, etc.), in the information collected during the project, there is no indication that interpreters who have been present in such situations have had access to psychological counselling made available by the police authorities.

Recommendations

- **Remuneration is a critical issue: interpreters deliver a highly specialised service and should be paid accordingly, i.e. as experts. Remuneration should also be regarded as a measure of quality assurance for interpreting.**
- **Working hours are another critical aspect - when too long, quality can suffer.**
- **Coordination between the police officer(s) and the interpreter about organisational aspects of the interview should take place before the interview. This should include briefing about interview strategies, the case and any person involved in the interview situation, agreeing on breaks, on how to deal with interjections, the way in which questions can be asked, establishing emergency signals (e.g. gestures). All these matters should be arranged before starting the actual interview because they aim at ensuring that the interpreter is comfortable and safe and that s/he is able to work professionally in the specific situation.**
- **Personal data of interpreters working for the police and courts should never be disclosed. As it emerged during discussions with experts, Spain could serve as a model for protecting the interpreter: This country uses a code or number in official documents instead of personal details, so that identification of the interpreter is not easy.**
- **Welfare measures, such as support by psychologists, should also be available for interpreters who have worked in extremely difficult situations due to physical and/or psychological and emotional stress.**



4. Interview Formats and Interpreting Modes

Article 1 (2); Article 2 (1), (2), (3) and (6) and Article 3 (7) of Directive 2010/64/EU

Interview Formats

It is common practice within the field of policing to make a distinction between suspects, witnesses and those who are victims of a crime. Within these three groups, there are people with special needs. The focus of this study is on people with language needs requiring interpreting support. It should, however, be borne in mind that the needs of “vulnerable” people (people with learning difficulties or mental illness) and children may require particular consideration during an interview and special guidelines and procedures may apply.

Police work involves many types of communicative events other than the “interview”. These may include procedures carried out as part of drugs or alcohol-related driving offences, the process of fingerprinting or DNA testing, and so on. These activities are set against an investigative background, as the police will remain alert to information or evidence emerging from such dialogue, but such activities could only be touched on given the scope of the study. Focusing on police investigative interviews offers the possibility of concentrating on key themes.

The investigative interview

The role of an investigative interview is to obtain complete, accurate, relevant and reliable information. The main purpose of an investigative interview with a suspect is not to “obtain a confession”, but rather to obtain information fairly so as to ensure that the information gathered will be admissible in the later stages of the process.

The context for investigative interviewing

When someone is detained or arrested, they must be promptly informed of the reason for this and their rights explained. In all cases it should be established that the interviewee understands. In some countries, specific procedures must be followed. For example, in Scotland, even when someone voluntarily agrees to attend a police station to answer questions (remaining free to leave at any time) a Voluntary Attendance Form must be signed.

As a general rule, in an investigation, there can be three main stages: (1) interviews conducted before there is reasonable cause to suspect any particular persons, (2) the interview conducted when there is reasonable cause to suspect a particular person, but insufficient evidence to support a charge and (3) the point at which a suspect is charged with a crime or offence and (in Scotland) can no longer be questioned by police. It is a legal requirement that relevant cautions be administered correctly, at appropriate times in the process. Some cautions are particularly complex (Czech Republic), and the police officer may explain them in plain language, after the caution has been delivered.

Interviewing models

Investigative interviewing is the major fact-finding tool available to police officers. The Scottish police have adopted the PRICE interviewing model as a means of providing a framework to structure all types of interviews, an approach familiar to other police forces (Belgium)⁵.

Planning and preparation (P) is considered vital to the success of an interview and ranges from logistical matters and becoming familiar with what is already known, to planning the interview strategy and objectives. The second phase (R) includes introductions of those present, and aims to support cooperation on the part of the interviewee. The next stage (I) concentrates on information gathering: allowing the interviewee to control the flow of information and encouraging them to give as full an account as possible. The police officer will then (C) clarify and probe to check information or elicit additional details, and confirm important aspects of the information. Finally, following summation, the statement can be written. Evaluation (E) will focus on both the new information and the investigation as a whole.

In Germany and France, four phases were described which echo this approach: the contact phase, the phase where the interviewee can speak freely, targeted questioning, and the writing of the report.

⁵ This is similar to the PEACE interviewing model (Planning and preparation, Engage and explain, Account, Closure, Evaluate) developed in England and used by a number of police forces worldwide.

Interviewing techniques

Within the above frameworks, successful interviews employ a mixture of interpersonal, social and cognitive factors and skills to enhance the retrieval of information from memory. For example, free recall (i.e. giving an uninterrupted account) will be used towards the end of the (R) stage and enhanced cognitive interviewing may be used when interviewing vulnerable or significant witnesses. Cognitive interviewing is a technique that is frequently employed - and can only be effective - with cooperative interviewees; conversation management is generally used with uncooperative interviewees.

The cognitive interview starts by creating the right environment for an interviewee to relive events. In essence, the focus is on allowing the interviewee to freely recall events with the interviewer refraining from interrupting during recalls. The role of the police officer is to support and prompt, with the interviewee and interviewer almost working in partnership.

The conversation management format is a three-stage approach incorporating the interviewee agenda, the police agenda and the challenge. First of all the interviewee is allowed to give their account without interruption and the police officers limit themselves to probing, summarising and linking topics. Next, the police officers will question on topics, which they have identified need to be addressed. Finally, if the interviewer has evidence, which proves the interviewee is lying or not telling the whole truth, the account will be challenged.

Police officers need to be skilled at both listening and questioning and there is a wide range of effective tactics available to them, some of which are: creating a good first impression, eye contact, body language/non-verbal communication, interviewee-compatible questioning, open-ended and closed probing questions, use of pauses and silences, echo probing, summarising, sketch drawings and visual aids, urging to report everything, memory jogs for person information, praising the interviewee's efforts, taking breaks, etc.

Interpreting modes

Whilst simultaneous interpreting (i.e. *chuchotage*/whispered interpreting) may occasionally feature in certain police situations (e.g. initial contact with a victim/witness), and could be suited to cognitive interviewing, there were no reports of it being used in investigative interviews. Police officers and interviewees may find "hearing" the two voices distracting, interpreters may not have the necessary skills, and in audio-recorded interviews it is not possible to have overlapping voices. The exception to this rule is that sign language interpreters normally work simultaneously, because there is no conflict between the languages. There was some police support (Czech Republic) for simultaneous interpreting using equipment; the view was expressed that consecutive interpreting acts as a barrier, since

verbal information is divorced from the facial expressions and body language of the interviewee. However, the standard mode of interpreting in the case of spoken languages is consecutive. This may be consecutive with notes, or short consecutive without notes – often because this suits the interviewing style, but sometimes because the interpreter does not master note-taking. It is generally accepted, if not universally applied, that the interpreter speaks in the voices of the interviewer/interviewee (I/you, in first/second person), rather than “reporting” in third person

Sight translation (oral translation of written texts, such as statements) forms an integral part of the investigative interview process.

Interpreters often carry out a significant amount of work related to telephone surveillance which may include summarising or producing translated transcriptions of oral sources (Belgium, Czech Republic, France, Germany, Italy).

The use of remote interpreting (by telephone and potentially by video-conferencing) is increasing in police settings. Currently, it tends to be restricted to specific situations and is not used for evidential purposes (Italy, Scotland).

Finally, relay interpreting may occur: when two interpreters are working in relay to bridge the language combination required, or when an interpreter is working with an Appropriate Adult (in Scotland) who is helping facilitate understanding by someone with special needs.

Recommendations

- **Interpreters should receive training to develop basic knowledge of investigative interviewing and questioning tactics.**
- **All stakeholders (police, interpreters, trainers and researchers, etc.) should work together to develop jurisdiction-specific guidelines for working with/interviewing through interpreters, and police officers should receive training.**
- **Police officers need to accept that interpreting will inevitably have an impact on an interview and, consequently, integrate considerations regarding interpreting into all stages of their interview plan. This should also inform their briefing of the interpreter.**
- **Facilitate access to authentic data to enable research into the impact of interpreting in the investigative interview.**



5. The role of the interpreter and its perception in a police context

Official designation and status of interpreters

Perceptions of the role of the interpreter were shown to vary in the six jurisdictions which formed part of the project. This is not least indicative of the fact that the role of the police interpreter must be viewed in the context of and is determined to a certain degree by differences of legislation and institutional practice (see Country Reports). A variety of designations for interpreters reflect different role definitions within legal contexts.

In the German context, the prerequisites for inclusion in a list of sworn interpreters vary widely amongst the sixteen federal states. Interpreters can also be sworn in on an ad hoc basis. While translators can be classified as experts, this is not the case for interpreters.

In Italy, different designations are used, depending on the source of interpreter recruitment. If the interpreter is recruited by the judicial police s/he is referred to as "judicial police auxiliary" (*ausiliario*), a title which indicates that they act as legal officers. When the appointment is made by the prosecutor, s/he is described as a "technical consultant" (*consulente tecnico d'ufficio*) i.e. a technical expert who works for the prosecutor's office. Police interpreting is carried out by internal staff interpreters or external free-lance interpreters. The former are referred to as "linguistic experts" (*funzionari linguistici*).

In Belgium anybody can claim to be a "sworn interpreter" after having taken an oath. The districts of Antwerp, Turnhout and Mechelen are an exception to this rule: here, successful completion of a specialised course offered at Lessius University is a prerequisite for working as a sworn legal interpreter. Urgent demand can be covered by swearing in interpreters in an ad hoc manner for the duration of an assignment. Interpreters do not have the status of language experts.

Czech legislation differentiates between court-appointed interpreters and ad hoc interpreters where there is no court appointment for a particular language.

In France, interpreters are considered to be court experts. They are appointed by one of France's thirty-five *Cours d'appel* (Appeal Courts) and the *Cour de Cassation* (Court of Cassation). The term "court expert" does denote a function, which should not be the person's main professional activity. Alternative lists compiled by different authorities within the legal system include interpreters both on a permanent and an ad hoc basis.

Contextual factors shaping the interpreter's role definition

The main contextual factors which shape the role definition, beyond the legal system and the police institutional setting, are highlighted throughout this report. In their entirety they point to a varying degree of professionalisation of Public Service Interpreting in general, and Police Interpreting in particular. Factors such as the availability of specialised training at a tertiary level, qualification requirements or the standing and influence of professional organisations shape the perception of the professional status of interpreters.

Discussion with institutional users of interpreting pointed to a prevalent perception that the presence of an interpreter equates to a loss of control over the interviewing process or the interaction with speakers of a foreign language. This referred not just to a lack of control over content, as interventions are rendered into or from the foreign language, but also the pacing and rhythm of exchanges and thus the interactional dynamics, in particular in an interview context.

In addition to specialised linguistic knowledge and familiarity with legal systems, police users above all stressed the need for confidentiality and neutrality on the part of the interpreter. A major concern, which was raised in this connection revolved around in-group loyalty between the interpreter and the interviewee as members of a shared cultural background. Interpreters corroborated that such loyalty claims are recurring and problematic features of mediated encounters. However, interpreters also presented a more complex picture of the conflicting expectations, which they are exposed to with regard to their role. Where interpreters had worked recurrently for a particular police force, or part thereof, they reported on having been asked to take on tasks beyond their role remit, such as talking independently to the relatives of victims. As police forces are seen as direct or indirect sources of employment, a refusal to take on such extraneous tasks can be difficult. The interviewee on the other hand might view the interpreter as an ally in a foreign language. This is of particular relevance in contexts where the interviewee's perception of the police is shaped by repressive policing regimes in their home countries. The pressure exerted on the interpreter by such scenarios can be exacerbated where s/he belongs to a close-knit ethnic community. Here s/he might find her/himself exposed to disapproval or reprisal as a result of their professional role during an assignment.

The perception of the interpreter's role by institutional users

Two recurring themes emerged in the perception of the interpreter's role by institutional users: interpreters were frequently viewed as a mouthpiece, as a “black box” or simply as invisible. Discussions provided evidence for the continued currency of a ‘legal fiction’, which casts interpreting as an essentially mechanical process. This is predicated on the assumption that the presence of the interpreter will not impact on the dynamics of the interaction; it is intrinsically linked to the concept of a literal, or word-for word and thus “objectively accurate” translation. This perception was also reflected in the frequently voiced assumption that the main problems encountered in police interpreting are associated with the knowledge of equivalent legal terminology. Other highly relevant skills such as the ability to make complex decisions about appropriate choices of interpreting strategies within a specific institutional context received little attention by comparison.

However, discussions with police users of interpreters provided frequent evidence that seemingly normative assumptions do not reflect the reality of how police officers work with interpreters. They highlighted the fact that police draw on a wider set of expertise and skills when working with interpreters. Most frequently, the expectation was raised that interpreters would provide explanations and clarification of culturally specific references (e.g. of a geographic nature) or forms of behaviour (e.g. on how to address a person) or that they would offer guidance on the appropriateness of procedure (e.g. gender matching of interpreter and interviewee). In marked contrast to the conceptualisation of interpreting as a mechanistic process, some practitioners apportioned far-reaching responsibilities to the interpreter. Amongst those was, for example, the assumption that interpreters would make complex legal texts easily comprehensible for the non-expert users.

In discussions it became clear that police officers' assumptions about the degree of latitude afforded to interpreters tend to differ with respect to specific types of interaction. Whereas, for example, the maintenance of control over the flow of information was a prevalent consideration with suspects, there seemed to be a perception that this might at times be relinquished in the interest of rapport building with a victim.

The perception of the interpreter's role and its reflection in working practices

The perception of the role of the interpreter, which has been summarised above ultimately informs working practices. In particular, it is reflected in assumptions about whether and to what extent interpreters should be provided with briefings as part of the planning and preparation phase of investigative interviews. A wide range of preferences was in evidence.

In some cases the prevalent practice was not to provide any background information at all, even where this was likely to be subject to sight translation. In other cases, police officers argued for providing an interpreter not merely with relevant background material but also an overview of their interview plan.

Particular mention should be made of the role of interpreters in emerging settings, such as telephone interpreting or telephone tapping. These highlight the fact that new technologies impact on working practices as well as interactional dynamics. The role of the interpreter has to be recast to take those changes into account. One example, which illustrates this evidence was a blurring of the role division between forensic linguistics and interpreting. This has been observed in cases when interpreters are asked to comment on the socio-cultural provenance of accents or play a part in voice identification.

Where public awareness of police interpreting is raised, it frequently occurs in connection with media reports on compromised investigative processes due to insufficiently qualified interpreters. The factors, which lead to such failures, such as a lack of appropriate training facilities, poor remuneration and problematic working conditions, are rarely examined. Another recurring feature of the public discourse on legal interpreting is the increase in expenditure which is required to respond to increased demand, a phenomenon that was observed in all member countries. By contrast, little consideration is given to the financial and personal cost of failing to make such provision.

Recommendations

- **Police users of interpreting services should be provided with training for interaction through an interpreter. Specific training for interpreters in a policing context should be part of training courses in legal interpreting.**
- **Research has conclusively shown that community interpreters are visible participants in any interaction. However further investigation is needed into the extent and possible impact of this visibility within legal settings. The degree of latitude afforded within role definitions for police interpreters must be a negotiated outcome of a discussion between users of interpreters and practitioners as well as researchers.**
- **Public awareness of the socially inclusive role and function of legal interpreting should be strengthened.**
- **Role definition must respond proactively to the demands of new technologies**



6. Code of Professional Ethics

Art. 5 and 6 of Directive 2010/64/EU

Compliance with the Directive

Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings, which forms the framework of this report, addresses the question of the quality of interpreting and translation services rendered in criminal proceedings. One factor, which is closely related to quality is the ethical conduct of interpreters during, before and after an interpreting assignment in court or for the police, generally referred to as legal interpreters.

Article 5 of the Directive which deals specifically with “Quality of the interpretation and translation”, stipulates in paragraph 3:

Member States shall ensure that interpreters and translators be required to observe confidentiality regarding interpretation and translation provided under this Directive.

Article 6 on training stipulates that

Member States shall 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 so as to ensure efficient and effective communication.

These references suggest that ethical standards for interpreting in the above-mentioned settings must exist but apart from confidentiality, no specific requirements are mentioned. However, the ethical behaviour and codes of conduct of interpreters working in court proceedings or for police authorities are important instruments for guaranteeing the

professional quality of interpreting services rendered in judicial settings.

As Member States are expected to implement the principles laid down in the Directive by the second half of 2013, the transposition of the Directive offers an opportunity to establish a list of ethical standards which goes beyond the national scope and by which interpreters in all Member States of the EU have to abide. The most important standards of ethical behaviour, which could form the basis of such a list, are mentioned below. The Directive could lead to the development of a common instrument, which would lay down quality requirements (best practice) and codes of conduct (ethical standards) for all interpreters.

The recommendations made at the end of this section should be seen as an orientation for the establishment of such ethical guidelines.

The present situation

As the research carried out under the ImPLI project has revealed, there are codes of ethics laid down by different national or regional professional associations in most partner countries. These associations do not, however, represent exclusively interpreters specialised in legal interpreting; their members are mostly conference interpreters, and their codes of conduct lay down rather similar basic principles, but are not necessarily specific enough to fully apply to the field of legal interpreting. In the countries covered by the report it appears that, generally speaking, there are no specific codes of conduct for legal interpreters. In many cases, legal interpreters, especially ad-hoc interpreters, are not aware of any established code of ethics to which to adhere. However, such a code would be an important prerequisite for achieving full professional quality of the services rendered.

Another problem that was identified during the analysis of the information collected during our work was that some countries recruit **in-house interpreters**; they may come under **pressure** when confronted with requests, such as to leave out certain parts of speech or render a statement in a way, which is different from what a speaker has said. As long as there is no code of ethics or code of conduct, which they can invoke, they are exposed to such pressure which may affect the quality of their work.

Another point where it was found that more information is necessary is that of mutual understanding and cooperation between police officers and interpreters. **Police officers need to understand and accept that interpreting will always impact and modify the way an interview is conducted**, as 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.⁶

⁶ cf. Wadensjø, Cecilia (1998). *Interpreting as Interaction*. Harlow: Addison Wesley Longman.

The interpreter also has to mediate the way of thinking of a person who comes from a different culture. There is a need to make police officers understand that they should abandon the idea of keeping exclusive control when working with interpreters; what the latter render in the foreign language cannot be controlled easily and on the spot anyway, and one therefore has to rely on the quality of the interpreter's service. Police officers must gain an insight into the fact that word-for-word rendering is impossible, not only for linguistic reasons but also because concepts and ideas are different between cultures and are also verbalised differently in different cultures. It is therefore all the more important that police officers know that **the interpreter can be trusted** to perform quality work and abide by the ethical standards of the profession. As there are no specific codes of behaviour, the provisions of the more general codes are not always accepted by the police officers.

Moreover, police officers in search of an interpreter are not always informed about the importance of the latter's relevant **qualifications**. For a number of police officers the interpreter is always a "risk factor" (as a police representative put it in one of the round tables).

In some countries an interpreter cannot work for the prosecutor and for the defence attorney in the same case because from an ethical point of view this is not considered to be right. The other parties in the proceedings, the defendants and their counsel tend to think that interpreters who are hired e.g. by the public authority are on the side of the police and the judicial authorities and are therefore not **impartial**.

In a nutshell, the police lack awareness of interpreters' ethical principles and therefore do not trust them sufficiently.

Such lack of trust needs to be overcome, and to achieve this, efforts should be undertaken to inform police officers about the necessary interpreter qualifications, which are not limited to the knowledge of two languages but include ethical principles and translational procedures.

It would also be helpful if the police were fully informed about **ways of finding qualified interpreters**, i.e. either interpreters who are members of a professional association or those who act professionally and abide by a number of standards which are regarded as ethical in all interpreting. At present, registers of police interpreters are established according to very differing criteria in the various countries. People recruited without checking on their qualifications or family members or persons involved/related in some other way with the case at hand will not necessarily abide by the ethical principles of the profession.

Professional standards

The standards for professional interpreting include, apart from confidentiality as mentioned in the Directive, impartiality, trustworthiness, reliability, and discretion. In addition, ethical principles include that interpreters should accept only work assignments for which they are qualified, that they should decline work if it involves unprofessional behaviour or disrespect of ethical principles, and that they should be extraordinarily conscientious in the handling of documents and files obtained.

In at least one country, interpreters working for the police are obliged to pronounce a uniform text of the ethical guidelines of the profession prior to any hearing in which they work.

Professional interpreters recruited for the police see it as their duty to provide high quality interpretation, to be loyal, objective and impartial, and they have often taken an oath. Part of their ethics is that they translate everything correctly, and it is included in the oath that if they cannot do so, they have to ask for clarification. They regard it as their duty and an obligation to contribute to establishing the truth.. Professionals regard it as part of their code of ethics to interpret everything that is said in both directions; in some countries it is not clear whether they should only interpret the most important parts or even simplify complex legal language for the lay side. The latter is common practice in most countries. Interpreters usually interpret in direct speech (first person). They are in control of their body language, and they do not show their emotions with respect to the interpreted communication. The interpreter does not communicate with the interviewed person without the interviewer being involved.

Members of a professional association abide by its code of ethics. Professional associations have systems of ascertaining the quality of the work performed by their members. Ethical standards also require interpreters to pursue further training.

Way ahead

For the reasons stated above, it is recommended to **include ethical standards under the heading of quality** and to make explicit mention of what these standards are. For example, it should be an ethical principle that interpreters' own contributions to the interaction should be restricted to an absolutely necessary minimum, and it should always be clear and transparent whether an interpreter translates or asks for clarification or gives an explanation.

In establishing such standards, one could **refer to the codes of ethics that have been**

established by the different professional associations. In a second phase, these would then have to be adapted to the legal setting and the requirements on which legal and interpreting experts have agreed.

