

Communication in the criminal courtrooms

Answers Slovenia

A. Interpretation in criminal courts

1. What criteria must be met for an interpreter to be appointed? Does this differ if it is for a party to the case, or a witness?

Court interpreters are accorded special status in the same way as court experts and court appraisers by the Ministry of Justice in accordance with Slovenian law. They are appointed by the Minister of Justice in accordance with the general administrative procedure laid down in the Rules on Court Interpreters¹, in accordance with the Law on Courts. Depending on the suitability of the candidate, the Minister issues a decision on the appointment as an interpreter or on the rejection, which also states the language for which the interpreter is named or rejected. An interpreter may commence his work by swearing an oath before the Minister: "I swear to do my job as a court interpreter conscientiously, accurately and to the best of my knowledge."² Minutes shall be taken of the oath taken, signed by the Minister, the interpreter himself and the scorer. The appointment of an interpreter is published in the Official Gazette of the Republic of Slovenia, and after the appointment, the interpreter is entered in the directory of interpreters, which is maintained by the Ministry of Justice in accordance with the provisions of the law.

Court interpreters are persons appointed for an indefinite period of time with the right and duty to interpret documents at a court hearing or to translate documents. Court interpreters can only be natural persons who are listed on a special list (directory) of court interpreters at the Ministry of Justice.

A natural person may be appointed as a court interpreter who:

- has relevant expertise and practical skills in a particular area of interpretation work,

¹ Rules on Judicial Experts, Court Appraisers and Court Interpreters (Official Gazette RS, No. 84/18).
² Article 21 of the ZSICT.

- has a pre-Bologna university degree or a Bologna master's degree program,
- is a citizen of the Republic of Slovenia or a Member State of the European Union or a Member State of the European Economic Area and is actively fluent in Slovenian,
- has capacity to contract,
- is personally appropriate,
- has at least six years of professional experience in the area in which he / she wants to work as a court interpreter,
- has not been the subject of a judgment which has the force of res judicata for an intentionally committed criminal offense prosecuted ex officio that would render him/her morally unfit for interpreting, as it could harm the impartial or professional performance of his/her work or the reputation of the court,
- has not been dismissed as a court interpreter for reasons of permanent deprivation of the right to perform judicial interpreting work.

The exam is written and oral, examining the candidate's knowledge in various fields, including knowledge of the constitutional system and judicial authorities, as well as knowledge of the basic institutes of criminal law and law and institutions of the European Union.

A court interpreter must attend at least five professional development courses within five years of the date of appointment and then every five years thereafter.³ If the court interpreter fails to submit the relevant evidence of professional development within the deadline, or if the Expert Council for Judicial Expertise, Judicial Appraisal and Judicial Interpretation⁴ the proof considers inadequate or insufficient, the Expert Council may check the professionalism and practical abilities of the court interpreter in one of the other ways of proficiency testing according to the law governing court experts, court appraisers and court interpreters, which he deems most appropriate.

As to the specific procedures in which the interpreters are ordered, it makes no difference whether the court interpreter is ordered for a party to the proceedings or for a witness.

³ Article 22 of the Rules on Judicial Experts, Court Appraisers and Court Interpreters.
⁴ Chapter II of the ZSICT.

2. Is the interpretation limited to certain languages?

The Ministry of Justice provides interpreters of different languages, there are no restrictions here. Court interpreters are also interpreters of the Slovenian sign language. It is true, however, that there is a lack of the interpreters for exotic languages as well as Romani languages.

3. Who appoints the interpreter?

The interpreter is included in the list of court interpreters by the Ministry of Justice, after having completed some training and examination, thus fulfilling the required conditions for court interpreters, as already explained under item 1. In the specific case, however, the interpreters are then ordered by the court.

4. Are there standard requirements for the quality of the interpretation or qualifications of the interpreter?

If so, how does the judge ensure compliance?

In any event, how does the judge ensure that the interpretation is accurate and meets good standards?

In principle, the court interpreters listed on the Ministry of Justice list must be appropriately qualified and of good quality. Of course, the same applies to them as to the other professions, with some being excellent and the other a little less. In a particular case, the judge often orders those who are available on time and with whom he has good previous experience. During the proceedings in which the court interpreter participates, the president of the panel, in the context of substantive and procedural guidance, ensures that the interpretation is appropriate. This is provided through his/hers own perception and through the responses of clients or other participants involved in the process through an interpreter.

5. Are there legal obligations for court interpreters?

Yes, before the hearing the president of the panel reminds the court interpreter that he/she must interpret to the best of his knowledge. At the same time, he warns⁵ him/her that a guilty

⁵ Article 333 of the Criminal Procedure Code (CPC) in relation to the fourth paragraph of Article 233 of the CPC.

plea, as well as false translation, constitutes an offense under Article 284 of the Criminal Code (KZ-1), for which a sentence of up to five years imprisonment is prescribed in the case of criminal proceedings; if the interpreter's act has serious consequences for the accused, the sentence could be up to eight years in prison.

6. For the main hearing of the case is the translation for the whole hearing or only part of the hearing? If it is only part, which parts, and why is the whole hearing not translated?

If an expert is ordered, the entire main hearing is interpreted.

B. The importance of good interpretation and good communication for the verdict?

7. Assuming that the quality of interpretation could affect the outcome of a case:

7.1 Do you consider this applies more in certain types of cases than others and, if so, what types of cases?

7.2 Is it a problem that can be remedied, or a problem that the judiciary must live with? And if yes, how do we secure that no one is wrongfully convicted?

The quality of interpretation should not affect the outcome of the proceedings. This must be taken care of by the judge, which is obliged to ensure a proper understanding of the procedure for all participants. Otherwise, violations in this regard can also be brought by legal means, especially in an appeal against a judgment, where they are strictly observed.

8. Is there a risk that people who have difficulty explaining themselves, possibly due to low intelligence or poor education, suffer disadvantages at the court? If yes, what remedies exist?

Applicable the same as in the previous answer. In addition, it is worth mentioning the provision of Article 70 of the CPC, which requires that a defendant who is incapable of successfully defending himself (which could also be impaired by inferior intelligence or lack of education) should be provided with an ex-officio lawyer for the first hearing. The defence lawyer then defends the defendant throughout the proceedings.

9. Is intercultural communication a subject of training for judges or part of the instruction of juries?

There is too little education of this kind.

C. Nonverbal communication in the courtroom

10. Can the body language of accused persons, victims or witnesses influence the outcome of a case?

Of course, the judge gets the impression of the case on the basis of the whole course of action, i.e. including the behaviour of the parties and other participants in the proceedings. However, the evidence is decisive because the decision must be professionally based on convincing evidence.

11. Is nonverbal communication a subject of training for judges or part of the instruction of juries?

There is also too little education of this kind.