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TO HAVE AN INTERPRETER – A RIGHT TO A FAIR TRIAL. EVALUATION OF PERSONAL EVIDENCE OBTAINED BY THE HELP OF AN INTERPRETER

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Abstract. The author is a trainee lawyer, and a graduating PhD student. Her field of research is the principle of directness in the criminal procedure, with special emphasis on the significance of the spoken language, and the possibility of the distortion of the information that is mediated during interpretation. The author supplements her research with her experience obtained during her time as a defense lawyer in criminal procedures. Her aim is to point out how a confession obtained with the help of an interpreter can lead to a false statement of facts. The right to have a free interpreter belongs to the circle of absolute rights of a fair procedure, the deprivation from which makes a procedure unfair in every case. However, improper interpretation bears risks of a similar proportion, as it can apply new meaning to the confessions. Thus, the forensic and questioning rules of interrogation are different when conducted with an interpreter, provided that the interrogator indeed strives to unveil the truth. This information should be part of the basic knowledge of the members of authority and the defense lawyer as well.

However, both the judge and the interpreter must keep it in mind that the parties might intentionally apply such linguistic means which result in the distortion of information.

Keywords*:* interpretation, criminal procedure, personal evidence, legal language

PRAWO DO SPRAWIEDLIWEGO PROCESU. OCENA ZEZNAŃ UZYSKANYCH PRZY POMOCY TŁUMACZA

Abstrakt: Celem niniejszej pracy jest podkreślenie, że zeznania uzyskane od świadka na drodze tłumaczenia mogą prowadzić do błędnych ustaleń faktów. Prawo do bezpłatnego skorzystania z usług tłumaczeniowych jest jednym z podstawowych praw, które musza być zapewnione w sprawiedliwym procesie sądowym. Niezapewnienie tłumaczenia lub tłumaczenie słabej jakości może prowadzić do niewłaściwej interpretacji sensu wypowiedzi co z kolei ma kluczowy wpływ na wyrok. Z tego powodu , śledczy który chce dotrzeć do prawdy powinien stosować inne procedury przesłuchania i stawiać inne pytania podczas przesłuchania z udziałem tłumacza, niż podczas przesłuchania bez tłumaczenia. Wspomniane różnice w procedurach powinny być szeroko znane, wszystkim osobom biorącym udział w procesie sądowym, jednakże sędzia i tłumacz musi pamiętać ponadto, o możliwości celowego użycia przez strony takich środków językowych, które mogą wypaczać fakty.

Słowa klucze: tłumaczenie, postępowanie karne, język prawa, język prawny, przesłuchanie

The special significance of personal evidence

During the criminal procedure, the process of verification includes the reconstruction of past events for the sake of establishing the statement of facts. A central part of the criminal procedure is the court trial. During the exploration of a well-grounded statement of facts, one can attribute, among the means of verification that formulate the rational conviction of the judge, great significance to confession, as personal evidence. In many cases, it is the principle of directness that allows for the proceeding judge to, for example, perceive a decline in the mental state of the accused that influences both the criminal procedure and the sentence, which information could get lost when an interpreter is

mediating, due to different linguistic characteristics.

The obtaining, and later, the evaluation of personal evidence demands great attention from the proceeding judge, as it could, by nature, easily mislead the process of verification. During interrogation and over its course, the execution of adequate supervision is required from the court, in order to guarantee the legal obtainment of evidence. Accordingly, the process of questioning (its manner, content and justifiability) – that influences the course of interrogation perhaps to the greatest extent – needs to be kept under appropriate control. The presiding judge must ensure that the manner of questioning does not damage the human dignity of the interrogated person, that the question is not suitable to influence anyone, that it does not include the answer, that it refers to the case, that it is asked by the competent person, it does not hurt the authority of the trial, and it is not aimed again and again the same fact. On failing to do so, the obtained personal evidence cannot be used as evidence during the procedure, according to procedural law.

