

HUMAN RIGHTS AND INTERPRETING: THE IRISH LEGAL SYSTEM

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Professor Imelda Maher, Secretary of the Committee of Polite Literature and Antiquities, RIA, launched the round-table presentations. Dr Anne O'Connor, School of Languages, Literatures and Cultures, NUI Galway, chaired the discussion. This report was compiled by Dr Mary Phelan.

Interpreter provision for both spoken and sign languages in Garda stations and courts has been a significant human rights issue for a number of years. This round-table discussion brought together an expert in spoken language interpreting, an expert in sign language interpreting, a sign language interpreter with extensive experience of working in the courts, a barrister who works in asylum law, and an interpreter provider.



Dr Mary Phelan, Dublin City University and Chairperson of the Irish Translators' and Interpreters' Association, explained that the right to an interpreter in criminal proceedings is clearly laid down in the Human Rights Act 2003 and in EU directive 2010/64/EU. While interpreters are provided in Garda stations and the courts, no training is available for them and they are not tested to ensure that they can provide competent interpreting. By way of comparison, in 2014, the Chartered Institute of Linguists awarded passes in all elements of the Diploma in Public Service Interpreting exam to one in four candidates, while one in five failed all elements. How many legal interpreters in Ireland would pass a similar exam?

For the past decade interpreter provision has been outsourced to translation companies and standards have been set in requests for tender. For example, the Garda request for tender in 2013 included as a minimum FETAC level 5 standard of education (equivalent to Leaving Certificate), which is totally insufficient for any interpreter, plus 70 hours of interpreting experience, in itself no guarantee of quality. The assumption is that anyone who speaks English and another language can act as an interpreter.

In recent years, legal interpreters' hourly rates have been cut dramatically and there has been a reduction in demand. In 2014 the Courts Service spent just over €1m, compared to €3.75m in 2008. Similarly, the Garda spent €800,000 in 2014

as against €2m in 2008. Dr Phelan suggested that some of these savings be allocated to training and testing of interpreters.

Colin Smith, BL, adjunct lecturer, Trinity College Dublin commented that challenges and obstacles relating to interpreting and translation are present in all fields and in all forums of the legal system. His talk focused on Irish asylum law, where the problem is particularly acute and where the consequences of dysfunction are especially grave.

One of the system's most serious flaws relates to one of the most fundamental duties of refugee status determination: listening to people's stories. The right to be heard is a human right. It is protected by the Constitution and by EU Law. A person who does not speak English or Irish can only be heard if there is an interpreter, and documents they have brought with them to corroborate their accounts can only have probative value if they can be translated and understood. Both Irish and EU law guarantee the right to an interpreter in ORAC and RAT interviews where necessary and possible.

The rules of court need to be adapted to meet reality: Order 40, Rule 14 – the requirement to translate affidavits – takes no account of the level of skill and the expense involved, and this can have implications for access to justice.

As there is no right to record interviews or hearings, there is no way to check the quality of interpreting. The standard of interpreters varies. Some are extremely weak, with poor language skills and bad practices.

Professor Lorraine Leeson, Centre for Deaf Studies, Trinity College Dublin, explained that deaf people have limited access to justice in Ireland. According to her research findings over the past 15 years, deaf people report that access to services tends to be *ad hoc*: if there is an aware administrator or lawyer, then things go well. If not, the process of trying to engage is incredibly stressful.

Across Europe, there has been little empirical evidence about the challenges of sign language interpreter provision. Professor Leeson is the Principal Investigator on a three-year project funded by the European Commission called JustiSigns. Their research shows that very few sign language interpreters in Europe have had access to formal training around the workings of the legal system in their country. Where training is available, it tends to be *ad hoc*.

The sign language interpreting profession has no official status in Europe (de Wit, 2012). There are difficulties in obtaining or ensuring quality of sign language interpreters (Brunson, 2007; Olsen *et al.*, 2014). There are challenges in interpreting legal terminology and discourse (Brennan &

Brown, 1997; Russell, 2002). There are also issues around recording the interpretation – not leaving the target language to serve as the original. The issue of interpretations being legally considered ‘hearsay’ has been raised in the UK courts, for example.

The JustiSigns project has the support of the Garda Commissioner and is working with the Garda Racial, Intercultural and Diversity Office, and Professor Leeson hopes that, with their cooperation and input, workable strategies can be developed to ensure best practice. This is critical – when things go wrong in police stations with the provision of interpreters, it is highly probable that they will be considered problematic in court.

There are also benefits from leveraging the services of appropriately skilled deaf interpreters (to interpret between different sign languages) in many legal settings, as such measures ensure that the system is ‘safe’.

Ulrike Fuehrer, co-owner of Context.ie and conference interpreter, explained that tender competitions have resulted in price becoming the determining factor in the choice of service providers. As a result, Context is giving serious consideration to ceasing to provide interpreters.

Context has lobbied the Department of Justice and other state authorities over the years for

the introduction and maintenance of a register of accredited interpreters. A 2008 government-funded report entitled ‘Developing Quality Cost Effective Interpreting & Translation Services for Government Service Providers in Ireland’ lists a number of recommendations including, for example, the introduction of a register of accredited interpreters; none of the recommendations has been implemented to date.

