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Addressed to:

The International Association of Judges - IAJ-UIM

The Romanian Magistrates' Association (AMR), professional and national, apolitical, non-governmental organization, stated to be a „public utility” entity, by the Government Decision no. 530/2008 - with the headquarter in Bucharest, Regina Elisabeta Boulevard no. 53, District 5, e-mail amr@asociatia-magistratilor.ro, tax registration code 11760036 - legally represented by Judge dr. Andreea Ciucă - President, sends the following

**ANSWERS TO THE THIRD STUDY COMMISSION QUESTIONNAIRE
"COMMUNICATION IN THE CRIMINAL COURTROOMS"**

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?*

In order to be summoned to court, the interpreter must be authorized. The authorization procedure is within the competence of the Ministry of Justice, being established by law. The activity of interpreter for courts is performed by persons certified in the profession and authorized by the Ministry of Justice. The authorization order is issued by the Minister of Justice.

There are several requirements to be met in order to obtain the interpret authorization. One of them is for a person to have a certificate issued by the Ministry of Culture as a translator for the specialty of legal sciences, from Romanian to the foreign language for which he/she requests authorization and from the foreign language into Romanian. Another condition is the lack of a criminal record.

The same criteria apply for the assignment of the interpreter, whether he is appointed for a party, a witness or even an expert.

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

The rule is that the court can appoint an interpreter for any language, according to the requirements of the case, without any limitations.

An interpreter may have an authorization issued by the Ministry of Justice for one or more foreign languages. So, he/she can make court translations from Romanian into those languages and from those languages into Romanian.

There are sometimes difficulties in finding an authorized interpreter in the case of some languages / dialects (the law refers to an Oriental or rarely used language). There are sometimes difficulties in finding an authorized interpreter due to their insufficient number.

3. *Who appoints the interpreter?*

The appointment is made by the judge, either by public assignment or at the request of the party, the witness, or the expert who does not know the Romanian language or cannot express himself in the Romanian language. The interpreter's fee is borne by the state budget.

When appointing the interpreter, the judge shall take into consideration the list of authorized interpreters provided by the Ministry of Justice. The list is updated by the Ministry of Justice and is communicated monthly by e-mail to the courts of appeal. These courts provide it to the other courts as well.

According to the Criminal Procedure Code, the official language in criminal proceedings is Romanian. However, Romanian citizens from the national minorities' groups have the right to express themselves in their mother tongue before the courts. The procedural documents are drawn up in Romanian.

The parties who do not speak or understand the Romanian language or cannot express themselves in the Romanian language are provided, free of charge, access to the documents of the file, by means of an interpreter. In cases where legal aid is mandatory, the accused may communicate free of charge with the lawyer by means of an interpreter, in order to prepare the defense.

Exceptionally, in the event that an urgent action is required by the court or if an authorized interpreter cannot be provided, the hearing may be carried out in the presence of any person who can communicate with the heard person. However, the court has the obligation to resume the hearing with an authorized interpreter as soon as possible.

If the heard person has communication disabilities, the hearing is done with the participation of a person who has the ability to communicate by using a specific special language.

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? 5. Are there legal obligations for court interpreters?

As we have shown, the qualifications of the interpreter are verified prior to the authorization, within the procedure established by law. We have mentioned above to some of the conditions that an interpreter must meet in order to be authorized.

Prior to the commencement of the hearing, he shall be instructed by the judge to provide an accurate interpretation.

It is difficult for the judge to verify if the interpretation is correct and complete, given that the judge does not speak that language. Therefore, the Association of Romanian Magistrates (AMR) supports the request made by several courts to give them the

opportunity and budgetary funds to hire authorized interpreters. The problem arises especially in areas where translation is often used by the courts, in and from certain languages.

However, there are situations in which the judge may realize that there is a deficiency in interpretation. For example, when it is obvious that the party does not understand the question or when he/she gives an answer that is not related to the question. There are also situations in which the lawyer or the other parties report to the judge deficiencies in interpretation.

The law specifies the obligation of confidentiality of authorized interpreters, as well as the obligation to respond to the court's request to provide interpretation. If the interpreter unjustifiably refuses, twice in a year, the request of the court, the interpreter authorization ceases. In this regard, an order of the Minister of Justice is issued.

