

Aspects of Legal Translation in Europe: The Need for Comparable Standards

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Legal translation is at the heart of multilingual communication as it enables individuals, companies, legal and government agencies to communicate across different languages and cultures within and across state borders.

The language map of any country reflects historical developments and changes within its borders. Thus, for example, in Belgium three official languages cater for the French and Flemish speaking populations and for German speaking pockets in eastern Belgium. Switzerland with four official languages has more than most though further afield, in South Africa, there are now eleven official languages.

Furthermore, many legal cases involve visitors and tourists, immigrants and foreign workers and other groups with differing mother tongues from any of the five continents, which adds to the variety of language needs in legal cases requiring translation and/or interpreting services.

Language and culture

The right of different linguistic groups to use their mother tongue in a legal context, especially if knowledge of the official language is inadequate, has been widely recognised in today's Europe. It is also widely understood today that language and culture are inseparable. This presupposes that interpreters and translators have a deeper understanding of nationhood and cultural identity than mere language proficiency.

This understanding extends far beyond the frequently quoted need to observe certain conventions in social contact with a particular linguistic or ethnic group. It requires an insight into the experiences, thought processes, social conventions, customs, taboos and other sensitivities based on class, religion, ethnicity or gender. It also requires the ability to interpret and translate these so that they become accessible where one or both parties have no direct access to the language and culture of the other.

Legal cases, be they civil or criminal or dealing with family law or human rights, may require communication across such language and cultural barriers even within the borders of any one country. Add to this the variety of languages and language combinations required in legal cases which extend beyond the officially recognised language or languages within a country.

The need for this is ever increasing due to open borders and the mobility of labour within the European Union, economic migrants and asylum seekers, international banking and insurance, tourism, crime and drug trafficking. All of these may operate across national borders and may involve the police and courts, frequently requiring combinations of one or more official languages and a variety of other European, African or Asian languages.

Same language – different culture?

Competence in language and culture is equally necessary where a language may be linked to partially different cultural conventions, for example Spanish if the case concerns a South American country. The French translator's work differs in France, Belgium, Switzerland and Quebec.

Language, terminology and legal specialisms

Legal translators need to be familiar with the linguistic conventions that apply to civil and criminal law and legal cases and documents that arise from them, such as contracts of employment, purchase or maintenance; testaments or wills; mortgages and loans. Each specialism requires knowledge of specialist terminology and knowledge of the linguistic conventions that are used in related documents. To ensure the highest professional standards, the legal translator should be part of the legal team and should have access to legal experts to ensure full understanding of any particular case and the required legal terminology.

Language and legal systems and processes

An understanding of the legal system or systems and the legal processes involved is essential, in particular for court and police interpreters and translators and should be part of their training.

Legal translators need to be certain that for their particular specialisms, they are fully familiar with all the above aspects. Errors could affect the quality of life of individuals or groups, endanger their lives and liberty, and affect national security or the maintenance of public order. Therefore, ensuring the right professional standards is of the utmost importance. This applies to linguistic competence, translation skills (de- and encoding), knowledge of systems, processes, terminology and linguistic conventions which apply in particular legal specialisms. However, in Europe, the reality varies as yet from country to country resulting in a patchwork of different practices and standards. Thus the danger of accusations of negligence is an ever-present reminder to legal translators of their responsibilities under the code of conduct.

Current support for legal interpreters and translators

Shortcomings that need to be overcome

Aware of the need for qualified and experienced legal interpreters and translators, most countries worldwide are developing more or less effective ways of dealing with this need. However, the shortage of qualified legal interpreters and translators combined with a lack of awareness of the importance of such qualified experts as well as a lack of funds has led to a variety of shortcomings. With hindsight, some of these might be called malpractices.

In Britain and elsewhere, advocacy and interpreting have sometimes been confused or misunderstood. Interpreters and translators must not convey anything more or less than what has been said or written whereas advocacy requires special pleading which is outside the legal interpreter's and translator's remit.

