

Court Interpreter: Lawyer, Psychiatrist, Director or Actor?

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1. Introduction

“The courtroom is like a theatre” – this is the metaphor used to describe a trial in the Anglo-American system, which is presented as a theatrical play, where actors–lawyers, through their stage actions, try to influence the jury (Edwards 1995: 19, Mikkelsen 1998: 27). The court interpreter is also a member of the cast of actors, except he did not receive the scenario earlier. While all the others play roles that they already rehearsed before, he is the only one that is forced to improvise. Lawyers not only try to manipulate the interpretation, as if it was a part of their carefully prepared production, but also to ignore the presence of the interpreter at the courtroom, hence common attempts at limiting the role of the court interpreter by lawyers to a depersonalized translating machine, a transmission belt, a telephone or simply a conduit (Ibrahim/Bell 2003, Lee 2009, Morris 1993, 1995, 1999).

This image slightly differs from the reality of the courtroom in the continental system. Here also interpreters are deprived of the chance to rehearse the scenario – to study the case records and prepare for the proceedings (e.g. Mendel 2011, Rostalski 2011). Interpreters are thus forced to act in an improvised manner, although they frequently lack the necessary preparation for this art. In many countries of the European Union, the situation regarding court interpreting is not satisfactory: there is a shortage of adequate curricula of training interpreters for the needs of courts, which results in appointing interpreters without required qualifications and the quality of the interpretation is low (European Commission/DG Interpretation 2009, Hertog/Gucht 2008).

Whereas from empirical examination it results that a court interpreter plays a definitely active part in the proceedings, and his action in the courtroom has an influence on the course of the process (Berk-Seligson 1990, Hale 2004, Jansen

1995, Kadrić 2000, 2009, Nartowska 2013). The importance of an interpreter in the court is also stressed by regulations of international and community law: European Convention on Human Rights as well as Directive 2010/64/EU of the European Parliament and the Council, according to which an interpreter guarantees a fair trial and guards human rights.¹ Thus, the court interpreter becomes the central character of the play, the main actor, without whom the play could not take place.

In the following article, it will be analyzed how the stage performance of court interpreters does look like in practice. Using examples taken from authentic proceedings in Austrian Court, the author will discuss improvisation strategies that are used by interpreters in individual scenes of the court theatrical play in order to successfully perform the given role.

2. Translation action in the courtroom

In the functionalist approach concerning court interpreting, translation action in the courtroom is a “communication oriented transcultural action” (Kadrić 2009: 26). Its goal is to enable communication between two languages (linguistic agency) and two cultures (cultural agency) in a specific, institutionally determined interaction (Kadrić 2009: 28). Linguistic agency means, above all, translation of oral texts (in the form of bilateral consecutive interpretation), written texts (most often in the form of sight interpretation), interpretation of sign language and multimedia texts as well as identification of foreign language documents during the proceedings. Whereas cultural agency encompasses adopting a stance regarding texts that appear during the proceedings together with their contexts as well as regarding particular culturally determined situations and behaviours.

The court interpreter is an expert for transcultural communication (Kadrić 2009: 39), responsible for enabling all parties in the court performance to understand and be understood. To achieve this, the interpreter must not only interpret what has been explicitly said in a language foreign to a given recipient, but he also must reveal in the interpretation the contents and meanings contained in the source language utterance implicitly, adjusting the translatum, the product of a translation process, for the needs of a given situation. The contents hidden beyond the linguistic layer of the utterance include cultural references not commonly known (e.g. in the foreign language) as well as facts not commonly known regarding the culture of a given institution (e.g. in the court language) (Kadrić 2009: 29). Thus, the interpreter acts as an agent not only between the culture of a foreign language

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.”

and the proceedings language, but also between the culture of the court language.² Therefore, he is entitled to take any actions providing the court with information necessary to determine the truth and restore the legal order as well as to give a foreign person the possibility to fully understand the course of the proceedings and to be fully understood in the person's own case.