The most effective means for influencing in communication is the application of the appropriate type of question or questioning technique (Kővágó, 2009:160). Certain questions are suitable to influence both subsequent remembering and the answers given based on that. Interrogation includes the reconstruction of past events, the presentation of things seen or perceived by the interrogated person via the reviving of memories about them. During questioning, the facilitation of this recalling process is allowed, however, questions of leading nature, questions that include the answer and qualify as suggestive cannot be asked during the procedure. Questions that can have a suggestive effect are, among others, assuming questions and expecting questions, but declaratory statements given with a questioning tone can have a suggestive effect as well. The expecting question prepares a particular answer, which in many cases leads to the birth of an untruthful confession. The recognition of the appearance of these forbidden types of questions is difficult in practice, and it is reasonable to take many evaluating factors into consideration. It is quite difficult to ask a question that does not suggest the opinion of the interrogator. When using different types of questions and wording, one may expect different answers as well. Thus, certain questioning techniques have secondarily a controlling and leading function as well. According to other opinions however, this secondary function of questioning is applicable to all questioning, regardless of its content and linguistic structure. According to Lempp, a question always contains

assumption and presumption in an implicit way, over which the participants cannot always have command at their free will (Lempp, 2002: 397). The procedural rules of guarantee regarding interrogation, when asserted, fundamentally serve the prevention of influencing. Influencing can even endanger the establishment of the objective truth (Elek, 2007: 142).

It is quite a demanding expectation of practice, to appropriately word a question. The interrogator is expected to possess the necessary knowledge regarding the questioning techniques and the different effects of the different types of questions. We can find an endless row of question types in studies of special literature: leading questions, test questions, loaded questions, control questions, questions with a focus on a conclusion, and the list goes on and on.

Decisions serving the linguistic presence

Court interpretation is an activity employed for the sake of the establishment and continuation of communication between those participants of the procedure who speak different languages. The collection and evaluation of the personal evidence prior to the application of the penal law sanction, and the possible exploration of the statement of facts depend on the interpreter proceeding appropriately in case the procedure has participants of different languages.

> "One of the basic principles of the right to a fair trial is the 'legal presence' of the accused at the trial, and this presence in a legal sense assumes a 'linguistic presence' as well." (González, 1998: 53).

From the right of the accused to defend themselves and to have a defense lawyer, comes the right to be able to communicate with the lawyer, and this appropriate communication is one of the most important prerequisites of getting to know the circumstances that are relevant for the statement of facts and defense, and of the establishment of the defense strategy. In connection with this, albeit indirectly, it is also necessary that the accused understands the point and process of the criminal procedure which is being conducted against them. And this requires an interpreter to help those, against whom a procedure is

conducted, in absence of the necessary linguistic knowledge.

The development of human rights and language rights after the Second World War introduced the establishment of the right to interpretation or translation as well. In the history of the declaration of the right to interpretation, the European Convention on Human Rights (1950) drafted by the Council of Europe can be considered a milestone, which records the following as part of a fair trial:

> "Everyone charged with a criminal offence has the following minimum rights: to have the free assistance of an interpreter if he cannot understand or speak the language used in court." (Section 6, Point 3/e)

The same rights are established by the International Covenant of Civil and Political Rights (1966) drafted by the General Assembly of the United Nations.

The European Parliament accepted with great majority the Directive 2010/64/EU of the European Parliament and of the Council, which sets out the common minimum rules in the field of interpretation and translation in criminal proceedings, to improve mutual trust between European Union countries.

According to the Directive, cost-free and satisfactory linguistic assistance must be provided, to ensure the ability of the persons being suspected or accused of a criminal offense who do not speak or understand the language of the procedure to exercise their right to defense, and in defense of a fair trial.

> "Member States shall ensure that suspected or accused persons who do not speak or understand the language of the criminal proceedings concerned are provided, without delay, with interpretation during criminal proceedings before investigative and judicial authorities, including during police questioning, all court hearings and any necessary interim hearings." (Section 2 (1))

It is important to emphasize what is established in Section 5 of the Directive, that discusses the quality of interpretation and translation to a great detail, emphasizing training and qualification. The practical background is a complaint often mentioned in the trade, namely, that court interpretation is provided by interpreters without proper training and court experience.

