

COURT INTERPRETING IN POLAND IN THE LIGHT OF DIRECTIVE 2010/64/EU. THE STATE OF THE ART AND CHALLENGES FOR THE FUTURE

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Abstract: In this paper, the current situation of court interpreting in Poland is subjected to an analysis in the context of the provisions of Directive on the right to interpretation and translation in criminal proceedings, which are binding for all Member States. In the light of the Community's requirements, normative regulation of the profession, courts' demand for interpreter services, court interpreter training and quality of court interpretation are discussed.

Key words: court interpreting, court interpreting in Poland, interpreting in criminal proceedings, Directive 2010/64/EU

1. Introduction

The Directive of the European Parliament and of the Council on the right to interpretation and translation in criminal proceedings (2010/64/EU) ensures any person speaking a foreign language, who does not have a good command of the official language of the proceedings, the right to language assistance by interpreters

throughout the entire criminal proceedings. At the same time, the Directive places high demands on the professional qualifications of court interpreters and the quality of the interpreting services in criminal proceedings. In this way, qualifications of court interpreters and the quality of interpretation are for the first time regulated in the Community law becoming a compulsory, fundamental requirement for activities of court interpreters.

The provisions of the Directive are binding for all Member States of the European Union, including Poland, and as Community law they take precedence over the national law. Hence, they bring numerous challenges for the Member States, as they are obliged to take measures that safeguard the sufficient quality of the interpretations in criminal proceedings. This article, therefore, examines, based on empirical data, the current situation of court interpreting in Poland in the light of Directive 2010/64/EU, in which such aspects as need for court interpretation, training of court interpreters and quality-relevant issues of the professional practice will be particularly considered. To what extent Poland meets the requirements of the Directive will also be analysed. The identification of possible weak points in the current situation of court interpreting should highlight the development potential and to suggest improvements.

2. Directive 2010/64/EU

The Directive of the European Parliament and of the Council on the right to interpretation and translation in criminal proceedings, the provisions of which the Member States had to implement into national law until 27th October 2013 (Art 9 (1)), guarantees that any suspect or accused person who does not speak or understand the language of the proceedings will receive a “free and adequate linguistic assistance” (17)¹. Granting the right to interpretation, the Directive seeks to preserve the right of a person speaking a foreign

¹ This assistance can take place both in the native language of the person or in other languages, that the person speaks or understands (22).

language to a fair trial (14)². Fair trial is ensured only when a person speaking a foreign language can fully exercise his/her procedural rights (among others the right to a defence, the right to ask questions).

In that connection, the Directive (Art 2 (1, 2) and Art 3 (1, 7)) stipulates that the person speaking a foreign language must receive a written translation of all essential documents in the proceedings. In exceptional situations, it is allowed to replace the translation with “an oral translation or oral summary”. Such a (sight or summary) interpretation, however, must not prejudice a fair trial. Moreover, the Directive ensures any suspect or accused person speaking a foreign language is provided with interpreting services during the entire criminal proceedings: before investigative and judicial authorities, during police questioning and all court hearings as well as for communication of the foreign person with his/her defence counsel.

The Directive (Art 3 (5, 9) and Art 2 (5, 8)) also stipulates that the quality of interpreting services in criminal proceedings must be sufficient to safeguard the fairness of the proceedings. Sufficient quality means ensuring the person speaking a foreign language knows the case against him/her and he/she is able to exercise his/her rights to a defence. If the person speaking a foreign language is convinced that the quality of the delivered interpretation is insufficient to guarantee a fair trial, he/she is entitled to complain. Therefore, the Directive establishes that the interpreting services must be provided by appropriately qualified interpreters who are competent in the field of legal terminology (31).

At the same time, the provisions form only minimum rules in criminal proceedings, so that adequate assistance may be more but never less extensive (32). All Member States of the European Union are responsible for the training of qualified interpreters and for taking quality assurance measures (Art 5). They are also obliged to set up one or more registers of independent, qualified court interpreters and to make it/them publicly available.

² The right to a fair trial, including a free assistance of an interpreter in proceedings, is also laid down by international law, in particular Art 5 and 6 of the European Convention on Human Rights.

