

The problems and practicalities of training translators and interpreters for the future envisaged by the EU Directive 2010/64/EU

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***Abstract.** The theme of the IAFL conference, 'Bridging the Gap between Language and the Law', in Porto in 2012 encouraged the creation of a parallel session on aspects of multilingualism and the law, and the inclusion of a Round Table on the problems raised by the EU Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings. This article describes the main points of addressed during the Round Table, which brought together representatives of the Directorate-General for Translation of the European Commission, the professional organizations EULITA and AIIC, and the TRAFUT and IMPLI projects.*

The article begins by reflecting on the historical, cultural, social and educational misunderstandings that underlie so much of what is at stake, and how all these organizations and projects are responding to the challenges ahead. It will then consider how a country like Portugal, with a language that is minor in European terms but major globally, could prepare for the future envisaged by the EU Directive, and make suggestions of ways in which the educational establishment can contribute. Much of what is suggested for Portugal is applicable in different degrees to other European countries and situations.

***Keywords:** EU Directive 2010/64/EU, multilingualism and the law, training interpreters and translators.*

Introduction

The theme of the IAFL conference, 'Bridging the Gap(s) between Language and the Law', in Porto in 2012 encouraged the creation of a parallel session on aspects of multilingualism and the law, and the inclusion of a Round Table on the problems raised by the EU Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings. The discussion brought together representatives of the Directorate-General for

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Translation (DGT) of the European Commission (EC)¹, the professional organizations EULITA (European Legal Interpreters and Translators Association)² and AIIC (International Association of Conference Interpreters)³, and the TRAFUT (Training for the Future)⁴ and IMPLI (Improving Police and Legal Interpreting)⁵ projects, as well as various people from both the professional and the academic sides of the Law and Languages.

This paper will begin by reflecting on the historical, cultural, social and educational misunderstandings that underlie so much of what is at stake. It will then proceed to describe how all these organizations and projects are responding to the challenges ahead. Finally, it will consider how a country like Portugal, with a language that is minor in European terms, but major globally, could prepare for the future envisaged by the EU Directive, and make suggestions of ways in which the educational establishment can contribute.

The challenge of Multilingualism and Multiculturalism in the global village

According to various sources, “history is written by the victors”⁶ but, as Ostler (2010) shows, the complexities of the part languages play in these histories are many and varied. The victors usually try to impose their culture, religion, and legal and political systems upon the vanquished, but the process is never simple, and languages often reflect the fusion, assimilation or otherwise of the cultures involved. The awareness today of the need to respect the social, cultural and emotional importance of languages to the people who speak them is behind the European ideal of preserving the languages and cultures of individual countries, at least as far as the official languages and cultures of the countries are concerned. This ideal requires that Europeans should be able to communicate with each other, develop political, commercial and economic unity, and move between countries in a spirit of integration.

There are 24 official or working EU languages and, although some are clearly more equal than others, every effort is made to maintain the multilingual dream, at least in theory. The practical means to this end has been the encouragement of second or third language learning and the education of good translators and interpreters. However, even for these official languages, it has not always been possible to provide full language services, and a multilingual policy that includes the approximately 450 languages of all the migrant people now living and working in the EU complicates the issue considerably. It is one thing to say that the migrants should learn the language of the host country, it is quite another to enforce this. One also needs to take into account the needs of the millions of tourists that visit Europe every year.

The dream of multilingualism is expensive, time-consuming and not always efficient, but (like democracy) “it is the worst form of communication, except for all those other forms that have been tried from time to time” (Winston Churchill – adapted!). The European institutions have found that the ideal is stretched to its limits by the need to provide common political and legal systems for the European Union. The multilingualism policy that covers all EU languages has been under strain for some time, and there are plenty of arguments for limiting the number of languages requiring routine translation and interpreting services. The situation in the police system and criminal courts is under particular strain, as the national governments usually have to pay for the services. Now that immigration has added considerably to the number of languages that

are needed in the courts, the problems are multiplying and the solutions are by no means simple. The issue of multiculturalism, which cannot be separated from multilingualism, is also provoking a variety of reactions at both political and social levels.

Multiculturalism is a politically divisive issue that cannot be ignored. The everyday culture of the city dwelling populations today may be increasingly homogenized by the effect of the media, the Internet and the immediacy of communication in the global village, but this homogenization has, in its turn, produced a reaction that is particularly relevant in relation to the migrant populations. The Law must not only contend with people speaking many languages, it must also try to understand their culture, background, and levels of education. All this has to be taken into consideration if the EU Directive is to be enforceable.

