

3. Программа развития языкового образования Северного (Арктического) федерального университета имени М.В. Ломоносова. – Материалы учёного совета [Электронный ресурс] Режим доступа: http://narfu.ru/ifmk/ychn_sovet/materials/2013ProektProgrRazvitInyazObrazovanSAFU.pdf .(дата обращения 30.01.2015).

УДК 81`23 + 81`44

ББК 81.18+67.410.9

ЗАРОЖДЕНИЕ СУДЕБНОГО ПЕРЕВОДА В РОССИИ: ТРЕБУЮТСЯ КВАЛИФИЦИРОВАННЫЕ ПЕРЕВОДЧИКИ

THE EMERGENCE OF COURT INTERPRETING IN RUSSIA: QUALIFIED INTERPRETERS NEEDED

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Аннотация: в статье рассматривается судебный перевод в России, еще не получивший надлежащего признания в стране. Анализируются взгляды российских учёных, а также исследуется зарождение и развитие судебного перевода в других странах. Спрос на устных переводчиков, специализирующихся в этом виде перевода, постоянно растёт в многонациональных странах. В связи с судебным переводом выделяются две проблемы: обеспечение доступа к правосудию представителям языковых меньшинств и финансовые возможности судов. Предложена программа мероприятий, направленных на решение этих проблем.

Ключевые слова: социальный, муниципальный, юридический, судебный перевод, Россия, присяжный переводчик

Abstract: the article discusses the problem of insufficient recognition of court interpreting in Russia. It analyses the views of some Russian scholars on the problem. The inception and development of court interpreting in other countries are examined. The demand for the professionals specializing in this kind of interpreting is constantly growing in multinational countries. Providing access to justice for linguistic minorities and the financial capacity of courts are the challenges to consider in the case of court interpreting. The action plan for resolving these problems is proposed.

Key words: community, non-conference, legal, court interpreting, Russia, sworn interpreter

1. Introduction

In most European and Western countries court interpreting is considered to be a particular type of community interpreting (CI) or public service interpreting as

it is called in the UK. CI is implemented in the contexts of social institutions and supports equal access for limited language proficient (LLP) persons to public services (people who have limited proficiency in the language of such services). Types of CI are also opposed to conference interpreting not only because of the settings (linguistic issues and procedures) but also because of the contact being an inseparable part in facilitating communicative events and so CI professional characteristics. That's why scholars almost always speak about additional sociocultural and ethical challenges, not to mention highly emotionally charged environment.

Speaking about its settings "it is worth to mention that CI may take place not only in purely social contexts but also in business ones, they can range from informal to formal settings" [1], all the interpreting modes may be used (simultaneous, which can be also sometimes performed in the form of whispered interpreting or "chuchotage"; consecutive; sight translation) and written translation is often also included into the duties of a community interpreter [1: 23].

2. Definition of court interpreting

As for court interpreting it is sometimes referred to as legal interpreting or distinguished from it. We define court interpreting as a particular type of CI performed not only in courts but also in police stations and even prisons when guilt, freedom, personal well-being, etc. are in question. The main objective is to provide equal access to justice and ensure that LLP people are linguistically present at their own trial, understand their rights and freedoms as any other native speaker.

But it doesn't mean that a court interpreter adopts the legal language complexity to the level of any given person's understanding, education and other background characteristics. A court interpreter also doesn't explain cultural differences, legal procedures or notions, give legal advice or voice personal opinion. The point is to put an LLP person under the same conditions as any other native speaker in the court settings or police encounter. That is why a court interpreter should "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" [12].

Here the concept of "conservation" of speech style is crucial. Firstly, because "triers of fact (the judge or jury) have to determine the veracity of a witness's message on the basis of an impression conveyed through the speaker's

demeanor” [12]. And secondly, because many countries “adopted procedures modeled on U.S. law, making the procedures at trial adversarial in character” [16].

Holly Mikkelson in her talk "Everything you always wanted to know about court interpreting" compares everything what happens in courtrooms with a theatre production. She says that lawyers will deliberately ask questions they know will make “someone cry or will make someone angry”, prosecuting attorney will cross-examine “the witness in a very aggressive way”, etc. But “you are also the witness who is being intimidated and who is getting flustered” [27]. An interpreter plays all the parts without a script, impartiality is constantly being tested. She says that attorneys “will deliberately ask questions that they know are difficult to interpret” or they can very subtly remind the attorney that the person requires an interpreter to undermine the interpreter’s, witness’s or defendant’s credibility or to cause a breakdown in communication [27].

