

Legal Interpreting in Italy: Recruitment policies and quality standards. Problem solving

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Basic legal requirements: Legislation

- **Italian Code of Criminal Procedure**
- Confusion between interpreter and translator
- Vagueness as to whose task it is to appoint the interpreter
- Lack of guidelines concerning the language threshold for the defendant
- No mention of interpreter's qualifications

Trouble-shooting

- We have tried to identify the main problems, in the Italian scenario, that are an impediment to the smooth functioning of the judicial system and which may jeopardize the right to a fair trial and the upholding of justice for both the judiciary and the citizens:
 - Lack of interpreter competence; interpreters' lack of training, knowledge and information;
 - Lack of organization and human resource management and lack of serious recruitment criteria;
 - Poor remuneration.

Lack of interpreter competence

The vast majority of interpreters do not:

- have any qualifications;
- know the Italian language well enough (and sometimes not the foreign language either);
- have any technical interpreting skills (managing turn-taking, chuchotage, note-taking);
- have the necessary knowledge of legal procedures and language.

Lack of knowledge and information

- Interpreters are often not familiar with a code of ethics (e.g. confidentiality and impartiality; they may feel allegiance to either institution or client).
- They do not know how to interact appropriately with the institution/actors in the legal system.
- They are not sufficiently familiar with the Italian culture.
- They are not sufficiently aware of intercultural communication issues.
- Note: many interpreters learn 'on the job'

What are the reasons for this lack of competence?

- *Historical reasons:* little importance given to migrants (Italy was a country of emigration), linguistic and cultural differences, or language services.
- *Budget:* no money to install serious recruitment/selection procedures, prior or on-the-job training services.

Practical reasons

- **1. Lack of trained interpreters**
- a. Few trained interpreters are willing to take this job – most skilled interpreters go into conference interpreting, which is more prestigious and far better paid; few interpreters can afford to work only in the legal sector or specialize in this sector; the pool of qualified interpreters is therefore reduced to a minimum.

2. Lack of organization and human resource management

- a. Lack of institutional and organizational control over:
- the global interpreting process;
 - interpreters' language skills (command of general language and legal language/terminology), and communication and interpreting skills;
 - defendant's comprehension;
 - performance /final product (accuracy of translation);
 - Interpreters' accountability towards institutions (interpreter taking sides);
 - no monitoring system in place (minimum awareness even of the problem).

3. Lack of recruitment criteria

- No standardized national rules:
 - No interpreter qualifications required, no exam; no accreditation or certification;
 - Varies from court to court whether or not a language degree is required;
 - Where do they get the interpreters from?
 - Lists (not registers):
 - Chamber of Commerce (*Camera di Commercio*), which prefers a degree, but it is not mandatory – at the discretion of (often non-existent) commission;
 - Clerk of court's list; criteria vary from court to court, but some courts have virtually no requirements except for speaking the foreign language;
 - No requirement to demonstrate their ability to speak either of their languages;
 - Exception: Alto Adige (bilingual German-speaking);
 - Interpreters are included in the category of “perito” – expert witnesses, no specific role pertaining to interpreting per se;
 - Interpreters called in on job-to-job basis; exceptions: e.g. Milan 24 hr Arabic interpreters.

Remuneration

- Court interpreters are paid per “vacazione” (two hours of work).
- The first “vacazione” is paid €14,68 and all subsequent “vacazioni” are paid €8,15.
- (Ministerial Decree, May 30, 2002, on the basis of Law No. 319, July 8, 1980 – at that time it was L. 24,732 and L. 13,740 respectively).
- According to Article 10 of this law, the amount was meant to be adjusted every three years in line with the cost of living. The most recent increase was in 2002.
- Judges do have some discretion however and can double this rate if they consider the job to be particularly difficult or urgent. In Milan the interpreters who responded to our survey said they were paid were paid €70 to stay at Court the whole day.

Consequences

- Poor interpreter performance is a direct consequence of the lack of institutional control over the interpreting process and the lack of adequate recruitment criteria.
- *What are the possible consequences of these shortcomings?*
 - Poor translation accuracy and lack of impartiality can lead to: criminals released and innocent people in jail, time wasted, mistrials, expensive appeals.