3. Theatrical play "The main proceedings"

The analysis is based on the research carried out in the years 2010 and 2011 in Landesgericht für Strafsachen (Regional Court for Criminal Cases) in Vienna, Austria. The research consisted in open and uncontrolled observation of proceedings in criminal cases with the presence of at least one court interpreter. The proceedings observed covered a broad spectrum of punishable acts: from possession of drugs and drug trade through bodily harm and assaults to rapes and murders.

3.1. Curtain: Calling the case

Right after the case is called, the interpreter needs to take one of the most important decisions, namely regarding the place he is going to occupy in the courtroom. Since the interpreter plays one of the most important roles in the courtroom, his place is crucial. His position determines the choice of interpretation techniques, thus influencing the course of the interpreting process and the course of the proceedings. In Austrian court, interpreters most frequently choose the place on the bench on the right-hand side of the judge. In the initial stage of the proceedings, during the examination of the accused, such position of the interpreter seems advantageous because of the ease of maintaining eye-contact with the accused, who is situated opposite the court. Next, when the accused occupies the place at the dock, its distance from the interpreter significantly increases, causing interpreting the course of the proceedings for him virtually impossible. The interpreter thus becomes merely a supporting actor, even an extra.

Interpreters sporadically choose the place next to the prosecutor, while two of observed interpreters decided to change their place during the proceedings: from the initial one, next to the prosecutor or judge, to the one at the dock. This way they could play their role, enabling the accused who speaks a foreign language to fully participate in the proceedings.

² Kadrić distinguishes the following "foreign cultures" at the courtroom, between which the interpreter is an agent (assuming to possess all three competences): the foreign language placed in a given (foreign) culture, court language placed in a given (institutional) culture and knowledge of the subject (specialist knowledge) placed in a given (specialist) culture (Kadrić 2009: 31).

3.2. Scene I: Personal examination

During the examination, the accused must answer a series of questions according to a standard form, such as e.g. date and place of birth, citizenship, marital status, home address, work, financial and material situation and earlier sentences. Most Austrian interpreters decide to use consecutive interpreting during the examination, less frequently combining the consecutive technique (questions of the judge) and simultaneous technique (answers of the accused). As a rule, at this stage they do not take notes. As personal examination of the accused is a routine activity, a common practice in Austria is for the judges to hand over a form with personal details of the accused to the interpreter, who takes over the examination, at the same time becoming a lawyer and a director. The interpreter then needs to coordinate many activities, namely to check the answers of the accused with the details presented in the form, to correct or fill in the details if necessary, and at the same time interpret the answers of the accused into the language of the proceedings, which is connected with a need to rapidly change between the languages.

During the examination, cultural agency is often necessary not only for the court, but also for the person speaking a foreign language. Court interpreters often provide socio-economic information regarding the accused and his country of origin as well as regarding differences in education systems, a received title or work. For one of the observed cases, a Slovak interpreter was appointed, while in the preliminary proceedings a Hungarian interpreter participated. Seeing the judge's surprise, the interpreter explained that the accused is indeed a citizen of Slovakia, but he belongs to the Hungarian minority living in that country, which justifies his bilingualism (16 August 2010). Whereas, for a foreign language speaker it is necessary to take into account the cultural differences in translation, e.g. through explication in order to avoid misunderstandings. For instance, in Poland, as an answer to a standard question: *Was sind Sie von Beruf?*/What is your profession?, the acquired profession is given, whereas in Austria such question regards the actual profession, as it is shown in the judge's commentary: *“Wo Sie jetzt arbeiten, gelernt ist was anderes!”* /“Where you currently work, not your profession!” (11 May 2010).

After personal examination, the accused is advised of his right to testify according to his own discretion and that the plea of guilty constitutes a significant extenuating circumstance. Also in this case it is common for interpreters to take the role of a lawyer and instruct the accused independently, either on their own initiative or at the judge's request. Austrian interpreters are acquainted with this procedure and the judges' expectations, because none of them refused to perform this task.

