

KAZAKHSTAN

3rd Study Commission of the IAJ - 2021

Communication in the criminal courtrooms

For 2021, the Third Study Commission, which focuses on Criminal Law, decided to study "Communication in the criminal courtrooms". This topic should cover different aspects of communication including questions related to interpreters and the communication of judges with non-legally educated participants to the procedure.

In order to facilitate discussion and to assist us in learning from colleagues, we ask that each country answer the following questions:

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?*

Answer: According to Article 85, paragraph 1 of the Criminal Procedure Code of the Republic of Kazakhstan (hereinafter referred to as the Law), a person who is not interested in the case, who speaks the languages required for translation, and who is involved in investigative and judicial actions in cases where the suspect, accused, defendant, their defenders or the victim, civil plaintiff, civil defendant or their representatives, as well as witnesses and other participants in the process do not speak the language in which the proceedings are being conducted, as well as for the translation of written documents.

2. *Is the interpretation limited to certain languages?*

Answer: Not limited.

3. *Who appoints the interpreter?*

Answer: In accordance with paragraph 2 of the Law, the body conducting criminal proceedings issues a decision on the appointment of an interpreter.

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?*

Answer: In order to avoid poor-quality translation, the Law provides the following: the translator has the right: to ask the persons present at the translation to clarify the translation; to get acquainted with the protocol of the investigative or other procedural action in which he participated, as well as in the relevant part with the protocol of the court session and to make

comments to be entered in the protocol regarding the completeness and correctness of the translation; to refuse to participate in the proceedings if he does not have the necessary knowledge for the translation; bring complaints about the actions of the body conducting criminal proceedings; receive compensation for expenses incurred by it in connection with participation in the production of investigative and other procedural actions, and remuneration for the work performed, if participation in the production of the case is not included in the scope of its official duties; submit a request for security measures.

The judge explains to the translator in advance that for violation of the law, the translator can be brought to justice.

It is also necessary to take into account paragraph 4 of this Law, according to which the translator must: to appear at the call of the body conducting the criminal process; to make a complete and correct translation; to certify the correctness of the translation with his signature in the protocol of the investigative action performed with his participation, as well as in the procedural documents handed over to the participants in the process in translation into their native language or the language they speak.

5. Are there legal obligations for court interpreters?

Answer: The translator is brought to criminal responsibility in case of making an unreliable translation. In addition, he is obliged not to disclose information about the circumstances of the case and other data that became known to him in connection with the involvement as an interpreter, as well as to observe the procedure during the investigative actions and during the court session.

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?

Answer: For a person who does not speak the language of legal proceedings, the translation is made in full, both of all materials and the course of the court session. Subsequently, any court document is served in two languages, in the language of the proceedings, and in the language that the person speaks.

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?*

Answer: The quality of the interpretation cannot affect the outcome of the case. In accordance with the Law and the Constitution of the Republic of Kazakhstan, equal access to justice is ensured, and it is the duty of the court to make a fair decision, the legality of which is checked by a higher court.

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?*

Answer: There is no such risk.

In accordance with paragraph 4 of the Normative Resolution of the Supreme Court of the Republic of Kazakhstan No. 4 of 29.04.2018, after the announcement of the verdict, the presiding judge explains the substance of the decision, which is noted in the minutes of the court session. At the same court session, the presiding judge must explain the term and procedure for appealing the sentence, its execution, the consequences of non-execution of the sentence and other issues provided for in Article 402 of the Criminal Procedure Code. The explanation is used in order to form the awareness of the justice and clarity of the verdict of the court among the persons present in the courtroom, including in order to develop the correct perception and attitude of the participants in the process to the offense or crime committed by the convicted person.

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

Answer: Given the fact that more than 100 nations live in the Republic of Kazakhstan, cross-cultural communication is not a problem, as we live in unity, respect and understanding. Upon receiving a higher legal education, each student passes the discipline "Professional Ethics", which addresses the issue of intercultural communication.

C. Nonverbal communication in the courtroom

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

Answer: No, it can't.

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

Answer: Upon receiving a higher legal education, each student passes the discipline "Legal Psychology", part of which is the study of non-verbal communication.