Consequences for judiciary

- Security risk – there is absolutely no selection procedure that guarantees an a priori impartiality – i.e. that the interpreter does not have any ‘agenda’ of his/her own. This agenda may simply be an instinctive sense of allegiance towards a co-national or it may be the hiding of facts to either protect or harm the client. The risk of mis-trials is high.

3 episodes of poor interpreting

- The following three episodes illustrate how precarious and disorganized the situation is in Italy and how serious the potential consequences are of poor interpreting.
- Example 1, Genoa G8.
- Example 2, the Meredith Kercher case.
- Example 3, the Akter Yesmin case.

Example 1

Genoa G8

The interpreter chosen to interpret the testimony of the British freelance journalist, Mark Covell, on January 25, 2006, in the trial against the Italian police for their alleged excessive use of force in the raid on the Diaz school was Marina Zacco. Marina Zacco is a Canadian citizen of Italian origin who has absolutely no training or qualifications in interpreting. She had a degree in Sociology from McGill University in Canada and had previously worked once before as an interpreter in court. She was chosen because of her prestigious position as Director of the Italo-British Association. When interviewed, she said that she did not know who had chosen her. She was phoned by the Clerk of Court's Office and told to turn up in court the following week to work as an interpreter during the G8 trial. She thinks she was chosen because she once worked as an interpreter in court when a judge friend of hers asked her to help some lawyers who needed an interpreter for English. One year later she was paid €8 net per hour.

- The presiding judge did not say anything to the court about the fact that an interpreter would be involved in this testimony and did not instruct the other members of court to behave consequentially.
- http://www.processig8.org/Udienza_021_Diaz.html

Arbitrariness in the selection criteria

- This case highlights the total lack of awareness among legal professionals in Italy about the need for interpreters to have specific skills. They will select people they know solely on the basis of their being able to speak the foreign language involved. Even in cases covered by the international media.

Example 2

Meredith Kercher

- British victim
- American defendant
- Interpreter: Anna Fronticelli
- Working languages: English, French, German, Chinese (now adding Arabic)
- Trial began January 16, 2009
- Amanda testifies June 12, 2009

<http://www.youtube.com/watch?v=1gW67Fj9RWY>

Lack of specific training

- The interpreter, after spending five months with Amanda at the trial, is unable even to translate the defendant's personal details (the first question that is always asked) as she cannot remember them and has to ask for a repetition. She then covers the testimony of Amanda by translating after Amanda has uttered just two or three words, making her testimony virtually impossible to follow. She is eventually interrupted by the judge, who asks her to let Amanda finish her utterances. The interpreter's reply is that she is translating simultaneously.
- The interpreter reveals a total lack of knowledge of court interpreting techniques (note taking, memorisation, how much to translate etc)
- The result is that Amanda continues her testimony the next day in her stilted Italian. And when the defendant doesn't even have that?

Example 3

Akter Yesmin

- 2004
- *Sikder Selim – murderer*
- *Haque Hamdadul – husband and victim*
- Lopamudra – Bangladeshi interpreter
- "A person totally incapable of and unqualified to carry out the profession of interpreting, who was not even on the Court's list of interpreters and who required the assistance of an interpreter when she was called to testify in the Court of Assizes."
- "She should have had sufficient cultural preparation to mediate between the defendant and judge."
- (Luciano Faraon, defence lawyer)

Akter Yesmin case - continued

- GIP (investigating judge): "remind her that Yesmin is accused of taking part in the murder of her husband and of conspiring to do so; in practice it is alleged by the Public Prosecutor that they (she and Sikder Salim) conspired together to attract her husband to the Nuove Gemme Park in Spinea and that Sikder Salim then killed Haque Amdadu, who was found dead in a ditch in the park at 12.30 on June 3. Tell her that for now."
- Interpreter: "They are saying what is written, what you said before, that you and Selim together took your husband to the park, where you spoke and Selim killed your husband. Is that right?"
- Yesmin: "Uhm, uhm, is that what I said?"
- Interpreter: "Yes."

Italian Constitutional Court Ruling

- This case was referred to the Italian Constitutional Court as the Defence requested that the interpreter they had brought with them be paid by the State, given that the interpreter provided by the court was totally incompetent. The judge at the trial rejected this request, stating that an interpreter had been provided by the Court and so the defendant's rights had been upheld. The Constitutional Court ruled otherwise, stating that the mere provision of an interpreter does not guarantee a person's right to a fair trial when that interpreter is not able to perform the task s/he was summoned to carry out. The Constitutional Court also declared that Parliament must introduce legislation to guarantee the necessary competence of court interpreters.