That is why conservation of speech style is of high importance in court interpreting. “The true message is often in how something is said rather than what is said; therefore, the style of a message is as important as its content. The interpreter is required to render in a verbatim manner the form and content of the linguistic and paralinguistic elements of a discourse, including all of the pauses, hedges, self-corrections, hesitations, and emotion as they are conveyed through tone of voice, word choice, and intonation; this concept is called conservation” [12].

Moreover, the transcripts of the cases made by court reporters consist of the language spoken in court and “the quality of interpretation therefore cannot be evaluated after the fact by the trial judge, or later on appeal” [23]. That is why “interpreters shall render a complete and accurate interpretation or sight translation, without altering, omitting, or adding anything to what is stated or written, and without explanation” [23].

Therefore, there are circumstances when an audio or audio/video record to supplement the court reporter's transcript is highly recommended. A record should be made of interpreted witness testimony: in all capital cases regardless of the interpreters’ qualifications and when interpretation is performed by a non-certified interpreter, especially if the LLP person is at risk of incarceration [23].

Errors in interpretation may alter the evidence presented to the judge because “an interpreter has the power to make a witness's testimony cast more (or less) blame than it did in the source language ... and, alternatively, he/she can remove from the testimony any blame-laying strategies it may have contained. Moreover, an interpreter can make an attorney look more polite and less aggressive

to a witness, and a witness more, or alternatively less cooperative to an attorney. Finally ... interpreters often introduce an element of coercion into the examination process when they interpret for witnesses and defendants” [9].

And also a record of the proceedings and statements should be made when an unqualified interpreter is hired to interpret felony proceedings involving entry of a guilty plea [23].

Speaking about court interpreters’ errors, they may occur, but if an interpreter discovers it during the proceedings, s/he should identify him/herself in the third person for the record (because all interpretation is carried out in the first person) and report the mistake at the earliest convenient opportunity. “If the interpreter becomes aware of an error after the testimony has been completed, he or she should request a bench or side bar conference with the court and the lawyers to explain the problem. The court can then decide whether a correction on the record is required” [23].

Furthermore, in the preamble to the “Modal code of professional responsibility for interpreters in the judiciary” it is said that as officers of the court, interpreters help assure that LLP persons “may enjoy equal access to justice and that court proceedings and court support services function efficiently and effectively” [23]. And there are instances when an interpreter struggles to balance his/her “obligation to remain unobtrusive with the need to exercise situational control when necessary” to achieve these targets [23].

Consequently, court interpreters notify the appropriate judicial authority of: the communication mode or language of the LLP person that cannot be readily interpreted; “any environmental or physical limitation that impedes or hinders their ability to deliver interpreting services adequately (e.g., the court room is not quite enough for the interpreter to hear or be heard by the non-English speaker, more than one person at a time is speaking, or principals or witnesses of the court are speaking at a rate of speed that is too rapid for the interpreter to adequately interpret); ... the need to take periodic breaks to maintain mental and physical alertness and prevent interpreter fatigue”; the need to take a brief recess to familiarize themselves with technical or specialized terminology unfamiliar to them; “any effort to impede their compliance with any law,” any provision of the code of ethics, “or any other official policy governing court interpreting and legal translating”; and finally interpreters should identify “any personal bias they may have involving any aspect of the proceedings” [23]. If court interpreters understand they cannot perform competently, they should withdraw from interpretation.

3. History of court interpreting

Since the prosecution of the Nazi war criminals at Nuremberg in 1945-46 “schools of interpreting have now been established all over the world, first in Europe, then in North America and Australia, and more recently in Asia, Latin America, and Africa. The European schools focused exclusively on conference interpreting, as did their counterparts in North America at first. No formal training in court interpreting was offered until government entities began setting proficiency standards for interpreters in the courtroom” [26].

The first regulations on court interpreting were imposed in the USA when the Federal Court Interpreters Act was enacted in 1978 requiring “Spanish interpreters working in the federal courts demonstrate proficiency by passing a certification exam. ... Australia also began requiring a proficiency exam for interpreters in 1978 (NAATI, 1999), Canada in the early 1980s (CTIC, 1999). Several individual states in the U.S. followed the lead of the federal courts and adopted certification requirements for court interpreters. ... This trend accelerated in 1995 when the National Center for State Courts founded a consortium of states to pool resources for interpreter training and testing (NCSC, 1999)” [26].