Recommendations

- **There should be some control over whether an interpreter working for the police abides by ethical rules; this could be done by way of certification through professional associations. Such associations whose members are specialised in legal interpreting should establish certification procedures which should be coordinated with police authorities to make sure that codes of conduct and best practices are mutually reinforcing and geared to improving quality of work and ethical standards of the profession. A European accreditation system with clearly defined criteria could be introduced.**
- **Professional associations at international, European and national level (FIT, AIIC, EULITA, BDÜ and others) should be involved in the establishment of a code of conduct specific to the field of interpreting for the police. The specific codes of ethics (for suspect interviews etc.) should be disseminated to legal authorities; relevant codes for the legal profession should be disseminated to interpreter associations. The practical guidelines for interpreters / police officers in interpreter-mediated police settings should be exchanged.**
- **Where agencies are used for recruitment purposes, such agencies should inform their interpreters about ethical standards to be complied with. Agencies should not discourage their interpreters from becoming members of a professional association.**



7. Quality monitoring

Directive 2010/ 64: recital 26; article 2, (5), (8); article 5, (1); article 6 ; article 7

Introduction

Requirements for the quality of interpreting and assessing the quality of interpreting are set out in Directive 2010/64/EU of the European Parliament and of the Council of 20th October 2010, on the right to interpretation and translation in criminal proceedings. Individual EU member states must implement this Directive by 2013, which is why the issue of quality assessment is particularly relevant. The situation in the countries we have analysed, which are taking part in the ImPLI project, is not entirely uniform and we can observe a number of differences. However, it is possible to make initial conclusions and recommendations.

The current situation and best practice

The quality of interpreting is closely linked with all the situations and aspects described and defined in the following points of the report: requirements for minimum qualifications (compulsory or non-compulsory study of interpreting skills and law or other postgraduate training) for legal interpreters ; the status and standing of legal interpreters; the existence or non-existence of a nationwide list/register/database of accredited legal interpreters; the existence or non-existence of a Code of Ethics; the existence or non-existence of a professional organisation of legal interpreters; working conditions and remuneration; mutual cooperation with police officers before and during interpretation (briefing on the case in question, on the deliberate use of certain interrogation tactics, or an agreement on the interpreting method used: consecutive uninterrupted or interrupted interpreting, chuchotage or voice-over, sight translation etc.).

It was stressed in the Directive that quality interpreting should ensure access to justice -

article 2, (5) and article 5, (1) - and it was mentioned that the lack of experience and qualifications on the part of interviewers and interpreters was a possible cause of difficulty (article 6).

The main issues surrounding quality assessment - Interpreters' qualifications: widespread versus non-widespread languages

It has been stated at the different round-tables that finding a quality, professional, “accredited” legal interpreter from a list of interpreters to interpret for criminal justice agencies is not a problem. However, this applies only as long as such a list exists in the country in question (register/database: local – regional – provincial – national/nationwide) for widespread languages (English, German, French, Russian, Spanish, Italian, Polish, etc.). The majority of such interpreters work on a freelance basis. There are only a handful of institutions which employ interpreters in-house (see Countries reports). The situation becomes complicated and problems may arise with languages, which are both widespread and global (for example, Chinese, Hindi, Arabic), but for which there is not always any provision for professional training of interpreters in European interpreting schools or on certified courses. Understandably, the situation varies in individual member states – it also depends upon the number of foreign nationals using these languages and residing in the countries in question (for example, Arabic or Chinese). It is more difficult and complicated to find a qualified interpreter for some other languages (for example, Vietnamese, Mongolian, or African languages, or even lesser spoken European languages such as Lithuanian, Latvian, Estonian, Czech and Slovenian, to name but a few), when police and courts often have to resort to appointing an “ad hoc” interpreter. In these cases it is very difficult to ensure and, above all, monitor and check the quality of the interpretation.

There is still evidence that interpreters are used from a given linguistic and cultural community. This can lead to an accused person trying to prejudice emotionally, influence and sometimes even threaten the interpreter. In this situation it may be appropriate to use yet another “monitoring” interpreter. An example can be made from Italy: in the past, this was the case for investigations involving Chinese nationals for various reasons. Firstly, 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 from the local Chinese community and is not closely related to the other Chinese nationals. In instances such as these, all interviews are recorded and then another interpreter from a different city is appointed to crosscheck the interpretation provided by the first interpreter. Very often, the police do not use qualified interpreters and engage them at the last minute. It is therefore impossible for the interpreter to go over the case file and prepare for the interview.

Lack of centralised registers of legal interpreters and Quality Assessment bodies

In some countries (for example Belgium - Flanders) we come across the issue that a free-lance “professional” framework leads to big differences in quality and, unfortunately, quality control is not carried out in a uniform and transparent way throughout the country. National quality control systems do not exist. Local initiatives do exist but are too fragmentary at the present time. There is no system in place to verify the accuracy of interpretation and translation. In some countries (for example France, Belgium), there are not centralised registers of legal interpreters from which criminal justice authorities can select interpreters.

A/V recordings of interpreter mediated interviews or written records of interpretation

In the EU member states which have taken part in the ImPLI project, different practices often exist in terms of keeping a record of the investigation and the interpretation. In most cases, a **written record** of the investigation is made (by a police officer), a written summary or verbatim record is taken down by police officers of all interviews; the police officer then reads it out and the interpreter interprets it using the sight translation method to the other party, who then signs the record and thereby agrees with the record’s accuracy. Furthermore, the interpreter signs the record, thereby confirming its accuracy. Unless the party objects, there is no system in place to verify the accuracy of the interpretation and translation. In some countries, an **audio and/or video recording** of the investigation is made, including the interpretation. In Italy, for the purpose of the minutes, interviews are usually audio-recorded. In many instances this has proven very useful, particularly when an “ad hoc” interpreter has been recruited: if there are any doubts and the investigation is particularly complicated, the interpretation can be cross-checked by calling on another interpreter. In other countries this is not allowed. However, this serves as an excellent solution to cross-check the interpreter’s performance and ascertains whether the interpreter has performed well or not. All interviews should be audio/video recorded.

In some countries (for example, Italy) the defendant has the right to obtain copies of the taped interviews 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 carried out by an independent expert who is not the same person who transcribed/interpreted the interview in the target language for the judicial police or the prosecutor’s office. This serves as a guarantee for the defendant. In addition to this, if the case goes to court, the defendant can request that the judge appoint an expert to translate the same interview once again.

In Scotland ‘complete disclosure’ applies, when interpreting notes must be handed over to the defence lawyer.

We can see that Quality Assurance is needed. It already forms part of police authorities’ work, but this will also have to include working with interpreters. Quality Assurance can help with finding possible solutions and improvements.

Future perspectives

Different mechanisms should be put into place to check the quality of interpreting. Below are some examples which, in our opinion, could serve on the one hand to strengthen the standing and role of the interpreter (a large majority of court interpreters are first rate professionals) and, on the other hand, could objectively enable monitoring and assessment of the quality and faithfulness of the interpretation in the event of disputes.

Recommendations

- **An audio-video recording should be made of the investigation, including all interpretation. All A/V recordings of the case file should be kept until the case is closed.**
- **In the event of disputes, a second interpreter should be provided and the recorded interview re-interpreted so as to provide a comparison between both interpreted versions.**
- **An interconnected register/list/database of qualified legal interpreters should be created within the European Union – as a gate-keeping tool to guarantee quality. There is much to be done in this field. The directive emphasises the importance of registers which need to be inter-connected and all of the same standard.**
- **A control mechanism should be created i.e. a professional organisation of legal interpreters working in cooperation with the Ministry of Interior or Justice, and universities' interpreting and law departments, to be called upon in the event of disputes.**
- **Certification courses for interpreters should be set up – based on ISO quality standards.**



8. Training in accordance with Directive 2010/64/EU

Articles 1(4), (5), (8); 5 (2); 6

Introduction

This chapter addresses the specific needs of interpreters' training for the pre-trial phase (police and prosecution): first as derived from the new Directive 2010/64/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 October 2010 on the right to interpretation and translation in criminal proceedings; second, according to expectations expressed by users (police and prosecution) throughout the ImPLI project.

It then gives a short overview of some existing training formats and assesses how they meet the quality standards set out by the Directive. In this respect these formats will be checked against the recommendations expressed by the Reflection Forum on Multilingualism and Interpreter Training⁷.

The chapter will then end with specific recommendations on the development of joint training modules.

Needs for training derived from the new Directive

Some essential improvements in comparison with previous sources⁸ referring to a fair trial are to be stressed because of their direct implications on training requirements:

- An interpreter is explicitly required from the time of the very first contact with the

⁷ <http://www.eulita.eu/sites/default/files/Reflection%20Forum%20Final%20Report.pdf> (2009)

⁸ Convention for the Protection of Human Rights and Fundamental Freedoms article 6 (a) does not specify if the information has to be given by an interpreter:

“Everyone charged with a criminal offence has the following minimum rights to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;”

examining authorities⁹ .

- The quality of interpreting is put under the responsibility of the recruiting authority and has to be such as to guarantee a fair trial¹⁰. It may be challenged¹¹ in case of doubt. The need for training judicial staff to work with interpreters is explicitly recognised¹².
- Developing a mechanism for assessing the language command of interviewees¹³ also requires specific training.

The quality of interpretation required by the Directive is defined according to the essential objective to be reached, which is: a fair trial, adequacy¹⁴ being the minimum requirement formulated in this respect. ImPLI's recommendations will logically specify a core curriculum indispensable to achieve these requirements.

Expectations expressed by the users in the course of ImPLI roundtables

In the eyes of ImPLI partners who are all interpreter trainers, police officers and prosecutors were not very specific in the way they expressed their expectations, probably because they are not aware of the scope of services they can expect from professional interpreters. This lack of information/knowledge is reinforced by the fact that they very often have to work with poorly qualified interpreters, especially in case of languages of lesser diffusion. Their general attitude is therefore often one of suspicion.

There seems to be nevertheless a consensus upon the following needs for interviews with interpretation:

- Direct contact with the interviewee

⁹ Article 2 (1) "Member States shall ensure that suspected or accused persons who do not speak or understand the language of the criminal proceedings concerned 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.

¹⁰ Recital (17) "This Directive should ensure that there is free and adequate linguistic assistance, allowing suspected or accused persons who do not speak or understand the language of the criminal proceedings fully to exercise their right of defence and safeguarding the fairness of the proceedings."

¹¹ Recital (24) Member States should ensure that control can be exercised over the adequacy of the interpretation and translation provided when the competent authorities have been put on notice in a given case." and also

Recital (26) "When the quality of the interpretation is considered insufficient to ensure the right to a fair trial, the competent authorities should be able to replace the appointed interpreter".

¹² Article 6 (training) Without prejudice to judicial independence and differences in the organisation of the judiciary across the Union, Member States shall 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 so as to ensure efficient and effective communication."

¹³ Article 2 (4). Member States shall 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 and whether they need the assistance of an interpreter.

¹⁴ Recital (24)

- No intrusion (from the interpreter) during the interview. Even if police officers have to accept interaction with a third party (the interpreter), they have - by law - to remain in control.
- Information about cultural differences is nevertheless welcome, as long as the interpreter does not impose anything. These intercultural “interferences” should always be under the control of the interviewer.

They are however considered essential when a cultural misunderstanding impairs a linguistic exchange.

These needs are consistent with the quality requirements expressed by the Directive and will be covered by the ImPLI recommendations; surprisingly enough, no need for training interviewers was spontaneously expressed.

Existing training schemes

Until now there has been very little specific training for police interpreting in most member states. The most difficult problem is languages of lesser diffusion for which interpreting schools have great difficulty providing “just in time” training in response to fast-changing needs related to migrations flows.

The urgency of most cases, insufficient information and lack of awareness about the risks of recruiting untrained interpreters is a general problem.

The situation is heterogeneous even within countries: e.g. Flanders in Belgium. (Courts of Antwerp, Mechelen, Leuven and Turnhout only recruit¹⁵ interpreters that have had adequate training, other courts do not (Dendermonde, Brussels, Gent, Brugge etc.). In Germany, the Hamburg police now only recruit interpreters who are sworn and who have passed the accreditation exam, but this is not the case for all Bundesländer

In France, there are different (including unofficial) lists of courts and police interpreters. The existence of a real professional qualification is rarely guaranteed.

Nevertheless different formats of legal interpreter training are offered in the respective countries of ImPLI partner countries:

- Graduate and postgraduates studies ¹⁶ (rare, especially for languages of lesser diffusion)

¹⁵ Lists of sworn interpreters do exist in the various judicial districts, but the criteria to become member of these lists differ according to the specific requirements of each district.

¹⁶ https://www.hs-magdeburg.de/studies/s-studienangebot/bachelor/b_fachdolmetschen

- Training modules within a graduate or postgraduate curriculum¹⁷
- Continuous Professional Development (CPD) in universities¹⁸ (a manageable solution for languages of lesser diffusion)
- Training seminars offered by professional associations.
- Unfortunately syllabi vary greatly and do not always comply with the relevant recommendations set out in the Report of the Reflection Forum on Multilingualism and Interpreter Training¹⁹. Many of them mainly focus on law at the expense of acquiring interpreting and translating skills. Few of them teach intercultural communication, interpreting techniques, or remote interpreting and transcribing of telephone tapping.
- Unfortunately there have been until now only a few limited initiatives to train users (police officers to work with interpreters. Such measures have been initiated in Scotland (Heriot Watt and Edinburgh Police), Belgium (Lessius Hogeschool and Antwerp Police) and in Germany (Hochschule Magdeburg and Aschersleben Police School)²⁰.

Adequate curricula in accordance with the Reflection Forum on Multilingualism and Interpreters Training

Considering the aim of the Directive of a fair trial, the needs of police and prosecution interviewers and of interpreters to work efficiently and ethically, training curricula for legal interpreters working in pre-trial settings should definitely include the basic interpreting skills required from any interpreter plus some more specific competences:

Techniques

- Sight translation (ad hoc translation of rights and other documents without delay)

¹⁷ Fachhochschule Köln

¹⁸ France: Diplômes d'Université:

Nice <http://www.unice.fr/asure/dotclear/index.php?2007/02/13/142-diplome-universitaire-formation-juridique-des-experts-traducteurs-interpretes>

Lyon 3 <http://facedroit.univ-lyon3.fr/formations/d-u-traducteur-interprete-juridique--366365.kjsp>

Paris ESIT Sorbonne nouvelle <http://www.univ-paris3.fr/du-traducteur-interprete-judiciaire-127462.kjsp?RH=1258124116983>

Germany

<http://www.aww.uni-hamburg.de/dolmetschen-uebersetzen-gerichte-behoerden.htm>

<https://www.hs-magdeburg.de/weiterbildung/angebote/zertifikat/dolmetschen-und-uebersetzen>

¹⁹ page 9-12

²⁰ Following a similar approach with lawyers, ISIT has set up a joint training programme with HEDAC (Haute École des Avocats Conseils de la Cour d'Appel de Versailles)

- Consecutive with or without note-taking (in case of specific difficulties of communication)
- Simultaneous whispering (to ensure a direct contact with interviewees, the police officers seeing the body language and facial expression, while listening to the interpretation as if they were reading subtitles)
- Remote interpreting

Competences

- Intercultural competence (to prevent misunderstandings by explaining culture-bound reactions of interviewees)
- Professional ethics²¹ dictating neutrality and confidentiality as required by the Directive²², introducing oneself, asking for clarification, turn-taking, etc.

Knowledge

- Extended range of language registers, legal language, terminology
- Knowledge of legal systems (police and court proceedings).

In accordance with article 6 of the Directive²³ best training practices should include **dedicated joint modules for police students and interpreter students**, creating awareness of their respective roles and needs. Seminars consisting of role-plays, interviewing techniques, remote interpreting should be staged.

This **joint training** should include an in-depth reflection upon **professional ethics** (see EULITA Code of Ethics).

Specific training solutions for languages of lesser diffusion should be applied

Reliable and flexible methods of training for interpreters in languages of lesser diffusion have been successfully applied for many years for conference interpreters at ESIT Sorbonne Nouvelle²⁴, at the EU Commission and Parliament²⁵ and also for legal interpreters in

²¹ Example Code of Professional Ethics of EULITA <http://eulita.eu/sites/default/files/EULITA-code%20of%20ethics-e.pdf>

²² Directive article 5 (3)

²³ e.g. Magdeburg University of Applied Sciences and Police School in Aschersleben), Herriot Watt, Edinburgh, Lessius University College (Antwerp)

²⁴ Laplace, C (1999). Didactique de l'interprétation en régime spécial. Limites et avantages de la méthode - un exemple: L'enseignement de l'interprétation consécutive vietnamien - français in: FIT, ed. Aacte, Mons., p. 9-20.

Germany and Switzerland²⁶.

Considering the aim of the Directive of a fair trial and the ImPLI project findings, the partners express the following recommendations to authorities in charge of organizing interpreting services, as well as to trainers of police academies and interpreting schools.

Recommendations

- **Interpreters' assessment and certification should be equivalent in all member states, with the aim of bringing uniformity to the diverse situations which prevail in the different member states – i.e. learn from each other's best practices**
- **Only qualified (certified) interpreters should be recruited, especially during the decisive pre-trial phase**
- **Working with interpreters should become part of police officer's training**
- **Joint training modules should therefore be organized on a regular basis by police academies, interpreting schools or professional associations**
- **Interpreting schools and police academies should also envisage offering training to the trainers, teaching them how to adapt curricula and design ways of assessing the interviewees' command of language.**

²⁵ Driesen, C & Drummond, G. (2003). Accelerated Training Courses for Conference Interpreters. In Bruha, J (Ed.), Festschrift anlässlich des 50-jährigen Bestehens der Stiftung Europa-Kolleg. Hamburg: Stiftung Europa Kolleg.

²⁶ Hamburg, Magdeburg Driesen, C. & Drummond, G. (2011). The "Tandem Method Training Interpreters to Work at National Courts. Forum Université Paris 3 Sorbonne Nouvelle KSCI, 9(2), 139-156.



9. Old and New Technologies

Directive 2010/64/ article 2 (6)

Introduction

Over the last 10 years, information and communication technologies have been going through a spectacular phase of development. This development also affects criminal proceedings, which have recently received an increasing amount of attention in the European Union and become a central topic of debate. Nevertheless, there are some particular circumstances we have to take into consideration here, specifically the fact that police pre-trial investigative interviews and criminal proceedings are governed by very strict safety rules.

The directive reflects this specificity and refers, in Article 2, to the use of new technologies, such as videoconferencing, telephone or the Internet in the presence of an interpreter, reading as follows: *Where appropriate, **communication technology such as videoconferencing, telephone or the Internet** may be used, unless the physical presence of the interpreter is required in order to safeguard the fairness of the proceedings.*

At the same time, the directive is highly quality-conscious: *Interpretation [...] shall be of a quality sufficient to safeguard the fairness of the proceedings.*(Art. 2 (8))

Considering both old and new technologies, this chapter will focus on telephone interpreting, telephone tapping and videoconference interpreting (VCI below).

Some definitions

Telephone interpreting

AIIC (2000)²⁷ defines tele-conference and tele-interpreting as follows:

Tele-conference: any form of communication between two or more participants in two or more different places and relying on the transmission of one or more audio signals between those places.

Tele-interpreting: interpretation of a multilingual video-conference by interpreters who have a direct view of neither the speaker nor their audience.

Telephone interpreting will be used only in limited situations (emergency meetings, roadside incidents, etc.); or for identifying the language used in urgent cases. Telephone interpreting is an emerging and cost-saving form of interpreting and is used exclusively in the initial phase of a criminal case.

Face-to-face interpreting is more common and, in criminal cases, is always preferable to telephone interpreting.

Telephone tapping in criminal cases

Telephone tapping is strictly controlled in many countries to safeguard individual privacy. In the European Union, it needs to be authorized by a court, and is normally only approved when evidence shows that it is not possible to detect criminal or subversive activity in less intrusive ways. Though gathering and collecting evidence through telephone tapping is possible in the whole of Europe, the way it is used varies from country to country.

Videoconference Interpreting (VCI)

VCI is one of the most important new technologies. It saves time and money – and, in contrast to telephone interpreting, can be used in both national and international criminal cases /investigations involving more than one country, in cross-border investigations in the initial and pre-trial phase.

Videoconference technology can now be used as a substitute for having the main parties physically present during criminal proceedings. It makes the job and working conditions of the police easier - at least in some respects. Police officers for instance no longer have to

²⁷ AIIC (2000), 'Guidelines for the use of new technologies in conference interpreting', Communicate! March-April 2000. Available at http://www.aiic.net/ViewPage.cfm?page_id=120.

travel to far away countries or waste time in traffic jams.

However, research²⁸ has shown that the use of VCI in an initial interrogation can also have negative implications. In the case of the initial hearing of a suspect, police tend to prefer face-to-face interrogations, while the location of the interpreter is of less importance to them and can thus be remote. In the case of a hearing of a witness or victim, police officers can be on a remote location together with the interpreter or can use remote interpreting, where the interpreter is alone in a remote location. (It is the police officer who considers whether using VCI is possible, and according to AVIDICUS the police preference is nonetheless a setting where the police officer can be together with the suspect/witness/victim, and the interpreter is in a remote location, as Police officers think they do not necessarily need to see the interpreter.

This preference of police officers for having direct contact with the interviewee, and contact with the interpreter is of secondary importance is rather surprising. The most important point of a hearing is that the police are in charge and control the whole proceeding, with interpreter visibility being kept as low as possible.

Best practices

Telephone interpreting:

Telephone interpreting is not frequently used in the various countries involved in ImPLI, apart from **Scotland**, where telephone interpreting is often the first type of formal interpreting. Its use as a backup solution is expanding in the event of unplanned or emergency interpreting needs, or when a certain language combination cannot be sourced locally. All telephone interpreting providers are based outside Scotland. Police only resort to this interpreting mode 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 distances, or because there is an emergency and the police are prepared to use any means necessary to understand and support a victim or witness. In that case, the police will contact an interpreter by telephone. This mode of interpreting is only used as an initial step to collect general information about an event where foreign citizens may be involved as victims or perpetrators of a crime. Writing a report on the basis of telephone interpreting is not possible in any European country. For a written report, having the interpreter physically present is obligatory.