The Law and Language

As volume 6/12 of the EC's 'Studies on Translation and Multilingualism – Language and Translation in International Law and EU Law' (2012) reports, international and EU lawyers/translators strive towards agreement on the legal concepts and the terms that represent them in the different languages. However, there is no guarantee that these terms, agreed by these multilingual, international groups as representing certain well-defined legal concepts, will be interpreted in the same way when used in the essentially monolingual local context of individual countries.

The understanding of legal terminology may not in itself be the main concern in criminal proceedings, but the monolingual, mono-cultural mindset of the representatives of the Law in most local contexts clearly affects their perception of translators and interpreters. The centuries-old discussion on how to make legal discourse as objective and clear as possible, leads to the tendency among legal practitioners to believe that legal language is actually objective, even though they may spend their time searching for loopholes in the law on which to base the cases for their clients. Many students of Law and legal practitioners, like the general public, have rarely had the opportunity to study languages beyond school or conversational level and are not particularly aware of cultures or legal systems outside their own, unless they are forced by circumstances to confront them. The global culture of the educated world we increasingly live in also helps to provide a veneer of uniformity that lulls us into a false sense of mutual understanding, which rarely survives close scrutiny.

The many attempts by legal systems to create a discourse as free as possible from the personal considerations of the individuals concerned, whichever side of the law they are on, and the largely monolingual culture of so many people in any particular country contributes to the idea that translation and interpreting are simply a question of mechanically exchanging one set of words with another. However, well-trained professional linguists are particularly sensitive to the linguistic nuances and cultural differences of the languages / cultures with which they work when confronted with translating and interpreting between two different legal systems.

Translators and Interpreters and the Law

The Directive on the right to interpretation and translation in criminal proceedings (European Parliament and European Council, 2010)⁷ starts by drawing attention to the fact that, despite the efforts made by the European Convention for the Protection of Human

Rights and Fundamental Freedom (ECHR), of which all Member States are a party, “experience has shown that that [the ECHR] alone does not always provide a sufficient degree of trust in the criminal justice systems of other Member States”(introductory paragraph 6). Although not explicitly stated in the Directive, one can only presume from its content that this lack of trust derives, at least in part, from deficient, or non-existent, interpreting and translating services within the criminal justice systems.

On the other hand, according to the endless complaints on translators’ forums and web pages about the way translators and interpreters are treated by various criminal justice systems across Europe, it would seem that there is a reason why such language services are neither adequate, properly used, nor properly catered for. The remuneration offered is much lower than that which is current in the commercial market and, understandably, it would seem that highly qualified language professionals avoid being available for the work required. This means that the criminal justice systems are forced to use unqualified or, at best, poorly qualified interpreters and translators, a situation that confirms their poor opinion of the services offered, and contributes to the establishment of the low rates that drive good professionals away.⁸ So we have a Catch 22 situation here that needs to be addressed.

The problems posed by the Directive and the education of translators and interpreters

The need for interlingual communication has been around since Babel. The very banality of this fact, and the frequently forgotten fact that the majority of human beings actually live in some sort of bilingual society or situation, has contributed to the low status given to translation and interpreting. For those who moved around the known world in past centuries, there was usually some sort of lingua franca (see Ostler, 2010), and bilinguals could sometimes make a living in commercial or political situations. Communication at a more basic level relied on pidgins and sign language.

The low esteem in which translation and interpreting were and often still are held is also to be found in higher education, and these institutions must therefore accept part of the blame for preparing professionals inadequately for the many challenges posed by a multilingual society. The idea of modern language faculties as a ‘light’ form of higher education for predominantly female students persists, and the academics in these faculties tend to regard actual language learning as the least important part of the curriculum, a servant to the more important areas of literature, culture, or, in some cases, linguistics.

Until relatively recently, training in professional translation was the job of polytechnics devoted to producing office staff with language skills. When the obligation to provide education that might actually lead to jobs forced a crisis in humanities education in general, and modern languages departments in particular, translation gained popularity, once the possibility of providing schoolteachers was exhausted. The staff members responsible for creating the new curricula, however, often have very little idea of how to train (they still prefer ‘train’ to ‘educate’!) translators, and even less of how to work towards the interdisciplinary needs of professional translation. The result is that the graduates from these institutions also contribute to the perception of the poor performance of ‘translators’.