Using friends and relatives as legal interpreters and translators for legal documents was and is often due to the shortage of qualified linguists for particular language pairs, frequently African or Asian. However, by using such willing but unqualified individuals, this practice also represents an economy measure, as such help has frequently been regarded as a family support not a service that required remuneration. Also, family members cannot be expected merely to interpret the facts of the case without pleading for members of their family. In at least one case, children had to interpret in their own parents' divorce proceedings and in another, manslaughter was mistaken for murder.

The 'Critical Link' Conferences in Canada and Sweden

To combat these shortcomings, three major international conferences were held in Canada during the 1990s, with a fourth to take place in Sweden in 2004 (1). In the main, these conferences have been concerned with legal interpreting but also other forms of public service interpreting such as medical.

The Diploma in Public Service Interpreting in Britain (DPSI)

During the 1990s, the Institute of Linguists in Britain developed the first formally recognised qualification for public service interpreters for four separate specialist areas including a legal option for England and Wales, and a separate option for Scotland to take account of differences in the two legal systems. The two legal options are now recognised by police and courts in Britain as formal qualifications (2). There are also local government and medical options.

The National Register of Public Service Interpreters (NRPSI)

The legal agencies can select qualified DPS interpreters from the NRPSI, which was set up by the Institute of Linguists in 1994 (3) and is now administered by a subsidiary company. There is no similar development in Britain for legal translators (see below).

The EU Grotius Project

The British experience and parallel developments in a number of other EU member states formed the nucleus for the EU funded Grotius Project 98/GR/131, which seeks to extend and develop further the basis for the training and assessment of legal interpreters and translators in the EU. Its recommendations were published in 2001 under the title *Aequitas, Access to Justice across Language and Culture in the EU* (4). It covers standards of selection, training and assessment as well as standards of ethics (codes of conduct and good practice), continuing professional development and interdisciplinary working arrangements for interpreters and translators within the legal system.

The project's current phase 2 seeks agreement among EU member and candidate member states to accept these recommendations, not as a blueprint but as a guide to enable each national legal interpreting and translation service to select and adopt from the recommendations with the aim of achieving in the longer term comparable standards and practices.

How can legal translators qualify?

While the Grotius Project covers both, legal interpreting and translation, it would appear that interpreter training is more advanced within the European Union than that for legal translators. In Britain, postgraduate qualifications, notably Masters degrees in translation may have a legal

option but are not wholly concerned with legal translation. The Institute of Linguists Diploma in Translation, whose holders operate worldwide, now has a legal option which, however, is not intended to provide a full legal translator's qualification.

In those European countries where no nationally recognised qualifications for legal translators exist, the legal agencies select and in some cases train individuals to meet the standards that they require, taking into account training, qualifications of various kinds, experience, continuing professional development and recommendations from professional translators associations who may evaluate the profile of individual practitioners.

In fact, the current provision of training and assessment for legal interpreters and translators in EU member states is patchy and uneven and standards of training, qualifications, practice and working arrangements differ from member to member state and even within states. In a number of European countries not even a sound knowledge of the legal system and its terminology and language is specifically required of legal interpreters and translators (5).

Linguistic standards

The proficiency of legal interpreters and translators depends above all on thorough linguistic competence, combined with interpreting and translation skills respectively. As there are as yet no agreed common denominators to establish what these standards should be, they are set out in great detail in *Aequitas* (6). The widespread assumption is rejected that if you speak two languages you can also interpret and translate, a view which appears to prevail in some instances where languages from Africa and Asia are concerned.

This can result in different standards of competence being required depending on the practitioner's language combination because the major European languages are being taught at universities throughout Europe and hence higher standards are expected. This inequality of standards adds to the patchy provision of legal interpreting and translation services across the European Union and may cast doubts on the uniform implementation of equal access to justice enshrined in the Human Rights Convention.