²⁸ AVIDICUS (JLS/2008/JPEN/037)

Telephone tapping

Except in **Scotland**, where it is very difficult to get authorisation for telephone tapping, this method of gathering evidence is widespread in every/all European countries involved in the ImPLI project. In the case of telephone tapping, the interpreter's presence is required several hours a day and for a longer periods of a week or more.

In **Germany**, tapped conversations are never recorded for the sake of interpreting and up to 4 or 5 interpreters are brought in to do the job. (Telephone surveillance) German interpreters always produce full German transcripts of tapped telephone conversations.

In **Italy**, linguistic experts are requested to listen to and summarise the conversations or to transcribe them in full into Italian when the investigating officers believe that the content is relevant for the investigation.

Tapped telephone conversations in the **Czech Republic** are/can be presented as evidence in court and the person whose phone was tapped has the right to check the transcript. Therefore, there is a need to have a transcript in the original language as well.

In **Belgium/Flanders**, the interpreter who does the tapping summarises the conversation and the investigating magistrate, having read the content, decides whether the conversation is relevant and has to be transcribed.

In **France** there are three possibilities. One of them is the same as in Belgium, where the interpreter summarizes the conversation and the investigating magistrate decides whether the text has to be transcribed. The second possibility (less common) is when the interpreter is offline, working with a few seconds' delay in conversations. This method is relatively straightforward, and the interpreter can work from any location, as long as they have an Internet connection. The third possibility is using recordings, which means that the interpreter translates locally or at home. In practice, this latter method is applied very rarely. All records are kept and the judge has a translated transcript (both a hard copy and an electronic version).

Videoconferencing VCI

Pre-trial investigations (first hearings): different practices have begun to emerge for pre-trial hearings of defendants and witnesses. The mode of interpreting is usually consecutive.

What is the current situation regarding the use of VCI in the countries involved in the ImPLI project?

In Scotland, videoconferencing requests in criminal matters must be addressed to the International Cooperation Unit of the Crown Office in Edinburgh. In civil matters, requests should be addressed to the Civil Law Division, DG Justice and Communities, St Andrew's House, Edinburgh.

In Belgium, VCI is only used in civil cases between the courtroom of Hasselt and Antwerp.

A survey conducted by the European Council Working Party on Legal Data Processing (e-Law) in 2008 shows that videoconferencing (VC) is used increasingly in **national and cross-border criminal proceedings** to speed up co-operation, reduce costs or increase security. The survey also asked whether respondents had experience in using videoconferencing for translation or interpretation. The **Czech Republic, France and Italy** replied that they had no such experience. **Germany** reported occasional to frequent use of simultaneous interpreting in video links in court. In **Scotland**, interpreters involved in videoconferences would generally be seated next to the witness.

In summary, videoconferencing is:

Used regularly	Used occasionally	Used rarely	Used - frequency unknown
United Kingdom	Germany	Czech Republic Italy	Belgium France

Recommendations

Telephone interpreting:

- Telephone interpreting should only be used to facilitate initial contact with the police, but not for evidential purposes
- Training for telephone interpreting is essential
- Surroundings should be as quiet as possible
- Equipment should be of good quality
- Use of VCI rather than telephone interpreting

Telephone tapping:

- Use of updated new technology which can filter background noise and provides clear audio input
- Briefing of the interpreter about the context and slang which might be used
- Training interpreters for use of telephone tapping

Video Conference Interpreting:²⁹

- **The Council of the European Union itself formulated recommendations for both, based on those of the AVIDICUS project³⁰.** These European Council recommendations are divided into two groups: the first concerns technical issues, while the second focuses on the quality of the participants, training and guidelines
- Homogeneity in the use of VCI in the different member states is recommended
- Creating standards concerning when to choose and how to use VCI with specially trained interpreters and legal practitioners is recommended
- Creating standardized professional ethics for VCI is necessary.

²⁹ The AVIDICUS project formulated recommendations for interpreters as well as for legal practitioners using VCI.

http://www.videoconference-interpreting.net/BraunTaylor2011/14_Braun_recommendations.pdf

³⁰ The Council of the European Union refers to the use of videoconference interpreting (VCI) in his document and stresses the obvious need for VCI.(It is not a public document yet. (<http://www.statewatch.org/news/2012/may/eu-jha-council-a-points-non-legislative.pdf>))



Concluding recommendations

DIRECTIVE 2010/64/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 October 2010 on the right to interpretation and translation in criminal proceedings explains in detail the importance of the initial contact with interviewing authorities for individuals who have little or no command at all of the language in which the criminal proceedings are held (article 2).

Since then, the EU has approved another roadmap³¹, which includes the Directive's minimum standards on the protection of victims and their access to law.

Through their professional experience the ImPLI partners were themselves from the outset convinced of the utmost importance of the pre-trial interview phase for all the ensuing proceedings. The ImPLI project has confirmed this assumption and provided a better understanding of the challenges of pre-trial interviewing.

The ImPLI project has clearly established that the different stakeholders have common interests, which should be taken into account to comply with the Directive's aim of the right to a fair trial:

³¹ 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.

1. Fundamentals

- Specific training for interpreters, especially in languages of lesser diffusion organised by accredited academic bodies.
- Specific training for the professionals in charge of interviewing
- Joint training modules for interpreters and the police, especially in the use of new technologies
- Harmonised certification of interpreters as a guarantee – also for other EU members states - of their professional training and adhesion to a professional code of ethics
- Establishment of registers including certified interpreters exclusively.

2. Recruitment

- Only certified interpreters should be recruited. Exceptions should be avoided in the interest of all stakeholders.

3. Interview phase

- Safety of the interpreter guaranteed during and after the interview.
- Reasonable working hours so as to maintain the required level of quality.
- Provision - as far as possible - of relevant information about the case in hand to the interpreter before the interview.
- Possibility for the interpreter to adapt interpreting techniques to the communication circumstances.
- Possibility for the interpreter to give an explanation in the case of a cultural misunderstanding, if the interviewer wishes so
- Importance of not requiring any other tasks from the interpreter besides interpreting
- Recording is recommended to ensure better quality control

On the basis of these results which emerged from the synergies created during the ImPLI project, and bearing in mind what has already been developed in Belgium, Germany and Scotland (cf. Country reports), joint training modules could be built along the following lines:

Recommended Joint Training Modules

- **Trainers from police academies and interpreting schools should work together to develop contents adapted to the specific working traditions and procedural needs of their respective countries.**
- **These modules could be integrated into graduate but also CPD curricula to create awareness about the specificity of interpreter mediated interviews among experienced professionals of both professions.**
- **The format should include lectures, role-playing and introduction to the use of new technologies. The time-slot envisaged could be 15 hours.**
- **The theoretical part of these modules should allow trainers from police academies and interpreter schools to introduce their professions to their respective students, explaining their specific tasks and problems.**
- **Presentation and discussion about rules of conduct and deontology should constitute an essential part of the programme.**

In conclusion, the ImPLI partners would call upon police academies, interpreting schools, the professional associations of all parties and national authorities in charge of recruiting interpreters for the pre-trial phase to consider the detailed recommendations which are formulated in this final report, (and illustrated by the films), and contribute actively to improving the quality of interviews with the assistance of interpreters. Furthermore, the ImPLI project could certainly lead to cooperation with the following projects or bodies:

- **EULITA** (European Legal Interpreters and Translators Association),
- **AVIDICUS** (Assessment of Video-Mediated Interpreting in the Criminal Justice Service)
- **Reflection Forum on Multilingualism and Interpreter Training** - Legal Interpreting in the European Union - Recommendations for Best Practices.

The contributors to, and authors of, this report hope that it, together with the films made in the course of its preparation, will serve as an inspiration to the partner countries to drive the ImPLI project to a successful fruition!



II Country Section



Tables: Interpreting Situation in the Partner Countries at a glance

Legal Interpreting in BELGIUM/FLANDERS

Questions	Answers	Remarks
Official title of legal interpreters in the member state?	Beëdigd tolk	- Sworn interpreter
Translator and/or Interpreter?	Yes	One can choose to be either an interpreter or translator or both. Requirement: be a sworn interpreter and/or translator
Legal basis & sources?	- Language Act of 15 June 1935 - Code of Criminal Procedure - Code of Civil Procedure - European Arrest Warrant (Art 11)	- No specific Belgian legislation on legal/sworn interpreters/translators
Specific training?	No	- No uniform legal basis for becoming a sworn interpreter - Only local initiatives i.e. Lessius Antwerp and BKVTF
Register	No	- No official central database of legal/sworn interpreters/translators in Belgium/Flanders - Lists of sworn interpreters are kept at each registry of the various courts (each judicial district has different requirements for becoming a sworn interpreter) - Only the judicial districts of Antwerp, Mechelen and Turnhout have a uniform requirement for being included in the local register of these districts : passing the Lessius training programme is compulsory
Pre-conditions for registration?	No	- No legal basis
<i>Personal (age, criminal records)</i>	No/Yes	- No: no legal requirement to have a clean criminal record, but in practice it is checked - Yes: a legal requirement is to be at least 21 years old

<i>Professional University level qualifications (certificate, diploma, degree)? CPD?</i>	No	- Certificate of Lessius Antwerp training, only for the Courts of Antwerp, Mechelen and Turnhout - Other judicial districts: various requirements exist
Limited geographical coverage?	Yes	Limited to the juridical district where you are enrolled
Nationality requirements? (Must interpreters be nationals?)	No	
Code of ethics?	No	- Not legally binding - Only local: judicial district of Antwerp
Interview formats		
<i>Face to face</i>	Yes	
<i>Remote</i>	Yes	Very limited
<i>Telephone Tapping</i>	Yes	
Quality control mechanism	No	No tape or video recording (or other specific system) to verify accuracy of the interpretation
Working conditions		
<i>Status</i>	Freelance	
<i>Safety/Security</i>	No	
<i>Duration</i>	No limit	
<i>Remuneration</i>	Depending	- On language (4 groups) - On timing (working days vs. weekend, night = x2)
	Between €33.25 (min) and € 57.45 (max) per hour	http://www.ejustice.just.fgov.be/cgi/article_body.pl?language=fr&pub_date=2012-01-27&numac=2012009022&caller=list#hit1
<i>Waiting Time paid?</i>	Yes	
<i>Travel expenses</i>	Yes	- always number of km from domicile to working place (no train tickets)
<i>Subsistence allowances</i>		
Professional associations	Yes	- (since 2012) Vereniging van Onafhankelijke Gerechtstolken en Beëdigde Vertalers https://www.facebook.com/groups/418805261486525/ - Forum BKVTF http://www.linguajuris.org/forum_nl.html (Dutch)

Legal Interpreting in The CZECH REPUBLIC

Questions	Answers	Remarks
Official title of legal interpreters in the member state?	interpreter (tlumočník)	Although the word itself means simply interpreter, in the context of legal interpreting a court-appointed interpreter is meant – the relevant legislation uses “interpreter”. The new draft legislation uses more specific terms “soudní tlumočník” and “soudní překladatel” (court interpreter and court translator)
Translator and/or Interpreter?	No	The current legislation does not make any distinction, both are called interpreters. In practice people can decide what they want to do.
Legal basis and sources?	Yes	Act No. 36/1967 on Experts and Interpreters; Regulation of the Ministry of Justice No. 37/1967 to implement the Act on Experts, Translators and Interpreters;
Specific training?	Yes	Resolution concerning minimum qualification standards of 2011 - JURIDIKUM, Faculty of Law, Charles University in Prague (legal translation only, 2 semesters) - seminars organized by Chamber of Court Appointed Interpreters (terminology) in cooperation with the Institute of Translation Studies, Charles University in Prague
Register	Yes	Regional databases, unified into one at Ministry of Justice level
Pre-conditions for registration?	Yes	
<i>Personal (age, criminal records)</i>	Yes	No criminal record
<i>Professional University level qualifications (certificate, diploma, degree)? CPD?</i>	Yes	Minimum practice of 5 years University Degree JURIDIKUM-course (The proposed new bill also includes a special exam)
Limited geographical coverage?	No	
Nationality requirements? (Must interpreters be nationals)?	No	Current law: Czech nationals, but the Minister of Justice can approve an exception (Proposed bill: nationals of EU countries and the Minister of Justice can approve an exception in other cases)

Code of ethics?	Yes	Not legally binding (accepted by members of the Chamber of Court-Appointed Interpreters)
Interview formats		
<i>Face to face</i>	Yes	
<i>Remote</i>	Yes	Very limited
<i>Telephone Tapping</i>	Yes	
Quality control mechanism	No	
Working conditions		
<i>Status</i>	Freelance In-house	In-house interpreters and translators are very limited in number
<i>Safety/Security</i>	No	
<i>Duration</i>	No limit	
<i>Remuneration</i>	Between €6,25 (min) and €14,60 (max) per hour, depending:	<ol style="list-style-type: none"> 1. - On region 2. - On language 3. - On the specific police unit <p>In practice, the fee is not less than €10,50 +25 % for working on public holidays, Saturday, Sunday</p>
<i>Waiting Time paid?</i>	Yes	
<i>Travel expenses</i>	Yes	Always per km from domicile to place of work
<i>Subsistence allowances</i>		
Professional associations	Yes	<p>Komora soudních tlumočnicků České republiky</p> <p>(Chamber of Court-Appointed Interpreters of the Czech Republic (since 1996))</p> <p>www.kstcr.cz</p>

Legal Interpreting in FRANCE

Questions	Answers	Remarks
Official title of legal interpreters in the member state? Translator and/or Interpreter? Legal basis & sources?	Expert traducteur et/ou interprète près la cour d'appel de... either or both Loi 2004_130 & décret 2004_1463.	Title of the translators and/or interpreters who are registered. Ad hoc recruitment of interpreters and translators is however always possible. Police services for instance do not always use the official lists of experts. Since 2004 an expert can be either a translator or an interpreter or both
Specific training?	A few CPD Programmes	D.U. Traducteur interprète juridique (2010), Faculté de droit Lyon 3 D.U. Traducteur interprète judiciaire (2012), ESIT Sorbonne nouvelle D.U. Formation juridique des Experts Traducteurs Interprètes, Université de Nice Legal training modules offered by associations. Emphasis mostly on legal subjects, less on interpreting techniques
Pre-conditions for registration? <i>Personal (age, criminal records)</i>	Décret 2004-1463 No criminal records, nor disciplinary sanctions Less than 70 years old	Article 2: General Conditions for registration (http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000005983254)
<i>Professional University level qualifications (certificate, diploma, degree)? CPD?</i>	Unclear: same conditions apply to experts of all professions	Décret 2004-1463, art. 2 and art. 6 Professional experience and university degrees mentioned, but no specific qualifications in interpreting and translating required. It is for a Committee (art. 12) composed of 12 judges and public prosecutors and five experts in different fields to decide
Limited geographical coverage?	No	
Nationality requirements? (Must interpreters be nationals?)	No	
Code of ethics?	Only for members of professional associations	The same oath is taken by all experts (Décret 2004-1463, art. 22 – Disciplinary control: art. 24) Interpreters recruited from unofficial lists have to take an oath before every assignment The oath formula “apporter son concours à la Justice en son honneur et conscience” (to lend one’s support to Justice in all conscience) allows for a very wide perhaps even misleading

Interview formats		interpretation
<i>Face to face</i>	Mostly	
<i>Remote</i>	Rarely	Also out in the field (searches)
<i>Telephone Tapping</i>	Mostly translation of recordings	
Quality control mechanism	None	Some criminal interviews are videotaped but this is not systematic and the recordings are not used to monitor the quality of interpreting
Working conditions		
<i>Status</i>	Free lance	
<i>Safety/Security</i>	Only during the interview	No security information for interpreters who have to work alongside policemen out in the field. Interpreters' details are easily accessible.
<i>Duration</i>		
<i>Remuneration</i>	30 € an hour first hour €42, 25% increase at night	Articles R122 and A47 of Code de Procédure Pénale Very long delays in payment (a year on average)
<i>Waiting Time paid?</i>	No	
<i>Travel expenses</i>	No	
<i>Subsistence allowances</i>	€15.25 between 11:00-14:00 and 18:00-21:00	
Professional associations	Yes	One national association : UNETICA (http://www.unetica.fr/) Regional associations : CETIJ (http://go.to/cetij) CRETA (http://www.creta-france.com/) Other interpreters associations : AIIC (www.aiic.net/node/2689/court-interpreting) SFT (http://www.sft.fr/page628_.html)

Legal Interpreting in GERMANY

Questions	Answers	Remarks
Official title of legal interpreters in the member state?	(allgemein) beeidigter Dolmetscher (= sworn interpreter)	Federal States have different titles for sworn interpreters
Translator and/or Interpreter?	Yes	
Legal basis & sources?	Yes	Art. 3 of the German Basic Law (Grundgesetz GG); Art. 185 of the Federal Law on the Constitution of Courts (Gerichtsverfassungsgesetz GVG); Art. 259 of the Code on Criminal Procedure (Strafprozessordnung StPO)
Specific training?	Yes	- FH Magdeburg-Stendal (BA in PSI) - continuous training courses offered by professional associations and academic institutions
Register	Yes	Local, established by the courts where the interpreters are sworn in
Pre-conditions for registration?	Yes	Depending on Länder-specific provisions, some require a state-administered examination
<i>Personal (age, criminal records)</i>	Yes	Minimum age: 18 years
<i>Professional</i>	No	Not compulsory, procedures for being admitted to the lists of sworn interpreters differ from one Land to the other
<i>University level qualifications (certificate, diploma, degree)?</i>		
<i>CPD?</i>		
Limited geographical coverage?	Yes	Limited to the Land in which you are sworn in
Nationality requirements? (Must interpreters be nationals?)	Yes, in some Federal States	For details, see http://www.bdue-berlin.de/infos-zum-beruf.html , pdf: Beeidigung-Vereidigung-Ermächtigung-Ländervergleich
Code of ethics	Yes	Very general provisions in some Federal States only for members of professional associations since it is the code of the association - not legally binding

Interview formats		
<i>Face to face</i>	Yes	
<i>Remote</i>	Rarely	
<i>Telephone Tapping</i>	Yes	
Quality control mechanism	No	Not explicitly defined, at present, most Federal States (e.g. North-Rhine Westphalia or Hamburg) require specific qualifications (knowledge of the German legal system)
Working conditions		
<i>Status</i>	free lance	
<i>Safety/Security</i>	no	risk assessment not explicitly defined in legal provisions, decision to be taken by police officers etc. involved
<i>Duration</i>	No limit	Interpreters may have to work for many hours and full days, often also during nights.
<i>Remuneration</i>	varies according to Federal State	police opts for the lowest offer, procurement procedure for framework contracts, very often with agencies (average between € 20 and € 55, mostly at the lower end)
<i>Waiting Time paid?</i>	Yes	
<i>Travel expenses</i>	Yes	travel time yes, subsistence no
<i>Subsistence allowances</i>		
Professional associations	Yes	BDÜ - Bundesverband der Dolmetscher und Übersetzer e.V. (www.bdue.de) ATICOM - Fachverband der Berufsübersetzer und Berufsdolmetscher e.V. (www.aticom.de) ADÜ Nord – Assoziierte Dolmetscher und Übersetzer in Norddeutschland e.V. www.adue-nord.de)

Legal Interpreting in ITALY

Questions	Answers	Remarks
Official title of legal interpreters in the member state?	1. <i>judicial police auxiliary</i> 2. <i>technical consultant</i> 3. <i>expert</i>	1.“judicial police auxiliary” (<i>ausiliario</i> appointed by the judicial police and acting as a legal officer. 2.“technical consultant” (<i>consulente tecnico d’ufficio</i>) when appointed by and acting as technical expert for the prosecutor. 3.”expert” (<i>perito</i>) when appointed by and working for the judge in court.
Translator and/or Interpreter?	Yes	
Legal basis & sources?	- ECHR; - Constitution art. 111 - Italian Code of Criminal Procedure (CCP) Art. 61 and 143-147 - Constitutional Court Ruling 254/2007.	
Specific training?	No	Except for occasional refresher courses on general topics or on terminology, there is an almost complete lack of training initiatives. In 2011 a one-off Masters course was launched by LUSPIO, Rome, for the Academic year 2011-2012.
Register	No	There is no national official register for legal interpreters. There are lists of court accredited interpreters and lists drawn up by local police.
Pre-conditions for registration?	Yes	
<i>Personal (age, criminal records)</i>	Yes	No criminal records.
<i>Professional University level qualifications (certificate, diploma, degree)? CPD?</i>	No	

Limited geographical coverage?	No	
Nationality requirements? (Must interpreters be nationals?)	No	
Code of ethics	No	
Interview formats		
<i>Face to face</i>	Yes	
<i>Remote</i>	Yes	Very limited
<i>Telephone Tapping</i>	Yes	
Quality control mechanism	Yes, but not routinely	Audio recording, double checking by another interpreter when there are doubts about the reliability of an interpreter's performance.
Working conditions		
<i>Status</i>	- In-house - Freelance	In-house interpreters- so called "linguistic experts" (<i>funzionari linguistici</i>)- are members of staff of the Ministry of the Interior.
<i>Safety/Security</i>	No	
<i>Duration</i>	No limit	
<i>Remuneration</i>	Gross rates x first 2 hours: Euro 14.68. Following 2 hours Euro 8.15 In case of urgency the rate may increase by three times.	Rates are set by law n. 319 art. 4 (8 July 1980) and Ministerial Decree of 30 May 2002 and have not been updated or adjusted since 2002. Average payment conditions: 1-3 months.
<i>Waiting Time paid?</i>	No	
<i>Travel expenses</i>	Yes	Travel refund by kilometre (Euro 0.25 x Km).
<i>Subsistence allowances</i>	No	
Professional associations	Yes	ANTIMI (National Association of Interpreters and Translators of the Ministry of the Interior), established in 2002 http://www.antimi.org assITIG, established in 2011 http://www.interpretingiudiziari.org/index.htm

Legal Interpreting in The UNITED KINGDOM/SCOTLAND

Questions	Answers	Remarks
Official title of legal interpreters in the member state?	None	There is no formally recognised job description beyond simple “interpreter” or “translator”.
Translator and/or Interpreter?	Yes	People may be qualified and work as either a translator or an interpreter, or both.
Legal basis & sources?	- Common Law and legal precedent (e.g. H.M. Advocate v. Olsson, 1941) - Scotland Act 1998 (section 57) - Human Rights Act 1998	No legislation specific to legal interpreters/translators in Scotland. A number of policy documents clearly set out requirements e.g. Lord Advocates Guidelines (2002) http://www.copfs.gov.uk/Resource/Doc/9/0000075.pdf and guidelines published by the Crown Office Procurator Fiscal Service (2008) http://www.copfs.gov.uk/Resource/Doc/13928/0000467.pdf
Specific training?	Partly	No comprehensive, “national” system. A number of routes are possible e.g. Diploma in Public Service Interpreting (+ Scottish Legal Option), Chartered Institute of Linguists; MSc in Translation and Conference Interpreting / Translation Technology with elective in PSI (legal settings), Heriot-Watt University; short continuing professional development courses offered by professional bodies, occasionally by COPFS, etc.. Otherwise, degree or vocational courses in general interpreting / translation underpinned by the National Occupational Standards in Interpreting/Translating.
Register	No	No official central database of legal interpreters/translators in Scotland. Some listings of Scottish interpreters with competence in legal settings held by the UK associations: ITI, CIOL and NRPSI. Registers/lists of BSL interpreters held by several bodies including SASLI, and ITISS in Scotland and NRCPPD and ASLI in the UK, but not specific to legal settings.
Pre-conditions for registration?	Yes	No legal basis. Membership is dependent on rules set by various associations.