CONCLUSIONS

- These three episodes show the inadequacy of:
 - The recruitment procedure for court interpreters;
 - The lack of interpreter qualifications, training and experience;
 - The lack of quality control;
 - The lack of awareness by judges and magistrates of the importance of interpreting.
- These examples show how such gaps in the system can lead to flagrant miscarriages of justice.

What do the politicians say?

- “There is not enough money to pay interpreters and expert witnesses, who are paid disgracefully late, even years later. And to understand how essential interpreters are in the Italian justice system nowadays, all you have to do is go into any courtroom where there is an immediate trial. You will find that 85% of the people arrested on the streets are non-Italians.”
- (Giancarlo Caselli, Chief Prosecutor of Turin in an interview with L’Espresso, November 12, 2009).

Addressing the problems

- How can we most effectively (and most realistically) address these problems?
 - By improving the recruitment system;
 - By providing training;
 - By providing more and better information for users (institutions and clients).

1. How to recruit safely

Recruitment standards need to be stricter and need to take into account the following questions

- Assessing qualifications
- Evaluation of language competence (rather than interpreting skills)
- - *Questions:*
- - How to assess competence? Language tests?
- - What needs to be tested? Foreign language or only Italian?
Language match (dialects for vehicular languages, especially Arabic and Chinese).
- - Should languages of limited diffusion be assessed using the same standards? Or would that make it impossible to find interpreters?
- Who should be responsible for the recruitment process? Clerks of Court? An outside body of testers (e.g. universities or interpreter associations)?

2. Training

If these requirements are missing and not enough interpreters pass the selection process, can the institution itself provide the necessary training? (This is already happening in many countries with a longer tradition of immigration, but in Italy this would be extremely innovative). Budget constraints are of course a major factor here. How to implement low-cost collaboration projects between universities and the police/courts?

- Arguments in favour: cost-saving, EU harmonization, security.
- *Do the judges think training might be useful?*
- According to our data, many (but not all) judges and lawyers think that it could be useful to provide training courses leading to better working relations with translators-interpreters (lawyers are the most positive).

a. Intensive, free, mandatory training courses for interpreters

- Basic course required for all interpreters (except those with interpreter qualifications?) similar to basic courses offered in other countries to interpreters of LLD languages:
 - The terminology of the Italian legal system (typology of crimes, the organization of the courtroom), which includes a basic orientation in the Italian legal system/procedures and how to address the various actors in the legal system appropriately;
 - Interpreting techniques (turn-taking, note-taking, speaking skills, chuchotage, interrupting and asking questions in the courtroom, confidence building);
 - Language reproduction tasks: paraphrasing/summarising/reducing versus verbatim faithfulness;
 - Code of ethics (impartiality and confidentiality). Balancing an international code of interpreter ethics with the specific needs of the Italian judicial system;
 - Italian courses for interpreters using languages of limited diffusion.

Once the basic skills have been acquired...

We still need to address issues such as:

The interpreter's role and tasks;

Interpreting the speaker's intentions when speech is confused and/or ambiguous;

Cultural awareness: difficulties in interpreting utterances that violate religious or cultural taboos/beliefs;

Intercultural communication competence.

b. Workshops - training the judiciary

- To help the judiciary get the best possible performance from interpreters, we also suggest offering workshops for judges and lawyers (provided by universities), intended more as a forum for dialogue, discussion and exchange of information than 'training' in the strict sense of the word. The main issue that needs to be addressed is how to work with interpreters in the courtroom, that is, how to use interpreters properly to the best of their abilities.
- Legal actors need to be reminded that the interpreter is not their assistant and is governed by his/her own professional code of ethics.

Workshops should also raise awareness about:

- How interpreting techniques (paraphrasing/ summarising/reducing versus verbatim faithfulness) affect communication; how to use these techniques to best safeguard legal requirements;
- The interpreter's role (who interpreters actually are and who they 'should be', their background training); realistic expectations of interpreters;
- The dangers of using untrained interpreters – possibility of legal liability and national security risks, as well as human rights violations;
- **These workshops can be used in courts, police, prison, etc.**