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Legal Interpreters in the News in Ireland

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Abstract: This article consists of a review of court reports from national and provincial newspapers in Ireland over an eight year period from 2003 to 2010. Coverage suggests that interpreters are not always provided in police stations or in the courts and that on occasion friends and family members act as interpreters in court. The issue of proficiency in English is a recurrent one and the reports provide an insight into the attitudes of judges, lawyers and police officers to defendants who are not proficient in the language. Meanwhile, some solicitors consistently request interpreters for their clients when they appear in court. Other salient issues are cost, interpreter competency and interpreter ethics.

Keywords: competency, court, ethics, interpreter, police, proficiency

1. Introduction

The present DPP [Director of Public Prosecutions], James Hamilton, recalls that on one occasion a German sailor was brought into court charged with a public order offence following a night on the town. He was asked to stand up, but did not move. He describes what happened next: Does he speak English? the judge enquired of the garda. No, Justice, he replied. Is there an interpreter? No, Justice. Does anyone here speak German? A hand went up at the back of the court. Swear him in, demanded the judge, and the man was sworn in as an interpreter. Ask him his name, Judge O hUadhaigh demanded of the interpreter. Fatt iss your name? the interpreter, who had clearly watched too many war movies, asked the defendant in German-accented English. (Coulter, *The Irish Times*, 12th December 2009)

The example above reads like an Irish joke and relates to sometime before Judge O hUadhaigh's retirement from the bench in 1995, possibly as long ago as the 1950s or 1960s. It is amusing of course, but perhaps not so much for the German sailor. In this article we will see examples from recent years that are equally alarming.

The article consists of a review of law court reports from Irish national and provincial newspapers over an eight year period from 2003 to 2010.¹ First we will consider the field of newspaper law court reports, a common item in newspapers, but especially in provincial newspapers where there is strong interest in what is happening in the local community. It should be noted that these reports tend to be very short, usually without a byline, and reporters are probably more likely to attend courts where judges have a reputation for speaking out. The reports can be frustrating because in some cases they leave the reader wondering why exactly judges come to certain decisions and what happened next.

Harris and Spark recommend that "A court report should try to answer in its first few sentences these five questions: Who was accused? Where does he or she live? What was he or she accused of? How did he or she plead? What was the court's decision and sentence?" (2001, p. 109). Clother further

¹ All cases quoted in this article were heard in open court and reported in national and provincial newspapers, and most are available on the Internet. All information is already in the public domain.

advises court reporters to “Watch for courtroom drama, with a witness breaking down, an outburst from the dock or a disturbance in the public gallery” (1999, p. 209) and that “Quotes add liveliness and corroboration to your report” (210).

2. The Irish Legal System

While the Irish legal system is based on common law, it differs in some respects from the system in England and Wales. Most cases take place in the District Courts, the lowest courts, before a judge and in the absence of a jury. According to the *Courts Service Annual Report 2009*, the District Courts heard 521,058 cases in that year, of which 11,772 were sent forward for trial to higher courts. The largest category of cases heard in the District Courts related to road traffic offences, followed by public order and assault, followed by drug offences (2010, p. 42).

Byrne and McCutcheon (2005, p. 219) explain how prosecutions are conducted in the District Courts: “In minor cases, the Garda who investigated a minor offence also becomes the prosecutor in court”. This is the reason why many of the reports mention a Garda or police officer who investigated the crime and appears in court as prosecutor.

The Bagdonas and Luu Cam Chan cases mentioned in this article took place in the Central Criminal Court where serious cases such as murder and rape are heard by a judge and jury.

In serious cases, such as murder, offences are investigated by the Garda Síochána [Irish police] and their files on the case are then sent to the Director of Public Prosecutions who determines whether a criminal prosecution is initiated; the Chief State Solicitor or local State Solicitor then briefs counsel in private practice for the prosecution itself. (Byrne and McCutcheon, 2005, p. 219).

Two court reports (Mr Li – witness and the Anar Odon case) relate to the Dublin Circuit Criminal Court. According to the Supreme Court website, the Dublin Circuit Criminal Court ‘has the same jurisdiction as the Central Criminal Court in all indictable offences except murder, rape, aggravated sexual assault, treason, piracy and related offences. This jurisdiction is exercisable in the area where the offence has been committed or where the accused person has been arrested or resides.’

The Garda caution – “You are not obliged to say anything unless you wish to do so, but anything you say will be taken down in writing and may be given in evidence” - is administered after a person has been charged with an offence. A notice of rights has been translated into a number of languages but does not mention a right to an interpreter. As the interview proceeds, the police officer writes out the answers provided by the suspect or witness in English. The interpreter then carries out a sight translation in the foreign language and the suspect or witness signs the statement. Electronic recordings are made of interviews with suspects in garda stations and DVDs provided to suspects or their solicitor. The DVDs can be played in court as evidence. While solicitors can consult with the accused in garda stations, they are not permitted to attend the police interview.

In serious cases, the Garda compile a book of evidence which is translated for defendants with limited English proficiency. According to Byrne and McCutcheon, “This material, colloquially called the ‘Book of Evidence’, includes a statement of the charges, a list of the witnesses it is proposed to call at trial and their statements and a list of exhibits (such as photographs) and any other relevant material such as forensic evidence, including genetic

fingerprinting (DNA evidence)” (2005, p. 224). The book of evidence must be served within 42 days of a defendant’s first appearance in the District Court.

3. Interpreting – the situation in Ireland

The European Convention on Human Rights (ECHR) was ratified by Ireland in 1953 and incorporated into Irish law in the form of the European Convention on Human Rights Act (ECHR Act) 2003. The relevant articles are:

Article 5.2 Right to liberty and security

Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

Article 6.3 Right to a Fair Trial

Everyone charged with a criminal offence has the following minimum rights:

- (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
- (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

The Act has been criticised by the Irish Civil Society Coalition (2011) as being “a weak interpretative model” with “a minimalist remedy in the form of a declaration by the Irish High Court that a law or act of a public body is incompatible with the Convention.” MacGuill mentions another criticism, the exclusion of courts from the definition of organs of the State in the Act and states that ‘The rationale quite simply was that if the Court was an organ of State [...] then there would be a positive obligation on the Court to act of its own motion to ensure that rights guaranteed by the Convention were observed’ (2007, p. 52). According to the Irish Human Rights Commission website, “The provisions of the ECHR do not directly come into Irish law by virtue of this legislation. Rather its provisions have only been partially or indirectly introduced in this jurisdiction.” Thus, despite the ECHR Act, ‘the common law position remains the case; that is, access to the services of an interpreter or translator is a matter for the discretion of the court’ (Bacik 2007, p. 117). Judge O’Donnell (2007, p. 150) in a journal article recommends that “classic clichés like ‘and of course my client’s rights under the Convention were violated’ should be avoided at all costs” and emphasises the importance of citing case law to support such a defence. Cases can be taken to the European Court of Human Rights in Strasbourg but all domestic remedies must be exhausted first.

Most common law countries have a testing system for court interpreters. For example, in the United Kingdom, there is a Register of Public Service Interpreters made up in the main of holders of the Diploma in Public Service Interpreting, a test administered by the Chartered Institute of Linguists. In the United States, the National Center for State Courts organises exams for Federal Court Spanish-English interpreters as well as for interpreters who work in 18 languages in State Courts in 41 states. In Australia the National Accreditation Authority for Interpreters and Translators Ltd tests interpreters. However, Hale argues that testing alone is insufficient and there is a need for compulsory pre-service training (2007, p. 166).

In Ireland, interpreters are not tested and standards vary enormously. A small number of interpreters hold the Graduate Certificate in Community

Interpreting from Dublin City University or have qualifications from other countries. Until 2007, the Courts Service recruited interpreters either directly or through translation agencies. In 2006 they went to tender specifying what they expected from interpreters:

Table 1: Courts Service interpreter competency levels

Level 1	The person can be shown to be competent in both English and the language concerned.
Level 2	The person is a native speaker of the language concerned and can be shown to be competent in English or is a native speaker of English and can be shown to be competent in the language concerned.
Level 3	The person is a native speaker of English with a third level qualification in the language concerned or a native speaker of the language concerned with a third level qualification in English.
Level 4	The person has Level 3 qualifications plus qualifications specific to translating or interpreting.

Levels 1 and 2 do not require even secondary schooling. Level 1 could mean that an interpreter is interpreting between two foreign languages. Level 3 could be an engineer or an architect who speaks two languages. Only level 4 is suitable for court interpreters and even that is not specific to the area. Some of the newspaper articles discussed here mention ‘professional’ or ‘official’ interpreters but in practice this just means paid interpreters provided by a translation agency.