There are various forms of interpreting and they can require different levels of training and competence, ranging from simply assisting oral communication in informal sit-

uations through to the highly paid and sophisticated simultaneous interpreting required for international conferences. Yet, here again, even the better-educated general public thinks that 'anyone with languages' can perform on demand mechanically. Nothing could be further from the truth and becoming a good conference interpreter requires especially arduous training, and few manage to complete the serious courses offered satisfactorily.

Many people do not even understand the difference between a translator and an interpreter or the difficulties involved in becoming good at either profession. Many also think that a language student must necessarily perform as well in their foreign languages as they do in their mother tongue. These misunderstandings are not confined to the general public and the legal profession.⁹

Clearly, there is no easy solution to all these problems, as the situations involved will vary widely. European countries differ considerably as to the nature of language use, the extent to which translation and interpreting is required, and between which languages. Even the European Commission has found it more economical to use English as a 'bridge' between languages such as Slovenian and Icelandic or Portuguese, than employ a translator who is fluent in these pairs of languages to translate or interpret between them. Also, providing good language services between most European languages requires a very different approach to that which it is possible to demand between these languages and, for example, a dialect of a sub-Saharan language.

One must also take into account that the criminal situations that require translation and interpreting will also range from fraud by multinational companies to petty theft, and from traffic offences to murder. Multinational companies will be able to pay a team of qualified legal translators and interpreters to avoid conviction for fraud; the illiterate migrant may be dependent on the language skills of a marginally better educated colleague to help him prove his innocence in a case of murder.

In the case of EU languages, one could argue for a full master's level course in community interpreting and translation, and such courses already exist¹⁰, but few countries can afford to dedicate educational resources to providing such specialized education. When there is no market for the language services beyond the occasional court case or community service work, it is unreasonable to expect the authorities to provide, or the private individual to pay for advanced qualifications. The best solution for most EU languages, therefore, is to provide specialized training as part of, or in addition to the general courses in translation and interpreting so that graduates have the qualifications to also earn their livings in the wider market for language services.

In the cases of infrequently used languages for which there is not enough demand for language services to provide a living for even a very few, individuals with good language skills can be given special training to enable them to provide an adequate service, and such courses are already offered by local councils in the larger cities of Europe (for example: the Worker's Educational Association <http://www.london.wea.org.uk/community-interpreting> in London). The results may not be equivalent to those expected of a highly trained interpreter, but it is the best that can be done. The relative unfairness of these situations may be unacceptable to the ideals of multilingualism and multiculturalism, but it is essential that all concerned recognize the need to be realistic.

In Portugal, the ACIDI – Alto Comissariado para a Integração e Diálogo Intercultural (The Commission for Intercultural Integration and Dialogue)¹¹ provides a telephone translation service that is admirable in the sense that it provides free ‘interpreting/translation’ services over the telephone to whoever requires them, usually immigrants who seek for knowledge on how to solve their social, economic and legal problems in Portugal. These services are offered by people who speak the languages required but do not necessarily have any training in what they should be doing.

Preparing for the future – international efforts

The EU Directive has no doubt caught many countries and legislations ill prepared for the eventuality of having to provide proper translation and interpreting services in all criminal proceedings. Some countries understand the problems involved and have taken measures to provide training for community interpreters and translators. However, others are either unable to understand the complexities of these services, or are unwilling to pay an appropriate price for them. These factors mean that, even if the educational establishments in these countries undertake to provide courses for such a wide variety of needs, the legal authorities must adapt to the reality of the market, and pay for the training and/or the services of those who receive proper training.

The need to provide training for good translating and interpreting services has been subject to both discussion and effective action for some years, often led by the EC’s Directorates for Interpreting (DG SCIC) and Translation (DGT)¹². The DG SCIC has provided training in conference interpreting to each new country that joins the EU and encouraged a variety of support activities. The DGT has led the development of the European Master’s in Translation (EMT) Network¹³ since 2006 and encourages close cooperation between universities and the language services profession. The policy for multilingualism is the driving force behind these activities, as was emphasized by the DGT representative, Catherine Vielledent-Monfort, in her presentation at the IAFL conference.

Besides the official EC initiatives, there have been several other projects led by professional organizations and academic institutions, several of which were represented at the conference. Liese Katschinka, the president of EULITA, which was established in 2009 to represent the interests of its members, presented their mission to promote ‘the quality of justice, ensuring access to justice across languages and cultures and thus, ultimately, guaranteeing the fundamental principles of human rights as enshrined in the European Convention of Human Rights and Fundamental Freedoms’ (EULITA’s mission statement – <http://www.eulita.eu/mission-statement>) as well as its determination to coordinate the efforts of professional individuals, organizations and institutions dedicated to promoting quality in legal interpreting and translation across Europe.