3. Legal regulation of court interpreting in Poland

Sworn translators and interpreters are responsible for interpreting in the Polish courtroom (*tłumacz przysięgły*)³. Their professional activities are regulated by the Act on the profession of sworn translator and interpreter, passed on 25th November 2004 and entered into force on 27th January 2005 (journal of laws no. 273, item 2702), which is currently the best regulation of the profession of court interpreters in Europe (cf. Hertog and van Gucht 2008: 173). The Act has taken court interpreters out of courts⁴ and newly created the independent profession of a sworn translator and interpreter (cf. Dostatni 2005: 7). The provisions of the Act are supplemented by additional legal regulations of the Minister of Justice.

3.1. Act on the profession of sworn translator and interpreter

The Act (Art 2) establishes general and special requirements for candidates for registration in the list of court interpreters. The general criteria include unlimited capacity to contract and the possession of one of the following citizenships: The Polish citizenship, the citizenship of one of the Member States of the European Union or the European Free Trade Association, of one of the contracting parties to the European Economic Area, of the Swiss Confederation or of another state in accordance with the principle of reciprocity. Besides that, candidates must not have a previous conviction for an intentional offense, a fiscal offense or a negligent offense against the security of commerce.

³ The term “tłumacz” includes both translator and interpreter activities since the Polish language does not distinguish between the two professions.

⁴ The previous Regulation of 1987 on sworn translators and interpreters originated in the People’s Republic of Poland and described the function of court interpreters only as proceedings’ helpers of the court. They were appointed responsible by the president of the court for their place of residence as sworn translators and interpreters in this court and only for its needs, so that their activity was limited to the relevant juridical district (Dostatni 2005: 7).

One of the special legal requirements includes knowledge of the foreign language, for which registration is sought and knowledge of the Polish language. In addition, all candidates must have a university degree. A necessary criterion is also the state examination for sworn translators and interpreters successfully passed; the law provides for no possibility of exemption from the examination (Dostatni 2005: 60)⁵.

An independent body, the State Examination Commission was formed to carry out state examinations for court interpreters (Art 3). The Commission consists of 11 members, who are characterized by a high degree of expertise in the area of (foreign) languages as well as translation and interpreting techniques and who are appointed by the Minister of Justice. In addition, each time two consultants are appointed responsible for the preparation with regard to content and the practical conducting of exams for a particular foreign language.

The exam for sworn translators and interpreters consists of two parts: a written and an oral part (Art 4)⁶. The written part of the exam consists of the translation of four texts: two texts are translated from Polish into a foreign language and two texts from a foreign language into Polish. Each time one text must be a court, official or legal document. But, the two general texts are related to socio-political and economic issues (Cieślik et al. 2010: 23). The written exam lasts 4 hours, and during the test the candidates are allowed to use dictionaries brought by themselves. The translated texts are provided by the applicants with a code, whereby the anonymity is ensured.

Each translation is evaluated in the following categories: accordance of the source text's content in the target text (10 points), terminology and phraseology of technical jargon (15 points), grammar, spelling and lexis (10 points), language register of the text type (10 points) and formal aspects of certified translations (5 points).

Candidates who have passed the written part, may take the oral exam. The oral part consists of consecutive interpreting of two

⁵ The 10,000 sworn translators and interpreters who acquired the right to practice the profession under prior regulations, were however excused from the exam obligation and were registered at their request in the new list of sworn translators and interpreters (see Cieślik et al. 2010: 85).

⁶ During the work on the draft law, a distinction between two professions, namely sworn translator and sworn interpreter, has been considered, so it would have been possible to take the exam in only one part and acquire the status of only a sworn translator or a sworn interpreter. This project was rejected (see Dostatni 2005: 69).

texts from Polish into a foreign language and of sight interpreting of two texts from a foreign language into Polish. Also in this case one of these two texts must be a court, official or legal document. The two texts for sight translation are handed over to candidates directly prior to interpreting. During the oral part of the examination no aids are allowed and the exam must be audio-recorded.

The interpretations are evaluated in the same categories which apply to the assessment of translations, with the exception of the last category – instead, phonetics, intonation and fluency of the interpretation are assessed (5 points).

The maximum achievable score both for the written and the oral part of the examination comes to 200 points; the respective part of the exam is considered to be passed if candidates achieve at least 150 points. The state examination is considered to be passed only if both parts of the exam have been completed with a positive result⁷.