Interpreters employed by the agency that won the tender are interviewed but are not tested to assess their interpreting skills. They attend a one-day basic training course organised by the agency, which is inadequate for work in the specialised field of court interpreting. Hale makes the point that “Short, superficial courses may even be counterproductive, creating a sense of complacency in governments and policy-makers who may be led to believe that such courses are sufficient to ensure quality in interpreting services” (2007, p. 169). Novice interpreters accompany a more experienced ‘buddy’ interpreter to court for half a day so they can learn what to do, where to sit and so on. Occasionally, if the contracted agency cannot provide an interpreter, other companies do so.

The Courts Service was allocated €122 million by the State in 2009 and spent €3 million or 2.5% of their budget on interpreting. Their *Annual Report 2008* gives a figure of over 10,000 requests for interpreters in 71 languages. The amount spent that year was €3.6 million. The original hourly rate for interpreter provision in 2007 was €46 with €25 being paid to interpreters but in April 2009 this was reduced to €42 with €18 being paid to interpreters (Tighe, *The Sunday Times*, 29th March 2009).

After a tender process in 2009 that included eight levels of competency, only one of which mentioned a qualification in translation or interpreting, the Garda Síochána divided the country into six regions and contracted three companies for each region. Garda officers are instructed to use a cascade system where they call the number one company first, then number two and finally number three. Some interpreters who work in garda stations have attended basic half-day or one-day training. From 1st February to 31st December 2009, the Garda spent €2.5 million on interpreting (Emanowicz 2010, p. 2). The Garda do not provide information on the number of interpreted events or on the amount paid to individual contracted companies.

4. Methodology

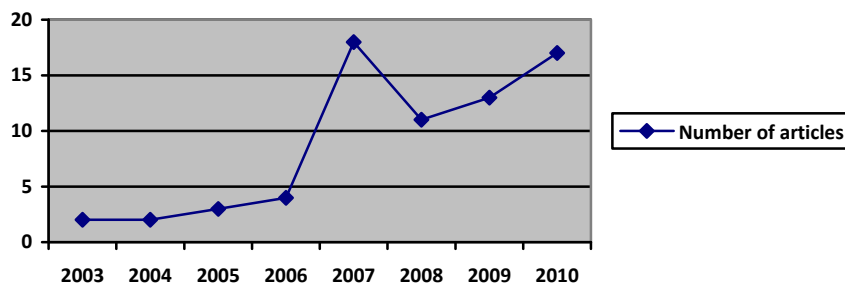
For the purposes of this article I accessed the Lexis-Nexis online database and carried out a search of Irish Publications which include national newspapers (*The Irish Times, Irish Independent, Irish Examiner, Sunday Independent, Sunday Business Post, Sunday Tribune*), fourteen provincial newspapers from the Independent Newspapers group (*Bray People, The Corkman, Enniscorthy Guardian, Wicklow People* etc), *breakingnews.ie* and other provincial newspapers such as *Carlow Nationalist, The Kingdom, Sligo Weekender, Waterford News and Star* and *Wexford Echo*. I carried out a separate search on the websites of the *Advertiser* which provided four results of interest for the Athlone and Galway editions, the *Mayo News* which provided two results, and the *Laois Nationalist* which provided one result.

I searched for 'interpreter' and 'court' on Lexis-Nexis on 1st January 2011 and obtained 1,778 results dating back to 1992. A search from 1st January 2000 to 1st August 2010 gave 1,568 results which meant that by far the majority of mentions related to the decade 2000-2010. I decided to keep to this period for the purpose of this article. However, it emerged that there were in fact no reports of interest in the years 2000, 2001 and 2002. A large proportion of search results related to cases outside Ireland and there were some false leads such as an actor interpreting a play at the Royal Court Theatre. Also, 75 results appeared repeatedly because a number of different provincial newspapers publish the exact same reports. Many articles merely mention the interpreter when quoting what a defendant said 'through the interpreter' or 'in the presence of an interpreter' and do not provide any supplementary information. I did not include interpreting for Irish or Irish Sign Language. I did not include results from Northern Ireland newspapers either, because the system is different there; in recent years interpreters for the police and the courts have undergone training and in more serious cases court interpreters are sourced from the U.K. Register of Public Service Interpreters.

Once I had narrowed down the searches to 70 articles that contained supplementary information on interpreter provision, I then divided the articles by theme. The themes are (i) proficiency in English (ii) no interpreter provided at the garda station (iii) no interpreter provided in court (iv) cost (v) interpreter competency and (vi) interpreter ethics. However, some articles incorporate a number of themes.

It is likely that many police officers and judges around the country ensure that interpreters are present for defendants with limited English. This article is perhaps representative only of a minority but even so it reveals an alarming number of cases where defendants' rights are not observed. The table below shows that the incidence of relevant articles increased considerably in 2007 to 18 reports, dipped in 2008 and increased again to 17 in 2010.

Figure 1 Newspaper reports covered in this article



5. How much English is enough and who decides?

A recurrent theme in the newspaper coverage is the level of English of suspects and defendants and whether or not they need an interpreter. While they may well have enough English to provide basic information, they may not understand more complex information and are unlikely to have any knowledge of the legal terms commonly used in the District Courts in Ireland. In relation to lawyers' technical vocabulary, Gibbons explains that:

Some of it exists to express specialist concepts, which is why a substantial proportion of this vocabulary consists of words or expressions that are not in everyday conversational use. (2003, p. 40)

Other characteristics of legal language cited by Gibbons are acronyms and archaic deictics such as *whereas*, *whereby* and *heretofore*.

Roberts-Smith quotes the judge in the case of *Cucu v District Court of New South Wales* (1994):

It must be said again that the majority (including the majority of lawyers) who are exclusively Anglophone show an enduring resistance to the needs of non-Anglophone parties and witnesses in court. The linguistic skills adequate for work and social intercourse frequently evaporate in stressful, formal and important situations..... (2009, p. 21)

The Palencar case, covered in more detail in section 6.2, provides a good illustration:

Garda Ann Cowley, who was in charge of Ballina Garda Station that night, told the court she was able to communicate with Mr Palencar when he was brought in. "I was able to get his name, address, age, nationality, height, hair and eye colour and marital status that night," she said, "and I gave him a card with his rights written on it in Slovakian."

Seamus Hughes [State Solicitor for Mayo] then asked Mr Palencar if he is married and he replied "no", prompting Mr Hughes to ask him how he understood what he had been asked. He replied through the interpreter that he did not understand, to which Mr Hughes responded that he has no problem understanding English when he gets excited. (O'Neill, *Mayo News*, 27th November 2007).

The misconception that a person who can reply to simple questions is also able to understand complex language, is still prevalent among some members of the Garda, lawyers and judiciary and is probably associated with the absence of training in this area. In this section we will examine their attitudes. The range of approaches by individuals in each group underlines the lack of clarity for all participants around interpreter provision.

5.1. Attitudes of Garda

The garda in these three cases all take different approaches. In the first case, a garda gave evidence about the arrest of a Polish man on a drink driving charge. She said that “she considered sending for an interpreter but he assured her that he had spent two years in London studying English” (*Wicklow People*, 23rd November 2006). The garda was swayed by the (inebriated) defendant’s assertion that he had studied English for two years; she did not have an objective way of assessing his English.

In contrast, a Lithuanian defendant was convicted in his absence of being drunk in charge of a car. In this case, the garda concerned took a different approach. He told the court that “He had reasonable English, but an interpreter was used by the gardaí to remove any doubt.” (*Fingal Independent* 11th July 2007)

In the third case, a Polish man was charged with public order offences:

When Judge Donnchadh Ó Buachalla asked the defendant whether he wanted the case to proceed today, Anuszewski looked confused and did not respond. Arklow Garda Sergeant Fergal McHugh, who was giving evidence of arrest, charge and caution, said 'He had no problem speaking English' on the night in question. (*Wicklow People*, 25th January 2007)

The defendant had no interpreter or solicitor in court. The case was adjourned and heard two months later and the defendant was fined €650. It would seem from the second newspaper report that there was no interpreter or solicitor at this stage either: “The defendant, who has lived in Ireland for the past 18 months, said he had now stopped drinking” (*Wicklow People*, 29th March 2007). The judge seems to have taken the Garda Sergeant’s opinion into account and decided to proceed without an interpreter. There is no argument about non-provision of an interpreter at the garda station, probably because the defendant has no legal representation in court.

