

Third Study Commission

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 procedure and conditions for appointing and dismissal of permanent court interpreters (translators) and permanent special interpreters for blind, deaf or mute persons are prescribed in Regulations on permanent court interpreters (*the Official Gazette of the Republic of Serbia*, nos. 35/2010, 80/2016/, 7/2017).

As per the aforementioned Regulations, a person who has acquired higher education, and fulfils the requirements to be employed as a civil servant, can be hired as a translator, provided it also fulfils the following special conditions:

- a) appropriate higher education in the field of a specific foreign language, or complete knowledge of a language from, or to which, translation is performed orally or in writing,
- b) knowledge of legal terminology used in language from, or to which, translation is performed,
- c) at least five years of professional experience in translation.

These Regulation's provisions, except for the ones concerning vocational education, are applied on special interpreters for blind, deaf or mute persons, appointed by the court for a specific case, when other forms of communicating with these persons are not possible.

A person who has acquired at least secondary education lasting 4 years can be appointed special interpreter for blind, deaf or mute persons.

The interpreter must fulfill the same appointment criteria, regardless of being appointed for a party to the case, or a witness.

2. Is the interpretation limited to certain languages?

This is not the case. Interpreters are appointed for foreign languages required, with no restrictions, following the proposal of one or more presidents of higher courts who have noticed a lack of interpreters for specific foreign languages.

3. Who appoints the interpreter?

Interpreters are appointed by the Minister in charge of the judiciary, following a proposal of one or more presidents of higher courts who have noticed a lack of interpreters for specific foreign languages.

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

Concerning the qualifications of the interpreter, as it was already mentioned, only a person with appropriate higher education in the field of a specific foreign language, or complete knowledge of a language from, or to which, translation is performed (in case of not previously acquired higher education) orally or in writing, and knowledge of legal terminology used in language from, or to which, translation is performed, can be appointed interpreter – translator. A commission assigned by the Minister in charge of the judiciary shall check if the conditions are fulfilled.

If so, how does the judge ensure compliance?

Judges do not ensure compliance; this is performed by the Minister.

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

If the interpretation/translation is performed orally before the court, judges can observe whether the interpreter and the party understand each other. If this is the case, interpretation can be considered accurate.

When it comes to interpretation in writing from another language to the language of the court, judges are also able to notice if the interpreter is familiar with legal terminology. The parties are allowed to point out if something is unclear or wrong with the interpretation. Judges can also bring in another translator / interpreter, should the need to do so arise.

5. Are there legal obligations for court interpreters?

Translators are obliged to own a round seal, with a 38 mm diameter, containing the first and the last name, a “court interpreter” mark, a marking of the designated interpretation language, and the interpreter’s place of residence. The translator must provide the higher courts with their seal print and handwritten signature. The translator is obliged to inform the Ministry of any change of data no later than 8 days since the change has occurred, as the Ministry keeps a record of interpreters in e-form.

Translators are obliged to keep a Record of translations and authorizations performed, containing the following data: 1) registration number; 2) the date of the receipt of a document or other paper to be translated; 3) the number and the date of the court's, or another state authority's document, based on which translation is requested, or, a personal name, address and the citizens identity number of the applicant; 4) the subject matter of the translation (a short denomination of what the document contains, and a special note whether the translation is to be used in Serbia or abroad); 5) the amount charged as remuneration and the translation expenses; 6) the applicant's confirmation of receipt of the document and its translation, along with the date of receipt; 7) notes. Record of translations and authorizations performed is stitched by a red tape, and authorized with the higher court's president's seal and signature.

The authenticity of the translation performed is certified by the interpreter by their signature and seal. The certification is performed by the following inscription: "I hereby certify the full conformity of this translation with the original document written in _____ language".

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?

If the party requiring translation is, for instance, the defendant in a criminal procedure, the interpreter will be present for the whole hearing.

If the only thing that needs to be translated is the witness testimony, the translator will only be present at the hearing, or its part, at which the witness will be interrogated

The same is applied when it comes to special interpreters for blind, deaf or mute persons.

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?

This is applied the same in all types of procedures.

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?

It is our belief that the quality of interpretation must not affect the outcome of a procedure. This means that the court must ensure accurate and quality translation and interpretation. No one can be unjustly convicted following the quality of interpretation, or translation. There are ways of avoiding this. Every judge acting in a specific procedure must ensure this.

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?**

Such a risk exists, but it can be overcome if judges would pay special attention to such persons and provide them with protection, in order for them not to be in a worse position than the other parties.

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

This topic is not a subject of training, nor is it included in instructions.

C. **Nonverbal communication in the courtroom**

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

Body language can indeed influence the outcome. The judge, when deciding on whether to trust the statements of defendants, victims, or witnesses, must take into account all the circumstances, including their body language.

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

It is not subject of training or instructions.