Successful candidates acquire the authorization to exercise the profession of sworn translator and interpreter (Art 5). Afterwards, they take an oath before the Minister of Justice which they undertake solemnly to keep to conscientiousness, impartiality and secrecy in their professional activities and to orientate themselves to standards of professional ethics (Art 7). Then, at their request the candidates are registered in the list of sworn translators and interpreters (Art 6) and at the precise moment they acquire the right to practice the profession. The Polish list, which is also regarded as exemplary in Europe (see Hertog and van Gucht 2008), is led by the Minister of Justice as a card index and in electronic form which is available to the public (Art 9). Sworn translators and interpreters are issued an official certificate by the Minister of Justice as proof of the acquired right (Art 5) and they are entitled to use a round seal (Art 18).

⁷ In the years 2005-2009 a total of 166 exams for 31 languages were conducted. The success rate in this period was between 20% and 31% (Kubacki 2012: 194).

3.2. Legal obligations of court interpreters

The Act explicitly defines duties and obligations of sworn translators and interpreters⁸. The statutory duties include apart from certified translations interpretation services (Art 13). The Act states that court interpreters must not reject an interpreting assignment at the request of the court, the prosecutor's office, the police or public administrative authorities in legal proceedings conducted under law, unless there are particularly important circumstances which justify the rejection (Art 15). However, this provision does not specify what type of particularly important circumstances may be concerned. Although, it can be assumed that court interpreters can claim the right to rejection only rarely (e.g. due to a severe illness) (Dostatni 2005: 97). Court interpreters always have to fulfil their statutory duties under principles arising from legislation (Art 14).

In addition, they are required by law to preserve particular diligence and impartiality when fulfilling the tasks entrusted to them as well as to keep secrecy about all the facts and circumstances, the knowledge of which they have acquired through their translator or interpreter activities. The statutory obligation of sworn translators and interpreters to maintain "particular diligence" when performing translation or interpreting services, requires them to provide high-quality translations and interpretations – national regulations correspond here with Community law. However, the guarantee of ensuring high quality should be among others the obligation imposed on sworn interpreters by the Act to a continuing improvement of professional qualifications (Art 14)⁹.

Sworn translators and interpreters are finally obliged to keep a repertory in which they have to list all the performed acts in their capacity as a sworn translator and interpreter (Art 17).

If court interpreters do not fulfil their statutory duties as well as their statutory obligations or if they fulfil their duties and obligations without the necessary diligence or conscientiousness, there

⁸ The legal provisions can be completed by standards of the professional practice, as described in the "Code of sworn translator and interpreter" (TEPIS 2011), although they are of recommendatory nature only.

⁹ This obligation includes not only further trainings in the foreign language and interpreter competencies, but also continuous training on legal provisions, rules of the professional practice and any other (legal) relevant aspects (Cieślak et al. 2010: 49).

is a violation of the professional liability of the sworn translator and interpreter (Art 21). In such case, the Minister of Justice or the competent voivode (just as well at the request of each client) can initiate proceedings before a disciplinary committee (Art 24). The disciplinary measures that may be imposed by the committee on court interpreters include: warning, reprimand, temporary withdrawal of the right to practice the profession (for a period of 3 months to 1 year) and the final withdrawal of this right (Art 21), which leads to immediate deletion from the list of sworn translators and interpreters (Art 27)¹⁰.

4. Court interpreting in Poland

4.1. Market of court interpreting

A survey carried out among Polish courts¹¹ of the first and second hierarchy level has revealed that approximately half of the surveyed regional courts (second level) call interpreters for fewer than 10 trials and in 36% of the courts for no more than 20 trials per year. Only in four Polish regional courts (in Warsaw, Suwalki, Poznan and Gdansk) are interpreters appointed quite frequently: from several times a month to several times a week.

However, the analysis of the sample of district courts (first level) suggests that the participation of interpreters in proceedings is higher in district courts than in regional courts. The surveyed district courts stated considerably more often that they call interpreters dozens

¹⁰ In the period from 2005 to 2010, the Disciplinary Committee has performed 219 proceedings. In 160 cases, a penalty was imposed, among others warning (74 persons) and reprimand (55 persons). The temporary withdrawal of the right to practice the profession has been imposed 28 times and the final withdrawal 3 times. The most common reasons for initiating disciplinary proceedings are: failure to comply with particular diligence and impartiality, rejection of assignments at the request of authorities and the non-compliance with keeping the repertory (Kubacki 2012: 303-306).