5.2. Attitudes of judges – you’ve had more than enough time to learn English

The Courts Service issued a 3 page *Protocol for Guidance to Judges and Practitioners* in April 2008. The document, which is not available online, outlines interpreters’ and judges’ responsibilities but does not mention a right to the free assistance of an interpreter or how to decide if a defendant needs an interpreter. Judges have not had the opportunity to attend training on the need for interpreters and how to work with them. Since the early 2000s some Australian lawyers and judges have undergone training in how to work with interpreters which has led to a better understanding on their part of the complexities of interpreting (Hale 2007, p. 94).

The newspapers reveal a variety of approaches by different judges. Some query the need for an interpreter in cases where the defendant has been living in Ireland for anything from two to seven years. This viewpoint fails to take into account the fact that not everyone has learnt English at school, some people do not have the opportunity to attend language classes and it takes a long time to become proficient in a language. Cambridge quotes Australian data that indicate that “it takes 1,765 hours of delivery for adults to get from no English to a level of competence required for further study or a job” (2008, p. 326). The level required to understand the language of the courts is considerably more specialised.

The theme of ‘you’ve had more than enough time to learn English’ is a common one:

..a lot of people have been in the country for the past three or

four years and have made no effort to learn the language. It's not fair' said Judge Mary Martin. (*Laois Nationalist*, 30th December 2004)

Similarly, Judge Mary Fahy was reported as saying that:

...it was 'absolutely ridiculous' to think that anyone living in this country for five years could not speak the language. The judge said she had granted Free Legal Aid but she was not going to certify for an interpreter. (*Galway Advertiser*, 11th January 2007)

Judge Mary Devins felt that a defendant should have learnt either Irish or English during his seven years in the country:

'How long have you been in this country,' Judge Devins asked the defendant Martin Justa directly, without the use of the interpreter, who replied that he had been in the country for seven years. 'So you have been in this country for seven years and you haven't learned at least one of our languages,' Judge Devins said. (*Mayo News*, 28th September 2010)

In a case about rates between a town council and a Chinese barber, the latter told the court he expected to have an interpreter in court. The unnamed judge "was surprised that an interpreter was required given that the barber had been in business for two years." (*Drogheda Independent*, 27th January 2010)

In the case of a Lithuanian defendant accused of public order offences, Judge Murrough Connellan queried the necessity to have an interpreter in court to assist someone who was so long resident in Ireland. The defendant had been living in the country for seven years but according to the court report it seems that his solicitor misunderstood where he worked:

'He had a feed of drink on him', explained Mr. Hickey who said his client was seven years in Ireland and was working for a coach firm in Donegal. However, something was clearly lost in translation between lawyer and Lithuanian client as it turned out that in fact Matulevicius was employed by Tony Doyle's of Enniskerry. (*Wicklow People*, 19th June 2008)

A man was charged with being drunk and abusive:

'He was quite abusive', Garda Ryan told the court. 'He said he could do what he likes, and he told me to F-off.'

Judge Murrough Connellan noted that the State was paying for an interpreter for Tela, a student who was in Ireland to study English for the last three and a half years.

'He was able to speak English when he was shouting abuse,' he suggested. 'He should have enough English to understand the court proceedings.' (*Bray People*, 20th December 2007)

The judge's parallel between the ability to shout abuse in English while drunk and the ability to understand court proceedings is worrying.

When a Polish defendant failed to produce a driving licence and appeared in Balbriggan District Court, "Judge Patrick Brady said he doubted Ciegotura's claims that he did not understand English and thought there was 'a bit of acting going on'". The newspaper reported that the court did assign an interpreter (*Carlow People*, 11th May 2010). However, the interpreter in this case has informed the author that he had been asked to provide interpreting services on a private basis to another defendant and had made the judge aware that he was being paid by the defendant. Mr Ciegotura asked the interpreter to interpret for him as well and paid the interpreter out of his own pocket. This background information strongly contradicts the judge's contention that the defendant was 'acting'.

5.3. *Some judges take a more cautious approach*

An unnamed judge in the case of a defendant who was charged with criminal damage expressed reluctance to assign an interpreter. However, he did admit that it is difficult to estimate defendants' proficiency in English:

'I feel he should be his own interpreter having been here six years,' said the judge regarding Grigorij Charlamov, who faced a charge of criminal damage. 'But I'm afraid there may be an injustice. It's difficult for the court to measure a person's fluency in English. I will certify for an interpreter.' (*Bray People*, 13th May 2009)

Some judges demonstrate their awareness of the need for interpreters. In one case, a concerned judge asked the solicitor about the defendant's level of English: "Judge Patrick Brady asked how good Montague's English was and his solicitor told the court that he had a 'good command' of the language and an interpreter was not needed" (*Fingal Independent*, 31st December 2008). Perhaps it would have been more appropriate however for the judge to address the defendant directly and establish for himself if he had enough English rather than relying exclusively on the solicitor's opinion.

Judge Ó Buachalla was quite perceptive about the level of English of a defendant who pleaded guilty to burglary and was asked to outline his financial circumstances. The Garda felt that the defendant spoke good English but the Judge "was not happy to proceed given that, when asked if he wished to take legal advice, the defendant responded 'what is vice?' The judge also observed that there appeared to be some confusion between the words 'lawyer' and 'liar'" (*Wicklow People*, 26th April 2007). The case was adjourned and an interpreter was provided at the next hearing (*Wicklow People*, 10th May 2007).

A Circuit Criminal Court judge displayed an enlightened view of the obstacles to learning English:

Judge Carroll Moran noted his guilty plea, his co-operation with the Garda, the fact that he was a poor man, a foreigner with very poor English, remarking that this was not unusual if a person lived in their own community. (Lucey, *The Irish Times*, 22nd January 2010)

The defendant had pleaded guilty to growing €180,000 worth of cannabis in a specially adapted house. Originally from Vietnam, he was a British national who had lived in London for 25 years.

5.4 *Attitudes of Lawyers*

The Breaking News website reported on a Dublin Circuit Criminal Court case involving bribery of a former Garda National Immigration Bureau employee by a Chinese man. The defence counsel Mr John Rogers SC [Senior Counsel] questioned a second Chinese man, Mr Li, a witness who had made allegations of bribery. He challenged his need for an interpreter in court on the grounds that he could speak English 'very well'. The questioning then focused on Mr Li's use of texting:

When Mr Rogers asked how he was able to send text messages to the accused in English asking him when he would be working, Mr Li replied that he sent them in 'simple English.'

Asked by Mr Rogers how he was able to read the letter summoning him to court as a witness, Mr Li answered: 'I can't understand it fully.' (Breaking News, 24th January 2008)

Presumably Mr Rogers was attempting to discredit a witness for the prosecution. However, Mr Li's answers are very reasonable – there is quite a difference between sending a simple text message in English and understanding court proceedings. Gibbons argues that “the level of language proficiency required in legal proceedings is beyond that required for everyday conversation” (2003, p. 232) and that “the language of the law is full of technical jargon, much of it incomprehensible to lay people who may not know the underlying concepts to which the jargon refers” (2004, p. 2).

At Wexford District Court, there was disagreement between the Garda and the defence solicitor regarding the need for an interpreter for Polish:

Asked by solicitor whether he had brought in a Polish interpreter to explain his rights to Stasiak, Garda Dennehy said he had encountered the Pole before and he spoke enough English to get by.

In court, however, Stasiak maintained he had little English and needed the services of an interpreter.

Asked by Supt. John Roche whether he had made a complaint about his alleged assault by the gardaí, Stasiak said he had not.

Ms. Dunne maintained her client's lack of English hampered him in complaining to the gardaí.

'He doesn't speak English does he?' she asked Garda Dennehy.

'In my experience, he does,' replied the guard. [...]

Finding him guilty of the Public Order Act offence, the judge said that it would be surprising that he did not speak some English, given that he had been living in Ireland since early in 2005 (*Wexford People*, 16th March 2007).

Like the other judges at the start of this section, this judge assumed that two years in Ireland would be sufficient for the defendant to learn enough English to understand what was being said in court. This assessment was arbitrarily made, without any expertise in second language acquisition or linguistics in general and is contrary to what has been found by research (Gibbons, 2003; English, 2010).

6. No Interpreter at the garda station

In some cases the Garda try and manage without an interpreter. This is a risky practice because the defendant can maintain in court that they did not understand the caution and the charge. A number of solicitors make this case but unfortunately, their success rate is not very high.