By November 2013, the Parliament of Hungary adapted the provisions of the directive into the national law (however, it does not

include the requirement of the appropriate qualification of the interpreters employed during the criminal procedure).

While the European Court of Human Rights (further on, the Court) is ready to acknowledge limitation on certain implicit partial rights of fair trial – as for example the right to remain silent, and the right of the defense to know all the evidence collected by the prosecution – as long as the rest of the guarantees provide enough assurance to preserve the fairness of the procedure, limiting the right to a free interpreter violates the fair nature of the procedure.

The right to a free interpreter is a personal right, a privilege. Also, the right to linguistic presence, to linguistic participation secured by the assistance of an interpreter is a prerequisite primarily for the accused him- or herself for practicing the partial rights of a fair trial. Thus, by being denied the access to a free interpreter, the accused may lose further partial rights of the fair trial. Additionally, due to the lack of an interpreter, the rights of the other participants are damaged as well, by, for example, being limited in their right to comment.

"Does it violate the requirement of a fair trial...?"

On 1 July 1981, Mr Georg Brozicek, a German national, was convicted by the Savona Regional Court (Italy) of, and was given suspended sentence of five months' imprisonment for, having resisted the police and committed assault causing bodily harm in 1975. In 1976, he had received in the Federal Republic of Germany notification from the prosecution of the institution of the proceedings, drafted in Italian, but he had returned it to the Italian authorities with a request – to which they did not reply – that they write to him in a language he understood.

The applicant claimed that he had not been informed of the nature and cause of the accusation against him (i) in a language which he understood and (ii) in detail.

The Court observed that the judicial notification sent to the applicant in 1976 constituted an "accusation" within the meaning of Article 6. The Italian judicial authorities should have taken steps to comply with the applicant's request to receive the notification in his mother tongue or in one of the official languages of the United Nations, unless they had been in a position to establish that the applicant in fact had sufficient knowledge of Italian to understand the purport of the

charges brought against him.

The German courts conducted proceedings against Luedicke, Belkacem and Koc due to different crimes. Considering that none of them knew the language of the state to an acceptable extent, they were ordered to have an interpreter.

Mr. Gerhard W. Luedicke is a citizen of the United Kingdom and was, at the time of his application to the Commission, a member of the British Forces stationed in the Federal Republic of Germany. The Bielefeld District Court convicted him of a road traffic offence. He was fined and ordered to pay the costs of the proceedings, including the interpretation costs.

Mohammed Belkacem is an Algerian citizen. The Juvenilye Court convicted him of assault occasioning bodily harm. He was sentenced to four weeks' imprisonment (Dauerarrest) – a sentence deemed to have been served during his detention on remand – and to a fine of DM 500, and he was ordered to pay the costs of the proceedings, including the interpretation costs.

Mr. Arif Koç, a Turkish citizen. The Assize Court attached to the Regional Court (Schwurgericht beim Landgericht) at Aachen convicted Mr. Koç of causing grievous bodily harm. He was sentenced to a year's imprisonment, but the balance of his sentence remaining after allowance had been made for his detention on remand was commuted to a period of probation. The court ordered the applicant to bear the costs of the proceedings "with the exception, however, of the costs occasioned by the assistance of the Turkish-language interpreter, which costs are to be borne by the Treasury". On an "immediate appeal" by the public prosecutor's department, the Cologne Court of Appeal (Oberlandesgericht), in a fully reasoned decision delivered on 5 June 1975, set aside the Assize Court's judgment insofar as it related to the interpretation costs.

The Court finds, as did the Commission, that the terms "gratuitement"/"free" in Article 6 para. 3 (e) (art. 6-3-e) have in themselves a clear and determinate meaning.