¹¹ The analysis is based largely on estimated data due to the lack of record-keeping of interpreter-mediated proceedings by the Polish courts. For more details, see Nartowska (2011).

or even hundreds of times per year. The analysis also shows that court interpreters are needed in various divisions, especially in criminal, but also in civil, economic, labour and insurance divisions etc.

The investigated courts have altogether registered the need for services of an interpreter in 34 different languages due to the ongoing proceedings within one year. Most often popular European languages such as German, English, Russian, Italian, French and Ukrainian were indicated, but also rare and non-European languages, including Romanian, Vietnamese, Arabic and Lithuanian also occur. Besides that, there is an occasional need for a number of other, sometimes very rare languages (cf. Nartowska 2011: 26-27, Mendel 2011: 6-7).

The supply side is as follows: Currently, 10,841 court interpreters for 51 languages (without sign language) are registered in the list of sworn translators and interpreters¹². Almost 83% of them are allotted to interpreters for only four languages, namely: German (36%), English (24%), Russian (12%) and French (11%). This means that the courts' demand for interpreting services for the most common European languages can be satisfied. Among the 47 other world languages represented in the list, the surveyed courts have also reported demand for those, which only a few interpreters in the whole of Poland are registered (such as Romanian 34, Vietnamese 19 and Lithuanian 43) or there are no court interpreters e.g. for Urdu¹³. In that case, the courts' need for qualified interpreters cannot be satisfied.

Of all the registered persons only a fraction of court interpreters, namely 7.5%, have been appointed in accordance with the requirements of the Act¹⁴, while 10,000 Polish sworn translators and interpreters were assigned in the prestatutory era (cf. Cieslik et al. 2010: 85), under the Regulation of the Minister of Justice of 1987 on court experts and sworn translators and interpreters (journal of laws no. 18, item 112). At that time, the legislature allowed exclusively graduates of philological or linguistic studies to exercise the

¹² The list of sworn translators and interpreters <http://bip.ms.gov.pl/pl/rejstry-i-ewidencje/tlumacze-przysiegli/lista-tlumaczy-przysieglych/search.html> (05.07.2015)

¹³ However, a positive trend on the supply side can be observed: While in 2011 there were no court interpreters for Mongolian, Armenian and Georgian at all, currently one Mongolian interpreter and 4 persons for the latter two languages are registered (cf. Nartowska 2011: 25-27).

¹⁴ The exam is an effective entry barrier: from September 2011 the number of court interpreters has increased from 10,463 to 10,841, and therefore, the authorization obtained only 378 persons (cf. Nartowska 2011: 22).

profession of sworn translator and interpreter, which meant that the ability to translate and interpret was equalized with the knowledge of a foreign language.

At that time, the curricula of the mentioned studies did not provide for any teaching of translation subjects and translation studies in Poland did simply not exist (cf. Kierzkowska 2007: 130-131)¹⁵. That is why most Polish practicing sworn translators and interpreters, the then graduates of philology and linguistics, cannot formally document the achievement of translator or interpreter qualifications – Polish court interpreters are “self-made professionals” (Kierzkowska 1992: 17), who do not meet the requirements of the Directive. The Act on the profession of sworn translator and interpreter has changed the access to the profession by introducing high demands, and above all, the state examination for candidates, however, those interpreters were automatically and unconditionally included on the list without any verification of their competence.

4.2. Practice of court interpreting

Despite the fact that in Poland there are over 10,800 court interpreters, courts and other state bodies have huge problems finding an interpreter for a hearing. This, among others, show statements of members of legal authorities:

[Interpreters] either refused to come to TOWN or after agreeing to participate in acts relinquished. The prosecutor had to personally deal with the setting an interpreter almost begging the interpreter by telephone to arrive quickly (Mendel 2011: 7)

and

Most of the interpreters did not want to take up interpretation of a case of a deadly road accident (Nartowska 2014b: 445).

¹⁵ The first postgraduate studies for legal translators and court interpreters were only established in 1998 at the Institute of Applied Linguistics, University of Warsaw (see Kierzkowska 2000).

In the latter case, the judge of the district court was forced, after repeated refusal by court interpreters, to call a teacher for the foreign language (sic!). It is paradoxical that this situation concerned the court's demand for a German court interpreter, of whom in Poland are the most (3832 persons). To find an interpreter in the case of rarer and rare languages is even more difficult and it forces lawyers to appoint ad hoc interpreters with unconfirmed qualifications (cf. Mendel 2011: 5-7).