6.1. Defendant found not guilty

In 2003, a Mongolian man called Anar Odon appeared at the Dublin Circuit Criminal Court charged with sexual assault and assault causing harm. It emerged in court that the interpreter at the garda station was the defendant's English language teacher and that he had not translated anything for the garda officer who said he had read Odon's rights. The non-translation of his rights was the basis for Mr Justice Michael White directing the jury at the Dublin Circuit Criminal Court to find him not guilty (Coulter, *The Irish Times*, 4th March 2003). At that stage Anar Odon had spent over a year in prison, partly because he could not be released on bail as he had no address to go to. This was a major miscarriage of justice.

6.2. Successful appeal

In 2007, a Slovak man, Mr Palencar, was convicted of failing to provide a blood or urine sample to the police after being arrested on suspicion of drink driving. No interpreter was provided in the garda station. With the help of his employer, he appealed the conviction to Ballina Circuit Court.

In overturning the conviction, Judge O’Sullivan said that he would have to be satisfied that the defendant understood that failure to comply with gardai and provide a sample was in itself in breach of the law.

“While gardai warned him of this he didn’t understand. You could not say he has good English unless he is a wonderful actor. It would be manifestly unjust to convict him in this instance,” he concluded (O’Neill, *Mayo News*, 27th November 2007).

This case is highly unusual because the appeal was on the grounds of lack of interpreting at the garda station and it was successful. In *Ladent v Poland* (2008), the European Court of Human Rights found in favour of a Frenchman who did not speak Polish but was arrested and detained for ten days in Poland and was not allocated an interpreter.

6.3. Provision of incorrect language interpreter at the garda station

The facts of the next case are very similar to the Palencar case above but the outcome is different. A Lithuanian defendant had been asked to provide a breath sample using an intoxilyser at the Garda Station. The solicitor claimed that the interpreter provided at the garda station spoke Russian and could not communicate with the defendant. However, the garda said he saw defendant and interpreter “having a full blown conversation for at least 30 minutes.” Incidentally, there are ethical issues here because the defendant and interpreter should not engage in conversation apart from a preliminary check to ensure that they speak the same language. Judge Brennan did not accept the defence arguments because the defendant had attempted but failed to provide a breath sample and said that “This makes utter nonsense and rubbish of his defence”. Thus, even though a Russian speaking interpreter was provided for a Lithuanian speaking defendant, the defendant was fined for failing to provide a sample and for driving without insurance. He was also banned from driving for four years. (*The Argus*, 20th May 2009)

6.4. Solicitors argue need for interpreter at garda station

A number of solicitors argue that their clients should have been allocated an interpreter at the garda station. A Lithuanian man was charged in Ennis District Court with threatening to kill and falsely imprison a woman. His solicitor said that these were serious charges and an interpreter was not present when he was charged and he did not understand what he was being charged with. She went on to say that “Foreign nationals should not be treated any different and should receive fair and equitable treatment and it is only fair that Mr Kupriscenka should know what he is being charged with.” There was no interpreter in court either and Judge Joseph Mangan struck out the charges “without prejudice to the State bringing fresh charges” (Deegan, *The Irish Times*, 21st October 2006). These were very serious charges and the solicitor made very valid points. Despite this, Mr Kupriscenka appeared again in court a week later in the presence of an interpreter. He was remanded in custody to appear in court on 3rd November (*Irish Independent*, 28th October 2006) but there is no newspaper report about what happened on that date.

In another case, a solicitor claimed that her client, charged with drink driving, was not provided with an interpreter while being questioned in the

garda station and did not understand the caution and his rights. However, the Garda claimed that the defendant “spoke to me at length” and the man was convicted (*Bray People*, 9th September 2009). The solicitor in this case is making a crucial point; it is essential that suspects be told their rights and that they understand the police caution.

Another case involved strong disagreement on the defendant’s level of understanding of English. A Slovak man was stopped at a Garda checkpoint where he took a roadside breath test. He was then taken to a Garda Station where he was asked to take an official breath test but claimed that he did not understand. No interpreter was called and “Garda John Kenny said that Cepen had no problem with having a conversation with him”. Also, his former employer stated that he “didn’t encounter any difficulties in understanding English during his tenure with him.” In court, Cepen’s solicitor argued that he did not understand his rights and the police should have waited for his wife to arrive so she could interpret. Cepen was disqualified from driving and fined €450 (*Carlow People*, 14th December 2010). The argument that the defendant’s wife could have acted as interpreter is a surprising one.

When a defence solicitor asked why her client had been searched on the roadside and not in the presence of an interpreter at the garda station, the Garda replied that the defendant’s “English was perfect at the time”. He added that the defendant’s “English went downhill badly when he was on his way to the station” (*Galway Advertiser*, 10th November 2008).

In the case of a Chinese defendant accused of smuggling cigarettes, it seems that no interpreter was provided at the garda station but the defending barrister insisted on an interpreter being provided in court:

State solicitor Kevin O’Doherty reported that the accused man had appeared to have no problems with English when interviewed about the matter. However, a translator attended court to assist the defendant follow proceedings and defending barrister Marc Thompson felt that this was necessary. (*Bray People*, 28th July 2010)

The barrister does not appear to have argued the case on the basis that no interpreter was made available at the garda station. The case seems to have been adjourned and subsequent coverage indicates that the defendant was provided with the book of evidence in English and that Judge Donnchadh Ó Buachalla “declined to certify translation” (*Carlow People*, 23rd November 2010). Unfortunately this report does not provide any information on the reasons for this decision. Nor does it mention any protests from the defending barrister.

7. No interpreter in court

Robert-Smith reviews a number of cases where appeals were made on the grounds of non-provision of an interpreter. In *R v Tran* (1994) in Canada, the judge found that:

It is clear that the right to the assistance of an interpreter of an accused who cannot communicate or be understood for language reasons is based on the fundamental notion that no person should be subject to a Kafkaesque trial which may result in loss of liberty. An accused has the right to know in full detail, and contemporaneously, what is taking place in the proceedings which will decide his or her fate. This is basic fairness. (2009, p. 21)

Irish case law dating back to 1929 covers the right to an interpreter.

Indeed the judgement of Chief Justice Kennedy in the case of *Attorney General v Joyce and Walsh* is very clear:

It would seem to me to be a requisite of natural justice, particularly in a criminal trial, that a witness should be allowed to give evidence in the language which is his or her vernacular language, whether that language be Irish or English, or any foreign language; and it should follow, if the language used should not be a language known to the members of the court, that means of interpreting the language to the court (judge and jury) and also, in the case of evidence against a prisoner, that means of interpreting it to the prisoner should be provided. (Hogan and Whyte 2003, p. 144)

Daniyan (2010, p. 137) cites three cases taken by asylum seekers in connection with interpreting and comments that “There are very few High Court decisions on the right to an interpreter in Ireland.” A search on justis.com resulted in a small number of results (11) for judicial review cases but most related to the Irish language (*MacCarthaigh v Ireland*, *Ó Monachain v An Taoiseach*).

Thirteen newspaper articles refer to cases where there was no court appointed interpreter. Curran (2008, pp. 10-11), from the Courts Service Media Relations Office, says that this is “almost never the case” but goes on to suggest a number of reasons why it may occur. It could be due to such short notice that the interpreter cannot get to court on time. In some cases the Courts Service only become aware of a need for an interpreter when a case has commenced and a defendant or witness is actually in court. A case could also have to be adjourned to locate an interpreter for a very rare language. The reports indicate that judges react in different ways when defendants do not speak English. One judge blames the defendant for not bringing someone along to assist him; others accept family members and friends as interpreters on the day, particularly if defendants plead guilty, but mostly adjourn the cases; one forges ahead with an interpreter with a different language; and one refuses to proceed with the defendant’s wife acting as interpreter and adjourns the case so an interpreter can be provided.

7.1. Examples of No interpreter in court

A Polish man was charged with assaulting his wife. There was no interpreter in court and the Garda said that the defendant had very little English and an interpreter had been provided when he was charged the day before. The case was adjourned so that an interpreter could be made available but the man was told to surrender his passport, not interfere with the alleged injured party and sign on three times a week at Bagenalstown garda station. Given the defendant’s poor level of English, it is hard to work out how this information was conveyed to him. (*Carlow People*, 9th April 2008)

A Chinese man was charged with murder at Kilkenny District Court. This case would have to be sent forward to a higher court.

Judge Furlong asked if an interpreter was required.

Mr Canny asked Mr Shen if he understood what was happening. He nodded and said ‘Yes’.

Mr Canny told the judge that ‘as matters become more complex’ an interpreter may be required for future hearings and Judge Furlong said that such an application could be made at any time.