The work on linguistic standards in *Aequitas* was greatly assisted by the *National Language Standards for Interpreters and Translators*, which include detailed descriptors of linguistic standards as well as performance and assessment criteria, together with ethical considerations and codes of conduct. (7). Both, the NLS and *Aequitas* emphasise the need for translators to be fully competent in both languages, requiring assessment, qualification, experience and commitment to their code of conduct before they can be entrusted with the responsibilities of a legal translator.

Codes of conduct and good practice

As a rule, professional bodies define their standards of ethical behaviour in a code of conduct. This code is created by the peers (of a profession) for the peers and is administered by the peers through disciplinary procedures. However, in Britain in the context of the DPSI and in the EU member states which participated in the Grotius Project, the legal agencies felt they had a direct

interest in and responsibility for content and administration of the code of conduct of their interpreters and translators.

For example, in matters of confidentiality or of collusion between a legal interpreter and one of the parties in a lawsuit, the legal agencies may require direct participation in the administration of disciplinary procedures, as they are ultimately responsible for the accuracy and confidentiality of all their legal cases and for combating collusion and corruption. Codes of conduct and good practice usually also require of all members of the profession that they keep abreast of new developments

Continuing Professional Development

Mentoring of newcomers to the profession

Adherence to the code is, however, on its own no guarantee that the required standards will be upheld. In the specialised field of legal translation, newcomers may need experienced practitioners as mentors to ensure a smooth entry into the profession. This function, too, could usefully be incorporated into the codes of conduct and best practice.

Continuing Professional Development

Mentoring and being mentored are part of continuing professional development. It is of particular importance for legal translation, which in most European countries is not regulated and does not have recognised standardised entry qualifications into the profession. It is, therefore, as a rule left to professional bodies and the legal agencies to set standards and ensure that all newcomers to the profession work towards these standards, maintain and raise them and keep abreast of new developments throughout their working lives.

In the absence of clearly defined mandatory courses and qualifications for legal translators in some of the European member states, some universities, such as City University in London, offer short courses or weekend workshops on specific legal topics, which are frequently presented by prominent members of a particular branch of the legal profession. The participants may be well-established legal translators anywhere in Europe who seek to add to their range of specialisms or wish to raise their standards in a particular field.

Continuing professional development can and should be challenging and worthwhile, facilitating the practitioner's work and improving career prospects. It can be developed into a structured plan extending over years and involving employers and senior members of the profession. (8).

The need for more work on comparable standards

Much more needs to be done to develop and implement comparable standards of linguistic competence, training and assessment, codes of conduct and good practice, and continuing professional development for legal translators in Europe and the world over, which can only be touched upon here.

In view of the significance of this field, the need for further development and the responsibility that rests upon legal translators, a more detailed study of relevant chapters of *Aequitas* is recommended. *Aequitas* also contains the editor's comprehensive bibliography. .

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- (1) For Critical Link 3 see various reports, including Ostarhild, Edda, 2001, in *Translatio XX 3-4*. - For the 2004 conference see <http://www.tolk.su.se/CL2004>
- (2) For more details of the DPSI see Ostarhild, Edda. 2000. 'The Diploma in Public Service Interpreting, legal option'. In *Translatio Nouvelle serie XIX No 4*
- (3) For more details of the NRPSI see Ostarhild, Edda. 1996. 'The National Register of Public Service Interpreters'. In *Proceedings of the XIV World Congress of the FIT*. 785-792.
- (4) Hertog, Erik, ed. 2001, *Aequitas, Access to Justice across Language and Culture in the EU*. Antwerp, Lessius Hogeschool
- (5) *Aequitas* p20
- (6) *Aequitas* chapter 2
- (7) For further details see *Aequitas* p86-87
- (8) *Aequitas* chapter 5. - For a short account of CPD for interpreters and translators see Ostarhild, Edda. 1999. 'Continuing professional development for interpreters and translators'. In *Language Today: International journal for multilingual documentation*. 18, p18-19

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