3.3. Scene II: The indictment

The interpreter, most frequently for the first time, learns what the proceedings will be about from the indictment read out by the prosecutor. The indictment, as the majority of judicial documents, is drawn out in a language characterized by unique lexis and syntax which are typical for highly specialized written texts. Density of information, references to particular legal regulations according to the classification of the punishable act, legal jargon, not rarely terminology from the scope of medicine or technology increase the complexity of the text. Moreover, as the indictment was prepared earlier and all the participants of the proceedings, except for the interpreter, already know its contents, it is read out at breathtaking pace. Below an example of a fragment of an indictment:

Die Staatsanwaltschaft Wien legt [Name], geboren am TT.MM.JJJJ in Wien, österreichischer Staatsbürger, ledig, ohne Beschäftigung, wohnhaft in [Ort] zur Last: [Name] hat am 15.06.2010 in Wien: eine fremde Sache beschädigt, indem er gegen den Pkw Renault Clio, behördliches Kennzeichen W-12345H, von [Name2] trat, wodurch der rechte Seitenspiegel, die rechte vordere Kfz-Türe, sowie der linke vordere Kotflügel beschädigt wurden. [Name] hat hiedurch das Vergehen der Sachbeschädigung nach §125 StGB begangen und wird hiefür unter Anwendung des §28 Absatz 1 StGB nach §87 Absatz 1 StGB zu bestrafen sein.

The prosecutor's office in Vienna accuses [Surname], born [Date] in Vienna, a citizen of Austria, single, unemployment, residing at [Place] of the following: [Surname] on 15 June 2010 in Vienna: he damaged other person's property in the manner that he kicked a Renault Clio car of [Surname 2], official registration number W-12345H, resulting in the damage of the right side mirror, the right front car door as well as the left front fender. Because of this, [Surname] committed an offence of property damage under the article §125 of (*Austrian*) Penal Code and is subject to sentence with the application of §28 paragraph 1 of the Penal Code from article §87 paragraph 1 of the Penal Code.

This stage of the proceedings undoubtedly requires acting skills from the interpreter. The majority of Austrian interpreters decide to summarize the indictment in a greatly simplified manner. They often limit themselves to mention the punishable act the accused is charged with. None of the observed interpreters decided on sight interpretation.

In judicial practice in Austria, reading out the indictment is often omitted for the sake of the indictment summary by the judge. The interpreter then does not need to face the challenge of its interpretation, but at the same time he is deprived of the case context which makes it difficult, sometimes even impossible, to comprehend the meaning of individual testimonies.

3.4. Scene III: Case examination

Examination of the accused in his case in Austrian court is in some aspects similar to the personal examination: also at this stage interpreters most often use consecutive or consecutive-and-simultaneous interpretation and act as cultural agents, especially if the proceedings are attended by an interpreter of a language, who for a foreign person constitutes a second foreign language (e.g. Russian interpreter for Chechnya citizens or Arabic interpreter for Somalis). The interpreters comment on particular events connected with culture of the institution, explain specialist terms or simplify the specialized language. Sometimes these efforts are necessary in the case of general lexis: during a drug trade case regarding an accused Nigerian, the appointed English interpreter used developed term definitions whenever there was a risk that the accused might not understand them, e.g. “Abnehmer (*customers*) = people who want to buy it.” (07 June 2010).

However, a significant difference between personal examination of the accused and case examination lies in the fact that during the second one, interpreters become directors of the performance, coordinating the course of interaction. Interference of the interpreter proves indispensable when testimonies of the accused become lengthy, chaotic and tangled. Observations indicate that experienced interpreters are definitely better at performing the director’s role. They often show their own initiative, they control testimonies and interrupt them if necessary (an interpreter to the accused: “Чекajte, Чекajte!”/“Please wait, please wait!” 22 June 2010).³ If the need arises, interpreters also ask the accused what did he have in mind and repeat questions of the judge, when the accused gets lost in the testimonies. Sometimes the interpreter’s interference turns out to be necessary towards representatives of the institution. Judges get impatient if they must hear out the interpretation till the end, so they try to interrupt the interpreter’s utterance. One of the interpreters in such a situation reprimanded the judge that he had not finished translating yet: “Ich muss noch den vorherigen Satz übersetzen!”/“I still need to translate the previous sentence!” 22 June 2010). In this case it might be of importance that the interpreter was at the same time a judge by profession.