Before the hearing began, Mr Canny had spoken in English to Mr Shen in the courtroom. (Parsons, *The Irish Times*, 11th December 2006)

The idea that it is acceptable not to have an interpreter at first instance and to provide one in a higher court is worrying. If it is felt by the court that an interpreter is definitely needed at the higher court, then surely one should be provided in the lower court, particularly in such a serious case. This judge is aware of the need for an interpreter but is swayed by the lawyer's assessment.

When a similar situation occurred three years later in Galway, Judge Mary Fahy took a very different approach and was very irate about non-provision of an interpreter for a murder trial:

'This is the most serious charge a District Court can have and the interpreter has not appeared,' said Judge Mary Fahy, who then insisted that the situation be brought to the notice of the courts service and demanded to know what excuse, if any, had been given. She then put the matter back to later in the afternoon and asked Det Sgt Thomas Molloy to make enquires. (*Galway Advertiser*, 8th January 2009)

An interpreter appeared in the afternoon but the newspaper report does not contain an explanation of why there was no interpreter that morning.

Another judge was anxious to provide an interpreter: "Judge Hamill asked a number of times if the defendant required an interpreter as she had failed to understand the previous [driving] disqualification." (*Bray People*, 24th November 2010)

The case was adjourned to January for the preparation of a report but not for the provision of an interpreter. Given that the judge had a concern about the defendant's level of English, it would have been preferable to adjourn the case. The defendant may have refused the judge's offer of an interpreter for any number of reasons. She may simply not have understood or she may have assumed that she would have to cover the cost herself.

7.2. Why didn't you bring your own interpreter?

A judge was reportedly annoyed on two occasions when defendants appeared in court without an interpreter but he did observe good practice and both cases were adjourned so an interpreter could be assigned. On the first occasion, the defendant:

...said he did not understand what was going on in court, prompting the judge to ask him why he did not bring someone with him who could have assisted with translation. He accused the defendant of wasting his time 'I am not pleased', he said, adjourning the case to January 8 in the hope that a professional interpreter would be available on that date. (*Carlow People*, 12th December 2007)

The following year, no interpreter was provided for a drink driving case before the same judge:

A Lithuanian national who turned up to court on Wednesday without the help of an English speaking person was told by a judge that 'this behaviour is intolerable.' Why do you not come in to court with someone who can speak English?' asked Judge William Harnett after communication with the defendant was proving difficult. 'I am beginning to lose patience, I find this intolerable.' (*Bray People*, 24th July 2008)

7.3. Family members and friends as interpreters

Some defendants ask friends or relations to accompany them to court, presumably because they are not aware that they may be allocated an

interpreter. There is a strong probability that these defendants did not have an interpreter at the garda station. Or perhaps interpreters are not routinely allocated in certain courts. Some judges decide to proceed with a family member or friend as interpreter while some adjourn the case so an interpreter can be appointed.

A defendant called Wojcieh Gorzkowski (most likely Polish although the report does not specify nationality or language) was charged with a public order offence, and appeared in Ardcavan court without an interpreter. It became clear to the court that he could not understand the proceedings:

...at this point the defendant's friend came forward to offer informal translation service. Once Gorzkowski was prepared to enter a plea of guilty, the judge had no problem going ahead.

(*The Corkman*, 3rd December 2009 a)

It is rather alarming that the judge in this case was willing to proceed without an interpreter. It is unlikely that the defendant's friend was able to do much more than provide a summary version of what was said. A similar case but involving serious charges to do with unpaid VAT and tax was taken to the European Court of Human Rights. In *Cuscani v the United Kingdom* (2002), an interpreter had been booked for the court case but did not appear. The defendant pleaded guilty and his brother acted as his interpreter. The applicant alleged that he did not receive a fair trial on account of the absence of interpretation at his hearing on sentencing. The Court found that there had been a violation of the ECHR and that:

The onus was thus on the judge to reassure himself that the absence of an interpreter at the hearing on 26 January 1996 would not prejudice the applicant's full involvement in a matter of crucial importance for him. In the circumstances of the instant case, that requirement cannot be said to have been satisfied by leaving it to the applicant, and without the judge having consulted the latter, to invoke the untested language skills of his brother.

A similar case involved a Hungarian man who also pleaded guilty and appeared before the same judge at Arklow District Court, charged with not having car insurance and not producing an insurance certificate.

Tibor's interpreter, who was also his employer while he was living in Ireland, said the defendant had come back to Ireland to face the charges in court. (*Wicklow People*, 15th February 2007)

Some judges adjourn cases where there is no court appointed interpreter. Judge Donnchadh Ó Buachalla adjourned three cases in one day on these grounds. A Polish defendant appeared in court on charges of ill treating a dog, which he denied. His interpreter was "a friend who provided an informal translation service." The judge put the case back to October 13th for hearing and asked the court clerk to arrange "an official Polish translator". However, the friend "was called into action twice more during the afternoon at the courthouse in Ardcavan. In one case, a compatriot had an assault case adjourned to September 15. Later, a man facing motoring charges with very poor English was remanded on bail to November 10" (*Enniscorthy Guardian*, 21st July 2010). While it is encouraging that all three cases were adjourned, it is disappointing that there was no court appointed interpreter on the day.

Similarly, Judge Mary Martin also adjourned a case because there was no court interpreter. A Slovak man appeared before Carlow District Court on a driving offence.

Evidence in the case had been given but Judge Martin then became aware of the fact that Becher didn't understand proceedings and was being assisted by his wife. She halted the

case and adjourned it until tomorrow (Wednesday) to provide a Slovakian interpreter (*Carlow People*, 8th March 2007). This was an example of good practice by the judge.

7.4. Solicitors request a court interpreter

Just as solicitors argue that their clients should have been provided with an interpreter when being questioned by the Garda, so too do they make the case for interpreters to be provided in court.

A Chinese man who had been studying English in Dublin for five years was charged with cultivating cannabis and his solicitor, “asked the judge to approve an interpreter as her client had very little English despite studying the subject in college. Judge Devins refused and the question of legal aid was deferred to a future court sitting.” (*Western People* 23rd June 2010)

In a drink driving case at Thomastown District Court, “The Garda observed that his prisoner’s English speaking skills diminished as he went through the procedures after the arrest.” The accused was assigned a solicitor who said that he “was unable to obtain proper instructions from his new client” and the case was adjourned so an interpreter could be assigned (*Carlow People*, 12th December 2007). Again, it seems that no interpreter was provided at the garda station despite the defendant’s poor level of English.

The *Fingal Independent* reports three occasions when the same solicitor had to request an interpreter. A Romanian man appeared before Balbriggan District Court charged with aggravated burglary using a firearm and knife and the solicitor requested an interpreter “because his English was poor” (*Fingal Independent*, 28th January 2009). At Swords District Court, a Russian speaker appeared on charges of public intoxication and engaging in threatening, abusive or insulting behaviour in a public place. He had ‘been charged and made no reply after caution’ (*Fingal Independent*, 12th August 2009). The same solicitor also requested an interpreter for a Croatian defendant charged at Swords District Court with driving under the influence (*Fingal Independent*, 23rd September 2009). It is not clear from the newspaper reports if interpreters had been provided at garda interviews.

7.5. Provision of incorrect language interpreter in court

We have seen an example above of a Russian interpreter being provided for a Lithuanian defendant in the garda station. A similar case occurred at Wicklow District Court where no interpreter was booked for an uninsured Polish driver and the judge decided to go ahead with the help of a Russian interpreter:

Tarnogorski doesn't have strong English and no Polish interpreter was in court, however he does speak a little Russian and was assisted by another interpreter. The language barrier led to some problems, particularly when Judge Donnchadh Ó Buachalla attempted to find out how long the defendant had been driving the car. ‘I think I now know what it’s like to be called a dentist,’ commented Judge Ó Buachalla. (*Wicklow People*, 7th June 2007)

In this case the judge seems to have assumed initially that the defendant’s ‘little Russian’ would allow him to communicate through a Russian interpreter.

8. Cost of Interpreting

As we have seen above, article 6.3 of the European Convention on Human Rights provides for “the free assistance of an interpreter” in criminal cases”. There is some European Court of Human Rights case law on this topic. For example, in *Işyar v Bulgaria* (2008), the Court found that Section 6.3 of the ECHR had been violated when a Turkish man was asked to cover the cost of interpreting. The court judgement in *Luedicke, Belkacem and Koç v Germany* (1978) provides more detail on the potential repercussions of not paying the cost of interpreting:

Making such an appointment [of an interpreter] admittedly eliminates in principle the serious drawbacks that would arise were an accused to defend himself in person in a language he did not master or fully master rather than incurring additional costs. Nevertheless, [...] the risk remains that in some borderline cases the appointment or not of an interpreter might depend on the attitude taken by the accused, which might in turn be influenced by the fear of financial consequences.