The Court concludes that the right protected by Article 6 para. 3 (e) (art. 6-3-e) entails, for anyone who cannot speak or understand the language used in court, the right to receive the free assistance of an interpreter, without subsequently having claimed back from him payment of the costs thereby incurred (Luedicke, Belkacem and Koc – Germany, 28, November, 1978).

It appears as a linguistic prerequisite that people accused of a

certain crime have to be informed on a language that they understand. During the examination of a specific case, we would like to mention the criminal procedure of an American citizen in Austria, and the evaluation of the actual and presumed damage in Strasbourg.

Mr Kamasinski claimed that at the hearing on 16 February 1981 at which the indictment was served on him only the titles of the crimes alleged were made known to him in English, but not the material substance upon which the charges were grounded.

The Court infers from the evidence that, as a result of the oral explanations given to him in English, Mr Kamasinski had been sufficiently informed of "the nature and cause of the accusation against him", for the purposes of paragraph 3 (a) of Article 6 (art. 6-3-a). In the Court's view, in the particular circumstances the absence of a written translation of the indictment neither prevented him from defending himself nor denied him a fair trial. Accordingly no breach of Article 6 (art. 6) can be found under this head (Kamasinski – Austria, 19 December, 1989).

The next decision of the High Court of Justice examines the lack of interpreter assistance not from the aspect of human rights or of a fair trial, but provides a guideline for the evaluation of the criminal procedure regulation infringement that results from it.

> "No such procedural regulation infringement is realized that would lead to unconditional invalidation, so revision cannot be considered as well-grounded, when the court does not employ an interpreter (or employs an inappropriate one) at the interrogation of a witness not familiar with the Hungarian language. The consequence of this so-called relative procedural regulation infringement is that the confession of the witness obtained without an interpreter cannot be considered as evidence."

According to the rules of criminal procedure, if a person with a native language other than Hungarian wishes to use his or her native language or another language during the procedure, an interpreter must be employed. Considering these regulations, the interpreter has an obligation to participate in and contribute to the procedural actions, where a person, who is not confessing in Hungarian, is interrogated.

According to point II. D) of Article (1) of Section 373 of the Criminal Code, it is an unconditionally invalidating violation of procedural rules, if the court held the trial in the absence of such a person whose participation is required by law. However, judicial practice is adamant in the evaluation of the scenario where an

unqualified interpreter is employed during the criminal procedure – it can only result in the invalidation of the challenged decisions, if this lack of qualification had a significant effect on the conduction of the procedure by limiting the legal rights of the people participating in the procedure. (CP 2005.312)

Via a relatively "recent" decision, the Court of the European Union declared its position regarding certain regulations of the directive 2010/64 EU of the European Parliament and of the Council about the right to employ interpreter or translation during the criminal procedure.

At a police check conducted on 25 January 2014, it was determined, first, that Mr Covaci, a Romanian citizen, was driving, in Germany, a vehicle for which no valid mandatory motor vehicle civil liability insurance had been taken out and, secondly, that the proof of insurance, the so-called green card, submitted to the German authorities by the person concerned.

The Traunstein Public Prosecutor's Office requested that any written observations of the person concerned, including an objection lodged against that order, should be in German.

By its question, the referring court asks, in essence, whether Articles 1 to 3 of Directive 2010/64 must be interpreted as precluding national legislation such as that at issue in the main proceedings which, in criminal proceedings, does not permit the individual against whom a penalty order has been made to lodge an objection in writing against that order in a language other than that of the proceedings, even though that individual does not have a command of the language of the proceedings.

Articles 1 to 3 of Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings must be interpreted as not precluding national legislation such as that at issue in the main proceedings which, in criminal proceedings, does not permit the individual against whom a penalty order has been made to lodge an objection in writing against that order in a language other than that of the proceedings, even though that individual does not have a command of the language of the proceedings, provided that the competent authorities do not consider, in accordance with Article 3(3) of that directive, that, in the light of the proceedings concerned and the circumstances of the case, such an objection constitutes an essential document.