Personal (age, criminal records)	Yes	Requirement to have Disclosure Scotland certificate (standard/enhanced depending on sensitivity of case) which provides information re: criminal record.
<i>Professional</i>	Some	No legal requirement re: age, but would normally be 18+
<i>University level qualifications (certificate, diploma, degree)? CPD?</i>		Diploma in Public Service Interpreting (+ Scottish Legal Option), Chartered Institute of Linguists; MSc in Translation and Conference Interpreting / Translation Technology with elective in PSI (legal settings), Heriot-Watt University
Limited geographical coverage?	No	Not within Scotland. Outside Scotland depends on recognition by other bodies.
Nationality requirements? (Must interpreters be nationals?)	No	
Code of ethics	Yes	Code of Conduct for Interpreters (COPFS 2008) – see Appendix A - signed by interpreters http://www.copfs.gov.uk/sites/default/files/Publications/Resource/Doc/13928/0000467.pdf If the interpreter breaches terms or conditions, criminal or civil proceedings may result.
Interview formats		
<i>Face to face</i>	Yes	
<i>Remote</i>	Yes	In limited circumstances, usually by telephone.
<i>Telephone Tapping</i>	Rare	With special permission, in very particular circumstances – often relating to national security - under Regulation of Investigatory Powers (Scotland) Act 2000
Quality control mechanism	Yes	Verbatim record noted by police officers in police notebooks (or electronic equivalent). Written statements signed by parties (including interpreters). These capture only the English-language output. However, any anomalies relating to interpreting will be noted. Moreover, details of the interpreter will be included in the police report submitted to the procurator fiscal. Suspect interviews are always conducted by two police officers and audio (increasingly video) recorded which allows for quality control of interpreting. The guidelines recommend that any interview involving an interpreter is recorded. There is full disclosure of any materials to the defence; therefore, any interpreter's notes will be retained for disclosure.

Working conditions		
<i>Status</i>	Freelance	Occasionally employed full-time by a municipal interpreting service or not-for-profit organisation (mostly applies to BSL/English interpreters).
<i>Safety/Security</i>	Yes	The 2008 COPFS guidelines specifically mention that an interpreter should not be left alone with an interviewee for reasons of safety and risk management: http://www.copfs.gov.uk/sites/default/files/Publications/Resource/Doc/13928/0000467.pdf Working practice of police officers should include warning interpreters of specific risks and the appropriate measures to take and agree a signal if the interpreter is threatened during an interview etc. They should not refer to the interpreter by full name. Police officers will use telephone interpreting rather than place an interpreter at risk (e.g. roadside incidents).
<i>Duration</i>	No limit	Awareness of need for regular breaks. Awareness of health and safety issues relating to sign language interpreting (threat of repetitive strain injury) which may necessitate 2 interpreters.
<i>Remuneration</i>	May range from £10/£16 - £29+	Spoken languages: depends on agency (procurement contracts). Lack of information due to commercial sensitivity.
	Between £28 - £35 per hour	Sign language (BSL): generally follows the recommendations set by a professional body (SASLI), but partly dependent on police force or interpreting service provider. £28 per hour day time/ £35 per hour for night time call outs (minimum 2 hours). Paid from door to door.
<i>Waiting Time paid?</i>	Yes	
<i>Professional associations</i>	Yes	<u>Scotland specific</u> Scottish Association of Sign Language Interpreters (SASLI) (founded 1980) Scottish Interpreters and Translators Association (SI-TA)(founded 2009) No professional association in Scotland solely dedicated to legal interpreters/translators. <u>UK associations with Scottish networks or memberships</u> Chartered Institute of Linguists (can search Scottish members)(founded 1910) Institute of Translation & Interpreting (Scottish Network) (founded 1986) Association of Sign Language Interpreters (Scottish Interpreters Network) (founded 1987)



ImPLI Country Reports



Country Report: BELGIUM/FLANDERS

1 - Legal basis for interpretation at national level

Belgium has three official languages: Dutch in Flanders, French in Wallonia and German in the German speaking community (south-east of Belgium). This report covers Flanders but it is important to mention first the use of languages in court proceedings in Belgium.

The principles for the rules governing the use of languages in court proceedings (Language Act of 15 June 1935) are that court documents are drafted and justice is dispensed in a single language. The principle of territoriality implies that justice is dispensed in Dutch and French in the corresponding language areas. The personality principle applies to justice dispensed in the Brussels-Capital district and in the municipalities in the Brussels periphery: citizens are free to speak the language of their choice and application of the language laws is mandatory. The monolingual principle of justice means that each trial, from the summons to the enforcement of the judgment has to be conducted in a single language, which is the language of the seat of the court. Thus it is the court's territorial jurisdiction, which determines the language of justice.

The same Language Act of 15 June 1935 (Art. 30, 30(2), 31, 32 and 34) also provides that the language used before courts and in the pre-trial phase (police investigation, investigating magistrates etc.) is determined by the person being heard, who has the right to use his own language ('mother tongue') for all statements and depositions if he cannot express himself in the language of the court or understand it. However, there are no legal provisions clearly defining the concept of "knowledge of the Dutch language" (i.e. the official language in Flanders) in order to decide whether a person is entitled to have an interpreter. All legal provisions only refer to the concept of "not understanding" or "not knowing" the language of the proceedings in broad terms. If this clearly is the case, a sworn interpreter must be made available free of charge at every stage of the criminal proceedings, in all interviews during the preliminary investigations and during the investigation itself, as well as before investigative and sentencing courts. The suspect's declarations may also be written down in his own language, or he can write his declaration himself. The concept of getting an "interpreter free of charge" means that the costs have to be borne by the state.

Nevertheless, there is no specific Belgian piece of legislation governing (court/sworn)

interpreters/translators. Different codes, such as the already mentioned Language Act, the Code of Criminal Procedure, the Code of Civil Procedure, the European Arrest Warrant (Art 11), do mention the interpreter/translator.

According to Unizo³², the profession of legal interpreters and translators (LIT) cannot be regulated due to a lack of legislation to this effect. At the moment anyone can claim to be a sworn interpreter or translator (even though certificates can be obtained after training to prove this), as the profession itself is not regulated. Without legislation it is not possible to sanction someone for using the title of sworn interpreter improperly. National legislation must therefore include the protection of legal interpreters and translators as a profession.

2 - Professional status

In Belgium/Flanders, legal interpreters work exclusively on a freelance basis. In most cases, legal interpreters cannot make a living from legal interpreting alone and have another job.

There are no in-house linguistic experts whatsoever at the Ministries, police offices or magistrates' offices. In exceptional cases, police officers can act as an interpreter.

Legal interpreters are not considered to be language experts in a technical sense of the word: this means they are only supposed to translate intentional language utterances, whilst rendering or explaining or pointing out unintentional language (such as regional accents or dialects) is not part of their assignment.

3 - Training and qualifications

The freelance status of the legal interpreter leads to major differences in quality. There is no quality control in a homogeneous or transparent way in Flanders. Neither are there national quality control systems and although some local initiatives do exist these are fragmentary, for the time being. The various judicial districts apply different requirements before accepting somebody as a sworn interpreter. It is therefore possible to distinguish between different categories of legal interpreters, keeping in mind that the profession is not protected by law, and given that interpreters are either bilingual or master at least two languages.

- Some legal interpreters have no degree at all and carry out the job as merely bilinguals: this is often the case for rarer languages, spoken by immigrants who have learned the local language. They took the oath based on their bilingualism and are sworn in: from that moment on, they can be put on the list of legal interpreters; if they comply with the requirements of the judicial district they work for.
- Legal interpreters may have different types of secondary or tertiary degrees – ranging from secondary education to university - but no specific training in interpreting and/or legal matters. Besides their educational qualifications, they master two or more languages

³²

Organization of Self-Employed and Small and Medium Sized Enterprises in Belgium

very well.

- Legal interpreters may have high and specialised degrees (Law school or Master of Interpreting/Conference Interpreting) but no qualifications for legal interpreting for several reasons: interpreting schools mostly offer training only in traditional European languages (rare languages are not usually included in the curriculum), but no knowledge of the legal field, while law programmes are mono-cultural and provide no specific training in either interpreting or translation skills.
- Legal interpreters may have had specific training in legal matters and translation, interpreting, terminology, and police questioning, although specific police interpreting training is rarely offered in Flanders (see below).

In Flanders, however, a growing number of interpreters receive training before being sworn in and are given access to police, pre-trial and court interpreting. Three different training programmes are offered to improve both interpreting and/or legal skills and knowledge: the *GVT-programme* (LIT-programme, Legal Interpreting and Translation) at Lessius University College and the *BKVTF* programmes (Belgian Chamber of Translators, Interpreters and Philologists) set up in collaboration with LinguaJuris³³.

Since 2000, passing the Lessius course is compulsory in three judicial districts, i.e. Antwerp, Turnhout and Mechelen to become a sworn interpreter but so far this is not a national requirement. So far, only the Lessius programme gives fully recognized access to LIT as a sworn interpreter in the BVT-service (the Sworn Interpreters and Translators Service, see below) in Antwerp, Turnhout and Mechelen.

The Lessius training programme being taught in Dutch without any language training as such³⁴, candidates are only accepted if their language skills are at B2 level (CEFR³⁵).

The 150-hour course is built up of 5 modules: a legal module, a legal interpreting module, a legal translation module, a terminology module and a police module. At the end of the classes, each module is assessed through a specific test at the end of the course.

Police interpreting is taught only in the specific module, whereas interpreting in pre-trial settings is touched on in various modules. Until a few years ago, future police officers at the Antwerp Police School received information on how to work with an interpreter, however this is not the case anymore.

The *BKVTF* offers a 4 days crash-course of 30 hours called Interact.J³⁶ organised every year, consisting of 5 modules (Belgian Justice, Interpreting skills, Hearings with an interpreter, Proceedings, Simulations) as well as a course consisting of three modules of 36 hours each (a

³³http://www.translators.be/index.php?option=com_events&task=view_detail&agid=100&year=2012&month=05&day=21&Itemid=128&lang=nl

³⁴ <http://www.lessius.eu/tt/stk/gvt/default.aspx>

³⁵ Common European Framework of Reference for Languages :

http://www.coe.int/t/dg4/linguistic/CADRE_EN.asp

³⁶ http://www.lingua-juris.org/interact_nl.html

general module, a module on translations and one on interpreting) without initial or final screening.³⁷

Appropriate training for legal professionals (magistrates, lawyers, police etc.) is rare. Awareness raising and training for legal professionals and the police has depended so far on a few local and individual initiatives.

4 - Recruitment and working conditions

The judicial district of Antwerp is the only district that has a local register with certified sworn legal interpreters – i.e. interpreters who have successfully completed the Lessius Training modules - by the BVT service at the Antwerp Court (the sworn Interpreters and Translators Service). Certified interpreters on the register are given priority for recruitment.

There is no official central database of sworn interpreters in Belgium/Flanders. Every judicial district has a list of sworn interpreters at its disposal. Unfortunately the BVT service does not have always the means (staff) to constantly update the register. The judicial districts of Mechelen and Turnhout also take Lessius certification into account, but there is no central register for the three districts. Although all stakeholders (magistrates, police officers, lawyers etc.) are aware that registers with certified and/or sworn LIT exist, they often rely on interpreters they know, and work with on a regular basis or on interpreters who are on standby. As suspects can only be detained for a limited time of no more than 24 hours, this means no time can be wasted on a detailed search for an interpreter, let alone two interpreters (see working conditions). These 24 hours must also allow for time for a confidential meeting with a lawyer (as prescribed by the Salduz Act).

LIT may be called on at any time of day and night and there are no limits for the duration of their assignment: it can take hours before an interview is finished and no second interpreter is provided. Safety rules are not complied with (e.g. interpreters can be left alone together with a suspect). There are no rules (in case of an arrested suspect) on working with two separate interpreters for the 30 minute, confidential conversation with the lawyer and the first police interview. (*see*: ethical code). Whilst legal interpreters are perfectly able to deal with such dilemmas by applying on their ethical code, not all interpreters are trained professionals, and situations as outlined above can place a heavy (psychological) burden on interpreters' shoulders.

There is no official ethical code defining the role of the interpreter. The judicial district of Antwerp is the only district where interpreters are obliged to sign an ethical code before taking the oath and becoming a sworn interpreter. Lessius interpreters are trained to always introduce themselves to the judicial representative (be it the police officer, lawyer or magistrate) and the client (the suspect, witness, victim). This introduction contains the following elements: "I am the interpreter Dutch – foreign language x, I will translate

³⁷ http://www.linguajuris.org/getuigschrift_nl.html

everything faithfully without omissions, additions or modifications. I am impartial and bound by professional secrecy. I will translate in the first person “I”, so you can address each other directly and you are not allowed to have private conversations with the interpreter”. This introduction and ethical code, nevertheless, are not legally binding. As mentioned before, this means interpreters can sometimes face ethical dilemmas. However, there are no coaching programmes for legal interpreters to speak with peers about any kind of psychological pressure, in a confidential environment.

In court, legal interpreters always pronounce their oath: *I swear to interpret faithfully what must be passed on to persons who speak different languages*. In the pre-trial phase, they do not pronounce this oath, but the general expectation of judicial actors is that interpreters translate what is said by the different parties word-for-word and literally.

Regarding remuneration, there is no difference in fees between interpreting for the police, in pre-trial proceedings or at the court. Fees differ on the basis of two principles: a) the frequency with which a language is spoken (the rarer the language, the higher the fee) and b) the time of day/night and the day of the week (over the weekend and at night – i.e. between 8 pm and 7am – fees are doubled). Travel expenses are refunded (taking into account the kilometres travelled from the interpreters’ domicile to the working place) and waiting time is paid. A list of the applicable fees (between € 33.25 and € 57.45) is available online.³⁸ Recently, payment of the fees has become a problem because the Ministry of Justice suffers delays in payments of between two and six months or even longer, in some cases.

5 - Professional associations

Because of the difficult working conditions and their unregulated profession, LITs are starting to organize themselves into professional groups.

For the Dutch speaking part of Belgium, there is one professional association that was recently created (2012). It is called the *Vereniging van Onafhankelijke Gerechtstolken en Beëdigde Vertalers* (Association of Independent Legal Interpreters and Sworn Translators).

For the time being, they are only organized as a Facebook group³⁹ but they are planning to set up a website to communicate with their members (about 200), to defend their rights, to improve working conditions and remuneration, to disseminate information and to be more visible for all stakeholders (magistrates, politicians, police amongst others). Recently, a forum called the *Forum LinguaJuris* has been set up at the initiative of the BKVTF and it is administrated by the BKVTF.⁴⁰

³⁸http://www.ejustice.just.fgov.be/cgi/article_body.pl?numac=2012009022&caller=list&article_lang=N&row_id=1&numero=2&pub_date=2012-01-27&language=nl&fr=f&choix1=EN&choix2=EN&text1=tarieven++gerechtskosten+2012&fromtab=+moftxt+UNION+montxt&nl=n&sql=%28%28+htit+contains++%28+%27tarieven%27%26+%27gerechtskosten%27%26+%272012%27%29+++++%29+or+%28+text+contains++%28+%27tarieven%27%26+%27gerechtskosten%27%26+%272012%27%29+++++%29%29&rech=6&tri=dd+AS+RANK+&trier=afkondiging#hit0

³⁹ <https://www.facebook.com/groups/418805261486525/>

⁴⁰ http://www.linguaJuris.org/forum_nl.html



Country Report: CZECH REPUBLIC

1 - Legal basis for interpretation at national level

The Czech Code of Criminal Procedure sets out the principles of criminal proceedings. S.2(14) says: “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 language or a language in which they state they are fluent.” In the course of informing the person to be interviewed about his/her rights and obligations, the person is also informed that it is his/her right to make use of an interpreter translating into his/her mother language or a language he/she speaks.

In 1967, Act 36/1967 Sb., the Act on Experts and Interpreters was adopted. In the first section, a description is provided of the purpose of this piece of legislation to ensure that expert and interpreting practice before state authorities and other authorities be conducted properly. The Act provides for the deployment of experts and interpreters, who are to be appointed for proceedings before authorities, and in connection with legal acts of individuals or organizations as determined by the Act. Though the role is only described as “interpreting” and the function is called “interpreter”, it covers translation and translators as well. A person defined as interpreter within the meaning of this Act is generally called a “court-appointed interpreter” in order to distinguish interpreters who have been appointed by the competent body as described under ‘Professional Framework’ below. The Act defines the duties of the interpreters but little about their rights.

The Act also stipulates the procedure for assigning the task to someone who is not a court-appointed interpreter, a so-called ad-hoc interpreter, and defines the situations under which an ad-hoc interpreter may be involved (e.g. no interpreter has been appointed or is available for a specific language).

2 - Professional status

Court-appointed interpreters (currently there is no formal distinction between interpreters and

translators) are persons appointed by a regional court, with jurisdiction according to their places of residence, in order to provide official translations or interpret in situations as required by Czech laws and ordinances. A register with their names is maintained by each regional court (which is the appointing authority; there are 8 regional courts in the Czech Republic). The data from the regional registers are collated in a national database, which is available to the public on www.justice.cz. The database can be searched by region and language and provides information on name, language combination, address, phone and e-mail, and specialisations other than law (e.g. medicine, IT). Currently, there are about 3000 court-appointed interpreters in the whole country.

Most court-appointed interpreters do other work to make their living besides working for the courts or the police. Many are conference interpreters or translators, teachers, etc. There are a certain number of in-house interpreters and translators employed by the police and customs authorities.

Police always engage a court-appointed interpreter in order to be able to use the information obtained in the proceedings before the courts. For purely operational purposes however, in-house interpreters or other resources are engaged.

In minor, non criminal proceedings, engaging an interpreter depends on who requires assistance – then it is up to them to bring their own interpreter (i.e. anyone) – if it the authorities then a court-appointed interpreter or in-house interpreter is engaged.

3 - Training and qualification

Since the end of 2011, an ordinance has been adopted harmonising the national qualifications required for being appointed (minimum standards for education, further training and working experience). Fulfilling the requirements does not guarantee that the applicant will be appointed. It is up to the regional court to decide about the appointment based on the qualifications of the applicant and the actual need for the specific language / language combination applied for. Until this piece of legislation was adopted, it was up to the regional court to decide. As long as there were various models (exams/no exams; prescribed qualification/exceptions, etc.) the qualifications and competence of court-appointed interpreters varied greatly.

The Faculty of Law, Charles University in Prague offers a two-semester course in Czech law. This course is designed specifically for the needs of translators and interpreters. In addition, a two-semester course is offered on legal terminology in English, German, French, and Russian, including an introduction into the relevant legal systems. The Faculty of Law at the Masaryk University in Brno offers similar courses. Further training possibilities are organized by the Chamber of Court-Appointed Interpreters (see under Professional Association below) and by the Union of Interpreters and Translators (JTP) in co-operation with the Institute of Translation Studies, Charles University's Faculty of Arts, on, for example, note-taking techniques, Czech language in law or terminology seminars in various

languages.

4 - Recruitment and working conditions

Court-appointed interpreters are preferably recruited within the local area in order to save time and travel costs. Officers needing an interpreter use the database at www.justice.cz ([http://datalot.justice.cz/justice/repznatl.nsf/\\$\\$SearchForm?OpenForm](http://datalot.justice.cz/justice/repznatl.nsf/$$SearchForm?OpenForm)) to select an appropriate interpreter, unless they already have established cooperation with an interpreter from an earlier case. Usually, the officer is willing to share basic information about the case such as the details of the alleged crime and relevant sections of the Criminal Code. The interpreters are generally contacted by phone. Officers will sometimes inform the interpreter of the name of the suspected person or witness to establish whether there is any relationship between the individual concerned and the selected interpreter. Unlike the courts which allow the interpreters to study the file before the trial, the police do not allow this. Usually, more detailed information is provided in cases of interpreting intercepted calls or observation audio-video-records.

Generally, investigative interviews are interpreted consecutively. As a rule, only one interpreter is assigned for the interview, even though sometimes it may last a long time. The same interpreter may be involved in the pre-trial proceedings as well as in the trial, and the same interpreter interprets the consultation between the suspect and his defence counsel. The courts and prosecutors prefer to assign the interpreting to the same interpreter who already has been involved in the pre-trial proceedings and “knows” the case.

When writing the records of interview, after having recorded the personal data, the interviewing officer asks whether the interviewed person is satisfied with the assigned interpreter. This question and the answer of the interviewed person is recorded. Interviews are generally not audio-recorded. This is only required in the event of a trial. However, a police officer conducting an interview has the right to carry out audio recording. In such a case, however, he must inform the other persons involved in the interview. In very few cases, the audio recording is carried out in order to double-check the interpreter.