Despite the ECHR and the accompanying case law, according to newspaper reports, one judge believes that defendants who can afford to pay for interpreting should do so (O’Brien and Horan, *The Irish Times*, 14th May 2005). Two tell defendants to pay for their own interpreters (*The Kerryman*, 21st November 2007 and *The Corkman*, 18th February 2010). Another believes that the case “would cost a fortune by the time interpreters are paid” (*Carlow People*, 11th May 2010). Meanwhile, a defence solicitor is concerned about the delay in serving a book of evidence and is anxious “to spare the cost of further appearances of an interpreter” (*The Corkman*, 29th July 2010).

In 2005, District Court Judge John Neilan was reported to have said that “foreigners earning wages could afford the translation service themselves”.

‘Not one of them is prepared to attend any of the classes available to assist them with having a command of the English language. That strikes me forcibly.’ Judge Neilan said: ‘Why should this court be put to the expense of bringing interpreters to the court? They have plenty of money.’ He said he would no longer be authorising payments to interpreters for foreigners who are earning good money in Ireland. (O’Brien and Horan, *The Irish Times*, 14th May 2005)

Judge Neilan is not aware of the many reasons why immigrants do not learn English or of the amount of time and effort required in order to become proficient. A few days later he clarified his remarks: “I never indicated that those who could not afford assistance would ever be refused it, just that if they could pay, they should pay.” (*The Irish Times*, 19th May 2005).

While Judge Neilan expressed his opinion on these matters very clearly, there are no examples in the newspaper reports of cases where he actually ordered that defendants who had sufficient means should cover the cost of an interpreter. In contrast, there are two reports of other judges ordering defendants to do so. In the first case at Cahirsiveen District Court and heard by Judge James O’Connor, a Polish caretaker was charged with stealing goods from his employer. “Mr Klimek’s sentence was suspended on the condition that Mr Klimek pays Mr O’Connor’s €800 expenses, €200 for a Polish translator and €1,000 to the court poor box before October 2008” (*The Kerryman*, 21st November 2007).

In the second case, two defendants were charged with handling stolen property and two members of the Garda said in court that they were able to understand questions and answer in broken English. This would imply that no interpreter was present in the garda station during the interviews. Judge

Murrough Connellan ordered the two defendants to “pay for their own Georgian interpreter” (*The Corkman*, 18th February 2010).

Two judges expressed concern about the cost of interpreter provision. Judge Mary Devins asked “Why, when the country is on its knees do we have to pay for a Polish interpreter” (*Mayo News*, 28th September 2010). In a case involving theft from a clothes recycling bin, “Judge Patrick Brady said that the case would ‘cost a fortune’ by the time interpreters are paid and told the court that the cost of an interpreter was ‘almost as much as a defence solicitor’” (*Carlow People*, 11th May 2010). District Courts solicitors’ fees are set at €223.89 for the first four cases or €55.97 per case. (Statutory Instrument No. 136/2010). While the Courts Service pays €42 per hour to the contracted agency, €18 is paid to the interpreter.

In a case involving possession of cannabis with intent to supply, the defence solicitor was concerned with the cost of “further appearances of an interpreter”:

Mr Chan's solicitor, Pádraig O'Connell, expressed his displeasure with the apparent delay in the serving of the book of evidence, saying that the State had made assurances on the last court date that the book of evidence was to be served on Thursday and Mr Chan sent forward for trial to spare the cost of further appearances of an interpreter. (*The Corkman*, 29th July 2010)

The argument about the cost of an extra day in court centres exclusively on the cost of interpreter provision and ignores the costs of the other court personnel.

9. Interpreter Competency

One of the arguments made before the European Court of Human Rights in *Kamasinski v Austria* (1989) was that “Austrian law providing for court-certification of interpreters ... was excessively vague and did not prescribe a reasonable standard of proficiency ensuring effective assistance of an interpreter.” The Court found that:

In view of the need for the right guaranteed by paragraph 3(e) (art. 6-3-e) to be practical and effective, the obligation of the competent authorities is not limited to the appointment of an interpreter but, if they are put on notice in the particular circumstances, may also extend to a degree of subsequent control over the adequacy of the interpretation provided.

Hayes and Hale (2010) in their study of 50 appeals on the grounds of incompetent interpreting over a two year period in Australia concluded that the argument that poor interpretation affected the witness’ or applicant’s credibility was rarely successful. Cases such as *State of Ohio v Alejandro Ramirez* (1999) in the United States provide clear illustrations of the dangers posed by incompetent interpreting (Kredens and Morris, 2010, p. 459) as does the Juan Ramón Alfonzo case where the defendant thought he was pleading guilty to stealing a toolbox but found himself sentenced to 15 years in prison for stealing a dump truck (de Jongh, 2008).

In Ireland, to date, while there have been no appeals on the grounds of incompetency of agency interpreters, some judges have questioned their competency. This is not surprising given the failings of the system outlined at the start of the article, whereby legal interpreters in Ireland are not tested to ascertain if they can actually interpret and their training is minimal. Consequently it is likely that some interpreting is not complete or competent.

In addition, it must be said that interpreters' working conditions are often incompatible with high quality interpreting. Many garda officers read the chargesheet at breakneck speed, few lawyers and judges use the microphones provided and the District Court in particular is a very noisy place with people constantly coming and going.

9.1. Judges question interpreters' competency

Roberts-Smith believes that "it would ordinarily be prudent for an interpreter to be required to state their qualifications for the record before being sworn or affirmed. That also recognises the principle at common law that it is the responsibility of the trial Judge to ensure that adequate interpretation is afforded the accused or witness" (2009, p. 23).

Some Irish judges keep an eye on the interpreter:

In cases where she [Judge Bridget Reilly] understood the language spoken by the accused, she said the response translated by the interpreter did not always correspond with what was actually said.

When Judge Reilly asked to see her translator's qualifications, she was shown a USIT [Union of Students in Ireland Travel] student card.

[The] Translator explained that while she is not studying English, she had attended a secondary school in Glasnevin for four years. (*Evening Herald*, 28th January 2004)

A similar example was reported four years later:

Judge Fahy told the 28-years-old interpreter from Lionbridge, the language company employed by the Courts Service to provide interpreters for foreign people coming before the courts with poor English, that she would not certify her for payment as she felt she was not translating everything that was being said for the benefit of the accused man. (*Galway Advertiser*, 2nd May 2008)

According to the newspaper report, the Judge had noticed that the Polish interpreter "had not translated the breath sample reading for the accused". She said she would send a formal letter of complaint to the contracted company. However, despite the fact that this judge realised that the interpreter did not interpret everything, the defendant was fined €500 and disqualified from driving for two years.

Judge Con O'Leary demonstrated his awareness of issues around interpreting when he asked an interpreter to provide "simultaneous translation" or as close as possible to that. He then told her not to engage in conversation with the defendant except to clarify an ambiguity. She agreed. The judge then asked her to explain the word ambiguity and she could not define it.

'This is another example of Lionbridge sending incompetent interpreters. You are not competent. You are not acceptable. You are free to go. You are not honest. If you do not know the meaning of the word you should say so.' he said to the interpreter.

She replied that she would look it up in the dictionary. As for not stating that she did not know the meaning, she said, 'Sometimes you think you understand a word.'

The judge said, 'You are translating words you think you know the meaning of, but do not.'

The judge then asked why Lionbridge had sent a man to do

Polish translation in the same court on the same day.

This interpreter explained that the requests for translators had been made on different days and unfortunately two were assigned.

Judge O'Leary turned to this man and asked, 'Do you know what an ambiguity means?'

He replied, 'It means a few meanings - difficult to explain.'

Judge O'Leary said, 'No, no. Again Lionbridge have sent someone who does not understand the language.' (*Irish Examiner*, 12th October 2007)

Later that day Judge O'Leary asked an Albanian interpreter if he understood the word ambiguous. He said, "My understanding of the word ambiguous is that you can interpret it in more than one meaning." This interpreter was accepted by the judge and he interpreted for an Albanian defendant in a case that was adjourned. Subsequently, staff at the contracted agency sent an email to all interpreters with a dictionary definition of the word 'ambiguity'. (*Irish Examiner*, 12th October 2007).

