

PROVIDING COMMUNICATION BETWEEN PEOPLE BELONGING TO DIFFERENT CIVILISATION PATTERNS

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Kommunikáció különböző civilizációs mintákhoz tartozó emberek között. Egy bírósági tolmács sokszor kénytelen kilépni szakmai szerepéből – nem csak közvetítőként vagy két fél közötti adatcserét biztosító szakemberként hajtja végre a feladatát, hanem két kultúra közötti médiumként is szerepel, ha a felek más-más társadalmi réteghez, vagy esetleg két egymástól eltérő civilizációs mintához tartozik. A cikk szerzője több éve bírósági tolmácsként dolgozott magyarul beszélő kárpátaljai romákkal és tapasztalata alapján fontolja meg e fajta tolmácsolás közben felmerő pragmatika megőrzésével kapcsolatos kérdéseket.

Kulcsszavak: bírósági tolmácsolás, kultúrák közötti kommunikáció, pártatlanság, közvetítés

1. Court Interpreting as Seen by Language and Legal Scholars, Obtaining Data

Working in court or in pre-trial settings professional interpreters often face challenges that are often modestly called “extra-linguistical” and have been described in literature, although less extensively than the issues deserve. One can refer to the works of Wadensjö (1992), Berk-Seligson (1990, 2006), Angemeyer (2015), Jalón and Russo (2015) or to more general works that deal with a broader range of community interpreting, like 2008 *Crossing Borders in Community Interpreting* volume and papers on medical interpreting and dialogue interpreting per se. Researching the challenges mentioned above and finding a place for them within the traditional frameworks of translation studies is often found to be difficult. As Dam and Schjoldager rightfully point out in their 1994 review of Wadensjö’s book, apart from the lack of analytical and theoretical framework, analysing interpreting in court and pre-trial settings is also problematic due to the lack of empirical data, since in many countries video and audio recording in courtrooms and, especially, during investigative procedures is often prohibited or, in the countries where recording all interactions with the police is obligatory, there is no procedure to obtain this data for research.

In the “parallel”, legal universe the issue is also being tackled by professionals and academics who often do not have any first-hand experience of court interpreting and at best rely on the stories they hear from their colleagues – judges or police officers. However, legal scholars, unlike linguists, have a better understanding of the way the law works, and often produce useful insights. Thus Obidina (legal scholar, Lobachevsky University, Nizhny Novgorod) speaks of three main challenges for court interpreters: linguistic, cultural and legal (procedural) (Obidina, 2016). Linguistic challenges are closely linked to the cultural ones, since the legal officials demand literal, word for word translation, seeing the interpreter as a “machine” able to code and decode automatically, while cultural specifics might go well beyond your regular dictionary definition.

Social and cultural differences complicate communication during investigation or in court. However, scientific and special literature that describes the complications is more often interested in the linguistic implications of such differences or focuses on social aspects of court interpreting (inequality of parties, their awareness of legal routine and legislation – or lack of such awareness). Alongside the obvious claims about the importance of maintaining *accuracy* and *impartiality* (as stated in most of the codes of ethics for court interpreters – where those exist), there has currently been a tendency to question the so-called “*rule worshipping and discuss limitations of ethical codes*”: Camayad-Frexias states, for example, that “*if you interpret during ... interrogation by torture or rights’ violations... you have facilitated the abuse – as a full-fledged accomplice*”, and calls for a consideration of *all* sources of authority when making an ethical decision in interpreting (Camayad-Frexias, 2011).

Apart from special literature a lot of data on court and pre-trial interpreting can be obtained from personal accounts of court interpreters, as well as from the works of fiction (strange as it may sound) based on the authors’ personal experience. Among Russian language books of this kind I’d single out an autobiographical story by a Russian interpreter with the British police Svetlana Savrasova (Savrasova, 2014) and two works of fiction written by Mikhail Shishkin (Venerin volos, 2005, also available in English translation as *Maidenhair*, 2012) and Mikhail Gigolashvili (Tolmach, 2004). Both Shishkin and Gigolashvili have worked as interpreters for Swiss and German authorities and had to translate in immigration hearings and during extradition trials. Even a short excerpt from one of the novels gives an idea of the challenges and cultural differences an interpreter has to cope with when working in legal settings:

Question: Your nationality?

Answer: Russian.

Question: Religious denomination?

Answer: What?

Question: Religion?

Answer: I am a believer.

Question: Orthodox Christian?