But if we take a look into the first stages of CI development, we’ll find out that the first CI practitioners in general were bilinguals (family members, friends and even jail inmates [23] in the case of court interpreting) or anyone claiming to have a sufficient command of the languages used. In contrast, now it is widely agreed that it is not enough to have good language knowledge or be bilingual. As for court interpreting it “is a highly specialized form of interpreting that cannot be effectively performed without commensurate specialized training and skills. Arguably, it is the most difficult form of interpreting. Being bilingual, even fluently so, is insufficient qualification for court interpreting” [23].

Furthermore, professional codes of conduct state that an interpreter must be unbiased, maintain confidentiality and report the situations that may involve any kind of conflict of interest. But even with realization of the need of CI professionalization governments can’t afford training and certifying interpreters in rare languages.

That’s why in many countries not only language-specific but also short-term language-independent training programs were designed, certification programs were developed and modal screening tests were proposed. These measures prevent laymen entering the emerging CI professions and making sometimes even fatal mistakes in interpreting of extremely sensitive nature.

Ultimately, the specific nature of CI has recently been acknowledged by ISO (International Organization for Standardization). It shows international recognition of CI as well as particular CI types. ISO 13611:2014 is the first ISO standard on interpreting that “establishes criteria and recommendations for community interpreting during oral and signed communication that enables access to services for people who have limited proficiency in the language of such services. ... addresses community interpreting as a profession, not as an informal practice such as interpreting performed by friends, family members, children, or other persons who do not have the competences and qualifications specified in this International Standard or who do not follow a relevant Code of Ethics” [16].

4. Research and recognition in Russia

Today we can definitely speak about considerable research being conducted and some obvious regulations set up on the court interpreting profession in many countries (European, the USA, Canada, etc.). The demand for qualified specialists is great worldwide. It is noticeable that in the United States the demand for CI is so high that many major hospitals, courts, schools and other social service institutions employ community interpreters. Besides, universities design courses to train highly specialized community interpreters; private language companies announce competitions for medical and court interpreter training; conferences on studying the issues of CI are convened [5].

But still even in Western and other countries where CI is recognized there are some problems with reaching consensus [2]. Teodor Hrehovčík says the following about CI: “Despite the fact that it is a rapidly growing field, especially in the countries with expanding foreign-based work force, we are witnessing a certain divergence in its perception. The variance is not only in a number of different names under which it can be found ... but also in its scope. Although different interpretations of the term in most cases reflect different needs, traditions and local specifics, it is possible to define the generally accepted common features of the phenomenon” [24].

Talking about Russia the notion and qualifications required to become a community and more specifically court interpreter may confuse even a very experienced and sophisticated interpreter, instructor or scholar. There are no clear recommendations, qualifications and professional associations for court interpreters as well as systematic research on the topic in the Russian Federation.

Legal translation is mostly taught as language for special purposes for students majoring in law and is researched without any focus on court interpreting distinctive features. Among the main requirements to become a court interpreter

M.G. Gamzatov lists attainment of majority and legal capacity. He also says that there are several ways to become a court interpreter: to have a higher legal education and proficiency in foreign language or to be a philologist with either additional certificate qualifying a person in legal translation or two year experience in legal or court interpreting [3]. This reflects the current situation in Russia.

In 2011 the UTR (Union of Translators of Russia) President L.O. Gurevich wrote a letter to the Ministry of Justice (Minyust) of the Russian Federation entitled “Notaries public and translators”. There he says it is evident that translators and interpreters are taking on an ever greater importance almost in every sphere of governmental and social life in Russia. The translation industry is getting its shape with some problems being realized and acknowledged by the community of translators. Among these problems he lists legal relationship between market participants [7].

L.O. Gurevich speaks not only about notaries public and translators, as it could be deduced from the letter title, but also points out on the whole range of regulations imposed by the number of codes and federal laws that are connected with translation (the Criminal Code and the Criminal Procedural Code of the Russian Federation, etc). He says they need to be considerably revised. He exemplifies it by discussing the figure of court (sworn) interpreter who is mentioned in the legal documents and criminal liability for “incorrect” translation stipulated there.

In connection with the Russian system of law he highlights the absence of the institution of court interpreters, training system, accreditation procedure and clear legal status. Indeed these issues are passed over in silence in Russia. The UTR President speaks about the necessity and the vital role of this kind of interpreters with reference to the Constitution of Russian Federation as Russia is a multinational country continuously expanding its international relations [7].

The above line of reasoning is strong and deserves serious consideration. There are also other scholars and practitioners who speak in favor of institutionalization of court interpreting and further research into this subject. K.M. Levitan emphasizes that court interpreting is going to become a topical issue in Russia because of the immigrant influx. He suggests that the law system and professional associations could adopt some practices from the USA where court interpreting is well-developed [4].