Just how important is coordination of court interaction by the interpreter one may find out from situations which demonstrate lack of such a control. When the accused speaks for too long, not only are interpreters unable to convey the full content of the utterance, but also judges lose patience and become distrustful. In such cases they need to intervene, enquiring about what has been said: “Was hat er gesagt?”/“What did he say?” 11 June 2010) or directly asking the interpreter to

³ However, in practice it also happens that interrupting the accused does not help, but disrupts communication. In one of the proceedings, the interpreter was unable to memorize more than one sentence at once, so he repeatedly interrupted the accused, restraining him and causing to him repeat himself and get lost in his own testimonies (11.06.2010).

translate shorter fragments (“Kürzere Abstände, bitte!”/“Shorter passages, please!” 11 June 2010). If the judges’ interferences recur repeatedly during a single examination, this results in communication difficulties.

3.5. Scene IV: Evidentiary proceedings

The major part of evidentiary proceedings is constituted by questioning of the witnesses. If testifying witnesses use the language of the court, the majority of Austrian interpreters wait as the questioning comes to an end and later interpret it by summarizing. Some of them start interpreting on their own initiative, others only at the judges’ request. They rarely opt for simultaneous interpretation by whispering for the accused, who at that stage sits at the dock, which in most cases is conditioned by the place they occupy at the courtroom. Therefore, interpreters recede into the background, even play a passive role of supernumeraries. This leads to exclusion of the accused from participation in the proceedings, although testimonies concern him directly, of which he is perfectly aware (e.g. he hears his name). During one of the observed proceedings, a citizen of Macedonia was accused of selling drugs to a policeman. The interpreter summarized the testimony of a policeman witness after his questioning. However, the accused insisted on full interpretation, because he did not agree with testimonies of the police officer. This led to a dispute between participants of the proceedings, who spoke simultaneously in two different languages, and the interpreter-director was burdened with decision about whose utterance to interpret first (28 May 2010).

During evidentiary proceedings other interpretation techniques are also used, namely sight interpretation and interpretation of multimedia material. A sight translation of documents, however, always takes place on the initiative of the interpreter, who asks the court for the document, e.g. a police protocol, in order to be able to translate it (18 June 2010). Observations suggest that such active part is taken only by experienced interpreters. Interpretation of multimedia material took place during so-called contradictory examination in a rape case. In this form of examination, the accused and the witness (the victim) are in two different rooms, while the examination course is observed at the courtroom through video transmission. During the abovementioned proceedings, in spite of difficult acoustic conditions, the interpreter interpreted through whispering the victim’s testimonies for the accused from the image of the television (14 June 2010). An additional task of the interpreter was also to take a professional stand. As the victim of rape testified that the condom packaging that had been put into her bag by the accused contained writing in foreign language, the interpreter was asked to identify that language, more specifically, to confirm or deny that it was, in that case, Slovak.

If one of the participants of the evidentiary proceedings is an expert witness or if the judge reads out an opinion of expert witnesses, which in practice happens very often, interpreters need to take on the role of a physician. In Austrian proceedings

one may often encounter medical opinions concerning performed examinations (e.g. concerning contagious diseases, the amount of alcohol in the blood), opinions after forensic examinations (in murder cases) as well as opinions describing types of suffered injuries in bodily harm cases (e.g. opinion describing the type of knife stabbing, manner of guiding the knife, type of wounds, internal organ injuries, consequences of stabbing as well as consequences that would arise in the case of a different trajectory movement 16 June 2010). Apart from that, there often appear psychiatric opinions usually concerning the sanity of the offender and his general mental state. Below an example of a fragment of an opinion by an expert psychiatrist:

Psychopathologischer Status: Bewusstseinslage ist klar, Vigilanz und Luzidität gemindert, Orientierung zu Ort, Zeit, eigener Person und Situation ist gegeben. Der Gedankenablauf ist geordnet, im Ich-Bewusstsein keine Störungen erkennbar, kein Realitätsverlust, keine Hinweise auf Halluzinationen (= Trugwahrnehmungen), keine pathologischen Zwänge und Phobien. Keine akute Suizidalität vorhanden.