In addition, it is important to note that Article 3(3) of Directive

2010/64 expressly allows the competent authorities to decide, in any given case, whether any document other than those provided for in Article 3(1) and (2) of that directive is essential within the meaning of that provision (C-216/14 15 October, 2015).

Communication by interpreter – the difficulty of ensuring guarantees

The court interpreter has an exceptional authority during procedures, and thus, during criminal proceedings as well, as he or she is the only person understanding all the remarks in the courtroom. However, avoiding even the smallest change or modification during the presentation of the understood information is a very difficult task, the primary reasons of which we will discuss below.

> "Since court interpreters interpret for participants from diverse backgrounds, they must be able to handle a wide range of registers from street slang to technical terms (Jieun, 2015:189)."

Loss of information as a result of translation or interpretation is a global problem, which is described well by the fact that many studies were published in the prominent journals of the world with the phrase "Lost in Translation" in their title. It can be considered an interpretation of the rigid phrase "Lost in Translation," when during the court procedure, courtroom interpreters translate a witness's testimony, errors are not just possible, they are inherent to the process.

Questioning can influence witnesses even when their native language is the same as of the interrogator. This influence can appear in any way, from the most innocent, almost imperceptible kind to the quite intimidating, inductive, thus, largely influential questions.

A question that is asked in front of everyone in the courtroom, and which is fully meeting the regulations, might transform into a forbidden question type, when conveyed by an interpreter who is less aware of the comprehensive knowledge on the questioning technique of the criminal proceedings. A question formulated by the court and hiding any subjective opinion might be conveyed with the expression of the interpreter's subjective train of thought when it is translated for the interrogator. Naturally, such influencing behavior of the interpreter,

who is fundamentally not interested in the outcome of the case, happens usually involuntarily.

Regarding the interrogating mechanism of the criminal procedure and influencing, we can read the following statement: "The risk of influencing is greater with the questions asked by the parties, than with the questioning done by the court (Elek, 2007:145)". In case of an interpreter assisting, this statement should be corrected as: the risk of influencing is significant in case of both questions asked by the parties, and questions asked by the court.

Hungarian language includes many polysemic words. When using our polysemic words, the interpreter has to go through the thought-process of exactly pinpointing the meaning relevant in the given context before translating it into another language. One needs to choose the word that corresponds the most from the vocabulary of the other language – which of course also offers the possibility to use many words with an identical, or synonymous meaning – after that. On the list compiled during the research with the aim of collecting those words of the Hungarian language with 25 or more meanings, one can find not only function words and verbs, but also adjectives (Papp, 1977: 157).

When establishing the statement of facts, defining the time of the perpetration as accurately as possible has a great importance. Hungarian language knows at least seven or eight synonymous words for describing the time of dawn (*hajnalodik*): *dereng*, *hajnallik*, *hajnalodik*, *pirkad*, *pitymallik*, *szürkül*, *virrad* (*megvirrad*). Daybreak does not happen in under a few seconds – in the summer it can last for more than an hour (Balassa, 1977: 186). Many languages, however, do not have such a diverse, continuous verb-system that is able to signify the exact period of the process of dawning. Thus, in intercultural communication, the information told by the parties speaking might be losing some of its accuracy due to the differences between the vocabulary of languages. The speaker, the mediator will gloss the exact meaning of information, if, instead of a carefully defined notion, he or she is forced to use a more generic phrase, due to linguistic characteristics. Apart from the generalization that leads to the blurring of information, the process is hindered further unfortunately by the involvement of the interpreter, a third person necessary because of the different linguistic knowledge of the speakers. The interpreter, as a person who is positioned outside of the process is forced during his or her work to mediate information between speakers of languages of quite different vocabularies without being aware of the exact intention,

consciousness and aim of the parties. The third person, who enters the communication between the participants of the procedure residing on the two ends of the establishment of the statement of facts (namely, the exact interrogator and the person providing information) necessarily due to the difference in the linguistic knowledge, can modify the content of information in the communication to a significant extent.

