

# Third Study Commission Questionnaire 2020

## Costa Rica

### Answers from Brazil – Association of Brazilian Judges – AMB

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?

**Answer:** According to the Criminal Procedure Code in force in Brazil "the interpreters are, for all purposes, equated to experts" (Article 281). It means that, even if there is no specific provision regarding the pre-requisites to be an interpreter in a criminal trial, it can be inferred that those who cannot be experts cannot be interpreters either: for example, those who testified during the trial or have made previous remarks on the case; the illiterate and those under 18 years old. Furthermore, the rules of suspicion of the judge apply to judicial interpreters. However, the fact is that, given the lack of specific provisions in this regard, and in the absence of own selection programs for judicial interpreters within the Judiciary, they are usually chosen by the judges themselves, among those known by the Court, what, for some scholars, reflects the amateurism of judicial translation and interpretation in Brazil. The criteria do not differ if it is for a party to the case, or a witness.

2. Is the interpretation limited to certain languages?

**Answer:** The interpretation is not limited to certain languages. The Code of Criminal Procedure is very clear to establish when there must be judicial interpretation and translation: when the person who is being interrogated is a foreigner (Article 193) and when the witness does not know the national language (Article 223), all to ensure that

the court decision and the content of the criminal hearing can be known by all actors participating in the criminal procedure.

3. Who appoints the interpreter?

**Answer:** The judge himself appoints the judicial interpreter, according to Article 23 of Resolution No. 305/2014, of the National Council of Justice, as well as Article 4 of Resolution No. 127/2011, of the same body.

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:** The absence of specific rules on the matter prevents the judge from guaranteeing the highest quality of interpretation, which is often done in an amateurish way in Brazil.

However, the judge is the authority who must guarantee the principles of legality and due process. For this reason, the judge is responsible for evaluating the interpretation under the dictates of such principles. If he identifies falseness or unsuitability in the interpretation, he can inform that to the Prosecutor's Office to investigate a possible commitment of the crime of false expertise (Article 342 of the Penal Code), for instance. He can also reassign the hearing, call for a new interpreter and require the completion of the interpretation.

5. Are there legal obligations for court interpreters?

**Answer:** Specifically for judicial interpreters there is no legal obligations, but the set of duties imposed on experts in general applies to them, because according to the Criminal Procedure Code they are equated to experts. Therefore, interpreters may not play their role in cases where there is incompatibility or legal impediment (Article 112 of the Criminal Procedure Code). They must act independently, impartially and without any pressure from the parties, or from anyone else. Otherwise, they could be held responsible for a crime (Article 342 of the Penal Code).

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:** The Criminal Procedure Code does not deal with the translation of the hearing itself, but only requires the presence of a judicial interpreter during the examination of defendants and witnesses when the person being questioned cannot speak the national language. However, it can be said that, applying the principle of full defense and due process of law, the entire hearing must be translated when the defendant

cannot speak Portuguese, to guarantee his/her full knowledge of what is going on during the trial.

## **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?*

**Answer:** The quality of the interpretation can influence any type 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 problem can be remedied through better preparation and certification of the interpreters, in order to demand a higher standard of quality in judicial interpretations. The Judicial School should be in charge of that preparation.

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:** The fact that the defendant has difficulties in expressing himself/herself, due to low intelligence or poor education, is likely to mean obvious disadvantages at the court, because the defendant will not be able to tell his/her story properly. The defendant will have to rely on a good counselor to help him/her to prepare himself/herself to the case.

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

**Answer:** Intercultural communication is usually not a subject of training of judges, or part of the instruction of juries in Brazil. The reason for that is not clear. Maybe it is because there is the false idea in the country that there are not many new migrants in Brazil, when compared to the past.

## **C. Nonverbal communication in the courtroom**

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

**Answer:** It should not. The outcome of a case should be the sole result of the exam of the evidence presented during the trial.

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

**Answer:** No, it is not.