The psychopathological status: the state of consciousness is clear, reduced vigilance and lucidity, orientation of time, place, self and situation is given. The thought process is organized, self-awareness disorders are not present, no loss of reality, no evidence of hallucinations (=false perceptions), no pathological obsessive-compulsive disorders and phobias. No acute suicidal tendencies.

In situations like that, interpreters-physicians are left exclusively to their improvisation skills, as terminological density and factual complexity of such opinions on the one hand and lack of specialist knowledge on the other, together with the speaker's quick pace, cause that interpretation becomes a tough challenge. Observations indicate that interpreters opt neither for whispering nor for consecutive interpretation with note taking; they rather limit themselves to only summarizing the understood content.

3.6. Scene V: Closing speeches and sentencing

The prosecutor and defence speeches are similar in nature to an indictment – they too are prepared earlier, stylistically refined and presented at the courtroom in a spectacular manner, constituting a permanent element of the show. More experienced interpreters take initiative independently and begin interpreting right after the speeches are finished, others ask the court for permission first (the interpreter to the judge: “Darf ich ihm das sagen?”/“Can I tell him this?” 09 June 2010). Sometimes judges ask the interpreter for a brief summary (“Wenn man ihm das übersetzt, was plädiert wurde?”/“Please translate what has been put forward” 17 August 2010). Interpretation of speeches is usually done in the form of a summary, and the interpreters attempt, above all, to enable their understanding by the person

speaking a foreign language, e.g. by adjusting their register to the one of the accused (“Vaša advokátka žiadala, aby ste si to nemuseli odsedieť”/“Your lawyer asked them not to make you serve this” 11 June 2010). Some interpreters, also independently, direct the performance by asking the accused if he supports the motion of his defence attorney.

Pronouncing a sentence constitutes a permanent element of the proceedings, hence for lawyers it is a routine activity. Judges read it out in an automated manner, paying no attention to the necessity of its interpretation. Usually right after pronouncing the sentence, the judge delivers a monologue lasting a couple of minutes, in which he justifies the decision. The vast majority of interpreters then wait with the interpretation till the moment when the justification is finished. In only two cases the interpreters-directors asked the judge for permission to interpret the sentence before the justification.

Interpretation of the sentence and its justification in most cases only includes their essence, it is usually limited to the punishment (in the case of conviction) and summarizing the justification. Only a couple of experienced interpreters were able to interpret the full content of the sentence. Observations indicate that interpreters use different strategies in order to enable the foreigner to understand the content. Therefore they give additional explanations (e.g. a Romanian interpreter explained to the accused what does “final sentence” mean 20 August 2010, a French interpreter explained to an African citizen what is “an appeal against a sentence” 28 May 2010), as well as simplify the specialized language (“Umorzona. Rozumie Pan ‘umorzona’? Odłożona na bok”/“Dismissed. Do you understand ‘dismissed’? Put aside” 23 June 2010).

After the sentence is pronounced, Austrian interpreters once more take an active part, taking over the task of lawyers and giving instruction on rights of appeal. Similarly to the instructions at the beginning of the proceedings, they often do this on their own initiative or after having asked the judge for permission.

4. Conclusions

The given examples of court interpreting practice in Austria demonstrate that an interpreter plays an active part on the court stage, which undoubtedly goes beyond a role of an invisible “translating machine”. The interpreter is not “simply ‘part of the furniture’ of the courtroom. She does not simply melt into the woodwork, even though judges would prefer that she do so” (Berk-Seligson 1990: 162). Translation action is namely complex in nature and it covers a broad spectrum of tasks. On the one hand, there are many interpretation techniques used in criminal proceedings (consecutive, simultaneous, whispering, sight interpretation, via media) that a court interpreter is required to master. On the other hand, translation action does not limit

itself only to linguistic agency, to interpreting exactly what has been said. Interpreters also act as agents between cultures, providing the court with additional information, explaining processes at the courtroom to the accused or clarifying terminology, but also taking a professional stand as experts for transcultural communication.