This situation is caused by the reluctance of interpreters to work in courts. Although it can be assumed that a person who decides to choose the profession of sworn translator and interpreter makes it consciously, and therefore realizes that he/she must fulfil the tasks of both a translator and an interpreter, although the Act obliges sworn translators and interpreters to work for the court, and despite possible sanctions, interpreters routinely refuse to deal with orders of the courts, "better still: they use all possible means just to not receive these orders at all" (Kuipers 2003: 111)¹⁶.

There are many reasons for this situation: Firstly, interpreters do not feel competent enough in the field of (court) interpreting. Formerly, the activities of a sworn translator and interpreter consisted mainly of translation, today, however, working for the authorities, including courts, is part of everyday life of this profession. Interpreters appointed both under the Regulations, and under the Act, who have not received formal education, are aware that they are not sufficiently prepared to work in the courtroom and are lacking the translator competence, but also experience. This illustrates the statement of an interpreter:

[During the studies] there was absolutely nothing about translation. (...) when I have to interpret, it is a problem for me just because I have no such experience (Nartowska 2014b: 371-372).

Interpreters are afraid of responsibility related to the court interpreting.

Secondly, rates for interpreting for the authorities have been understated for years. The rates established under the Regulation of 2005 (journal of laws no. 15, item 131) are not acceptable (amount to

¹⁶ Also, the lawyers point out excuses of interpreters: "All sworn translators and interpreters refused to participate in the acts excusing themselves with holidays, staying away from place of residence" (Mendel 2011: 7).

approx. 7 to 10 €/hour, travel expenses are not covered) and are one of the main reasons for the reluctance of court interpreters to work for state bodies (cf. Mendel 2011: 24-25). The ministerial remuneration is in no way a reflection of either the high competencies necessary for court interpreters, or of the responsibility they carry. Beyond that, it does not constitute a source of motivation for interpreters to work for authorities, it is frequently even unprofitable, and all the more to prepare for the hearing. This problem, in addition, is enhanced by tardiness of courts in settling debts.

4.3. Training of court interpreters

The educational situation of Polish translators and interpreters in general already began to change in the 1990s. To meet the requirements of the labour market, first translation modules were introduced in philological curricula, at present there are some translation or rather linguistic courses of study that train future interpreters. Sweeping changes in the educational system brought the Act on the profession of sworn translator and interpreter causing a creation of countless post-graduate studies in the field of translation studies in the past 10 years in whole of Poland¹⁷.

However, university studies or training programs for court interpreters are still missing. Philological studies, even after the introduction of courses in translation in a minimum range do not prepare graduates to practice as interpreters¹⁸, they generally have other purposes. But even the completion of translation studies, mostly as complementary master studies (see examples in Błaszowska 2014, Jopek-Bosiacka 2014, Tyupa 2014), is not sufficient to pursue the profession of court interpreters (Kadrić 2009: 219). A court interpreter has to in fact acquire and develop specific skills and competencies that

¹⁷ University interpreter training <http://www.tepis.org.pl/index.php/linki/uczelnie-kształcace-tłumaczy> (05.07.2015).

¹⁸ Regarding the inadequate preparation of philologists to practice as an interpreter see Kierzkowska (2003), Kubacki (2012), Żmudzki (2010) cit. after Błaszowska (2014).

curricula of translation studies do not include at the moment, and modules for training of court interpreters are virtually non-existent¹⁹.

However, while postgraduate studies allow those who mastered a foreign language (both graduates of non-linguistic studies as well as philologists), and who want to start an interpreter career, to acquire basic translation skills, their offer is rarely addressed to sworn/court interpreters. Individual institutes either direct their offer separately to translators (of specialized texts or rather of literature) or (conference) interpreters (e.g. UNESCO Chair for Translation Studies of the Jagiellonian University). Even studies declaring the preparation of candidates for the profession of sworn translator and interpreter, practice largely single-track focusing on translation skills (specialized translation) (cf. Kubacki 2012: 271-272). An exception is the two-semester Interdisciplinary Postgraduate Studies in Translation at the Institute of Applied Linguistics, University of Warsaw²⁰, of which the aim is to convey skills in legal translation and court interpreting as well as to prepare for the profession. The studies are designed for interpreters of English, French, Spanish, German, Russian and Italian²¹.