So Russia faces the same problems with CI as any other country with high immigrant influx and changing criminological situation. The USA struggles to adapt to the changing demographics but minority languages are still the issue of

increasing concern in CI. Sometimes it is virtually impossible to train interpreters in infrequently encountered languages that are not traditionally taught at university level.

Telephone and video remote interpreting is a promising option for governments to save money and solve the problem of minority languages. “The potential value of telephone interpreting is greatest in courts where interpreter services are rarely needed, and for interpreter services in languages that are infrequently encountered. Without substantial modifications to current practice, however, telephone interpretation serves to mask the central problem with interpreting services in courts – the use of unqualified interpreters” [23]. And there is a number of challenges court interpreters face in the situation of remote interpretation: poor connection quality, lack of visual cues in telephone interpreting and some others.

What is more, today we can find various professional associations in different countries that are organized to protect its members’ rights, advance quality of court interpreting and legal translation, conduct research, design codes of ethics and certification programmes, maintain certified court interpreter databases, promote exchange of views among scholars, practitioners, educators as well as attorneys and judges. They organize forums and hold conferences, provide continuing education, raise public awareness of the issues of their members’ work, etc. In the USA we can name NAJIT (National Association of Judiciary Interpreters and Translators) founded in 1978. There are also many state, regional, and local organizations in the country. Besides, countries’ governments and independent organizations support the development of court interpreting and research in the field, e.g. a USA non-profit organization NCSC (National Center for State Courts).

We can also find many books, academic journals on community and court interpreting. For instance, John Benjamins Publishing Company, “an independent, family-owned academic publisher headquartered in Amsterdam, the Netherlands”, noted for its publications in linguistics, translation and interpretation, published a considerable number of books and special issues of its journals devoted to this topic [25].

And finally there are various training possibilities in most Western and other countries. Anita Ertl and Sonja Pöllabauer from the University of Graz also known as the Karl Franzens University, Austria, say that “there exists a large array of often highly divergent training concepts (both at university level and outside academic institutions)” [10].

Russia is at the very emergence of the court interpreting profession and its recognition. The authors believe that Russia should follow the same path that other countries undergone and adopt practices used in Western and European countries by examining them, discussing and choosing the most suitable.

There are other views on court interpreting in Russia. Some scholars, practitioners and educators say that there is no need in recognition of the institution of court interpreters in the country and development of training programmes as well as certification procedures. The Director of translation and expert examination agency "Otkryti Mir" A.V. Vinnikov believes that as many governments still permit services of interpreters who are not obligatory certified but have to take oath swearing to maintain confidentiality and acknowledging the liability for deliberately incorrect translation there is no need in the institution of court (sworn) interpreters. He says that court interpreting isn't a specific profession because an interpreter is a universal one. A.V. Vinnikov highlights that interpretation should not be perfect since an LLP person should simply understand what is going on as if it were in his/her native language. An interpreter just needs to know two languages and the subject of interpretation not necessarily at the level of a specialist in law. An interpreter is primarily a linguist, not a lawyer and needs a short-term introductory course organized by a translation agency, says the Director of "Otkryti Mir" [6].

But A.V. Vinnikov still acknowledges some of the court interpreting peculiarities owing to the great demand for it. He touches upon the problem of deontology and lists five principles of professional conduct based on the handbook written by Sonja Pöllabauer: confidentiality, neutrality, accuracy and completeness of interpretation, professional demeanor and tactfulness. A.V. Vinnikov also points out that non-verbal communication, logic, intuition and common sense help an interpreter minimize his/her mistakes (which are sometimes inevitable). He states that an interpreter should use verbal and non-verbal methods to ensure understanding as well as modify complex legal notions to the level of trial participants' understanding [6].

This point doesn't hold water. It contradicts generally accepted ideas and fundamentals of court interpreting theory. "Interpreters must be able to translate with exactitude ... while accurately reflecting a speaker's nuances and level of formality... The interpretation cannot be summary or convey only the gist of the original source message" [11]. Court interpreters can't edit, omit or add any information. They should understand the basic notions of law but refrain from explaining them as well as counseling, or advocating, or engaging in any other

activities which go beyond their scope of practice. “Colloquial expressions, obscene or crude language, slang, and cultured or scholarly language have to be conveyed in accordance with the usage of the speaker” [22].