Answer: Yes. I just didn't get it.¹

Further on in the novel the interpreter faces a situation where the detained person starts talking directly to him instead of addressing the lawyer he is supposed to communicate with, and insults the interpreter personally in a manner that makes the lawyer aware of an emotional exchange going on. This situation is commonly described in translation and interpreting studies as switching of roles – interpreter ceases to be a «pipeline» and becomes a «facilitator»: see Anderson, 2002, Morris, 1998, 2008 or, most recently Jacobsen, 2017 on the role of interpreter, as well as numerous MA studies and training videos and manuals provided by some police authorities.²

2. Major Extra-linguistic Challenges of Court Interpreting

Having been working with Hungarian-speaking Roma from the Transcarpathia region (citizens of Ukraine) since 1996 in Russian courts and during investigations (i.e. with judicial and police authorities) I have found myself in situations when knowledge of terminology and even understanding of cultural and social differences was not sufficient to perform the interpreter's duties properly. Here I would like to describe several situations of this kind in the hope it might be useful for my colleagues working with the same language pair (Hungarian-Russian), or in a similar cultural setting, when the two cultures clash during investigation procedures or in court.

The challenges begin with the very first questions a detained person is asked at a police station. In my experience, one might find it difficult to get through with the simplest (and most formal – in the procedural sense) questions like 'What is your date of birth?' or 'What is your nationality?' (*Назовите дату рождения – Mikor született? and Какое у вас гражданство? – Milyen állampolgárságú?*). Despite the fact that these two basic questions translate perfectly well from any language into any other language, those asking the questions presume that the person they are addressing has the same idea of time and national affiliation. In the Hungarian-speaking Roma case the situation proved different, and the detained persons were often unable to provide meaningful answers to these two questions, which left me, as an interpreter, helpless until I realised it had to do with a different mental set and world outlook. Further time-related issues, like failure to confirm being at a certain place at a certain moment in time when answering the question 'Were you at the metro station entrance at 6 pm on October 6?' e.g. (*Вы находились у входа в метро 6 октября в 18.00? – Ott volt a metró bejárata előtt október 6-án du. 6 órakor?*) – the answer would be 'I'm always there around 6 pm' (*Mindig ott vagyok*

1 Шишкин М. Венерин волос // Знамя, 2005. № 4.

2 See, e.g. training videos for Cambridge police, like this one: <https://www.youtube.com/watch?v=82Jouljq9WA>.

6 óra körül – Я всегда там бываю около шести), only strengthened my suspicion that the detained persons were not ‘obstructing justice’, as a policeman or investigator could conclude, but were, in fact, acting as representatives of a polychronic culture in terms of chronemics and types of time-cultures defined by Thomas J. Bruneau (Bruneau, 1980), i.e. had a fluid approach to scheduling time and a much less formal perception of time in general. Having realised this fact and done some research I was later able to explain the issue to the officers or defence lawyers who had trouble establishing time frames with the detained Hungarian-speaking Roma persons. However, it could only help to make the officers in charge of the investigation aware of the challenge, since the law (and common sense in our monochronic or variably monochronic cultures) still requires exact answers to time-related questions. At most, my comment or explanation would only resolve tension, but not provide a solution, which in this case obviously lies beyond the interpreter’s area of expertise.

Providing too much ‘help’ for legal professionals in a legal setting may easily compromise the legal process. Vasilenko (Vasilenko, 2013) rightfully acknowledges that “legal systems in all countries, legalese used in court hearings are hard to understand even for general native speakers, not to mention non-native speakers (other countries’ residents) participating in the legal process... Court interpreting is not aimed at providing explanation of the court procedure itself, i.e. a client should understand just as much as he or she would understand if the hearing were held in his or her mother tongue.”

While the law gives priority to the accuracy of translation, a ‘layperson’, or someone with a limited understanding of legal ritual and procedure might find it difficult to work with an interpreter. On the one hand, in a highly traditional and predominantly oral culture with a specific emphasis on speech skills, an interpreter is viewed rather as a facilitator, or, to put it in the words of Gambier, Gile and Taylor, seen as a “participant in the conversation” (Conference Interpreting), an “advocate” and “visible agent” (Pöchhacker, 2004). Thus, the trust put in an interpreter implies for representatives of such cultures that he or she would fully embrace the case and act accordingly. A somewhat ridiculous experience I, myself, once had in a courtroom involved a woman passionately shouting ‘Lord is my witness, I am innocent!’ (*Isten a tanúm, ártatlan vagyok!*) and expecting a similar performance on my behalf. After I provided an accurate translation (*Господь свидетель, я невиновна!*) but failed to deliver it with the same degree of emotion, the defendant turned to me and asked indignantly, ‘Where’s the passion?’ (*Hol a szenvedély?*).

On the other hand, however, the interpreter can be viewed as a hostile representative of a not-quite-comprehensible foreign (in various respects) power, since he or she clearly – in the eyes of a legally incompetent and often illiterate detained person – possesses information about the outcome of a case and can even influence legal officials. Interpreters, in their turn, might try to establish closer contact with their ‘clients’, which often leads to tricky situations. Preventing this ‘love-hate’ relationship

between interpreter and defendant is not easy, especially for young interpreters who are only beginning to work in legal settings. Judging from my personal experience, maintaining a polite, sympathetic, but somewhat restrained attitude and referring substantive questions to legal (or other) officials in charge (police officers, defence lawyers – especially when there are human rights issues) proves to be a more sensible strategy than just ‘making friends’ with defendants and offering them amateurish advice that can eventually harm all parties involved.

