

# **Conclusions**

## **of the Third Study Commission**

### **2020/2021**

After the IAJ-congress of 2020 was postponed, the board of the 3rd Study Commission decided, in spring 2021, to continue with the topic chosen for 2020, i.e. "Communication in the court rooms", covering different questions related to interpreters and to the communication of judges with non-legally educated participants to the proceedings.

We received more than 30 answers to the questionnaire sent out in 2020 and again in 2021. Based on these answers, the following conclusions have been adopted at a virtual meeting on 6 September 2021.

#### **I. Interpretation in criminal courts**

##### **1. The right on interpretation and translation**

All the countries that have answered the questionnaire have rules that ensure that there is access to interpretation if a party does not speak the language of the proceedings. There are the same conditions for defendants as for victims and witnesses.

Member states of the European Convention of Human Rights are obliged to grant the right to interpretation, free of charge, to every accused person under Article 6 ECHR. Furthermore, Article 14.3 of the UN's International Covenant on Civil Political Rights (ICCPR) provides that in a criminal trial, an accused person must be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him; in addition, Article 14.3 of the ICCPR grants the right to have the free assistance of an interpreter if the accused cannot understand or speak the language used in court.

It is the decision of the court if an interpreter is needed by a party. If an interpreter is appointed, in most of the countries the interpreter is appointed by the court or, during the investigation, by the body conducting the investigation.

Interpretation is not limited to specific languages. However, some answers mention that a lack of access to interpreters for specific, less common languages or dialects can be a problem. This problem could be aggravated by the fact of increasing globalization and mobility of persons.

In most countries the translation is for the whole hearing if it is the defendant that needs translation. If only a witness needs interpretation, the translation will be limited to his/her testimony and questioning.

## **2. The legal status of interpreters**

There are countries where rules have been laid down for the interpreters' work, including rules on taking an oath, and other countries where the interpreters' work is regulated by their own ethical rules. In many countries, the interpreter may be held criminally liable for poor or incorrect interpretation.

## **3. Quality management of interpretation/translation**

It is difficult to ensure that the interpreter has the right skills, especially for the work in court which may require some basic knowledge of the legal terminology and, in some cases, specific technical language.

Some countries have laid down rules or criteria in their legislation which a person must meet in order to function as an interpreter, whilst in other countries, especially from the common law area, such criteria have been set out in court decisions. These may be requirements for education and qualifications, but also citizenship, and rules to ensure impartiality.

It is usual that interpreters come from an agency and it is the agency that controls the implementation of standards and checks that the interpreter is suitably qualified.

In some countries, the interpreter must take the oath to interpret correctly. It is also customary for the party and the interpreter to be asked if they understand each other.

## **II. The importance of good interpretation and good communication for the verdict (or "for a due process")**

### **1. The importance of good interpretation**

There is agreement that correct interpretation is essential for a fair trial and poor interpretation can affect the outcome of the case. Therefore, it seems very important to have access to interpreters accredited by public administration or by reliable translation agencies. Furthermore, the judge should, throughout the proceedings, be aware of the risk of poor interpretation and his/her responsibility to ensure a proper translation.

At the same time, it is stated in most of the answers that the composition of the court with judges, prosecutors and defence counsel helps to ensure that inadequate or incorrect interpretation is discovered in time.

However, in practice, it can be very difficult for the judge to ensure the good quality of interpretation if s/he does not know the respective language. If a witness and a defendant speak the same foreign language, a natural check can be made through the defendant or the witness as he or she may complain the interpretation is not accurate. In those circumstances, the judge will have to make a decision about it. The judge can also take in account signs of non-accurate interpretation, for instance a very short translation of a longer statement of a party or a long translation of a short statement. Furthermore, the judge should pay attention to the fact that the rhythm of the speech is not too quick to allow a proper translation.

Another difficulty could be an inaccurate translation due to the fact that the interpreter has problems in translating statements that include terms or behaviours which are shameful or even taboo in his or her culture. This can especially occur in cases of sexual offences.

One method of reducing the risk of incorrect or poor interpretation could be the recording of the hearing so that, in case of doubt, the quality of interpretation can be reviewed afterwards.

## **2. The importance of good communication**

Inability to express oneself or to give an explanation due to low intelligence and/or incapacity as a result of mental or physical health issues and the like can be a challenge. Where a defendant has difficulty expressing himself, it requires extra patience on the part of the judge and others in court and the defendant's problems must be remedied by the defence asking in-depth and illuminating questions. Using a simpler language which the witness will understand will also help in these situations. The same applies for other parties to the proceedings as victims and witnesses.

In some countries, the court has various tools at its disposal which can be used to assist the accused. It can be a social worker who can act as a support person, but also the possibility that a person can be questioned without the accused or members of the public being present

## **3. Intercultural communication in particular**

Intercultural communication is communication between people with differing cultural identities. Knowledge in intercultural communication can help to better understand the explanations and the behaviour of persons coming from other cultures. Intercultural communication is not a compulsory part of judicial training in most of the countries that have answered the questionnaire, but in many of the same countries training is offered.

## **III. Nonverbal communication in the courtroom**

A majority of the answers to the questionnaire affirm that the body language of accused persons, victims or witnesses is quite important and can influence the outcome of a case, whilst others deny such influence.

For the first group, body language is an important part of assessing the credibility of a statement. It can also influence the perception of the character of a person. For the second, smaller group, body language should have no bearing on the decision of a case, but it cannot

be ruled out that prejudices associated with a particular attitude may affect the experience of explanation and its credibility.

It is recognised that as a result of different backgrounds people may have different methods of non verbal communication which are not always understood. For example within some communities it is acceptable to look someone in the eye, whilst in other communities for a woman to look a man in the eye would be unacceptable behaviour. Care therefore needs to be taken with interpreting body language, demeanour is only one factor to be taken into consideration when assessing reliability.

In many countries, nonverbal communication is part of the training of judges, whether compulsory or on a voluntary basis.