EULITA has helped to promote projects that were presented during the conference. Christiane Driesen presented ImPLI (Improving Police and Legal Interpreting) which ran from April 2011 to September 2012 and was “a comparative study of interpreter-mediated questioning practices – especially by the police – in Belgium, the Czech Republic, France, Germany, Italy and Scotland”. TRAFUT – Training for the Future was a project that ran from November 2011 to October 2012 and organized workshops in Slovenia, Spain, Finland and Belgium with a view to preparing the training of translators and interpreters for the outcome of the Directive 2010/64/EU.

Problems in the Portuguese context

One obvious failing of the system is that there are no possibilities in Portugal for either interpreters or translators to register as sworn translators with proper qualifications and status. Anyone who feels qualified can claim to be able to interpret and, when legalization of a translation is required, anyone who has done the translation can go to a notary, who may have no knowledge of the language, and swear that it is a good translation. I would hasten to add that Portugal is not alone in this respect, but it is also true that Portugal loses considerable revenue to Spain when multinationals who insist on a sworn translation have to cross the border to obtain one (Joana Forbes, personal communication).

Whatever the law may say, do, or not do, however, there can be little doubt of two things: that the representatives of the law usually have little understanding of the skills required for interpreting and translation and, consequently, that the proper payment for these services is totally inadequate for the expertise required. Several university courses include community interpreting and legal translation or related topics in their programmes, but their graduates cannot be expected to receive inadequate payment simply because courts see no difference between them and those they so often employ, with minimal or no qualifications to do the work.

Manuel Sant'iago, representing AIIC at the conference, drew attention to the laws, or lack of them, to provide for proper interpreting in legal and criminal cases in Portugal. Although Sandra Silva from the Faculty of Law (see this volume) argues that the Portuguese legal system is technically prepared to meet the demands of the Directive, Sant'iago described how the letter and the practice of the law do not always coincide.

Legal translation has gained some importance as part of the training of translators. However, it is not often easy to find people with an education in law prepared to teach translation, and too many classes are given by language teachers who are out of their depth with any but the simplest texts. On the other hand, lawyers faced with the problem of translating legal texts will often find themselves floundering as they attempt to find cultural, terminological and phrasal equivalents in the other language, as Forbes (2012) demonstrates.

The translation of legal documents is very poorly remunerated by the court system, and it is not enough to say that those who do it will develop the competences and networking contacts to then be paid good rates when working privately for law companies. This does not necessarily happen and by no means relieves the courts of the duty to treat translators with respect.

There is therefore a need for cooperation between the police, the Law and language professionals to work on multilingual matters. Forensic linguistics at all levels can contribute to this cooperation and there is a growing awareness of this.

Forensic linguistics and its contribution to a better understanding of the relationship between the Law and language in Portugal

The need to write clearly and well worries many people, as can be seen in the considerable literature on academic writing or technical communication, but the interest is particularly relevant when it comes to language in legal settings. A recent publication of articles resulting from a seminar on language and the law at the University of Coimbra (Carmo, 2013b) shows a growing understanding among judges, lawyers, and others in

the legal profession of the need for clear and carefully written legal documents, whether they are for legal information for the general public or the judicial decision on a case. Carmo (2013a: 65–74) draws attention to the connection between democracy and this requirement, and Ferreira da Silva (2013: 125–138) in the same volume describes the battle lawyers have fought to make judges evolve from the high-handed, minimal judicial decision to providing a properly argued, well-written document. There is also an article by a forensic linguist using discourse analysis to understand the stress of the position of the accused in court (Carapinha, 2013: 35–64). There are others working in forensic phonetics. However, all this work is essentially monolingual in focus.

Those of us who are involved in the educating of interpreters and translators must now ask ourselves how we can use the nascent interest in forensic linguistics in Portugal to improve the perception and treatment of our graduates. Graduates in translation and interpreting already have many of the intercultural and language skills needed to perform services for the courts. Therefore, if their original course does not already include formal preparation in this area, it should not be difficult to create a short concentrated specialization in the international norms they need to respect, followed by certification after their ability to perform properly in real-life situations has been tested. Courses in legal translation are increasingly included in the curriculum or offered as specializations to professional translators. The people who take these courses could then apply to be evaluated for inclusion in an official register of qualified legal interpreters and translators.