The obligation of confidentiality concerns the facts, information and documents that the interpreter becomes aware of while performing his professional activity. This obligation remains valid even after the cessation of the position of authorized interpreter. Exceptionally, the obligation of confidentiality ceases if the law or the party interested in maintaining confidentiality releases the interpreter from this obligation. The violation of the obligation to maintain confidentiality is a criminal offense.

According to the law, the interpreters are obliged to request, within 60 days from the date of authorization, the registration to the court which is competent in the area where they reside.

Authorized interpreters also have the obligation to notify the Ministry of Justice and the court where they are registered concerning any change of name, address, residence, telephone number and / or e-mail address, within 60 days from the date of change. Otherwise, they cannot carry out their interpretation activity.

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?

As a rule, the interpretation services are provided at the trial term at which the hearing of the party/witness requesting an interpreter is scheduled. However, the interpretation services can be provided throughout the trial, for example in the situation where the accused does not know the Romanian language. Interpretation includes not only oral translation, but also translation of documents in the file.

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?

From the point of view of the qualitative interpretation requirements, there must be no differences between the types of cases. A correct and complete translation, which allows the party to be understood by the court, to understand what the court says and to have access to the documents of the case, is an essential requirement for respecting the right to a fair trial.

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?

If, as indicated above, there are suspicions about the quality of the interpretation, the judge may order a new hearing at any time during the trial. However, the party has no obligation to give a statement, even if the judge requests it, and may exercise his/her right to remain silent.

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

As a rule, a person who has difficulty explaining himself has disadvantages in relation to others. This disadvantage can also exist in the case of a lawsuit. Remedying the situation must be an important concern for the judge, as far as possible according to the law.

If the judge considers that the accused could not defend himself, he is obliged to appoint a publicly assigned lawyer. The same remedy exists in the case of the victim. The lawyer's fee is borne by the state budget.

If the judge deems it necessary, he can turn to specialists (psychiatrists, psychologists, counselors) to determine the person's IQ, level of intellectual development and level of understanding.

In certain situations where the judge finds that there are difficulties in understanding, he provides additional explanations to the parties or witnesses or simplifies the manner in which he addresses them. So the judge adjusts to the level of understanding of the party or witness.

We specify that this attitude corresponds to the criteria for evaluating the judge regarding the conduct during the court hearing. The evaluation of the judge is done by a commission made up of judges (including from the superior court). According to the Evaluation Guide, approved by the Superior Council of Magistracy, the judge must ensure that the participants in the trial have understood the essential aspects of the trial and their obligations. He/she must also create a climate conducive to the expression of the parties.

For minors, the assistance of a lawyer is mandatory, regardless of whether the minor is an accused person or a victim. So, when the case is registered in court, a notification is sent to the Lawyers Bar in order to appoint a publicly assigned lawyer. If the minor appears in court with a chosen lawyer, the mandate of the publicly assigned lawyer ceases. In addition, in the case of minors, the presence of the legal representative (parent, guardian) is mandatory, as well as the summoning of the probation counselor to court. There are also special hearing rules for minors that take into consideration the specifics of age.

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

In the training programs developed by the National Institute of Magistracy and by the Superior Council of Magistracy for judges, in the country and abroad, subjects from this category are also approached.

Information on certain categories of vulnerable persons (for example Roma) is disseminated to judges, and from judges to litigants in these categories, information on free legal aid programs and counseling dedicated to them. In this regard, the Superior Council of Magistracy has developed a program, starting with 2016, with the support of Norwegian partners.

B. Nonverbal communication in the courtroom

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

Body language is not recorded in the statements of accused persons, victims or witnesses. The court's decision cannot be based on this language. According to the Code of Criminal Procedure, the court decision must take into consideration the evidence in the case. However, the evidence has no pre-established value, being subject to the free judgment of the judge, following the evaluation of all the evidence submitted in the case.

If during the hearings the judge notices that the interpretation is in contradiction with the body language, he/she can ask for additional explanations, he/she can reformulate the questions or he/she can record these aspects. This is, however, a difficult task, as the same gesture can have different meanings from one culture to another.

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

The decision is delivered by the judge. There is no jury.

During the recent years, in the programs of continuous professional training of judges carried out by the National Institute of Magistracy are included topics that address nonverbal communication.

Judges participating in competitions for the positions of President and Vice-President of the courts are also required to have specific knowledge about nonverbal communication.

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