The fee paid to the court-appointed interpreters is stipulated by law; within a range between CZK 150 and CZK 350 per hour (€ 6.25 to 14.60). An additional fee is paid in case of working during the night, on public holidays, on Saturday and Sunday or for specific difficulties.

5 - Professional associations

A court-appointed interpreter can join the **Chamber of Court-Appointed Interpreters**. Membership of this organization is **voluntary** and is open only to interpreters and translators qualified, admitted, appointed and sworn pursuant to the Act on Experts and Interpreters. The members' data, including language combinations, address, phone number, e-mail, membership in other professional organizations and information about professional liability

insurance are kept in a database available to the public on www.kstcr.cz. Currently, the Chamber has about 500 members.

The task of the Chamber is to pursue, enforce, and defend the professional, working, legal and social interests of its members. The Chamber strives to improve the qualifications and know-how of its members by sharing experience and knowledge. It organizes seminars, meetings, briefings and conferences for interpreters and translators. As a non-political organization, the Chamber participates in preparing and negotiating drafts of legal regulations concerning interpreters and translators, and on discussing and drafting other regulations relating to their activities, including the formulation of ethical principles of the profession. Currently, the Chamber is pursuing a new regulation for the profession. The most important highlights are a separate piece of legislation for interpreters as distinct from other experts, the official recognition of interpreters and translators as separate professions (something that today's legislation does not distinguish), qualification requirements, enrolment examination, payment conditions, compulsory professional liability insurance and an obligation for life-long training.

The Chamber has its own Code of Ethics for court-appointed interpreters, published on the website. The Board of Directors of the Chamber also deals with complaints about interpreters. The interpreters concerned are asked to submit their position. The Chamber can issue a warning and in a case of severe violation of working duties / Code of Ethics, the Chamber can expel the member concerned.

The Chamber of Court-Appointed Interpreters is a member of EULITA and of FIT. The members are informed about the activities of FIT, EULITA and about seminars and meetings organized by the Chamber, universities or ministries, by newsletter, on websites and through its own magazine "Soudní tlumočník" (Court-Appointed Interpreter), published twice a year.



Country Report: FRANCE

1 - Legal basis for interpretation at national level

In criminal matters, an interpreter shall be called upon - under penalty of nullity of the proceedings - whenever someone who does not speak or understand French is questioned following his/her remand in police custody (police station or gendarmerie brigade) or his/her placing under judicial investigation (examining magistrate). This also applies to court hearings and to witnesses.

Here is an overview of the legal bases for interpretation in criminal proceedings in France:

- Direct implementation of art. 6.3. of the European Convention on Human Rights which states that “Everyone charged with a criminal offence has the following minimum rights: (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him; [] (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court”
- The French code of criminal procedure
- Art. L111-8 of the *Code de l’entrée et du séjour des étrangers* (Code on the Entry and Stay of Aliens).
- Loi 2004_130 and implementing decree 2004_1463 reforming inter alia the status of legal experts.

2 - Professional status

A corps of legal translators and interpreters was set up by law in 1971 (implementation decree in 1974). They are called *ETICA : Experts Traducteurs Interprètes près les Cours d’Appel*. They are court **experts** appointed by one of France’s 35 *Cours d’appel* (appeal courts) and then put on a list made available to all courts, police forces and administrations under their jurisdictions. The *Cour de Cassation* (Court of Cassation) has its own national register comprising translators and/or interpreters who have demonstrated special abilities and expertise. The people on those 36 lists were originally both translators and interpreters. There were no specific criteria or standards applied. Anyone could become court interpreter or translator.

It is to be noted that being an expert is neither a trade nor a profession. It is a function and should not be the main activity of the person registered. Court experts may have to make themselves available whenever they are needed, including upon short notice (court requisition).

As years went by, the number of lists/registers has increased giving rise to a lot of confusion:

The 2003 Immigration Act has made it possible for the State Prosecutors of each *Tribunal de Grande Instance* (high court) to set up a list of sworn interpreters who are only called upon in cases of illegal stays on the French territory. Court experts can request to be put on that list. This possibility is still provided for under art. L111-8 of the *Code de l'entrée et du séjour des étrangers* (code on the entry and stay of aliens).

Administrative courts also have their own lists which may also include court experts. The same applies to individual courts and police officers who have difficulty finding an interpreter for a specific language or at a given time. The people on those lists are sometimes neither court experts nor sworn interpreters. They have to take an oath each time they are called upon. Police officers may step in as interpreters provided they are not on duty. If an interpreter is required for a criminal case, the reasons for appointing someone who is not on a list of court experts must be stated.

Court experts who retire at 65 may apply to become honorary experts if they have been long enough on either a *cour d'appel* register or the *Cour de Cassation's*. They may be called upon when no other interpreter can be found. The age limit to be a court expert is 70. They then take oath on an ad hoc basis.

The 71-498 act dated 29 June 1971 was changed by the 2004-1463 decree dated 23 December 2004 which provides – inter alia - for separate translators and interpreters lists as well as for continued education.

3 - Training and qualifications

In France there is no exam to become a legal interpreting expert. Anyone interested can file an application with the *Tribunal de Grande Instance* (court of first instance) of his/her business or personal address, indicating his/her degrees and diplomas and experience. If accepted, the interpreter is then put on a list for a 2-year probation period at the end of which, a new application can be filed for a period of 5 years. Before each certification renewal, interpreters shall provide evidence that their knowledge not only of the languages but also of the legal proceedings and systems has improved. Each year, each expert supplies a list with all the assignments s/he has performed as well as the training sessions or seminars s/he has taken part in (annual report).

The applications are reviewed by the Public Prosecutors and then transferred to the General Assemblies of the *Cours d'appel* (appeal Courts). In case of renewed applications, the public

prosecutors transfer the files to a committee comprising 17 members: judges, lawyers, public prosecutors with *Cours d'appel* (appeal courts), *TGI* (courts of first instance), *Assises* (courts of assizes), *tribunaux de commerce* (commercial courts) and *prud'hommes* (employment tribunals); and 5 court experts from all fields of expertise.

The criteria to be met are the same that apply to all court experts whatever their fields of activities, i.e. best standards of probity and moral values and sufficient experience in an activity related to the specialty for which they apply.

Criteria specific to interpreters vary from court to court. Some courts have now a grasp of what can be expected from professional interpreters and are more demanding than others, requiring for instance not only the command of 2 languages but also specific interpreting skills.

4 - Recruitment and working conditions

Interpreters intervene from the moment a person is called in for questioning up to his/her judgment. They are seldom informed of the nature of the case which they will have to interpret. Most of the time, there is only one interpreter working both ways all day long.

- Very few policemen and judges are trained to work with interpreters.
- The interpreters' fees are set under articles R.122 and A.47 of the French Code of Criminal Procedure. Travel expenses are reimbursed under article R110 (travel) and R111 (subsistence).
- Court interpreters are paid €30 an hour except for the 1st hour which is paid €42 so as to account for travel time. The hourly rate is increased by 25% at night (between 10pm and 7am) and on week-ends and holidays. Time paid is the time during which the interpreters are available to the Justice, including waiting time before the hearing starts. Each hour started is due.
- Subsistence allowances are €15.25 for lunch (assignment between 11:00 and 14:00) and dinner (assignment between 18:00 and 21:00)

5 - Professional associations

UNETICA (<http://www.unetica.fr/>) is the only national association exclusively dedicated to Experts Traducteurs – Interprètes (ETI - registered legal translators and interpreters). It was set-up in 1986 and has been active ever since in defending the title of Expert Traducteur – Interprète. It requires that its members comply with French labour laws. Unetica is a member of **EULITA** (www.eulita.eu)

Moreover, there are a number of French regional associations of ETI such as:

CRETA (<http://www.creta-france.com/>), also a member of **EULITA** and **CETIJ** (<http://go.to/cetij>)

Besides those dedicated associations, both **SFT** (http://www.sft.fr/fo/public/menu/gestion_front/index&id=484) – the largest professional translators’ union in France - and **AIIC** (www.aiic.net) - the only global association of conference interpreters - have among their members legal interpreters.

SFT has a FAQ section dedicated to legal interpreting and translation. (<http://www.sft.fr/page628-.html>)

AIIC has a committee specifically in charge of court and legal interpreting. (<http://aiic.net/node/2689/court-interpreting>)



Country Report: GERMANY

1 - Legal basis for interpretation at national level

The German system has its own peculiarity with regard to the judicial system (administration of justice) due to its federal structure. This means that in the field of police organisation, the states (Länder) and the federal level (Bund) have different fields of responsibilities, which overlap sometimes and have to be coordinated. The federal structure has an impact on the judicial organisation in general but also on the conditions of recruitment of interpreters. Nevertheless, recruitment procedures differ between the Länder, which means that every Land has its own law on interpreters. Meanwhile, most of them require at least some qualification for becoming a sworn interpreter and working as an interpreter for the police.

- At European level, the right to the service of interpreters is laid down in Articles 5 (II) and 6 (III) of the European Convention on Human Rights, which includes provisions on the right to fair trial.
- This is reflected in Article 3 of the German Basic Law (Grundgesetz GG) and in § 185 of the Federal Law on the Constitution of Courts (Gerichtsverfassungsgesetz GVG).
- It is also laid down in § 259 of the Code on Criminal Procedure (Strafprozessordnung StPO) and is referred to in the Guidelines for Criminal Procedure and Rule No. 181 of the Administrative Fine Procedure (Richtlinien für das Strafverfahren und das Bußgeldverfahren RiStBV).

These rights apply to individuals that have been suspected, indicted or brought before a court as defendants. For the time being, however, provisions in Germany do not explicitly specify the right of victims to have recourse to interpreting and translation.

2 - Professional status

Interpreters who work for the police are generally freelance interpreters who also accept assignments from other clients. They do not function as experts.

There are no uniform standards and guidelines specifying the 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.

A number of lawyers, judges and police officers tend to expect that interpreters should offer word-for-word renditions for them and leave it to the expert side to construct the meaning of an utterance. " From this point of 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. According to the profession, by contrast, 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. If an interpreter feels s/he is not impartial, an assignment may be rejected. 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.

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, the police assess any risk that might be involved.

The police stipulate that the translation must be literal, word-by-word. The interpreter should not explain, advise, or counsel the interviewee, and everything said should be translated faithfully. The interpreter also has to sign that the interpretation was correct.

3 - Training and qualifications

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 another, 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.

According to § 189 of the Federal Law on the Constitution of Courts, interpreters have to swear an oath and may then act as sworn interpreters. The qualification “sworn interpreter” can be obtained according to different procedures in the Länder.

Interpreters have to have knowledge of legal systems of both countries concerned. The translation of individual words and technical terms is not sufficient, as cultural and legal backgrounds may differ. Several institutions and professional associations offer further training courses, especially on the German legal system.

As for the role of the interpreter in police interviews, s/he has to be the ears, mouth and eyes of the interviewee and has to show empathy. Tactically prudent, well-founded behaviour on the part of the interpreter is also necessary. The interpreter also has to convey what is said between the lines of interviewees’ utterances. The interpreter is also obliged to warn if an

interviewee is feeling unwell or about to faint.

Linguistic knowledge must cover legal terms and concepts but also wide general linguistic skills. Understanding of German dialects and those of the country or culture concerned is another prerequisite. Interpreter should also have cultural and ethnic knowledge and be able to advise police officers on potentially embarrassing situations that may arise (e.g. in the interview room).

4 - Recruitment and working conditions

As a reaction to the EU activities especially the new Directive 2010/64/EU on linguistic rights, but also of Directive 2006/123/EC of 12 December 2006 on services in the internal market, the Länder have established a register for the whole of the Bundesrepublik – http://www.justiz.de/onlinedienste/dolmetscher_und_uebersetzerdatenbank/index.php (which could be soon connected to other EU members).

The selection of interpreters for police interviews is up to the police authorities or public prosecutors.

Interpreters are usually recruited because they live close to the police station in question and are immediately available to work. A list, kept at regional headquarters, is consulted. Personal criteria include training, sworn interpreter's status, linguistic competence, and knowledge of the German legal system.

Gender is often important and has to be taken account of (especially in cases of sexual offences); religious background, family, national and community structures (in refugee cases) are also considered when selecting interpreters, not only in the interest of the client but also in that of the interpreter. In general, interpreters are summoned by telephone rather than in writing.

The Police forces tend increasingly to recruit sworn interpreters. It is however sometimes very difficult to find sworn interpreters for less widely spoken languages; Since suspects usually need to appear before a judge within 24 hours, interpreters have to be available at short notice and also at night. Interpreters are also needed for telephone surveillance, where they may have to work for many hours and full days, often also during nights.

As for the mode of interpreting, simultaneous is not often practiced in interviews but whispering is used into the foreign language. Consecutive, however, takes longer. If more than two languages are involved, consecutive takes a lot of time.

In police interviews, interpreters generally work alone.

So far, police officers have not always been sufficiently trained in working with interpreters. There are no national standards or internal guidelines (on practices and procedures for work with interpreters).

Pay

In some federal states, police authorities have started procurement procedures for framework contracts, which have led to a reduction of hourly rates since the police always opt for the lowest price offered. The hourly rate varies between € 20 and € 55, according to federal state.

5 - Professional associations

BDÜ - Bundesverband der Dolmetscher und Übersetzer e.V. (www.bdue.de)

ATICOM - Fachverband der Berufsübersetzer und Berufsdolmetscher e.V. (www.aticom.de)

ADÜ Nord – Assoziierte Dolmetscher und Übersetzer in Norddeutschland e.V. www.adue-nord.de



Country Report: ITALY

1 - Legal basis for interpretation at national level

The Italian Code of Criminal Procedure (CCP), which came into force in 1989, contains five articles that refer specifically to interpreters in criminal proceedings (art. 143-147), under the heading *Traduzione degli Atti* (Translation of Proceedings). Art. 143 states that the interpreter's task is to enable defendants (and, in accordance with art. 61, also anyone under investigation) "who do not know the Italian language (...) to understand the charges made against them and follow the proceedings in which they are involved". Paragraph 2 in the same article states the right to interpreting to anyone who "must or wants to make a statement" during criminal proceedings and does not speak Italian⁴¹. This principle has been reiterated by Italy's highest courts on various occasions, but it only refers explicitly to suspects and defendants and only implicitly to witnesses and victims. Moreover, art. 143, par. 3 explicitly states that not just judges, but also public prosecutors and officers of the judicial police may appoint an interpreter. This means that the services of an interpreter must also be provided during the investigative phase, including when the person under investigation makes an unsolicited statement. Failure to comply with this provision may lead to the invalidation of suspect/victim/witness statements when submitted to court. Further legal grounds for the right to an interpreter for defendants "who do not understand or speak the language used in the [criminal] proceeding" are to be found in art. 111 of the Italian Constitution⁴².

The concept of knowledge of the Italian language expressed in art. 143 has been challenged on numerous occasions as it is too vague and more restrictive than the provisions of the European Convention on Human Rights and the International Covenant on Civil and Political Rights, which guarantee the right to the free assistance of an interpreter not only for the defendant, but anyone who cannot understand or speak the language used in court. A ruling

⁴¹ For the right of victims to interpreting see also:
https://e-justice.europa.eu/content_rights_of_victims_of_crime_in_criminal_proceedings

⁴² <http://www.wipo.int/wipolex/en/details.jsp?id=2509>

of the Court of Cassation in 2007⁴³ spoke of “communicating⁴⁴” and “participating fully in the hearing”.

2 - Professional status

The terminology used in normative texts/legislation/CCP to define the status of the interpreter working in criminal proceedings depends on whom s/he is appointed by: the interpreter is called a “judicial police auxiliary” (*ausiliario*) when s/he is appointed by the judicial police and acts 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 office⁴⁵.

In Italy police interpreting is carried out by in-house (i.e. staff) and external (i.e. freelance) interpreters. The former, so called “linguistic experts” (*funzionari linguistici*), are members of staff of the Ministry of the Interior. They work as translators and interpreters either at the headquarters of the Ministry of Interior, in Rome (about 25% of them), or at the police headquarters, police stations and other police offices throughout Italy (about 75% of them). Their services are requested almost exclusively by local law enforcement agencies and in particular police headquarters, where linguistic experts mainly assist 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, in particular: Traffic Police, Mail and Communication Police, Border Police (Air/Sea/Land), and Railway Police.

Freelance interpreters are called in whenever there is a need for interpreting in East European, African and Asian languages/dialects that are not covered by the in-house linguistic experts.

Linguistic experts (who are members of staff of the Ministry of Interior) have no formal guidelines or standards of professional practice (let alone the freelance interpreters who are not members of an association). The only rule they have to comply with is that they must reject assignments that clash or can cause damage to the professional activities they perform as members of staff of the Ministry of the Interior.

On 16 April 2012 the lower house of the Italian Parliament passed a draft law⁴⁶ establishing that for professions having no official or public register, associations are empowered to issue

⁴³ Constitutional Court Ruling 254/2007.

⁴⁴ Until this ruling was issued, Italian legislation only mentioned knowledge of the language and the ability to understand charges by a defendant, and no mention was made of the possibility for defendants to fully participate in the proceedings.

⁴⁵ In this case the interpreter is considered as a party in the criminal proceeding according to the adversarial system now in force in Italy.

⁴⁶ Draft law (*disegno di legge*) n. 3270, 2012, to become a law it needs approval by the upper house of the Italian Parliament.

regulations and certifications. Interpreters' associations are currently working to set professional standards and accreditation rules.

3 - Training and qualifications

While the right to an interpreter is fully recognised in Italian law, the law says nothing about the qualifications these interpreters must possess, nor does the CCP mention any criteria on which the selection of interpreters should be based. No guidelines have ever been provided by the Ministry of Justice or Interior to assist the police, prosecutors and courts in selecting and working with interpreters, nor has a specific body been set up to manage interpreting services.

Linguistic experts (in-house) are selected by public competition (see 4) for which a high school certificate is the minimum requirement, but apart from that they are rarely offered further training opportunities and basically self-train on the job. Exchange of experience and the joint management of large translation projects are left to their own initiative. Recently a network was created to define and disseminate protocols setting some common standards for translation work, but no code of conduct for shared institutional practice has been agreed on yet.

There is no standard recruitment practice for freelance interpreters. Very often it is difficult to find qualified interpreters for less widely-spoken languages/dialects and sometimes cultural mediators⁴⁷ or bilingual people without any specific training or experience are recruited as interpreters. The only formal requirement is that the person called upon to act as an interpreter must have no criminal record.

The judicial police and prosecutors are aware that when they use external interpreters they do not always get the quality of service they would like to have, but since they work under time pressure, sometimes they have no alternative. Moreover, qualified freelance interpreters and translators, when called upon to work during investigations, are badly paid (see 4), feel their status is not recognised and this discourages them from working in this field.

Except for occasional refresher courses on general topics or on terminology, there is an almost complete lack of training initiatives designed to offer interpreters in-depth knowledge of criminal law or criminal proceedings in Italy or in foreign countries or to explore the legal, ethical and professional aspects of this activity⁴⁸.

4 - Recruitment and working conditions

The total number of in-house linguistic experts in service is about 250. All were selected in

⁴⁷ According to CNEL - Italian National Council for Labour and Economic Affairs - the cultural mediator is an active agent in the social integration process who acts to facilitate the relationships between migrant citizens and institutions, public services or private organisations, without replacing either party. See <http://www.portalecnel.it>

⁴⁸ In 2011 a Masters course was launched by LUSPIO, Rome, for the Academic year 2011-2012.

the mid-80s, by public competitions where candidates had to submit their CVs and sit an examination. The examination had two phases: the first consisted of a written composition in Italian on a general topic, and translations (of the same text) into each of the two foreign languages the candidate was applying for. Candidates who passed the first phase were shortlisted, and then had to take an oral test with a part on administrative law and a part on language skills. Interpreting skills were not tested at all.

Linguistic experts currently cover 11 languages. Most work with English, French, German and Spanish; a small number work with Albanian, Portuguese and Russian, and a very few work with Arabic, Chinese, Slovenian and Turkish.

Whenever there are no linguistic experts available for a specific language, the judicial police or the prosecutors resort to free-lance interpreters. These are either directly recruited from lists of court accredited-interpreters, or through agencies, or simply by calling in an interpreter the police or prosecutor has worked with before. As mentioned before, cultural mediators or bilinguals can be recruited as interpreters for languages of lesser diffusion. The rates for police interpreting - set by law and never updated since 2002⁴⁹ - are very low and cover two hour-slots: Euro 14.68 for the first two hours and Euro 8.15 for each of the following two hour-slots. In case of urgency the rate may be increased threefold.

The judicial police and prosecutors resort to interpreters to perform a number of activities and produce documents that form part of the investigation whenever foreign languages are involved. Activities that may require interpreting include: collecting summary information, interviewing suspects in the presence of their defence lawyer, interviewing child witnesses with support, and producing full Italian transcripts of foreign language phone taps. In all these instances the interpreter is required to produce a very close or even verbatim translation of what is being said. Depending on the case, the interpreter may or may not be given any information beforehand about the context and subject to be dealt with.

One of the most frequently used interpreting modes is dialogue interpreting in face-to-face interviews involving two or more parties. Simultaneous interpreting is never used in these settings, nor is *chuchotage* (whispering), as police interviews are generally recorded for the purpose of the report.

The quality of interpreting is not routinely controlled or assessed. Double-checking of recordings by another interpreter can be used when there are doubts about the reliability of an interpreter's performance.

More than 25 years after the first hiring of linguistic experts 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 see them as essential for institutional duties. As a consequence, they are often asked to perform different tasks from those they signed up for (mainly administrative ones).

⁴⁹ Interpreting rates are set by Law n. 319 art. 4 (8 July 1980) and Ministerial Decree of 30 May 2002.

This reluctance derives from mistrust of the interpreters and from a lack of knowledge about their profession. In some places linguistic experts are called upon to provide interpreting only when there really is no other solution available.

5 - Professional associations

There are two national professional associations gathering legal translators and interpreters in Italy: **ANTIMI** and **assITIG**. Both are members of EULITA, the European Legal Interpreters and Translators Association.