Another cultural challenge while working with the Roma or other pre-industrial communities has to do with the inner hierarchy within the community itself. As far as I could witness for myself, the Transcarpathian Hungarian-speaking Roma community maintains a very rigid hierarchical system, with males held less accountable for their behaviour, women obliged to obey the elders (male or female) and with some members of the community enjoying greater privileges than others (e.g. being able to hire defence lawyers rather than being reduced to free legal services provided by the State). Such hierarchical relations, as well as the value placed on being included in the Romani society (expulsion from it is considered a grave punishment) are also linked to a concept of personal responsibility and legal (criminal) liability that differs from that expressed in the Criminal Code of the Russian Federation (Article 11 of the Code speaks of “persons” who commit crimes and offences). However, when it comes to establishing guilt during pre-trial investigation, representatives of traditionally hierarchical communities, especially when detained at a younger age and for the first time, have difficulties comprehending the idea of being personally liable for a crime they have committed, and would realise the consequences of their own actions only later. Thus, questions like ‘Was it you who pulled the wallet out of the victim’s purse?’ (*Это вы вытащили кошелек из сумочки потерпевшей?* – *Maga húzta ki a tárcát a sértett táskájából?*) would often be answered with sentences starting with “we” or “us” – e.g. ‘We didn’t mean to – she [the victim] was offering it herself by not locking her bag’ (*Nem is akartuk – a sértett maga ajánlotta, hiszen nem zárta a táskáját* – *А мы и не хотели вытаскивать – она [потерпевшая] сама предложила [кошелек], сумку-то не закрыла*). In this case, it is important for an interpreter to be very precise and not change anything, for accurately translated testimony may later help investigators and defence lawyers develop their strategies in court.

The challenges I have mentioned in the context of my own experience do not even remotely cover the whole range of issues interpreters have to deal with when working with people of multiple ethnic backgrounds. One of the major issues many of my colleagues encounter is the basic difference between acceptable and unacceptable behaviour in various cultures, that – in the case of the Russian Federation – identify peoples that live within the country, i.e. are Russian citizens (and not refugees or labour migrants for that matter). Certain behavioural patterns may contradict customary legal practices. A colleague working with the Tuvan language (Tuva or Tyva is a subject of the Russian Federation in the Siberian District) shared an extreme example of working as an

interpreter in a rape case where the victim could not testify, i.e. was literally unable to discuss her story with a male investigator. The interpreter, being an ethnic Tuvan, suggested that the victim should stand with her back to the investigator and talk to her friend, another non-Russian speaking Tuvan, who, in turn would face the investigator and repeat the victim's words, talking to the investigator through the interpreter. In this case the issue was resolved through cooperation, and all parties were ready to come to an arrangement – even though the Russian Criminal Code does not provide for such situations.

Linguistic precision, understanding of law and fundamental principles of the given legislation, as well as cultural awareness are indeed the key competences one expects from an interpreter working in the legal setting. In this context, the interpreter's ethics discussed above and professional code of conduct are usually seen as a matter of course. However, if we look at the approaches taken by Russian and international legal scholars, we cannot help but notice a substantial difference. The former are still trying to catch up with the systems that have already developed ethical codes and are currently setting rules for the Russian Language Professionals' Code of Ethics³ (a group of experienced freelance translators and interpreters, members of the Union of Translators of Russia, representatives of major translation agencies and legal professionals started working on the Code in 2012) focusing on interpreter's/translator's integrity and independence, as well as on maintaining impartiality, which is still an issue in many Russian courts where an interpreter is often viewed as a service provider and is expected to lend assistance to police or court in obtaining evidence (Obidina, 2016).

Experienced interpreters practising within systems that already employ working ethical codes in speak of "inherent limitations" such codes entail. Camayad-Frexias (2011) suggests that codes' limitations fall into "three categories: 1) grey areas in reality which fall "in between" ethical tenets, obscuring their interpretation and applicability; 2) situations where different tenets conflict or lead to divergent conclusions; and 3) bias in the way the code originated and evolved." Being obliged not to discuss matters in which they are engaged or offer opinions, interpreters might compromise their personal moral values. In reality, where fundamental human rights are sometimes violated even when the law-enforcement agencies follow the letter of the law, maintaining balance between one's empathy, convictions, duty as an individual, on the one hand, and impartiality and confidentiality, on the other, might be a hard task. In my opinion, the challenges interpreters encounter in legal settings are in many cases determined not only by linguistic or cultural differences, but also by inertia of legal procedure that is still finding it hard to find space for an interpreter in pre-trial situation or in court, although the number of cases where interpreters' services are needed is constantly growing. Having written this I clearly realize that this discussion would lead us more into the realm of

3 http://translation-ethics.ru/code_en/

virtue ethics and common sense, that do not always agree with acting laws and legal procedures.

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