In 2009, Judge John Neilan asked how he was supposed to run a court when there was no Polish interpreter present and told one man with almost no English (or presumably Irish) to "suíogh síos agus lig do scíth," or 'sit down and relax' until one was called. He later dismissed that interpreter for incompetence, saying that the court would not hire him or the company he works for, again (*Athlone Advertiser*, 27th November 2009). Unfortunately, the newspaper article did not include any further information on why the judge believed the interpreter was incompetent.

While Judges O'Leary and Neilan objected to interpreters from certain agencies, it is unclear if they can in fact insist that the Courts Service provide them with interpreters from another agency that does not hold a contract. Furthermore, merely changing agencies is no guarantee of quality or competency because many interpreters work for a number of agencies.

Judge Ó Buachalla seems to have accepted that there were interpreter competency issues in the case of a woman who was charged with drink driving and dangerous driving. She was assigned an interpreter in court, pleaded guilty and was sentenced. However, the newspaper reported that:

Later in the morning, solicitor Ed King told the judge the defendant had approached him outside the court seeking his assistance. He said she hadn't realised what she was pleading guilty to. Judge Ó Buachalla fixed recognisances so she can appeal the case if she wishes. (*Gorey Guardian*, 21st January 2009)

This raises questions about the quality of interpreting in this case and leaves unanswered questions about whether the woman understood that she had the right to appeal the case.

9.2. Replacement interpreter provided

The interpreter for Albanian arrived late for the case between former boxer Steve Collins and an Albanian bouncer.

At two o'clock, the interpreter took the affirmation in hesitant English and as barristers exchanged glances of alarm, the jury were again dismissed. By the time the jury returned a few minutes later, a new interpreter had been found - this time it was one who took the affirmation in a pronounced Dublin accent and so, finally, and to the relief of all, they were able to get down to business. (*Irish Independent*, 20th November 2008)

It seems that in this case the court immediately realised there was a problem and opted for another interpreter. This is in line with the Courts Service spokesperson's assertion that "Where an issue of a lack of clarity or understanding arises, the dynamic of the court setting makes this apparent. On these rare occasions the interpreter is replaced." (Curran, 2008, p. 11). The 'pronounced Dublin accent' seemed to convince all present that this interpreter was competent.

9.3. *Sight translation problems*

A barber living in Clonakilty was charged with murdering his former partner. Evidence included two letters which he had written in Turkish. The *Irish Independent* reported that Kedik's "words were haltingly read out" for the jury's consideration.

'Perhaps you are going to resentfully judge me for what I have done but please don't do so,' began the letter, translated into English from its original Turkish.

'What I thought was beautiful thing which didn't happen my friend. My thought was also to kill (my son) but I always watched him. He is a clever boy. I can't do it.

'I will only kill Rose, then myself,' he said, going on to say that he would not kill Ferhan, not because he was his son, the letter said, but because he 'observed him'. 'He is a clever boy, I can't do it,' Kedik had repeated.

Another found by gardaí was addressed to a family member in Turkey.

'I am sorry to upset you - I always upset you,' Kedik had ruefully begun this one.

However, he said his conscience is clear - or as Detective Garda Maurice Shanley informed the court yesterday, the Turkish version of this actually translates as 'My forehead is open.'

'I loved Rose, but whatever she said or did neither represents me or my family,' Kedik had said, dismissively adding that Rose 'can't give anything to my son'.

His son was a 'clever boy' who was 'needed for human beings' and so he couldn't kill him, said the letter, the Turkish language seeming to translate oddly into English. (Anderson, *Irish Independent*, 25th January 2008)

As the journalist remarks, the interpreter reads out the translation 'haltingly' and the Turkish language in this case translated 'oddly' into English. If it was written in correct Turkish then one would expect the translation to be in correct English. The Detective Garda's remark about 'my forehead is open' being the equivalent in Turkish of 'my conscience is clear' demonstrates a lack of understanding of how idioms work and is quite likely based on what he was told by the interpreter.

The evidence included two letters written in Turkish by the defendant and sight translated by the interpreter at the garda station. A second Turkish interpreter said in court that these sight translations which were recorded on video "were not strictly correct". Apparently the evidence from the Garda Station was that the defendant had written both letters on the Tuesday night but "Kedik had actually said he was not sure when he had written the letters and in the case of one letter, he said, he had written it on the Wednesday". Mr Justice McCarthy said the jurors would be given a verbatim translation of the relevant interview. (Breaking News, 1st February 2008)

9.4. Interpreter could not read Urdu

There was an unusual case in Enniscorthy District Court involving a man's identity. An interpreter was provided for Urdu and was asked to read from a Pakistani identity card but was unable to read Urdu script (*The Corkman*, 3rd December 2009 b). Perhaps the interpreter had been educated in Ireland and had never been schooled in Urdu. Interpreters would normally be expected to be literate in the languages they work in because sight translation forms part of their work. In addition, if they cannot read they cannot use dictionaries, locate parallel texts or learn about the legal system in the country of their other language.

9.5. The Interpreter as Scapegoat

A sub-theme on interpreter competency is that of the interpreter as scapegoat. There were two reports of defendants claiming they had been given incorrect information by the interpreter. However, we have no access to the interpreters' side of the story. One newspaper reported that a man who had been banned from driving for four years and was subsequently caught drink driving, told the court that "an interpreter had told him he was only off the road for a total of eight months." (*The Corkman*, 17th December 2009)

In a similar case at Swords District Court, a Lithuanian defendant who was asked why he had not appeared in court on a previous occasion claimed that "his interpreter had given him the wrong date." (*Fingal Independent*, 14th October 2009)

9.6. Other

Most of the articles found provide the bare details of the case and as a result it can be difficult to work out what exactly went on in court. The *Drogheda Independent* reported (3rd March 2010) that in a case involving the theft of a bottle of vodka, "Through his interpreter, Znotins told the court he was 'guilty', before adding he had worked 'on Total production'." What could Total production possibly mean? Perhaps what the defendant said did not make sense or perhaps the interpreter was at fault.

10. Interpreter Ethics

We have already seen a case where the Garda officer reported that the defendant and interpreter had engaged in "a full blown conversation for at least 30 minutes" (*The Argus*, 20th May 2009). The interpreter should not have conversed with the defendant in this way and should have been challenged by the police officer. Codes of Ethics for interpreters usually stress confidentiality, impartiality, not expressing personal opinions and dressing appropriately in court. The examples that appear in court reports include an interpreter going on a date with a witness who is later convicted of a double murder, interpreters speaking out on behalf of defendants, an interpreter dressing inappropriately, complainants, defendants who have interpreters' phone numbers, and interpreters offering their opinions. It is surprising that these cases are happening but it is even more surprising that in the main there is no reaction from defence solicitors or judges to this behaviour.

10.1. Impartiality

A very worrying case occurred in 2003 involving a Chinese man who was later convicted for a double murder. A Chinese interpreter was provided at the garda station to take a witness statement from a Mr Yu Jie. He asked the Garda for her telephone number and as she had no objection, they provided it. Mr Yu Jie phoned the interpreter and they went out on a date. Subsequently, Mr Yu Jie was charged and in due course convicted of the murders. Clearly, the Garda realised their error and a Chinese Interpol officer served as court interpreter. However, the same interpreter was “used as a translator for other witnesses in the case” (*The Irish Times*, 5th March 2003). The Garda should not have provided an interpreter’s phone number to the witness and one can only speculate that they did not think through the consequences. In addition, the fact that the interpreter went on a date with a witness illustrates the consequences of using a system that depends on people who have not had the opportunity to undergo training and to explore the ethical issues associated with unprofessional behaviour.

A Central Criminal Court case in late 2007 provides a very interesting illustration of ethical issues that can arise and that seem to have been accepted as totally normal by the court. The case involved a Lithuanian man called Bagdonas who did not appear in court but was convicted of rape and of threatening to kill a Latvian woman. A key aspect of all codes of ethics for legal interpreters is impartiality; interpreters are not supposed to get involved and should certainly not provide their phone number to clients. In this case the complainant “agreed with Mr Graham [defence counsel] that she had called an interpreter involved in the case to ask her to tell gardaí she wanted to drop the case.” (*Breaking News*, 30th November 2007). Not only was the complainant calling an interpreter involved in the case, but it seems that the defendant also had direct access to the court interpreter:

Mr Justice White told the jury on Thursday, November 29, that phone calls were received the previous day by a court interpreter from Bagdonas and there was a suggestion that he had been in some form of accident. (*Irish Independent*, 6th December 2007)

Judging from newspaper reports, nobody in court expressed concern at both complainant and defendant having interpreters’ phone numbers and contacting them directly about their cases.