ANTIMI (National Association of Interpreters and Translators of the Ministry of Interior⁵⁰) was established in 2002. About half of the full-time in-house staff of the Ministry of the Interior are members (see 2). It was established to contribute to the recognition and acceptance of the professional status of linguistic experts both inside and outside their working environment. Its declared aims are: protecting and promoting the work of linguistic experts in the various contexts where they work, including legal/judicial settings and not only police activities; promoting the exchange of experience and knowledge with other professional associations; establishing and strengthening relations with academic and research institutions to promote the integration and interaction of theory and practice.

AssITIG⁵¹ (Associazione Italiana Traduttori e Interpreti Giudiziari) groups legal translators, interpreters and translators and transcribers of audio/video recordings working for judicial authorities. It was established in August 2010 and currently has 20 members. To become full members Italian translators and interpreters must have been practising professionals and members of a professional association for at least three years with at least a CEFR⁵² C1 level in their foreign languages. For foreigners CELI 4/CILS 3, PLIDA C1 levels in Italian are required as well as three years of professional experience and membership in a professional association. For languages and dialects of lesser diffusion it is however possible for these minimum requirements to be relaxed. Among the duties established by the articles of the association there are continuing education and training. AssITIG's main aims include: promoting quality in legal translation and interpreting; lobbying for legal recognition of the professional status of legal interpreters and translators; guaranteeing continuing professional development of their members; achieving fair and proper working conditions and remuneration.

⁵⁰ <http://www.antimi.org>

⁵¹ <http://www.interpretigiudiziari.org/index.htm>

⁵² Common European Framework of Reference for Languages:
http://www.coe.int/t/dg4/linguistic/CADRE_EN.asp



Country Report: United Kingdom/Scotland

1 - Legal basis for interpretation at national level

Criminal law and procedure in Scotland are different from those in the rest of the United Kingdom. The Treaty of Union (1707) permitted the continuation of certain Scottish institutions – including legal systems; therefore, these differences pre-date Devolution (Scotland Act 1998). One of the defining features of Scots Criminal Law is that it is based on “common law”. Many of the most serious crimes in Scotland (e.g. murder), as well as less serious crimes (e.g. breach of the peace), are common law crimes. However, Scotland has developed a “mixed system” with a growing numbers of crimes and offences appearing in the statute books (e.g. illicit drugs). Scotland shares a number of statutory offences with England and Wales through UK legislation (e.g. road traffic law, laws relating to environmental pollution).

Scots Criminal Law has never been “codified”, but is effectively contained in a single act of Parliament, the Criminal Procedure (Scotland) Act 1995. Scotland also became the first country in the United Kingdom to introduce the European Convention of Human Rights (ECHR) into its laws. The Human Rights Act 1998 incorporated the Convention into Scots law (from October 1998) and required all public authorities (including the police) to act in conformity.

Given this context, policing in Scotland differs from policing in England and Wales, and Northern Ireland. For example, the Police and Criminal Evidence (PACE) Act 1984, and the Codes of Practice drawn up under this legislation, govern policing in England and Wales, not in Scotland. In Scotland, police powers are set out in the Criminal Procedure (Scotland) Act 1995. Other definitions are contained in the Criminal Justice (Scotland) Acts.

In 2012⁵³, the legal responsibility for policing in Scotland is shared by Scottish Ministers, Police Authorities and Chief Constables (under Police (Scotland) Act 1967 – amended). However, Chief Constables have sole responsibility for operational matters, in compliance with the instructions of the Lord Advocate (the senior law officer in Scotland). In Scotland, the Crown Office and Procurator Fiscal Service (COPFS), headed by the Lord Advocate, is responsible for the investigation and prosecution of crime and is independent of both the police and the judiciary.

⁵³ The 8 Scottish police forces are to amalgamate into a single force from 2013.

A key definition of policing in Scotland is that it is “policing by consent” i.e. not as officers of the state or a military force, but as “ordinary citizens armed with some additional powers”, subject to the same rule of law as other members of society, acting on behalf of, and with the support of the public. A core purpose of policing is to detect and investigate crime. As part of this process, since the 1980s, the “search for the truth” has become a key focus, leading to the introduction of “investigative interviewing”. This change has led to more concentration on the interviewing of suspects and witnesses, and to the planning of interviews and teaching of effective questioning skills. Consequently, the importance of communication is highlighted. Ultimately, the position of the police, as stated by the Association of Chief Police Officers in Scotland, is that translation services are a fact of life in modern policing and this is money well spent⁵⁴.

No specific legislation relates to interpreting and translation in Scotland, although law regarding the provision of interpreters comes from two sources: firstly, from common law (of which the case of *H.M. Advocate v. Olsson*, 22 May 1941, is an example of legal precedent) and, secondly, from statute in that the Scotland Act 1998 (see section 57) and the Human Rights Act 1998 (see section 3 and section 6) have both incorporated the ECHR into Scots law and are therefore informed by Articles 5 and 6 of the ECHR.

Moreover, since Devolution, the Scottish Parliament has focused on placing the mainstreaming of social inclusion at the core of its policies and required those delivering services to the public to embed an equality perspective into their work, including equality of access to information and services which entails overcoming language barriers. Coupled with related legislation – the Disability Discrimination Act 1995 (c.50), with its relevance to the Deaf/British Sign Language (BSL) community; the Human Rights Act 1998; the Race Relations (Amendment) Act 2000 - this has driven forward action relating to language policy and practice in public sector organisations. Further motivation has been provided by environmental changes - for example, following the introduction of the dispersal policy (Immigration and Asylum Act 1999) the number of languages spoken by individuals or communities who have come to reside in Scotland has been estimated to exceed 150⁵⁵ - and by developments in certain public sector fields. In the criminal justice sector, positive steps were taken following the enquiries conducted into allegations of institutional racism in connection with the handling of the case investigating the murder of Surjit Singh Chhokar in 1998. For example, in 2002, guidelines were published by the Lord Advocate for the information of the Chief Constables of the Scottish police forces which contained recommendations relating to interpreting provision, including for the families of victims⁵⁶.

⁵⁴ Wilson, C.W.L, Turner, G. H. & Perez, I. (2012) “Multilingualism and public service access”, in Marilyn Martin-Jones, Adrian Blackledge and Angela Creese (eds.) *The Routledge Handbook of Multilingualism*. London & New York: Routledge. p.323

⁵⁵ O'Rourke, B. and Castillo, P. (2009) “‘Top-down’ or ‘Bottom-up’? Language Policies in Public Service Interpreting in the Republic of Ireland, Scotland and Spain”, in R. de Pedro Ricoy, I. Perez and C. Wilson (eds.) *Interpreting and Translating in Public Service Settings: Policy, Practice, Pedagogy*. Manchester: St Jerome Publishing. p.36

⁵⁶ The Lord Advocate (2002) ‘Assessment of language needs and cultural sensitivities’, *The Lord Advocate's*

Interpreting guidelines for all levels within the criminal justice system – the police included - have been publicly available since 2008⁵⁷.

The 2008 guidelines presume that “all communications with any member of the public are carried out in the language most easily understood by the individual concerned” (section 2.1) and set out detailed guidance regarding all stages of the process from initial contact, to preparing for the interview, conducting the interview and at the end of the interview.

2 - Professional status

In Scotland, there is no legislation governing the professions of interpreting and translating. Instead, these professions are supposed to be self-regulating, for example, through membership of professional associations. Recommendations regarding the background and minimum qualifications of interpreters normally expected to work in legal settings are set out by the legal authorities (e.g. for police settings, the Diploma in Public Service Interpreting with the Scottish legal option, or equivalent, as well as a certificate from Disclosure Scotland at standard/enhanced level as appropriate, i.e. information regarding criminal history). Often the agencies or other intermediary bodies responsible for providing the interpreters (or undertaking the translation work) act as gatekeepers in this respect. Additional vetting procedures may be required in cases relating to national security.

The majority of interpreters working in police settings are freelance. In some cases, an interpreter may be employed by an organisation, such as a municipal interpreting service to work in the more commonly used community languages (this is rare) or to work in BSL (more common). A number of organisations supporting the Deaf community also employ full-time BSL interpreters. As interpreters work across a range of sectors, they are expected to sign the Code of Conduct designed by COPFS for each job of work with the police (see 2008 guidelines, Appendix A).

This Code of Conduct reminds the interpreter of their boundaries, such as the need to interpret “the exact meaning without adding, omitting or changing anything”, but they are also invited to “point out if a party has not understood” and to “alert parties to a missed cultural reference”. However, where an interviewee has special needs, an interpreter may need to work (in a relay type situation) alongside an Appropriate Adult⁵⁸ whose role is to facilitate communication between a mentally disordered person and the police in all categories of interview - witness, victim and suspect.

In Scotland, an interpreter who has worked as a police interpreter should not work as the

Guidelines to Chief Constables. Edinburgh: Crown Office.

<http://www.copfs.gov.uk/Resource/Doc/9/0000075.pdf>

⁵⁷ The Working Group on Translation and Interpreting (2008) *Code of Practice for Working with Interpreters in the Scottish Criminal Justice System*. Edinburgh: Crown Office and Procurator Fiscal Service.
<http://www.copfs.gov.uk/Resource/Doc/13928/0000467.pdf>

⁵⁸ <http://www.scotland.gov.uk/Topics/Justice/law/victims-witnesses/Appropriate-Adult>

interpreter in court for the same case (with the exception of the first appearance in court from custody, due to time constraints). Indeed, although it is rare, the police interpreter can be cited to appear in court to answer questions regarding their interpreting, just as police officers also appear in court.

The legal bodies in Scotland do not have any language service personnel on their staff and it is recognised that a police officer should not act as an interpreter.

3 - Training and qualifications

Despite the dominance of English, Scotland is a multilingual country with a number of long-established minority language communities: primarily speakers of Bengali, Chinese (Cantonese), Punjabi and Urdu, but also Italian and Polish, as well as heritage indigenous languages such as Gaelic (the country's second official language since the *Gaelic Language Act 2005*) and Scots – plus the language of the Scottish Deaf Community, BSL. Since the late 1990s, the number of languages spoken by individuals or communities who have come to reside in Scotland has increased exponentially. The range and changing profile of the languages required presents particular challenges. Therefore, the training and qualifications of interpreters are situated at different points across a spectrum.

- At one end of the spectrum, there are interpreters with postgraduate degrees in interpreting and translation with a specialisation in interpreting in legal settings (e.g. former MSc in Translation and Public Service Interpreting (legal settings) / current MSc in Translation & Conference Interpreting plus the public service interpreting (PSI) in legal settings elective offered by Heriot-Watt University). This specialist elective (150 student effort hours) is designed to satisfy the requirements of the UK's National Occupational Standards in Interpreting (NOSI)⁵⁹ at Level 4 i.e. entry level to the profession. It involves an interlinked approach to course delivery; that is, involving close collaboration between the university and representatives of police forces and other legal bodies. However, this elective is only offered in Arabic, Chinese (Mandarin), French, German and Spanish with English.
- Other interpreters with university degrees in translation and interpreting combined with experience as professionals in conference interpreting or legal translation have up skilled to be able to work in legal settings, often thanks to continuous professional development (CPD) offered by professional bodies or agencies, or *ad hoc* training courses (1-2 days) organised by COPFS, or by acquiring the Chartered Institute of Linguists' (CIOL) Diploma in Public Service Interpreting (DPSI) with the Scottish Legal Option (150 hour course).
- BSL interpreters may study for university level awards such as the part-time graduate certificate or diploma offered by Heriot-Watt University (replaced by a full-time undergraduate degree from 2012), which offered an introduction to police interpreting, or a national vocational qualification (NVQ) in general interpreting offered by private providers.

⁵⁹ http://www.cilt.org.uk/home/standards_and_qualifications/uk_occupational_standards/interpreting.aspx

However, the strength of the professional associations of sign language interpreters means that interpreters also need to be eligible to become full members before undertaking work in legal settings and can benefit from CPD offered by the associations. A key factor regarding BSL/English interpreting qualifications is that they have been mapped onto the NOSI by National Registers for Communication Professionals Working with Deaf and Deafblind People (NRCPD), the UK body which manages the main UK-wide register for sign language interpreters.

- In many cases, the sole qualification offered by interpreters is the DPSI⁶⁰. Training to prepare for the examination is offered by two further education colleges in Scotland and by an interpreting agency. However, despite the range of languages offered by the CIOL (over 40 in 2004), this qualification is not available across the full range of languages in which interpreting has been required in Scotland.
- At the other end of the spectrum, there are cases, usually involving languages of lesser diffusion, where the interpreter working in police settings has only benefitted from screening and basic training within an agency. Partly to respond to this, a new level was introduced to the NOSI (at Level 3), in 2010, so that these “trainee” interpreters, who may have strong bilingual skills and are providing an interpreting service, can receive some accreditation for their professional competence.

Specialist, hands-on training provided by experts from Heriot-Watt University in how to work with interpreters was integrated into a number of training courses for police officers for around a decade from 2000: Policing a Multiracial Society (Strathclyde Police College), Interview Advisors’ Course and Initial Detective Training (Scottish Police College). The training of police officers in how to work with interpreters remains integrated within certain specialist training courses at the Scottish Police College: for example, in the study materials for the Initial Investigator (Detective) Training courses.

4 - Recruitment and working conditions

In Scotland, there is no register of certified or sworn legal interpreters or translators, nor any comprehensive listing of “legal interpreters”.

For interpreters working in British Sign Language (BSL), full membership of the Scottish Association of Sign Language Interpreters (SASLI), which manages the main Scottish register, is expected as a minimum to work in legal settings. Some Scottish interpreters are members of the UK NRCPD register as well or instead of belonging to SASLI. However, membership of either register does not guarantee a qualification specific to legal settings. There is also Independent Translation and Interpreting Services – Scotland (ITISS), which lists freelance practitioners and the bodies of which they are members. Indeed, some sign language interpreters are members of CIOL or of the Institute of Translation and Interpreting (ITI), primarily spoken language organisations.

⁶⁰ <http://www.iol.org.uk/qualifications/IoL-DPSI-Handbook-Apr04.pdf>

For spoken language interpreters, it is possible to search both the ITI Directory of Members and the National Register of Public Service Interpreters (NRPSI) for interpreters with competence to work specifically in legal settings. However, these UK-wide registers have only a few Scottish legal interpreter members and are little used by Scottish legal bodies.

The lack of clarity regarding qualifications and the need to recruit competent interpreters across a wide range of languages and promptly⁶¹ were factors which, when combined with the amount of spending on interpreting and translation services by the police, led to the sourcing of interpreting services through procurement contracts. A contract is awarded primarily to a single agency or consortium of agencies. To date, as there are 8 separate police forces, there have been a number of different contracts awarded either by a single police force or by several working together as a group to award a contract. However, when a single police force comes about from 2013, it is likely that this will mean a single procurement contract.

There is a lack of public transparency regarding the rates of pay to interpreters under police procurement contracts (said to range from £10 per hour to untrained interpreters, to £16-£29 per hour). However, there has been a great deal of discussion amongst interpreters regarding the negative impact on hourly pay rates, entitlement to travel expenses, etc. Despite other improvements to procurement processes (Lothian & Borders' Police procurement procedures used to be 3 pages long, but are now almost 100 pages) those awarding the contracts are powerless to set any conditions regarding specific payments to staff.

As spending on sign language (BSL) interpreting is treated separately from spending on spoken languages, the amount spent is not high enough to trigger the need for a procurement contract. Therefore, the police recruit sign language interpreters through agencies, from registers or turn to trusted individuals.

In the past, SASLI set recommendations, which its members, service providers and purchasers of interpreting services respected, and, although SASLI is not currently active in regulating this, the traditional solidarity tends to persist. Therefore, sign language interpreters working for the police will be paid around £28 per hour (minimum 2 hours) or £35 per hour for antisocial hours (night time call outs), travel time paid door to door, and 45 pence per mile mileage.

In some circumstances, the Scottish police may turn to telephone interpreting. Telephone interpreting is generally limited to initial contact with someone or in critical circumstances (e.g. where vital evidence may be lost). It may sometimes be used to facilitate the pre-interview meeting between a solicitor and the suspect. The reality of telephone interpreting is that the interpreter may not be based in Scotland.

⁶¹ Prior to October 2010, a suspect could only be detained for a maximum of 6 hours before being charged. Since October 2010 and the Cadder ruling, which means that a suspect must be allowed a pre-interview meeting with a solicitor, this has increased to 12 hours, and may be extended to 24 hours maximum.

The 2008 guidelines mentioned above detail best practice in working with interpreters: this includes the need for regular breaks, briefing the interpreter and allowing a preview of forms and discussion of procedures and interview plans, procedures for resolving difficulties, and health and safety considerations. The possibility of requiring two interpreters is mentioned (albeit specific to sign language interpreting because of the health and safety considerations relating to repetitive strain injury).

5 - Professional associations

A number of professional associations have already been mentioned: for example, **SASLI and the ITI**, which has a Scottish network. In 2009, a **Scottish Interpreters and Translators Association (SI-TA)** was established by a group of interpreters, partly as a response to difficulties within the profession.

One of the key recommendations⁶² of stakeholders in research commissioned by the Scottish government, published in 2006, was that a Scottish certification/accreditation body for public service interpreters and translators (working in both spoken and sign languages) should be established which could maintain a register of accredited interpreters/translators. A similar consensus, specific to the legal domain, emerged in discussions during a Forum on the Future of Translation, Interpreting and Communication Support in the Justice Sector in Scotland, which united representatives of all interested stakeholders in February 2010.

⁶² <http://www.scotland.gov.uk/Resource/Doc/90506/0021781.pdf>



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Professor in the Department of Languages and Intercultural Studies at Heriot-Watt University in Edinburgh. She received her MA from Mannheim University and her PhD from Edinburgh University. She teaches Conference and Public Service Interpreting and Subtitling. Her research interests are Dialogue Interpreting and also documentary film.

Ms. Ivana Cenkova

PhD and CSc. (Prague) both in theory of interpreting. Habilitation in the same academic field. Currently Professor in Translation Studies at the Institute of Translation Studies, Charles University in Prague, Czech Republic. Head of the Department of Theory and Didactics of Interpreting. Course Leader of the European Masters in Conference Interpreting. Practicing conference interpreter.

Ms. Christiane J. Driesen

PhD in Interpretation and Translation Sciences. (Paris III, Sorbonne Nouvelle). Chargée de Mission ISIT - Professor and founder of Legal Interpreting Training at the University of Applied Sciences in Magdeburg, and at the University of Hamburg (CPD Centre), Germany. Participation in diverse other CPD courses. Conference and legal interpreter. Member of AIIC, Vice-president of EULITA.

Ms. Sylvia Kalina

Prof. Dr. phil. Dipl.-Dolm. Sylvia Kalina, Cologne University of Applied Sciences, Institute for Translation and Multilingual Communication. Diploma in Conference Interpreting, doctor of philology, professional conference interpreter (aiic), trainer in conference interpreting Masters programme and researcher in interpreting studies with focus on quality assurance for all types and settings of interpreting.

Ms. Gabriele D. Mack

Associate professor for German language and linguistics and conference interpreter, University of Bologna, School of Modern Languages for Interpreters and Translators in Forlì, Italy; coordinator of the MA Conference Interpreting Programme.

Ms Heidi Salaets

PhD in Linguistics and Literature: Romance languages Heidi Salaets currently is the head of the Masters' in Interpreting at Lessius University College (Antwerp) and of the interpreting research in the Translation Studies research group. She trains both interpreters in the Master (dialogue) and conference interpreters. Current fields of research are: Legal Interpreting and Translation (LIT), PSI (Public Services Interpreting), quality and assessment in interpreting

Ms. Katy Štifterová

Mgr. Charles University Prague in Prague, Faculty of Arts, Institute of Translation Studies and Faculty of Law. Diploma in Interpreting and Translation, Court-appointed interpreter and translator, member of the Board of the Chamber of Court-Appointed Interpreters and Translators, long years of experience as in-house interpreter of the Customs Administration.

Ms. Christine Wilson

Lecturer (French) in the Department of Languages and Intercultural Studies, Heriot-Watt University, Edinburgh, where she teaches translation and interpreting. Involved in a range of consultancy activities in the legal domain, which include developing training on “working through interpreters” at the Scottish National Police Training College and working with the police to develop a tool for assessing translation performance during the procurement contract process. A core member of the EULITA TRAFUT project.