Moreover, A.V. Vinnikov also speaks critically of certification procedures. In his opinion they are carried out just for personal gain of the professional organizations’ members and free-lance interpreters who hinder the progress in the sphere of court interpreting. By saying so he also underlines that we can’t follow the path of other countries due to the Russian Federation demographic profile and changing criminological environment. His point is that outsourcing court interpreting to translation agencies is the solution for courts. The scholar exemplifies this by describing the current practice in the UK [6]. In 2011 court interpreting was outsourced to a private firm Applied Languages Solutions (ALS) (which was then sold to Capita) to save £18m a year [18; 19].

But “the service is still falling short of its key performance target, according to the latest government figures” [21]. Courts in England and Wales previously hired certified freelance interpreters from the National Register of Public Service Interpreters [17; 28]. And after the outsourcing of court interpreting to a single contractor certified interpreters staged protests and decided to boycott court work with poorer pay and conditions [18; 20].

So the new system now causes chaos and costly delays forcing Capita to employ incompetent interpreters. This led to miscarriages of justice. There were also many instances when interpreters failed to show [17; 18; 20; 21]. The Law Society said: “A lack of available interpreters costs time and causes unnecessary adjournments, resulting in avoidable distress to victims and inconvenience to witnesses” [21].

On the whole, court interpreting in the UK is recognized as a specialized field that needs competent professionals who can provide accurate interpretation. But cutting costs and outsourcing it to a single contractor made interpreters boycott the company and there is now no confidence in a due process. That’s why we can assume that the UK practice of outsourcing to Capita hasn’t proved successful yet and certification is needed.

5. Conclusion

The need for training linguists and interpreters in court interpreting is just starting to be realized in Russia. We can even find some short-term courses in CI in Russia that include court interpreting. For example, at the Murmansk State Humanities University I.E. Kudryashova developed a course for the third year students majoring in translation and translatology [8]. At the Ural Federal

University there is also an introductory course in CI for the third year students of translation and translatology major (run by T.M. Babanina – one of the article's authors).

In Russia there are not too many researchers working in the field. The main focus in training is placed on written legal translation and peculiarities of legal language. No court interpreting training programmes are designed. If there are any, they are exclusive and not enough to speak about the established tradition of formal training and certification of court interpreters in Russia.

We believe that the situation should be improved not only in court interpreting but also in other types of CI. First of all the urgent need of action plan design should be acknowledged. This plan could include the following steps: 1) clarification of terminology; 2) consensus about the role(s) of community interpreters; 3) institution of formal training programmes; 4) development of a credible certification programme; 5) establishment of professional associations to represent the interests of community interpreters, enforce the code of ethics and maintain a central, national registry of certified interpreters; 6) provision of training for CI trainers 7) provision of training for professionals working with community interpreters; 8) education of the public and potential clients about the role(s) of community interpreters and the importance of hiring trained professionals 9) instillation of public trust in the profession [2; 10; 14; 13; 23]. Russia should follow the path of Western and European countries in promoting equal access to all public services.

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УДК 37.026:37.017

ББК 74.005.1+74.48

**АКТУАЛЬНОСТЬ МЕЖДИСЦИПЛИНАРНОГО ПОДХОДА В
МЕЖКУЛЬТУРНОЙ ПЕДАГОГИКЕ ТОЛЕРАНТНОСТИ
THE TOPICALITY OF THE INTERDISCIPLINARY APPROACH IN
INTERCULTURAL PEDAGOGICS OF TOLERANCE**

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Аннотация: В настоящей статье анализируются результаты научно и социально значимых мероприятий, посвященных различным аспектам толерантности. Уточняется роль толерантности для формирования позитивных представлений, уважения богатого многообразия культур, их традиций и этнических ценностей. Доказывается актуальность педагогики толерантности. Подтверждается наличие и эффективность планомерной и систематической работы по формированию установок толерантного сознания в российском обществе на основе междисциплинарности.

Ключевые слова: толерантность, сотрудничество, национально-культурные организации, педагогика толерантности, междисциплинарный подход

Abstract: The article analyses results of different scientific events the main objective of which is doing research in the problem of tolerance. The author defines the role of tolerance in the development of positive attitudes, in respecting a wide variety of different cultures and their traditions. The author proves the topicality of tolerance pedagogics. The article also acknowledges the presence and efficiency of systematic work on increasing the level of tolerance in the Russian society within the interdisciplinary approach.

Key words: tolerance, cooperation, national and cultural organizations, pedagogics of tolerance, interdisciplinary approach

В настоящее время тема толерантности является одной из наиболее актуальных и широко востребованных во всем мире. К проблемам толерантности проявляют интерес представители различных областей