

**Working Group on the Jurisdiction of the Courts
Submission from the Irish Translators' and Interpreters' Association (ITIA)
2002**

The ITIA is an association that brings together translators, conference interpreters and interpreters working in the courts, hospitals and at interviews with asylum seekers. In 2001 the ITIA organised two interpreting events: an Interpreting Day in February when the situation was compared with that of other EU countries such as Belgium and the United Kingdom and in September an evening on Ethics, Community Interpreting and Asylum Seekers. The ITIA believes that there is room for improvement in the provision of interpreting in the courts. This is essential for the fair administration of justice.

Languages and the Courts Service

Over the last ten years, the population profile of Ireland has changed dramatically. It is now a multicultural population that includes EEA workers, refugees, programme refugees, asylum seekers and people here on work permits. The issue of languages is briefly mentioned in the Courts Service Strategic Plan 2000-2003:

Ensure that an adequate number of staff are competent in the Irish language so as to allow for service to be provided in Irish as well as in English. Account also to be taken of those whose first language is neither English nor Irish.

Offer training to staff to enable such service to be provided and also to enable a service to be provided to those who can speak neither language.

At present the idea of 'to enable a service to be provided to those who speak neither language' seems to consist in interpreters being recruited as the need arises through private agencies. While the Courts Service, with the help of these agencies, can access interpreters in 210 languages and dialects, there is no process in place where interpreters can be trained and tested. The agencies do not test the interpreters to ensure that their knowledge of languages is sufficient to ensure a high standard of interpreting. Nor do they test interpreting ability. This is a fundamental flaw in the system. The assumption in the courts and elsewhere is that if a person speaks two languages they can interpret. This is a dangerous assumption because interpreting is a skill that benefits from training and practice. The mere fact that a person speaks two languages is not in itself a guarantee of a high standard of interpreting.

According to Gonzalez et al (1991):

The court interpreter is required to interpret the original source material without editing, summarizing, deleting or adding while conserving the language level, style, tone and intent of the speaker or to render what may be termed the legal equivalence of the source message.

Given that interpreters in the Irish courts cannot avail of any specialised training, it is doubtful if they are aware of these constraints when they agree to take on court interpreting work. In practice many interpreters in the Irish courts do not have any sort of knowledge of the law or of legal terminology, they do not know how to behave if they make a mistake, they do not have any kind of code of ethics. Yet Court

Interpreting is probably the most specialised area across the interpreting spectrum as the interpreter must have a very high level of accuracy, must understand legal concepts and must have strategies to help deal with the explanation of legal terms to clients from different legal systems. The interpreter has to be able to deal with complex legal language, ambiguous questions, slang and references to the media. Poor interpreting can obviously affect a court's perception of a defendant: Susan Berk-Seligson in her book *The Bilingual Courtroom* has clearly demonstrated that an interpreter who adds in polite phrases such as 'Yes, your honour' 'No, your honour' 'Yes sir' etc not actually uttered by the defendant, helps convey a much more positive image of the defendant.

The Courts Service argues, of course, in the words of its Media Relations Adviser in a recent letter to *The Irish Times* that 'the very dynamic of the courtroom would make it immediately obvious if there was a problem' – in fact, many studies have shown that it may be assumed that the defendant is contradicting him/herself or indeed those present in court may not be aware of any problem. In 1999 the United States Office of Minority Health observed in the context of medical interpreting that:

The error rate of untrained 'interpreters' is sufficiently high as to make their use more dangerous in some circumstances than no interpreter at all. This is because it lends a false sense of security to both provider and client that accurate communication is actually taking place.

The only way to be certain that interpreting is of a high standard is to record cases and analyse the language used. Recording is not of course allowed at present in the courts and perhaps this is a question that should be revisited. Routine recording of interpreted cases would provide a very useful source of material for research and would help to provide some guarantee that quality interpreting is taking place. A further potential problem that has not been addressed is that of 'contamination' where the same interpreter is involved in interpreting a police interview with a defendant and is subsequently asked to interpret for the defendant in court. In other countries this is regarded as an undesirable situation because the interpreter may add in information recalled from the police interview and not actually uttered in court.

The European Convention on Human Rights

Now that the European Convention on Human Rights and Fundamental Freedoms is part of Irish law, perhaps we can take article 6 seriously:

The Kamasinski case, taken in 1988 to the European Court of Human Rights took up the issue of interpreting with Mr Kamasinski claiming that the process of accreditation for interpreters in Austria was inadequate. While the Court rejected most of Mr Kamasinski's case, it did make the following observation:

In view of the need for the right guaranteed by paragraph 3e (article 6-3-e) to be practical and effective, the obligation of the competent authorities is not limited to the appointment of an interpreter but, if they are put on notice in the particular circumstances, may also extend to a degree of subsequent control over the adequacy of the interpretation provided.

The Netherlands took this observation seriously and the authorities there have done a lot of work in the area of training and are now setting up testing programmes for court interpreters. Originally there were six interpreter centres around the country (now being changed to one) that operated from a register of 700 interpreters. The Ministry of Justice pays the interpreters. The minimum age for interpreters in the Netherlands is 23 and they should have spent at least three years in the country. From 2003 all interpreters will have to be accredited if they are to work for government services. Certification will become void after a certain amount of time; as a result ongoing training will be part of the system.

In the United Kingdom interpreters can take examinations for the Diploma in Public Service Interpreting where they specialise in English law, Scottish law, medicine or local government.

What should be done?

- Training should be provided in court interpreting, focusing on interpreting techniques, note-taking, interpreting practice, ethics and terminology.
- A testing system should be established for the most commonly used languages
- In the case of other languages, knowledge of English should be formally tested.
- A register of accredited interpreters should be established
- Ongoing refresher training for interpreters should be established
- Short training courses should be provided for court personnel who need to work with interpreters .
- Consider making audio or video recordings of interpreted court cases.
- The Courts Service could establish its own section for finding interpreters rather than working through agencies
- A record should be kept of all cases where interpreting is provided and in what languages.

References

Berk-Seligson, Susan (1990) *The Bilingual Courtroom: Court Interpreters in the Judicial Process*. Chicago: University of Chicago Press.

Gonzalez, Roseann, Vasquez Victoria and Mikkelson, Holly (1991) *Fundamentals of Court Interpretation: Theory, Policy and Practice*, Durham, North Carolina: Carolina Academic Press.