ANNEXES

Diagrammes: The Court System in the Partner Countries at a glance

DIRECTIVE 2010/64/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 October 2010 on the right to interpretation and translation in criminal proceedings

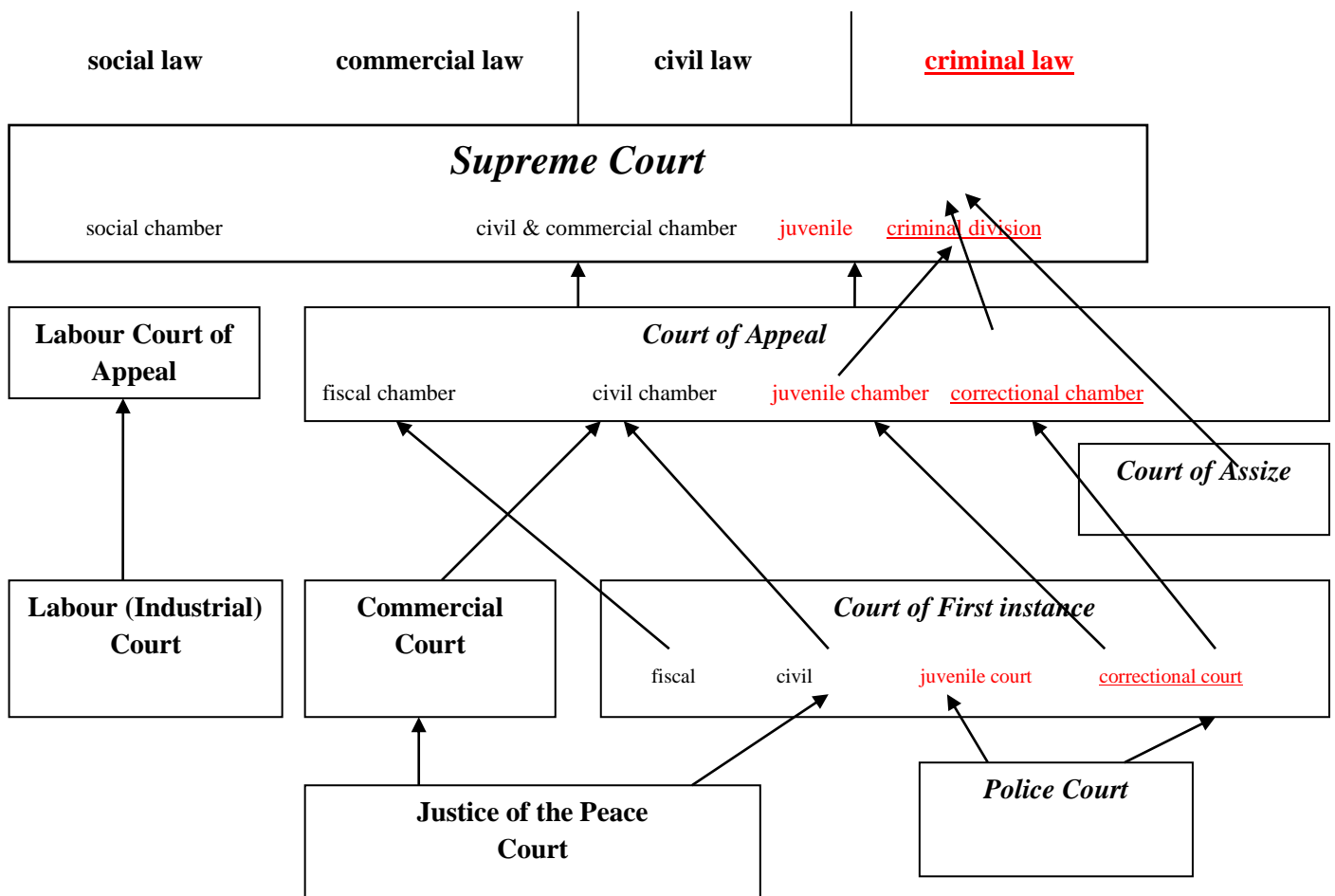
EULITA Code of Professional Ethics

Minutes of Roundtables



Diagrammes: The Court System in the Partner Countries at a glance

Belgian Legal System

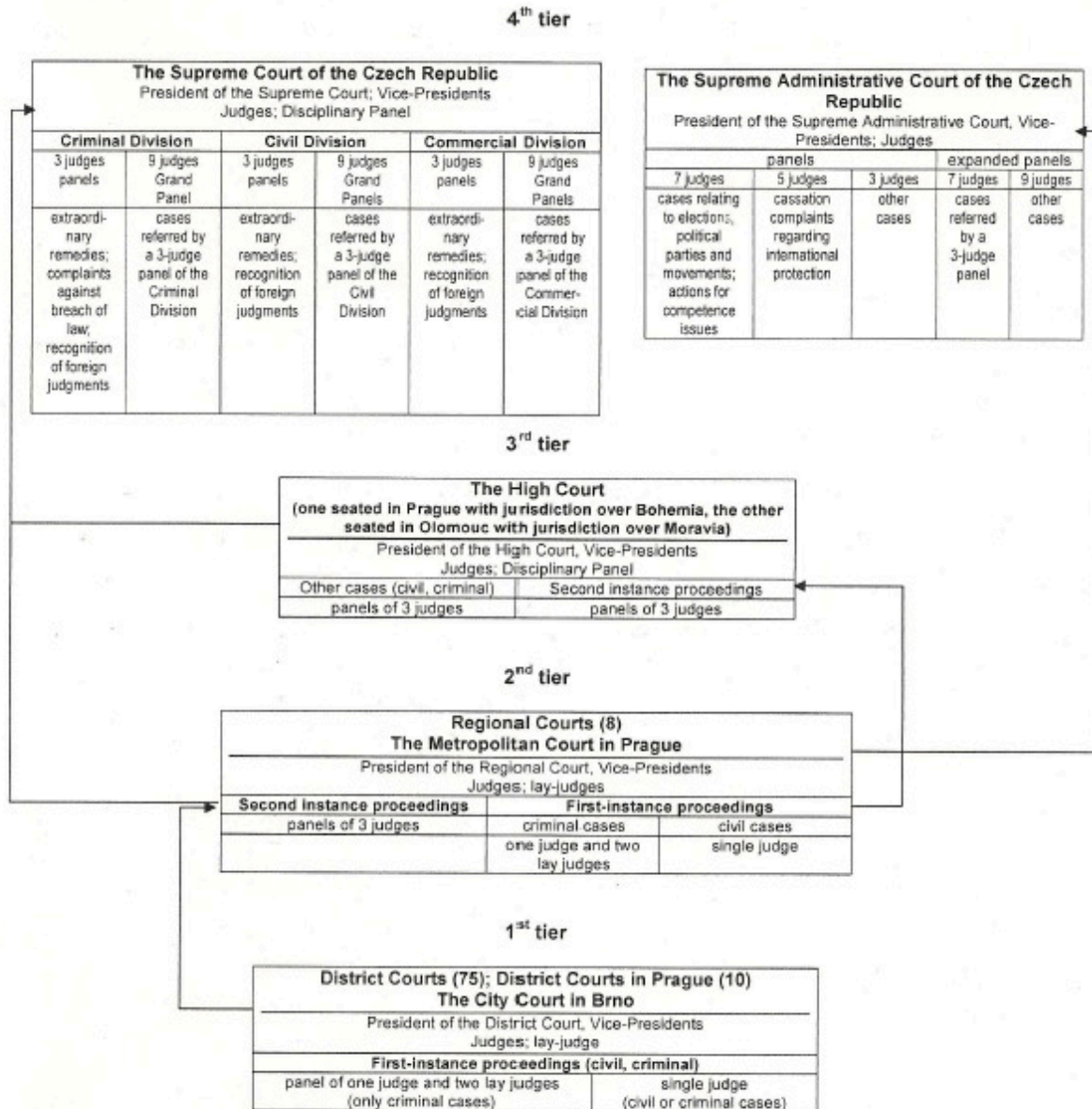


- The Supreme Court (Hof van Cassatie, Cour de Cassation, Kassationshof) (Brussels)
- Belgium is divided into 5 jurisdictions: Court of Appeal (hof van beroep/ cour d'appel/ Appellationshof) (Chambers: civil, penal, youth), and labour court of appeal (arbeidshof/ cour du travail / Arbeidsgerichthof)
- In each province (10): Assize court (Jury)(hof van assisen/cour d'assises/Assisenhof) (Criminal cases as well as all political crimes and offences against the press code). This is not a permanent court.
- In each judicial district (Gerechtelijk arrondissement/arrondissement judiciaire/ Gerichtsbezirk)(27)
- Court of first instance (rechtbank van eerste aanleg/ tribunal de première instance / Gericht Erster Instanz) Chambers: civil, criminal cases (correctional court), the youth court, fiscal)
- Labour/Industrial court (arbeidsrechtbank/ tribunal de travail/Arbeitsgericht)
- Commercial court (Rechtbank van koophandel/ tribunal de commerce //Handelsgericht)
- District court (arrondissementsrechtbank/ tribunal d'arrondissement/ Bezirksgericht)
- Police court (politie rechtbank/tribunal de police/Polizeigericht) (32)
- In each judicial canton (Gerechtelijk kanton/ canton judiciaire/ Gerichtskanton) (187): Justice of the peace (vrederecht/justice de paix/Friedensgericht)

Furthermore there are:

- the Constitutional Court (Grondwettelijk Hof, Cour Constitutionnelle, Verfassungsgerichtshof) (Brussels): has the power to set aside and suspend laws, decrees and ordinances; independent of the legislative, executive and judicial authorities.
- the Council of State (Raad van State, Conseil d'Etat, Staatsrat) (Brussels): the highest administrative court; has the power to suspend and set aside administrative actions (individual and statutory) that violate the legal rules in force.

The System of Courts in the Czech Republic (four-tier system of courts; two-instance proceedings)



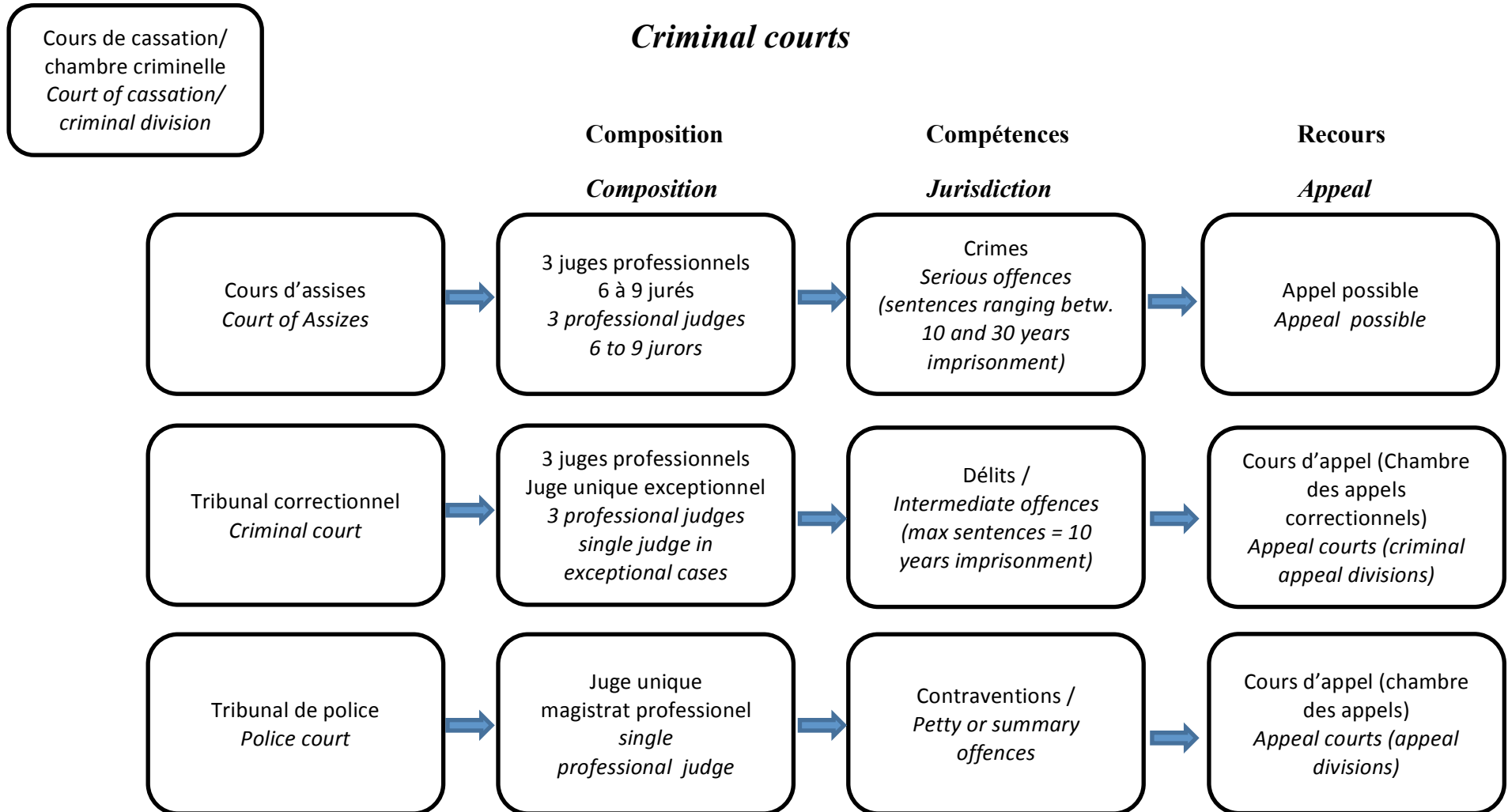
The Constitutional Court of the Czech Republic stands outside the general court structure. It is headed by the President of the Constitutional Court and two Vice-Presidents, and is composed of 12 constitutional justices. Depending on the nature of a case the Court may hear cases in plenary or in one of four chambers composed of 3 justices each.

Organisation juridictionnelle française

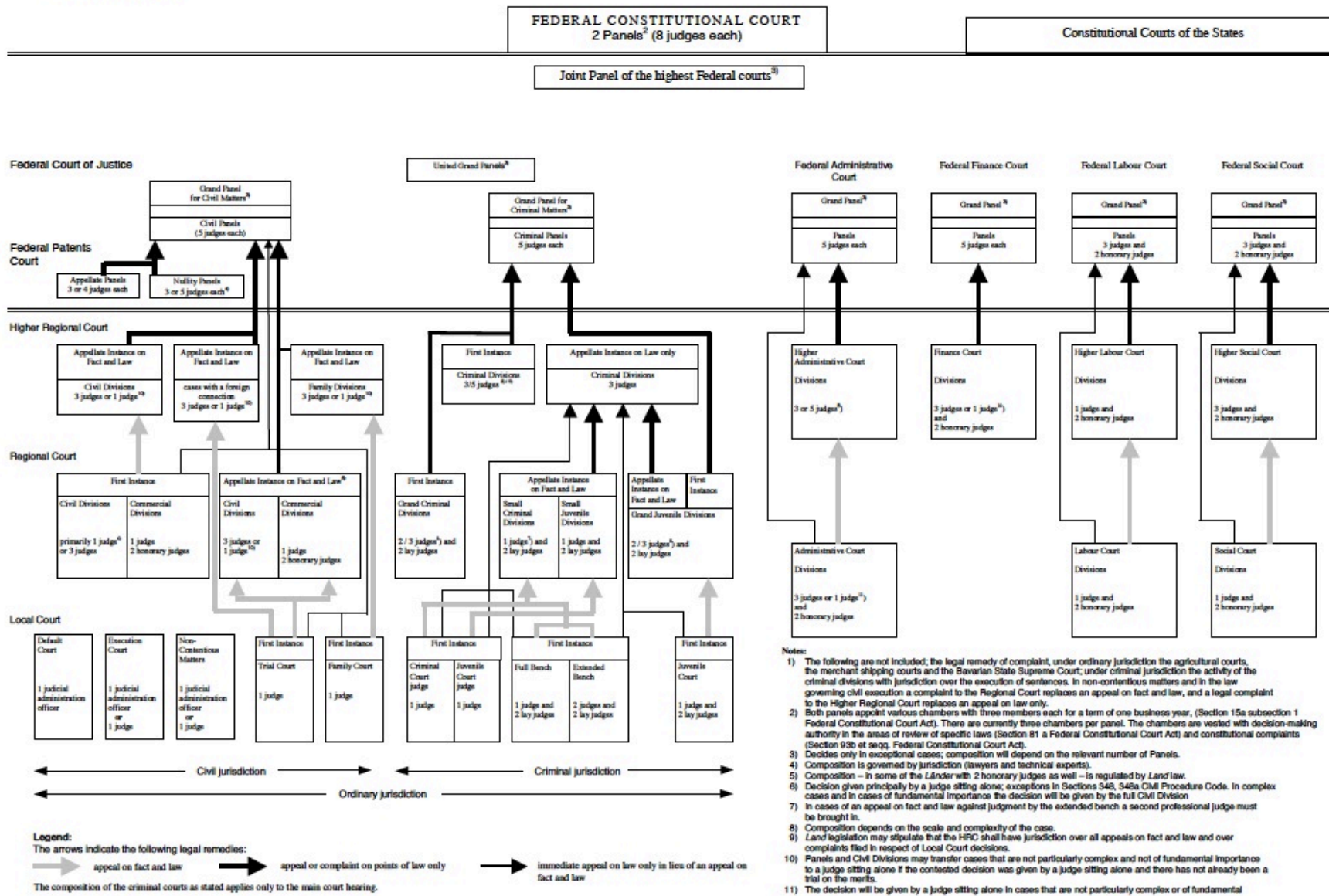
French Judicial System

Juridictions répressives

Criminal courts



The Courts of Law In the Federal Republic of Germany¹⁾

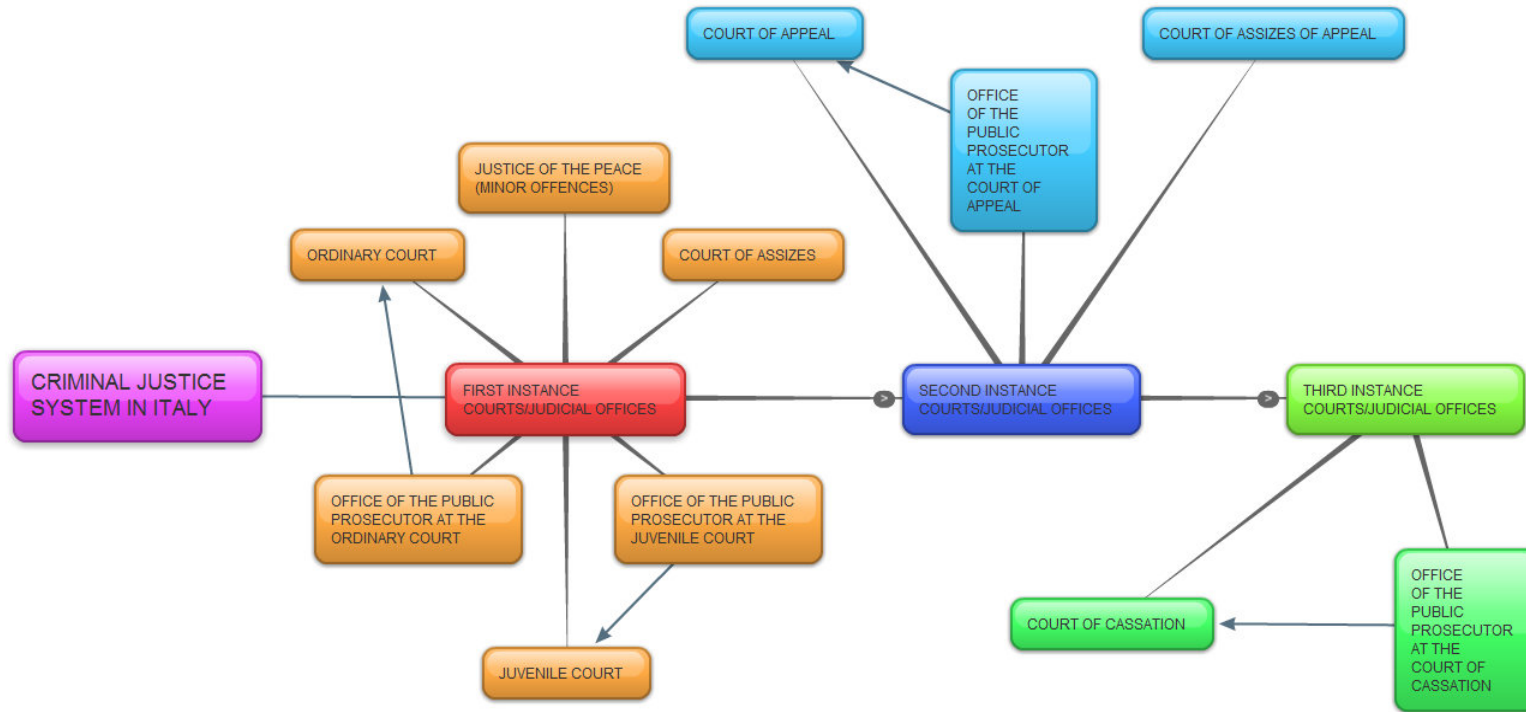


INVESTIGATING AGENCIES IN ITALY



All investigative activities are supervised, coordinated or conducted by the Public Prosecutor.

CRIMINAL JUSTICE SYSTEM IN ITALY



The Ministry of Justice only deals with recruitment and administrative matters of judges and prosecutors. Judges and prosecutors report to a self-governing body: the Superior Council of the Judiciary.

UNITED KINGDOM/SCOTLAND

Her Majesty's
Inspectorate
of
Constabulary
for Scotland

Association
of Chief
Police
Officers in
Scotland
(ACPOS)

**Scottish
Police
Federation**

THE POLICE

Responsibility...
Scottish Ministers
Police Authorities
Chief Constables

Police Ranks
Chief Constable
Deputy Chief Constable
Assistant Chief Constable
Chief Superintendent
Superintendent
Chief Inspector
Inspector
Sergeant
Constable
(Special Constables)

Scottish Police Forces
Central Scotland Police
Dumfries & Galloway
Constabulary
Fife Constabulary
Grampian Police
Lothian & Borders Police
Northern Constabulary
Strathclyde Police
Tayside Police

**Scottish Police Services
Authority**
Forensic Services
Information Services:
Criminal Justice
Information Services: ICT
Scottish Police College
Scottish Crime and Drug
Enforcement Agency

British Transport Police
(Scotland)

THE PROSECUTION

**Crown Office Procurator
Fiscal Service (COPFS)** –
independent public
prosecution service (Dept
of Scottish Gov)

Crown Counsel

Lord Advocate
Ministerial Head of
COPFS / head of
criminal prosecution +
investigation of deaths

Solicitor General
(Deputy of Lord
Advocate)

Advocate Depute
(prosecutes cases in
High Court)

**Procurator Fiscal
Fiscal Depute
- the public prosecutor**
(+ prosecutes crime in in
Sheriff Court + Justice
Peace Court)
= 11 fiscal areas

**Victim Information and
Advice Service**

Scottish Court Service responsible for providing the staff, buildings and
technology to support Scotland's courts + the work of the independent judiciary, etc.

THE CRIMINAL COURTS

Appeal Courts

Supreme Court of the United
Kingdom (in devolution issues
only?)