The different linguistic instruments are also well-represented by the fact that legal material written in the official languages of the European Union cannot always be translated into different languages while fully retaining the same meaning, as not only the languages, but also the linguistic systems show significant differences. Due to these significant differences between linguistic systems, not even the specific part of text prepared in advance can be translated without difficulties. The difficulties of translation and correlation surfacing as a result of the differences between linguistic systems further hamper the work of the interpreter functioning as an instant linguistic mediator.

The difference between linguistic systems, the validity of avoiding loan translation are represented by examples examined in foreign special literature as well. The example focuses on the pitfalls of translating between English and German language, regarding the use and translation of "ja" and "yes". The "ja" used in German means on the one hand "yes", but it is also often used as a filler word, to which the corresponding phrase in English is "um" or "well". When forgetting about this difference of linguistic systems during the interrogation of a witness or accused person, a German expression of hesitation could easily be translated as an unconditional agreement.

> "People who belong to different cultures do not only speak different languages, but – what is even more decisive – they also even perceive the world itself in a different way" (Hall, 1987: 25).

Criminal procedure often also becomes a stage for intercultural communication. Intercultural communication is a type of communication, "during which the cultural comprehension and symbol systems of the people starting interaction with each other are different to such an extent that they modify the event of communication" (Samovar, 2007:10). So in this form of communication, verbal and non-verbal messages are exchanged between at least two people coming from different cultures.

Cultural and linguistic differences often greatly obstruct the full, or in many cases, even the partial understanding of the subjects of

communication.

Words, expressions and symbols are formed among the circle of the members of different cultural communities as a result of a long historical development. Their use and purpose inside the given community is generally accepted and understandable. National legal systems are results of long development and reflect the countries history and culture, and cause terminological problems in the translation process (Juszkiewicz, 2012:51). Beyond the denotative meaning of symbols, namely, beyond the lexical, literal meaning of the word, the connotative meaning – or its absence – can lead to the misunderstanding of the parties. Connotative meaning also includes the subjective associations of the user under the scope of the expressed thought.

The different styles of presentation and speech in different cultures can also be a source of misunderstandings. We can differentiate between, among others, direct, indirect, vivid, subtle, complementary, informal, formal, personal, contextual, instrumental and affective styles.

In cultures using the direct way of speech (the United States, England, Germany), individuals express their intention openly, while the ones using the indirect way (Asian cultures) express their thoughts often in an ambiguous, easily misreadable fashion (Neuliep, 2006:261).

The vivid style bases expression to a great extent on rhythm and the intensity of tone, the complementary style only shows the factual tone of the message alone, while the subtle style is characterized by an emotionally reserved delivery (Ting, 2005:178).

Based on the length of speech and the difference of the applied volume, we can differentiate between refined, exact and concise styles. The refined delivery of Middle-East is often colored by different metaphors, similes and attributes. The exact style is a characteristic of the Americans for example, while the concise style is usual in Japan and China, where silence has a great positive significance (Neuliep, 2006:264).

The instrumental style (for example in the United States and Canada) is aim- and result-oriented via persuasion and influencing, and draws understanding into the speaker's own scope of responsibility, while the affective style (for example Japan, China) pays more attention to the process of communication itself, while sharing understanding between the speaking and the listening party (Neuliep, 2006:268).

The silence used by the person giving confession requires different evaluation as well. A long silence has a rather negative

meaning in Western cultures, whereas it is expressing respect and agreement. However, just to undermine the unanimity of interpretation, Eastern cultures also have a silence with a meaning of disapproval as well (Gudikunst, 2003:61).

It must be noted however – it can make the understanding of the thoughts expressed by the subjects of communication even more difficult –, that the meaning of many used abstract notions can be varied by the personality and the experiences of the individual, and by many other factors. Thus, the personal meaning behind such abstract notions as beauty or freedom may differ even between individuals who belong to the same cultural community.