What is more, the research indicates that court interpreters play numerous roles in the theatrical play. They act as lawyers when they take over the lawyers' tasks and also as performance directors when they coordinate testimonies or control interactions. Translation action in court may change the scenario of the performance and give it a different course. After all, interpreters are also actors on the court stage that are capable of improvising, which enables them to play the role of an interpreter-psychiatrist or an interpreter-lawyer despite the lack of necessary preparation and knowledge of the scenario. As practice shows, the role of a court interpreter does not remain merely a supporting one in any court theatrical play. Therefore, a new task and at the same time a challenge for interpreter training facilities in the European Union is to prepare interpreters for work for the needs of the court, so that they have a chance to rehearse the scenario of the court theatrical play, even if they do not know its final version.

Bibliography

Berk-Seligson, S. (1990). *The bilingual courtroom. Court interpreters in the judicial process*. Chicago: Univ. of Chicago Pr.

Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 04.11.1950.

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 OJ L 280, 26.10.2010, p. 1–7.

Edwards, A.B. (1995). *The practice of court interpreting*. Amsterdam, Philadelphia: Benjamins.

European Commission / DG Interpretation (eds.) (2009). *Reflection Forum on Multilingualism and Interpreter Training. Final Report*. http://ec.europa.eu/dgs/scic/docs/final_reflection_forum_report_en.pdf [07.07.2010].

Hale, S.B. (2004). *The discourse of court interpreting. Discourse practices of the law, the witness, and the interpreter*. Amsterdam, Philadelphia: Benjamins.

Hertog, E. / Gucht, J. van (2008). *Status quaestionis. Questionnaire on the Provision of Legal Interpreting and Translation in the EU. AGIS project JLS/2006/AGIS/052*. Antwerp: Intersentia.

Ibrahim, Z. / Bell, R.T. (2003). Court Interpreting: Malaysian Perspectives, in: Brunette, L. / Bastin, G.L. / Hemlin, I. / Clarke, H. (eds.). *The Critical Link 3. Interpreters in the community*. Amsterdam, Philadelphia: Benjamins, p. 211–222.

- Jansen, P. (1995). The role of the interpreter in Dutch courtroom interaction: The impact of the situation on translational norms, in: Tommola, J. (ed.). *Topics in interpreting research*. Turku: University of Turku, p. 11–36.
- Kadrić, M. (2000). Interpreting in the Austrian Courtroom, in: Roberts, R.P. (ed.). *The Critical Link 2: Interpreters in the Community*. Amsterdam, Philadelphia: Benjamins, p. 153–164.
- Kadrić, M. (2009). *Dolmetschen bei Gericht. Erwartungen – Anforderungen – Kompetenzen*. Wien: facultas.
- Lee, J. (2009). „Conflicting views on court interpreting examined through surveys of legal professionals and court interpreters“, in: *Interpreting* 11.1, p. 35–56.
- Mendel, A. (2011). *Raport z badania ankietowego na temat jakości tłumaczenia w postępowaniu karnym*. Warszawa: Krajowa Szkoła Sądownictwa i Prokuratury, Stowarzyszenie Tłumaczy Specjalistycznych i Przysięgłych TEPIS. <http://www.tepis.org.pl/>.
- Mikkelsen, H. (1998). „Towards a redefinition of the role of the court interpreter“, in: *Interpreting* 3.1, p. 21–45.
- Morris, R. (1993). „The interlingual interpreter — Cypher or intelligent participant?“, in: *International Journal for the Semiotics of Law* 6.18, p. 271–291.
- Morris, R. (1995). „The Moral Dilemmas of Court Interpreting“, in: *The Translator* 1.1, p. 25–46.
- Morris, R. (1999). „The gum syndrome: predicaments in court interpreting“, in: *Forensic Linguistics. The International Journal of Speech, Language and the Law* 6.1, p. 6–29.
- Nartowska, K. (2013). „Tłumacz i działanie translatorskie w sądzie“, in: *Comparative Legilinguistics. International Journal for Legal Communication* 13, p. 109–120.
- Rostalski, I.J. (2011). Rahmenbedingungen beim Dolmetscheinsatz als Voraussetzung für ein faires Verfahren, in: Baur, W. / Lindemann, A. (eds.). *Faire Verfahren brauchen qualifizierte Sprachmittler*. Berlin: BDÜ Fachverlag, p. 108–114.