High Court of Justiciary
(sitting as a Court of Criminal
Appeal)

High Court of Justiciary
(Scotland-wide) - JUDGE

Sheriff Court - SHERIFF

(6 sheriffdoms – 49 courts)
summary+ solemn (+ jury/15)

**Specialist Courts +
Tribunals** e.g. Children's
Hearings (appeal to Sheriff C)

Justice of the Peace Court
(lay JPs) (Glasgow –
Stipendiary Magistrate)
summary - organised by
sheriffdom - 55 courts

Faculty of Advocates

NB:
independence
/ advocates

THE JUDICIARY

NB: independence

Lord Justice General
(High Court of Justiciary)

**Lords Commissioner
of Justiciary**
(High Court Judges)

**Sheriff Principal
Sheriff** (full + PT)

**Justice of the
Peace**

**Stipendiary
Magistrate**

THE DEFENCE

Defence lawyer/ counsel

- advocate
- solicitor- advocate
- solicitor

**Public Defence
Solicitors' Office**
(7 locations) (pilot
scheme)

GOVERNMENT

UK Gov
Advocate General
- advisor on Scots
Law to UK Gov

Scottish Government

**Cabinet
Secretary for
Justice**
(Justice
Secretary)

**Society of
Solicitor
Advocates**

**Law Society of
Scotland**

**Scottish Legal
Aid Board**

Voluntary Bodies
**Victim Support
(Scotland)**
Victim Support + Court
Witness Service
Scottish Women's Aid

EULITA

Code of Professional Ethics

adopted by the EULITA General Assembly in Prague, 4 February 2012

Preamble

One of the main objectives of the European Association for Legal Interpreters and Translators (EULITA) is to represent its full and associate member associations, as well as its associated individual members at European level.

EULITA therefore has the responsibility to draft a code for legal interpreters and translators working in judicial contexts or similar settings, such as pre-trial proceedings (i.e. interviews with police and prosecution officers, consultations with defence lawyers), court hearings and post-trial interventions. The Code and its underlying principles are outlined below.

The professional ethics of legal interpreters and translators derive directly from the principles that are defined in the following sources. They demonstrate the key role of legal interpreters and translators in the search for truth and how their work may affect the life and rights of others:

- The Universal Declaration of Human Rights, December 1948 (Articles 1-11)
- The European Convention for the Protection of Human Rights and Fundamental Freedoms, November 1950 (Articles 5 and 6)
- The Charter of Fundamental Rights of the European Union (2000/C 364/01), CHAPTER III – Articles 20 – 21, CHAPTER VI – Articles 47 – 50
- Directive 2010/64/EU of the European Parliament and Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings

Legal interpreters and translators thus play an essential role in all efforts to ensure the equality of citizens in justice-related communications.

The members of EULITA have accepted this Code and comply with its articles.

Definition of Terms

For the purposes of this Code, the following terms shall have the following meaning:

Legal interpreter and translator:

Legal interpreters and translators are professionals who are qualified to interpret spoken language, sign language or written language.

Consecutive interpreting:

The interpreter renders the interpretation after the source-language speaker has finished speaking or signing. Spoken-language interpreters can use special note-taking techniques to help in the rendering of lengthy passages.

Simultaneous interpreting:

The interpreter transfers the message from the source language into the target language while the source-language speaker speaks or signs continuously. This is the mode commonly used in sign-language interpreting as well as in conference settings.

Whispering (*chuchotage*):

Simultaneous interpreting without the use of interpreting booths usually provided for a maximum of three persons.

Sight translation:

It is required for the ad-hoc oral translation of documents. The source-language document is rendered orally or signed in the target language as if it were written in the target language.

Intercultural Competence

Awareness and full understanding of the cultural factors, including but not limited to, behaviour and gestures, values, roles, institutions, as well as linguistic differences and similarities.

Professional Competence

Legal interpreters and translators shall use the specific interpreting technique (consecutive, simultaneous, whispering, sight translation) according to the requirements for optimum cross-cultural communication in legal settings.

Legal interpreters and translators must not take on an assignment for which they have no competence (in terms of language or subject matter), or which they are not able to perform properly (e.g. for lack of time to prepare for the assignment).

Legal interpreters and translators shall strive to maintain and improve their interpreting and translation skills and knowledge.

Accuracy

The source-language message shall be faithfully rendered in the target language by conserving all elements of the original message while accommodating the syntactic and semantic patterns of the target language. The register, style and tone of the source language shall be conserved.

Errors, hesitations and repetitions should be conveyed.

An interpreter shall request clarification when he or she did not understand a sign-language user or speaker, for example for reasons of acoustics, or ambiguity of a statement. He or she shall signal and correct any interpreting errors as soon as possible.

Obstacles to Performance Quality

Legal interpreters and translators shall bring to a court's*) attention any circumstance or condition that affects the quality of their performance such as interpreter fatigue, inability to hear and/or see, inadequate knowledge of the specialized terminology, insufficient understanding of a dialect. They must decline assignments that would have to be delivered under conditions that make a qualified professional performance impossible.

Impartiality

Legal interpreters and translators shall remain neutral and also maintain the appearance of impartiality, avoiding any undue contacts with either witnesses, defendants and their families or members of the legal professions.

Any potential conflict of interest shall be immediately disclosed to the court*).

Confidentiality

Legal interpreters and translators shall be bound by the strictest secrecy. Any information acquired in the course of an interpreting or translation assignment for judicial purposes or its preparation shall not be disclosed.

Legal interpreters and translators shall refrain from deriving any personal or financial benefit from information they have acquired in the course of an interpreting or translation assignment for judicial purposes or its preparation.

Protocol and Demeanour

Legal interpreters and translators shall behave with dignity and respect towards the court and perform their duties as unobtrusively as possible.

They shall use the same grammatical person as the speaker or sign-language user. Should it become necessary for them to assume a primary role in the communication, they must make it clear that they are speaking for themselves, by using for instance the third person (i.e.: "The interpreter needs to seek clarification ...")

Legal interpreters and translators shall refrain from giving advice to the parties or otherwise engage in activities others than those relevant to the actual assignment.

Solidarity and Fair Conduct

Legal interpreters and translators shall act in a spirit of respect, cooperation and solidarity towards their colleagues.

*) applies to all legal settings.

EULITA recommends that specific Codes of Best Practices should be drafted by the respective judicial administrations in cooperation with the representatives of legal interpreters and translators working for them.

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I

(Legislative acts)

DIRECTIVES

DIRECTIVE 2010/64/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 20 October 2010

on the right to interpretation and translation in criminal proceedings

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular point (b) of the second subparagraph of Article 82(2) thereof,

Having regard to the initiative of the Kingdom of Belgium, the Federal Republic of Germany, the Republic of Estonia, the Kingdom of Spain, the French Republic, the Italian Republic, the Grand-Duchy of Luxembourg, the Republic of Hungary, the Republic of Austria, the Portuguese Republic, Romania, the Republic of Finland and the Kingdom of Sweden ⁽¹⁾,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

(1) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice. According to the Presidency Conclusions of the European Council in Tampere of 15 and 16 October 1999, and in particular point 33 thereof, the principle of mutual recognition of judgments and other decisions of judicial authorities should become the cornerstone of judicial cooperation in civil and criminal matters within the Union because enhanced mutual recognition and the necessary approximation of legislation would facilitate cooperation between competent authorities and the judicial protection of individual rights.

(2) On 29 November 2000, the Council, in accordance with the Tampere Conclusions, adopted a programme of measures to implement the principle of mutual recognition of decisions in criminal matters ⁽³⁾. The introduction to the programme states that mutual recognition is 'designed to strengthen cooperation between Member States but also to enhance the protection of individual rights'.

(3) The implementation of the principle of mutual recognition of decisions in criminal matters presupposes that Member States have trust in each other's criminal justice systems. The extent of mutual recognition is very much dependent on a number of parameters, which include mechanisms for safeguarding the rights of suspected or accused persons and common minimum standards necessary to facilitate the application of the principle of mutual recognition.

(4) Mutual recognition of decisions in criminal matters can operate effectively only in a spirit of trust in which not only judicial authorities but all actors in the criminal process consider decisions of the judicial authorities of other Member States as equivalent to their own, implying not only trust in the adequacy of other Member States' rules, but also trust that those rules are correctly applied.

(5) Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter the ECHR) and Article 47 of the Charter of Fundamental Rights of the European Union (hereinafter the Charter) enshrine the right to a fair trial. Article 48(2) of the Charter guarantees respect for the right of defence. This Directive respects those rights and should be implemented accordingly.

⁽¹⁾ OJ C 69, 18.3.2010, p. 1.

⁽²⁾ Position of the European Parliament of 16 June 2010 (not yet published in the Official Journal) and decision of the Council of 7 October 2010.

⁽³⁾ OJ C 12, 15.1.2001, p. 10.

- (6) Although all the Member States are party to the ECHR, experience has shown that that alone does not always provide a sufficient degree of trust in the criminal justice systems of other Member States.
- (7) Strengthening mutual trust requires a more consistent implementation of the rights and guarantees set out in Article 6 of the ECHR. It also requires, by means of this Directive and other measures, further development within the Union of the minimum standards set out in the ECHR and the Charter.
- (8) Article 82(2) of the Treaty on the Functioning of the European Union provides for the establishment of minimum rules applicable in the Member States so as to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension. Point (b) of the second subparagraph of Article 82(2) refers to 'the rights of individuals in criminal procedure' as one of the areas in which minimum rules may be established.
- (9) Common minimum rules should lead to increased confidence in the criminal justice systems of all Member States, which, in turn, should lead to more efficient judicial cooperation in a climate of mutual trust. Such common minimum rules should be established in the fields of interpretation and translation in criminal proceedings.
- (10) On 30 November 2009, the Council adopted a resolution on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings⁽¹⁾. Taking a step-by-step approach, the Roadmap called for the adoption of measures regarding the right to translation and interpretation (measure A), the right to information on rights and information about the charges (measure B), the right to legal advice and legal aid (measure C), the right to communication with relatives, employers and consular authorities (measure D), and special safeguards for suspected or accused persons who are vulnerable (measure E).
- (11) In the Stockholm programme, adopted on 10 December 2009, the European Council welcomed the Roadmap and made it part of the Stockholm programme (point 2.4). The European Council underlined the non-exhaustive character of the Roadmap, by inviting the Commission to examine further elements of minimum procedural rights for suspected and accused persons, and to assess whether other issues, for instance the presumption of innocence, need to be addressed, in order to promote better cooperation in that area.
- (12) This Directive relates to measure A of the Roadmap. It lays down common minimum rules to be applied in the fields of interpretation and translation in criminal proceedings with a view to enhancing mutual trust among Member States.
- (13) This Directive draws on the Commission proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings of 8 July 2009, and on the Commission proposal for a Directive of the European Parliament and of the Council on the right to interpretation and translation in criminal proceedings of 9 March 2010.
- (14) The right to interpretation and translation for those who do not speak or understand the language of the proceedings is enshrined in Article 6 of the ECHR, as interpreted in the case-law of the European Court of Human Rights. This Directive facilitates the application of that right in practice. To that end, the aim of this Directive is to ensure the right of suspected or accused persons to interpretation and translation in criminal proceedings with a view to ensuring their right to a fair trial.
- (15) The rights provided for in this Directive should also apply, as necessary accompanying measures, to the execution of a European arrest warrant⁽²⁾ within the limits provided for by this Directive. Executing Member States should provide, and bear the costs of, interpretation and translation for the benefit of the requested persons who do not speak or understand the language of the proceedings.
- (16) In some Member States an authority other than a court having jurisdiction in criminal matters has competence for imposing sanctions in relation to relatively minor offences. That may be the case, for example, in relation to traffic offences which are committed on a large scale and which might be established following a traffic control. In such situations, it would be unreasonable to require that the competent authority ensure all the rights under this Directive. Where the law of a Member State provides for the imposition of a sanction regarding minor offences by such an authority and there is a right of appeal to a court having jurisdiction in criminal matters, this Directive should therefore apply only to the proceedings before that court following such an appeal.

⁽¹⁾ OJ C 295, 4.12.2009, p. 1.

⁽²⁾ Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1).

- (17) This Directive should ensure that there is free and adequate linguistic assistance, allowing suspected or accused persons who do not speak or understand the language of the criminal proceedings fully to exercise their right of defence and safeguarding the fairness of the proceedings.
- (18) Interpretation for the benefit of the suspected or accused persons should be provided without delay. However, where a certain period of time elapses before interpretation is provided, that should not constitute an infringement of the requirement that interpretation be provided without delay, as long as that period of time is reasonable in the circumstances.
- (19) Communication between suspected or accused persons and their legal counsel should be interpreted in accordance with this Directive. Suspected or accused persons should be able, inter alia, to explain their version of the events to their legal counsel, point out any statements with which they disagree and make their legal counsel aware of any facts that should be put forward in their defence.
- (20) For the purposes of the preparation of the defence, communication between suspected or accused persons and their legal counsel in direct connection with any questioning or hearing during the proceedings, or with the lodging of an appeal or other procedural applications, such as an application for bail, should be interpreted where necessary in order to safeguard the fairness of the proceedings.
- (21) Member States should ensure that there is a procedure or mechanism in place to ascertain whether suspected or accused persons speak and understand the language of the criminal proceedings and whether they need the assistance of an interpreter. Such procedure or mechanism implies that competent authorities verify in any appropriate manner, including by consulting the suspected or accused persons concerned, whether they speak and understand the language of the criminal proceedings and whether they need the assistance of an interpreter.
- (22) Interpretation and translation under this Directive should be provided in the native language of the suspected or accused persons or in any other language that they speak or understand in order to allow them fully to exercise their right of defence, and in order to safeguard the fairness of the proceedings.
- (23) The respect for the right to interpretation and translation contained in this Directive should not compromise any other procedural right provided under national law.
- (24) Member States should ensure that control can be exercised over the adequacy of the interpretation and translation provided when the competent authorities have been put on notice in a given case.
- (25) The suspected or accused persons or the persons subject to proceedings for the execution of a European arrest warrant should have the right to challenge the finding that there is no need for interpretation, in accordance with procedures in national law. That right does not entail the obligation for Member States to provide for a separate mechanism or complaint procedure in which such finding may be challenged and should not prejudice the time limits applicable to the execution of a European arrest warrant.
- (26) When the quality of the interpretation is considered insufficient to ensure the right to a fair trial, the competent authorities should be able to replace the appointed interpreter.
- (27) The duty of care towards suspected or accused persons who are in a potentially weak position, in particular because of any physical impairments which affect their ability to communicate effectively, underpins a fair administration of justice. The prosecution, law enforcement and judicial authorities should therefore ensure that such persons are able to exercise effectively the rights provided for in this Directive, for example by taking into account any potential vulnerability that affects their ability to follow the proceedings and to make themselves understood, and by taking appropriate steps to ensure those rights are guaranteed.
- (28) When using videoconferencing for the purpose of remote interpretation, the competent authorities should be able to rely on the tools that are being developed in the context of European e-Justice (e.g. information on courts with videoconferencing equipment or manuals).
- (29) This Directive should be evaluated in the light of the practical experience gained. If appropriate, it should be amended so as to improve the safeguards which it lays down.

(30) Safeguarding the fairness of the proceedings requires that essential documents, or at least the relevant passages of such documents, be translated for the benefit of suspected or accused persons in accordance with this Directive. Certain documents should always be considered essential for that purpose and should therefore be translated, such as any decision depriving a person of his liberty, any charge or indictment, and any judgment. It is for the competent authorities of the Member States to decide, on their own motion or upon a request of suspected or accused persons or of their legal counsel, which other documents are essential to safeguard the fairness of the proceedings and should therefore be translated as well.

(31) Member States should facilitate access to national databases of legal translators and interpreters where such databases exist. In that context, particular attention should be paid to the aim of providing access to existing databases through the e-Justice portal, as planned in the multiannual European e-Justice action plan 2009-2013 of 27 November 2008 ⁽¹⁾.

(32) This Directive should set minimum rules. Member States should be able to extend the rights set out in this Directive in order to provide a higher level of protection also in situations not explicitly dealt with in this Directive. The level of protection should never fall below the standards provided by the ECHR or the Charter as interpreted in the case-law of the European Court of Human Rights or the Court of Justice of the European Union.

(33) The provisions of this Directive that correspond to rights guaranteed by the ECHR or the Charter should be interpreted and implemented consistently with those rights, as interpreted in the relevant case-law of the European Court of Human Rights and the Court of Justice of the European Union.

(34) Since the objective of this Directive, namely establishing common minimum rules, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the

Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(35) In accordance with Article 3 of the Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, those Member States have notified their wish to take part in the adoption and application of this Directive.

(36) In accordance with Articles 1 and 2 of the Protocol (No 22) on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter and scope

1. This Directive lays down rules concerning the right to interpretation and translation in criminal proceedings and proceedings for the execution of a European arrest warrant.

2. The right referred to in paragraph 1 shall apply to persons from the time that they are made aware by the competent authorities of a Member State, by official notification or otherwise, that they are suspected or accused of having committed a criminal offence until the conclusion of the proceedings, which is understood to mean the final determination of the question whether they have committed the offence, including, where applicable, sentencing and the resolution of any appeal.

3. 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.

⁽¹⁾ OJ C 75, 31.3.2009, p. 1.

4. This Directive does not affect national law concerning the presence of legal counsel during any stage of the criminal proceedings, nor does it affect national law concerning the right of access of a suspected or accused person to documents in criminal proceedings.

Article 2

Right to interpretation

1. Member States shall ensure that suspected or accused persons who do not speak or understand the language of the criminal proceedings concerned 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.

2. Member States shall ensure that, where necessary for the purpose of safeguarding the fairness of the proceedings, interpretation is available for communication between suspected or accused persons and their legal counsel in direct connection with any questioning or hearing during the proceedings or with the lodging of an appeal or other procedural applications.

3. The right to interpretation under paragraphs 1 and 2 includes appropriate assistance for persons with hearing or speech impediments.

4. Member States shall 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 and whether they need the assistance of an interpreter.

5. Member States shall ensure that, in accordance with procedures in national law, 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, the possibility to complain that the quality of the interpretation is not sufficient to safeguard the fairness of the proceedings.

6. Where appropriate, communication technology such as videoconferencing, telephone or the Internet may be used, unless the physical presence of the interpreter is required in order to safeguard the fairness of the proceedings.

7. In proceedings for the execution of a European arrest warrant, the executing Member State shall ensure that its competent authorities provide persons subject to such

proceedings who do not speak or understand the language of the proceedings with interpretation in accordance with this Article.

8. Interpretation provided under this Article shall be of a quality sufficient to safeguard the fairness of the proceedings, in particular by ensuring that suspected or accused persons have knowledge of the case against them and are able to exercise their right of defence.

Article 3

Right to translation of essential documents

1. Member States shall ensure that suspected or accused persons who do not understand the language of the criminal proceedings concerned are, within a reasonable period of time, provided with a written translation of all documents which are essential to ensure that they are able to exercise their right of defence and to safeguard the fairness of the proceedings.

2. Essential documents shall include any decision depriving a person of his liberty, any charge or indictment, and any judgment.

3. The competent authorities shall, in any given case, decide whether any other document is essential. Suspected or accused persons or their legal counsel may submit a reasoned request to that effect.

4. There shall be no requirement to translate passages of essential documents which are not relevant for the purposes of enabling suspected or accused persons to have knowledge of the case against them.

5. Member States shall ensure that, in accordance with procedures in national law, suspected or accused persons have the right to challenge a decision finding that there is no need for the translation of documents or passages thereof and, when a translation has been provided, the possibility to complain that the quality of the translation is not sufficient to safeguard the fairness of the proceedings.

6. In proceedings for the execution of a European arrest warrant, the executing Member State shall ensure that its competent authorities provide any person subject to such proceedings who does not understand the language in which the European arrest warrant is drawn up, or into which it has been translated by the issuing Member State, with a written translation of that document.

7. As an exception to the general rules established in paragraphs 1, 2, 3 and 6, an oral translation or oral summary of essential documents may be provided instead of a written translation on condition that such oral translation or oral summary does not prejudice the fairness of the proceedings.

8. Any waiver of the right to translation of documents referred to in this Article shall be subject to the requirements that suspected or accused persons have received prior legal advice or have otherwise obtained full knowledge of the consequences of such a waiver, and that the waiver was unequivocal and given voluntarily.

9. Translation provided under this Article shall be of a quality sufficient to safeguard the fairness of the proceedings, in particular by ensuring that suspected or accused persons have knowledge of the case against them and are able to exercise their right of defence.

Article 4

Costs of interpretation and translation

Member States shall meet the costs of interpretation and translation resulting from the application of Articles 2 and 3, irrespective of the outcome of the proceedings.

Article 5

Quality of the interpretation and translation

1. Member States shall take concrete measures to ensure that the interpretation and translation provided meets the quality required under Article 2(8) and Article 3(9).

2. In order to promote the adequacy of interpretation and translation and efficient access thereto, Member States shall endeavour to establish a register or registers of independent translators and interpreters who are appropriately qualified. Once established, such register or registers shall, where appropriate, be made available to legal counsel and relevant authorities.

3. Member States shall ensure that interpreters and translators be required to observe confidentiality regarding interpretation and translation provided under this Directive.

Article 6

Training

Without prejudice to judicial independence and differences in the organisation of the judiciary across the Union, Member States shall 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 so as to ensure efficient and effective communication.

Article 7

Record-keeping

Member States shall ensure that when a suspected or accused person has been subject to questioning or hearings by an investigative or judicial authority with the assistance of an interpreter pursuant to Article 2, when an oral translation or oral summary of essential documents has been provided in the presence of such an authority pursuant to Article 3(7), or when a person has waived the right to translation pursuant to Article 3(8), it will be noted that these events have occurred, using the recording procedure in accordance with the law of the Member State concerned.

Article 8

Non-regression

Nothing in this Directive shall be construed as limiting or derogating from any of the rights and procedural safeguards that are ensured under the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Charter of Fundamental Rights of the European Union, other relevant provisions of international law or the law of any Member State which provides a higher level of protection.

Article 9

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 27 October 2013.

2. Member States shall transmit the text of those measures to the Commission.

3. When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

Article 10

Report

The Commission shall, by 27 October 2014, submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive, accompanied, if necessary, by legislative proposals.

Article 11

Entry into force

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

*Article 12***Addressees**

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Strasbourg, 20 October 2010.

For the European Parliament
The President
J. BUZEK

For the Council
The President
O. CHASTEL