Context has engaged with international organisations and networks promoting training and accreditation of public service interpreting. As a board member of the European Network of Public Service Interpreting and Translation (ENPSIT) and co-chair of its Training & Accreditation Committee, Ulrike Fuehrer has examined best-practice examples from other European jurisdictions for their potential adaptability to the Irish situation. As the expert for interpreting issues in the NSAI mirror committee in Ireland for ISO standards, she is involved in setting interpreting standards for interpreter qualifications, recommending best-practice procedures for service providers and raising awareness of how to work well with interpreters among end users and requesters. ISO is currently working on a new standard for legal interpreting.

Bernadette Ferguson, sign language interpreter, explained that the issues for sign language interpreters differ from those for spoken

languages. For example, as sign language is context-driven, interpreters confronted with seemingly neutral words such as ‘hit’ and ‘weapon’ need more information to understand how a person was hit or what weapon was used. The fact that the community of deaf people is small can also be an issue.

Other issues are inconsistency in provision of court interpreters for sign language and the fact that there is no obligation to provide interpreters in the civil courts or road traffic accidents, ASBOs, and disputes between neighbours. There are issues around provision in the Family Law courts where the same interpreter is expected to interpret for both sides. This can even lead to arguments over who ‘has custody of’ the interpreter and is ethically complex during negotiations where the interpreter is privy to both sides.

The etiquette for interpreters depends on individual judges. Issues that have arisen include a co-accused being asked to interpret for a sibling; two interpreters not being allowed to consult on perceived errors; a sign language interpreter not being allowed to interpret a defendant’s comments on a case. Sometimes all information pertinent to a case is provided and sometimes nothing is provided. Some judges instruct sign language interpreters to transliterate. Some judges always ensure that the interpreter’s oath is administered and some never do.

RECOMMENDATIONS

1. Accredited training, including interpreting practice, for spoken language and sign language interpreters.
2. Independent testing of spoken language interpreters.
3. Qualified translators to carry out legal translation.
4. Training for members of the Garda, lawyers, court personnel, decision-makers and judges.
5. Reform of court rules to take account of the costs of quality interpreting and translation.

ATTENDANCE

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| Jette M. Abildgaard | |
| Karl Apsel | Karl Apsel Consulting Ltd |
| Martin Beuster | Context |
| Claudia Correiro | Translator and Interpreter |
| Darren Coventry Howlett | Garda Racial, Intercultural & Diversity Officer |
| Daniel Crean | Centre for Deaf Studies, TCD |
| Maria Manuela de Almeida Silva | School of Law, NUIG |
| Orlaith Delany | |
| Alissa Dunsky | Centre for Deaf Studies, TCD |
| Ruth Fitzpatrick | MA Translation Studies, DCU |
| Aisling Glover | Centre for Deaf Studies, TCD |
| Giovanna Golinig | |
| Ciara Grant | Centre for Deaf Studies, TCD |
| Maureen Greene | |
| Lucie Guignard | |
| Gill Harold | UCC |
| Patricia Hawkins de Medina | |
| Mary Henderson | Immigrant Council of Ireland |
| Alison Kelly | TCD |
| Hassina Kiboua | Irish Refugee Council |
| Lisa Kennedy | |
| Bozena Kurcok | Legal Aid Board |
| Anne Larchet | Irish Translators' and Interpreters' Association |
| Miriam Lee | Irish Translators' and Interpreters' Association |
| Cormac Leonard | Irish Sign Language/English Interpreter |
| Miren Maialen | Irish Translators' and Interpreters' Association |
| Renata Marques da Frota | Lawyer |
| Orla McCabe | Centre for Deaf Studies, TCD |
| Niall McDevitt | |
| Tom McLoughlin | State Solicitor, Galway |
| Susan McMonagle | UNHCR Ireland |
| Grace Mulvey | Irish Council for Civil Liberties |
| Réidín Murphy | DCU |
| Aoileann Ní Chiardha | DCU |
| Deirdre Ní Canna | Centre for Deaf Studies, TCD |
| Anna Ní Ghallachair | Maynooth University |
| Fidelma Ní Ghallchobhair | |
| Bernard O'Connor | |
| Romy O'Callaghan | Centre for Deaf Studies, TCD |
| Ciara Pigott | Centre for Deaf Studies, TCD |
| Tiziana Privitera | Freelance Translator |
| Marta Rytwinska | |
| Annette Schiller | Irish Translators' and Interpreters' Association |
| Fuat Sevimay | TCD |
| Gemma Shannon | Centre for Deaf Studies, TCD |
| Yiqiong Shao | DCU |
| Sarah Sheridan | Centre for Deaf Studies, TCD |
| Soraya Sobreira | |
| Sunjid Tough | Irish Translators' and Interpreters' Association |
| Victoria Vize | DCU |
| Isabelle Walsh | Centre for Deaf Studies, TCD |
| Yanli Wang | Student in MA in Translation, DCU |
| Paulina Wilson | Queen's University Belfast |
| Giuliana Zeuli | Irish Translators' and Interpreters' Association |