The *Breaking News* website provided further coverage on the case and reported the garda station interpreter’s observations on the complainant’s demeanour:

An interpreter has [told] a Central Criminal Court trial that a Latvian woman ‘appeared to act a little bit odd for a person who was just raped’ when giving her statement of complaint.

Ms Hincu told defence counsel, Mr Brendan Grehan SC (with Ms Miriam Reilly BL) that the woman seemed very relaxed, was smiling and cracked a couple of jokes while making her initial statement.

However, Ms Hincu said she was unhappy about being asked to judge someone else.

‘I’m just the interpreter. I have no right to give my opinion because I’m not a trained psychologist or social worker.’

Ms Hincu told Mr Grehan that she was Moldovan and did not speak Latvian and had interpreted for the woman through Russian. She said that ‘all Latvians speak Russian’.

She denied she had mistranslated the word ‘friend’ in part of the woman’s statement although she agreed with Mr Grehan that there was no distinction in Russian between the words ‘friend’

and ‘acquaintance’.

She added that she had ‘definitely not made any mistakes’ in translating the woman's words and said that ‘translating isn't difficult.’

She agreed with prosecuting counsel, Mr Gerald Clarke SC (with Ms Anne-Marie Lawlor BL) that she had no idea how a rape victim would react. (Breaking News, 4th December 2007)

In this case, the interpreter does seem to have some awareness that she is “just the interpreter” and should not give her opinions. However, she does give her opinions and her opinions could sway the jury. She also claims that “all Latvians speak Russian” but this statement is contradicted by the 2000 census for Latvia which, according to the *CIA World Factbook*, shows that Latvian was spoken by 58.2% of the population, Russian by 37.5% and Lithuanian and other languages by 4.3%. It would seem from this that most Latvians do not speak Russian.

Another issue was the translation of ‘friend’. An online English-Russian dictionary (freedict.com) provides the word *приятель* for friend and *знакомый* for acquaintance. No knowledge of Russian is required to appreciate that these are two different words. Another surprise is the interpreter’s assertion that “translating isn’t difficult” and her confidence that she had “definitely not made any mistakes”.

10.2. Interpreters speak out on their own initiative

An example of the interpreter speaking out occurred at Tralee District Court in the case of a defendant who was charged with injuring her child who later died:

Supt Sullivan also asked if her life was in danger from members of her own community. ‘Your sister told me yesterday your lives are at risk as a result of what happened.’ Ms Paczkowska's interpreter said: ‘Yes. There is going to be a community court as well for her Ms Paczkowska.’ (Lucey, *The Irish Times*, 12th August 2005)

The interpreter should not answer on behalf of the defendant. Ms Paczkowska was released on bail and failed to appear at Tralee District Court. In January 2010 she was arrested and extradited from London under a European Arrest Warrant (*The Irish Times*, 11th February 2010). Judge O’Connor remanded her in custody and extended time for the book of evidence to be presented. He also asked the interpreter whether Ms Paczkowska understood fully the charge facing her, and the interpreter confirmed that “she understands she is charged with killing her child” (Lucey, *The Irish Times*, 10th November 2010). Here, the judge is asking an important question but he should have addressed the defendant directly. It is not up to the interpreter to decide if the defendant understands the charge. Worse, the interpreter answers on behalf of the defendant.

The *Wicklow People* (29th March 2007) reported on a case heard at Wicklow District Court involving a Lithuanian man charged with being drunk in public. According to the newspaper, “The interpreter said the defendant had been in Ireland for a year and a half and his brother had explained the seriousness of his actions to him”. Here, once again, it would appear that the interpreter is speaking on behalf of the defendant.

Another court case focused on a Polish man who had undergone an implant procedure (to stop him drinking) and could die if he drinks too much. He was charged with being drunk in public. The interpreter was asked to do a sight translation of a letter from the defendant’s Polish doctor. She did this

but it would appear from the report that she also added in her own opinion – “His interpreter told the court that even if admitted to hospital anything containing ether would be out of the question for Bas and she suggested that for his own safety the statement be translated into English in case Bas did end up in hospital” (*Wexford People*, 28th May 2008). This is not really a matter for the interpreter or indeed for the court.

An Estonian woman faced charges of dangerous driving, driving without insurance, drink driving and failure to produce an NCT [National Car Test disc]. Judge David Anderson suggested that she obtain the advice of a solicitor and the interpreter intervened to say:

'She thinks she's guilty either way and a solicitor won't help,' her interpreter told the court. 'A solicitor might help keep her out of jail,' said the judge, and she eventually took on the services of a solicitor on legal aid. (*The Corkman*, 8th July 2010)

The interpreter in the next case went even further:

An interpreter told the court that the defendant was not driving at the time. Garda Delea said the defendant was the registered owner. The interpreter said that the defendant had told him that he could not understand the summons and on those grounds the charge should be struck out. (*The Corkman*, 28th October 2010)

This example is rather surprising – the interpreter is speaking out on behalf of the defendant and is even providing legal advice to the effect that the charge should be struck out on the grounds that the defendant did not understand the summons. Even more interestingly, there is no indication in the report that the interpreter is told that it is not his job to express his opinion on legal matters.

10.3. Dress code

On a somewhat different note, the *Irish Times* reported on a case in Galway District Court:

Judge Aeneas McCarthy told a Polish interpreter at Galway District Court yesterday that she was inappropriately dressed for appearing before his court in a professional capacity.

The young woman, who was wearing tight, low cut jeans and a skimpy top, which left her midriff exposed, had been assigned to the court in an official capacity to interpret for Polish defendants who came before the court.

‘At the risk of sounding prudish, I think you are inappropriately dressed for this court bearing in mind you are here in a professional capacity,’ the judge admonished the young woman. She made no reply. (*The Irish Times*, 19th July 2006)

11. Conclusion

The *ad hoc* nature of interpreter provision in Ireland is confirmed by newspaper coverage from 2003-2010 which demonstrates that some judges, lawyers and police officers were not aware of the possible right to the free assistance of an interpreter in criminal proceedings. Perhaps that explains why some judges are so exercised about the cost of interpreting. As for defendants, many do not expect to be allocated an interpreter and bring along friends, family members or even their own privately hired interpreter.

Some judges were aware of the need for interpreter competency and were prepared to challenge interpreters when they felt they were not doing their

job. Overall, however, judges do not seem to understand the boundaries of the interpreter's role and do not object when interpreters speak out of turn. Some direct questions to interpreters instead of to defendants.

The issue of English language proficiency is a constant theme in newspaper coverage. Some judges have difficulty in assessing the defendant's level of English and depend on members of the police, solicitors or defendants themselves to work this out. Many do not appreciate the amount of time that is required to become proficient in English and in particular to understand the language of the court. Some police officers in the newspaper reports were willing to manage without interpreters on the grounds that the suspect had enough English 'to get by'. In some cases they were more cynical and insisted that the suspect's level of English declined rapidly after arrival at the garda station.

Some solicitors made valiant attempts to show that their client was being unfairly treated because no interpreter was provided at the garda station or the interpreter did not have the right language. However, in the articles covered here, they were not usually successful with this argument. A number of solicitors requested interpreters in court and succeeded in having cases adjourned so that an interpreter could be provided. It is likely that in these cases no interpreter was provided at the garda station but an argument is rarely made on these grounds. Unfortunately, many defendants in the District Courts have no legal representation to make the case that they should have been allocated an interpreter at the garda station. They are also unlikely to understand that they may be entitled to free legal aid.

The main message that comes through is the need for judges, lawyers and the police to be trained to help them understand why interpreters are needed and how best to work with them. This is one of the requirements (for judges at least) of the Directive of the European Parliament and of the Council on the right to interpretation and translation in criminal proceedings which is due to come into force in October 2013. It is to be hoped that the Directive will help make interpreter provision a right rather than a matter of discretion.

However, the most important issue of all is that of quality; at official level, both the Garda and the Courts Service assume that anyone who speaks English and another language can interpret, something that is clear from the very low levels of competency that they have set for interpreters in their requests for tender. In this article we have seen examples of interpreters whose competency was dubious and of a small number who behaved unethically. In practice, it is very difficult to ascertain if interpreters are interpreting accurately in court because a lot of the time they are providing whispered simultaneous interpreting. While some interpreters who currently work in garda stations and the courts in Ireland may be highly competent, it is probable that a large proportion are not competent at all. The newspaper coverage demonstrates that foreign defendants' rights to a fair trial are not always respected in the Irish courts.

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