

Third Study Commission Questionnaire 2020

Costa Rica

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?

The criteria for an interpreter to be appointed is the lack of knowledge of the Portuguese language by the person who is going to give evidence in court. This applies to everyone that needs to be heard in the court, regardless if it is a party to the case, a defendant or a witness.

2. Is the interpretation limited to certain languages?

No.

3. Who appoints the interpreter?

The court appoints the interpreter from its database of available interpreters.

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?

There are no standard requirements for the quality of the interpretation or qualifications of the interpreter. Interpreters have to give an oath and are subject by law to the obligations of impartiality and subject to criminal responsibility if they intentionally fail to be accurate.

However, If the judge does not understand the language spoken by the witness or party it cannot ensure that the interpretation is accurate and meets good standards.

5. Are there legal obligations for court interpreters?

All interpreters have to make a compromise that they will perform their job faithfully.

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?

Only the parts regarding the interaction with the court and the person that needs the translation are fully translated. However, if the defendant does not understand Portuguese the translator will tell him/her what is being said in the trial. The final judgment may also be subject to translation.

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?

Yes, if the judge understands the foreign language that the other person is speaking it can control all aspects of the testimony being given.

On the other cases, the judge must rely solely on the accounts given by the interpreter.

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 problem can be remedied by ensuring good qualification to interpreters and create a list of official interpreters that should work with the court.

We secure that no one is wrongfully convicted by making a combined analysis of all available evidence and not only the evidence available via testimony.

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. It can be remedied by a good interpreter that can understand the difficulties of that person. Also, the judge might realize that a witness or a party has some kind of disadvantage and take action if the interpreter does not realize that.

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

Intercultural communication is not addressed in the training of judges or instruction of juries. It is only addressed regarding the Portuguese reality of different ethnic groups.

C. Nonverbal communication in the courtroom

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

Yes, the Portuguese legislation establishes the principle of the free assessment of the evidence by the judge.

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

No.