Postgraduate studies have been enjoying great popularity, even among philology and linguistics graduates. This means that a training system for interpreters in Poland has been established, consisting of linguistically oriented five years university studies (bachelor and master) and postgraduate studies in translation and interpretation (1-2 years).

The training offer of the Polish Association of Sworn Translators and Interpreters TEPIS, namely Laboratorium Tłumacza Przysięgłego (Workshop of a Sworn Translator and Interpreter)²², is also worth an emphasis. It is addressed both to already practising court interpreters, interpreters called to the court ad hoc, as well as

¹⁹ Consequently, court interpreters are forced to improvise in the courtroom (see Nartowska 2014a).

²⁰ IPSKT <https://www.ils.uw.edu.pl/80.html> (05.07.2015).

²¹ In addition, there is a variety of courses preparing for the exam for a particular language, e.g. Postgraduate training for German interpreters (Adam Mickiewicz University in Poznan), Postgraduate course preparing for the exam for English translators and interpreters (University of Linguistics in Częstochowa) or Course for translator and interpreter candidates for Russian (University in Olsztyn).

²² Laboratorium Tłumacza Przysięgłego <http://www.tepis.org.pl/ksztalcenie/tepis/lktps-ii.pdf> (01.11.2013).

candidates interested in the profession. The aim of this 9-month course is to provide knowledge and practical skills in both specialized translation and interpretation with emphasis on the legal, judicial and economic field. Initially, the course was only held in Polish constituting an attractive training offer especially for participants working in languages for which there are no university or postgraduate studies. Currently, classes are taught in English, French, German, Russian and Italian.

4.4. Cooperation of court interpreters with legal authorities

A study conducted by Mendel (2011) among judicial representatives on the one hand and interpreters on the other regarding the quality of interpreting services, although it is not representative²³ and has not been subjected to extensive scientific analysis, provides relevant information on the current state of the cooperation of authorities with court interpreters. The survey revealed that persons working with interpreters are not always aware of the nature of the court interpreter's work, which consequently may adversely affect the activities of the interpreter in the courtroom²⁴. For example, interpreters fault that they have no possibility to terminologically prepare themselves for an assignment because they are denied access to the file (Mendel 2011: 29). The lack of information on the subject of the proceedings is also the reason why the surveyed interpreters principally do not like to participate in a trial. The majority of the lawyers indicates, however, that they make all necessary information about the criminal proceedings (legal basis, time, place and circumstances of the committed offense) available to the interpreters (ibid. 2011: 9). Those lawyers who do not provide such information to interpreters, are of the opinion that this is not necessary for interpretation and its quality or rather because they consider it to be

²³ The survey was participated by 351 institutional representatives and 53 interpreters.

²⁴ Nartowska (2014a, b) also confirmed the negative impact of lawyers' missing experience in collaboration with interpreters on interpreter's activities in the courtroom.

not important²⁵. This confirms the fact that lawyers perceive language as a code by which contents are encoded. The task of the interpreter is therefore, in their opinion, an automatic switching between the two codes, being in a ratio to each other one to one, and therefore without any loss in terms of content or form (cf. Morris 1995)²⁶.

Some institutional representatives justify the missing information by the fact that interpreters are not interested in receiving such information (Mendel 2011: 10-12), even if the majority of the surveyed interpreters claim to request both the provision of information about the case to be interpreted in preliminary proceedings and the inspection of the files in case of court proceedings (ibid. 2011: 30-31). Finally, restricting interpreters information or access to the files because of their impartiality and confidentiality results from the ignorance of the statutory duties of court interpreters by the judiciary representatives.

Similar is the situation with documents that are to be read aloud and interpreted in proceedings: While lawyers claim to hand over the document to the interpreter for a sight-interpretation (ibid. 2011: 13), the majority of the surveyed interpreters say that they do not get the respective document in their hands (ibid. 2011: 32). As reasons for this situation they name lawyers' power of decision-making who do not see the need of such a practice, are not familiar with it or expect that interpreters should know and be able to do everything.

4.5. Quality of court interpreting

There is no large-scale research on the quality of court interpreting in Poland. From the analysis of a case regarding the role

²⁵ This is shown by the following lawyers' statements: "For translation or rather interpretation it is not necessary", "He should be able to do it [interpreting], without needing to get to know the content of the case", "I do not think it is necessary to fulfil the duty entrusted to him", "Circumstances of the offense are here not of bigger importance because the interpreter either knows a certain word or phrase or not" (cf. Mendel 2011: 10).