> "For the successful mediation of communication, one must have a knowledge about the culture of the involved parties. Statements should not be transplanted to the language of another culture semantically, but according to the intention of the message." The aim is fundamentally to reach the same effect (Hidasi, 2004:73).

Situation (gifts):

- Ez egy nagyon finom vörösbor, állítólag Liszt Ferencnek ez volt a kedvence, remélem, hogy Önnek is megnyeri a tetszését. - "This is a very fine red wine, allegedly the favorite of Ferenc Liszt, I hope You will like it as well."

- This is a bottle of red wine, many people claim it to be a quite good one... - English people do not approve of open praising, especially when it comes to gifts that are to be given.

- Amari oishii mono dewa nai keredomo, o-kuchi ni awanai kamoshiramasenga... - "This is not a very tasty wine, I am afraid You will not even like it..." - Despite the same intention, the Japanese wording is almost the opposite of the Hungarian one

We can see that an expression delivered with the same semantics would serve the expression of a significantly different intention.

Considering this, the court interpreter can basically act with full power (deviating from word-by-word translation) in the formulation of the sentences of questioning and confessing for the sake of the accurate

mediation of intentions and messages, which activity is almost unverifiable by either the court, the prosecution or the defense, and thus, hinders the practical assertion of the principle of directness, of the contradictory process and of the direct conviction.

The danger of misinterpretation, and thus, the chance of the validity and credibility of the confession becoming questionable is increased when the narrative, psychological and cultural skills of the person giving the confession are weak, or if they lack education.

The area of syntx and lexis set off plenty of linguistic and cultural problems to be dealt with by the translator (Zygmunt, 2012:68).

Chances of mistranslation in the courtroom are increased when the judge, the prosecutor or even the defense lawyer are using complicated wording. It can happen that such a question is asked, that may not even be interpreted in the same way by two lawyers speaking the same language.

Closing thoughts

The right to have a free interpreter is included among the rights of a fair trial with absolute validity, and denying this right will in every case turn the procedure unfair. Thus, the criminology and interrogatory rules of questioning through interpreter are different, when the interrogator is truly after unveiling the truth. This should be part of the basic knowledge of members of authority and the defense lawyer. However, the judge and the interpreter must be aware of the fact that certain parties may consciously employ linguistic instruments that result in the distortion of information.

This threat to the success of verification at interpreter-assisted interrogations is only amplified by the fact that neither the interrogator, nor the opposing party (prosecutor-defense) can express their objection against an ill-formed question due to a lack of linguistic knowledge. One of the components of the principle of directness, or, the requirement of the contradictory procedure – when the examination of the evidence and the obtaining of personal evidence happens in the crossfire of prosecution and defense – cannot be asserted in practice.

Thus, an interpreter-assisted interrogation can necessarily only provide personal evidence of lesser quality, as the principle of directness is asserted only indirectly and with a lesser quality.

The fact-finding activity of the court is an indirect cognitive activity based on factual conclusions, as it is not directly perceiving the fact that is to be verified. Indirect verification means further mediation (transposition). By citing the original question raised by János Neumann, Flórián Tremmel formulated the most fundamental question of verification, using the language of information theory. "How can one create a (practically) fully reliable system based on not fully reliable elements – so for example, on indirect evidence that only provides a basis of probability implication? In other words: how can one reach sufficient total evidence or complete verification." (Tremmel, 2006:126)

In case of having indirect evidence, the proceeding court undoubtedly faces a cognitive process, and an evaluating, and conviction-formulating process that is more complex and complicated. It is generally accepted in the literature of law that standalone indirect evidence is not actual evidence, and it can provide only the basis of probability implication. The need for further wide-scale verification is formulated. Regarding the acceptability of indirect evidence, one needs to examine the factual and objective nature, logical closure and relevance (Elek, 2014:40-50).

According to our views, the personal evidence of a lesser quality – due to the limited possibilities on asserting the procedural guarantees discussed above – acquired via interrogation mediated by an interpreter should fall under the same legal judgment as indirect evidence.

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