However, there are situations in which it is necessary to seek the help of people with the necessary language skills, but without formal qualifications as interpreters or translators. The market for such qualifications for people who need to communicate between, say, Bulgarian, Finnish and Portuguese is not sufficient to justify a university running a full master's degree in only these combinations. The alternative, someone sufficiently bilingual in these less-spoken languages, but with some other employment, should, however, be offered proper training before appearing in court or in the public services. Such training should be made obligatory, and the educational establishment, together with the professional associations, should work with the police and legal institutions to provide it.

Finally, in our multilingual, multicultural Europe there will always be those with marginal levels of language skills or even education who may suddenly be called upon to interpret or translate. However, even in these cases, it is essential that they should be helped to understand their responsibilities before they are permitted to perform, even if the crash course envisaged lasts only a few hours.

Conclusions

The Directive certainly poses several problems for all those involved in interpreting or translating for the police, the courts and other legal organizations. The work being done by EULITA and others is definitely taking us in the right direction but there is still a long way to go. There needs to be a concerted effort to create bridges between Language and the Law, as proposed by this conference. For this, a good deal of work needs to be done to raise awareness and create mutual respect between all involved. The representatives of the law need to be made more aware of the power of languages, the diversity of languages, and the cultures they represent. On the other hand, those

who prepare interpreters and translators for the needs of the courts must consider not only the need to train university graduates to provide the necessary services and / or provide life-long learning programmes for those already practising as language services providers; they also need to prepare short extra-mural courses for those who will be needed more sporadically.

All this requires those in government to understand what is necessary. The European Commission is already leading the way to providing suitable certification of interpreters and translators who can demonstrate the necessary skills with the TransCert – Trans-European Voluntary Certification for Translators project¹⁴, and the project QUALETRA – Quality in Legal Translation¹⁵. Governments need to recognize these initiatives by creating the status of sworn interpreters and translators for those who attain the necessary level. Although such a move would necessarily imply a complete revision of the official remuneration at present in force, it would contribute to greater justice by encouraging the employment of the well-qualified professionals who at present try to avoid having their names on the informal list in the drawer of some court official responsible for finding interpreters and translators.

These proposed solutions are not new. The institutions and projects referred to above are leading the way, but there is a long way to go to change the mindsets of those responsible for justice, not to mention the general public's attitude to language services providers.

Notes

¹DGT – Directorate General of Translation – http://ec.europa.eu/dgs/translation/index_en.htm

²EULITA – European Legal Interpreters and Translators Association – <http://www.eulita.eu/>

³AIIC – International Association of Conference Interpreters – <http://aiic.net/>

⁴TRAFUT – Training for the Future – <http://eulita.eu/training-future>

⁵IMPLI – Improving Police and Legal Interpreting – <http://www.isit-paris.fr/-ImPLI-Project-.html>

⁶This quote – or something similar – is attributed to various people including Napoleon Bonaparte, Winston Churchill and George Orwell.

⁷Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:280:0001:0007:EN:PDF>

⁸The official rate payable to translators in Portugal is 0.027 cents a word; interpreters will receive 100€ for a case, no matter how long the session takes. No travel or other expenses are contemplated.

⁹Most teachers of translation will recognize the sinking feeling experienced when a colleague approaches asking if one's (20-something-year-old Portuguese native speaker) students would like the experience of translating the colleague's thesis into English, or acting as simultaneous interpreter in an international conference on engineering; no mention of remuneration.

¹⁰For example, the Master's Degree in Intercultural Communication, Public Services Interpreting and Translation, Universidad de Alcalá de Henares, Spain. http://www2.uah.es/traduccion/formacion/master_oficial_POP_EN.html

¹¹ACIDI – Alto Comissariado para a Integração e Diálogo Intercultural (The Commission for Intercultural Integration and Dialogue) – <http://www.acidi.gov.pt/>

¹²DG SCIC – Directorate General of Interpreting – http://ec.europa.eu/dgs/scic/index_en.htm; DGT – Directorate-General for Translation http://ec.europa.eu/dgs/translation/index_en.htm

¹³European Master's in Translation (EMT) Network – http://ec.europa.eu/dgs/translation/programmes/emt/network/index_en.htm

¹⁴TransCert – Trans-European Voluntary Certification for Translators – <http://transcert.eu/>

¹⁵QUALETRA – Quality in Legal Translation – <http://www.eulita.eu/qualettra>

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