

Foundation meeting of Eulita Thursday 26th November 2009, Antwerp

Thank you for your kind invitation to address this meeting. I am a Solicitor/Advocate and a UK Representative on the CCBE Criminal Law Committee. The CCBE represents over seven-hundred thousand lawyers from twenty-seven different countries in Europe. I am delighted to attend the launch of Eulita the formation of which is long overdue.

The major question I would like to address is why is a properly qualified and regulated interpreter essential to court proceedings? As a defence lawyer who appears in courts almost everyday I regard an interpreter as essential. Why do I say that?

I'll tell you about a true case study. A Polish national is charged with attempted murder while working in Scotland. The trial is to proceed before a Sheriff, a judge and jury. The victim and the witnesses are Polish with little knowledge of the English language. An interpreter is provided and certified as capable in terms of a contract between the court service and an independent company. The company has been advised in writing as to the nature of the charges, the type of case and it is confirmed that an interpreter will be provided that meets the required standards. Before the commencement of the trial the judge asks questions of the interpreter to satisfy himself as to whether the case can be conducted properly and the interpreter confirms this.

During the course of the trial the defence raised concerns about the interpreter's ability particularly to understand and interpret tenses and English verbs. The timing in the case is critical because the nature of the defence was one of self defence. Because of these concerns the trial was adjourned for a short period. The judge spoke to the interpreter who after a number of questions agreed with the defence position that she was struggling to interpret the case properly. She explained that she had never conducted a trial like this before in any court and had not yet completed her course for full qualification. Therefore after three days the trial at great cost was deserted or dropped. A complaint was subsequently lodged by the judge with the Scottish Court Service and the contracting company.

As to the use of an interpreter there are a number of questions that have to be asked. Firstly when do we require an interpreter. In my personal opinion as soon as the police focus on a certain individual as being a suspect an interpreter is required from then until the conclusion of the case and this includes an appeal. My preference would be for it to be the same interpreter.

The second issue is as to who the interpreter should be. Obviously if the proceedings are at court the responsibility for providing a fully qualified interpreter should rest with the court service and payment should be made by the state. Lessons have to be learned from the case study that I have described. A similar responsibility applies to the defence who instruct their own interpreter and the qualification and competence of that individual has to be established. I will come back to that in a minute.

The third issue which is probably the simplest is that in terms of the right to a fair trial, the presumption of innocence and the issues raised in adversarial or inquisitorial systems an individual must understand the proceedings. If the individual accused has to explain his or her position further to be full compliance with article 6 there must be the use of a properly qualified interpreter.

Whether appointed by the court or instructed by the defence the interpreter must be registered with a nationally recognised authority. He or she must be of good character, be aware of the issues in a case particularly conflict of interest, have no detailed or prior knowledge of the case, be independent, competent and qualified to an agreed standard or level. If possible having some knowledge of the local justice system would be helpful. Furthermore the interpreter should agree to a rule of confidentiality in respect of these proceedings which are to be regarded as confidential. A code of conduct with disciplinary procedures must be in place if there is non compliance with the rules and regulations put in place.

I would prefer if the interpreter was advised in advance of the nature of the case, the requirements of the interpretation and details of the background of the case so that the forgoing can be addressed. In my view one safeguard would be that the appointment of an interpreter whether by the court or by the defence should be notified in advance. The identity qualifications etc should be made available. Confirmation of the appointment should be at a preliminary hearing. If there is any objection to an interpreter this should be identified at an early course so that this can be ventilated and decided before the trial commences.

For consideration you may think that you could have interpreters started to different levels of standard. For example complex for detailed court proceedings requiring contemporaneous interpretation you would require a five star interpreter. For procedural and formal hearings three stars and perhaps for less ominous responsibilities for example meetings one or two stars.

Payment of course should be sufficient to encourage career in professional structure. You would want there to be registration, continuing professional development and training. Without proper payment you will not be able to encourage the development of such a profession. Payment should be made by the state for court interpreters and through a properly funded legal aid system for those instructed by the defence.

Finally I would like to conclude by telling you a little story which explains how it is not only about interpreting the words it is also about how comments are made. Sometime ago I was acting for an accused who was charged with murder and the allegation was put to him. His reply to the allegation was 'I did it'. When I asked him as to why he stated this he advised that he hadn't said it that way but said it 'I did it' questioning with surprise as to why the allegation was being put to him. You will see it is obviously not only about translation of the words but it is about the tense, the emphasis and nuances. I would like to congratulate sincerely Eric Hertog for his contribution to language and multilingualism. Thank the Belgian Ministry of Justice for their willing involvement and assistance in this meeting and I wish Eulita well in this very important area of work.