

INTERNATIONAL ASSOCIATION OF JUDGES – 3rd STUDY COMMISSION

“Communication in the criminal courtrooms”

SUBMISSIONS FROM NORWAY

For 2020, 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?

A judge must appoint interpreters in criminal proceedings if a party or witness does not know Norwegian. In criminal proceedings the interpreter is always appointed by the court. The criteria are the same for a party to the case or a witness.

If the court and the parties know the foreign language in question, an interpreter must not be appointed. (In practice Swedish, Danish or English).

Parties and witnesses who speak the Sami language (official minority language in Norway), have the right to speak Sami in court proceedings. If a person who does not understand Sami take part in the proceedings, the court will appoint an interpreter.

If a person who has a hearing impairment and/or a speech impairment is to

give testimony in court, questions can be answered in writing or through the assistance of an interpreter appointed by the court.

Written evidence in other languages than Norwegian must be translated except in cases where the court and all parties involved understand the foreign language.

The Government carry all costs related to interpretation in court proceedings and translation of documents.

2. Is the interpretation limited to certain languages?

No.

3. Who appoints the interpreter?

The Judge.

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

There are no formal requirements with regard to the education or training of the interpreter. However, in 1997 a certification scheme was established, and there has for many years existed a register of interpreters, classified into categories by qualifications. This register was in 2020 replaced by a National Register of Interpreters, and at the same time, the qualification categories were revised. There are five categories (A-E). Interpreters in category A are certified interpreters with a bachelor degree in interpretation in the public sector.

For interpreters who are registered in the courts' register for interpreters, their qualification category in the National register is transferred to the courts' register.

If so, how does the judge ensure compliance?

The Government is responsible for The National Register for interpreters, and will require proper documentation for education and training as basis for registration.

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

According to general guidelines the courts shall choose the best qualified interpreter available.

5. Are there legal obligations for court interpreters?

The interpreter must be impartial and accurate.

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?

The entire hearing would be translated if the need for an interpreter is by a party. If the need for an interpreter is by a witness, then just the witness' testimony would be 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?

In criminal cases quality interpretation is most important. The quality of

the interpretation probably does not affect the outcome of certain types of criminal cases more than other types. The problem would rather be the lack of sufficiently qualified interpreters certain languages.

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?

In many instances the parties will address problems in the interpretation during the trial, and this will be remedied instantly. In Norway hearings are not recorded on a routine basis, but if there is a record, errors in the interpretation can be controlled and give grounds for appeal if not remedied under the hearing.

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?

Yes, this is obviously a risk. Both the court and the lawyers must be aware of this problem and work to clarify the testimony for the court through the questions they ask the witness during the hearing.

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

Intercultural communication is not a subject of training for judges in general, but in the annual seminars for Norwegian judges intercultural topics have been addressed (in civil cases, e.g. in family and social law).

C. Nonverbal communication in the courtroom

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

It probably can.

But for the last years there has been more focus on “witness psychology” in the training of Norwegian judges. Most judges today will be careful to think that they can decide whether a person is truthful or not based on his or her testimony or body language alone. The testimonies of parties and witnesses will be considered against other evidence of the case.

During the pandemic many cases more cases have been carried out by video link. This has raised the interesting question of whether we tend to assess parties and witnesses who appear before us in court as more truthful than those who give testimony via videolink.

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

As for question 10.

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Thank you for your participation.