²⁶ The lawyers' belief that everything that is said in a foreign language can be "switched" to the language of the proceedings and functions in it as the original Morris (1995: 30-31) calls a legal fiction.

of court interpreters in Polish criminal proceedings²⁷, which however, does not allow to draw general conclusions, it results that the quality of the interpretation in the courtroom is sometimes frighteningly low. This problem is illustrated by the following example of the interpretation of the indictment:

Judge: ••• Yhm. ((1,6s)) Dobrze, w takim razie proszę o odczytanie aktu oskarżenia.

[••• Um. ((1,6s)) Well, in that case, please read the indictment.]

Interpreter: Also jetzt wird • Anklageschrift...

[So now is being (read) • the indictment...]

Prosecutor: Oskarżam Karla Fischer • o to, że: •• w dniu DZIEŃ MIESIĄC ROK

[I accuse Karl Fischer • because of this, that he: •• on the date DAY MONTH YEAR]

I: My mogę/ możemy usiąść?

[We can/ can we sit down?]

((whispers)) Wir können jetzt sitzen.

[We can sit now.]

Pr: w miejscowości NAZWA, gmina NAZWA, naruszył zasady bezpieczeństwa w ruchu drogowym

[in the city NAME, the municipality of NAME, violated road safety rules]

I: ((2,0s)) Und jetzt ist diese... ((1,6s))

[((2,0s)) And now is the... ((1,6s))]

diese/ •• das hier (()) vorgelesen •• (()) und das.

[the/ •• this here (()) reading out loud •• (()) and this.]

Nie dostał yyy...?

[He did not get ehh...?]

Pr: w ten sposób, że kierując samochodem osobowym marki MODEL POJAZDU

[that driving passenger car MODEL VEHICLE]

Defence counsel: •• Skróconą wersję.

[The shortened version.]

I: Das ist das hier.

[This is this here.]

²⁷ The research was conducted in a Polish district court. For more details, see Nartowska (2014b).

This example shows that the interpreter is overtaxed with the interpreting task trying to save face by using different strategies of “non-interpreting”. First, she comments the course of events in the courtroom, then she looks for the text passage being read aloud in the documents of the defendant and finally she replaces the interpretation pointing out the right paragraph to the defendant. In this way, the defendant is deprived of the possibility to participate in the hearing, in the act of the indictment read out, and he is not able to fully exercise his rights to a defence. This means that the defendant has not been guaranteed the right to a fair trial, and its violation may be complained in court.

In addition, insufficient or poor quality of interpretation can result in the necessity to postpone the trial and call another interpreter, leading to additional costs, inefficiency and at the same time, to lawyers’ distrust, and consequently to a negative impact on the cooperation of lawyers with interpreters. The presented example, of course, does not allow the conclusion that the problem of low-quality interpreting concerns all or many court interpreters in Poland. However, undoubtedly disturbing is the occurrence alone of single cases of this kind of practice that take place due to the fact that interpreters are aware of their statutory duties and undertake assignments for the court, despite their missing preparation for this task.

The research (Kadrić 2009, Nartowska 2014a, b, 2015a, b) also shows that for the quality of the interpretation in the courtroom it is necessary to develop the correct, actual role identity with the own role as a court interpreter. If the interpreter does not develop a proper awareness of his/her role as an expert in intercultural communication (or develops a wrong identity), his/her actions may negatively affect the interaction in the courtroom, the course of proceedings and the cooperation with the lawyers.

5. Discussion and conclusions

The analysis of the current situation of court interpreting in Poland shows both positive developments and changes that have already taken place, as well as some weaknesses which represent new

challenges for the future of court interpreting, so that all requirements of Directive 2010/64/EU could be fully met.

Among the undoubted strengths of court interpreting in Poland is the very progressive legal regulation of the profession of sworn translator and interpreter. The Act places high demands on the candidates and establishes the complex accreditation process. The difficulty of the state examination ensures that only qualified interpreters are allowed to practice the profession, thus the requirements of the Directive are taken into account. Also, the publicly available list of sworn translators and interpreters led by the Polish Minister of Justice meets the requirements of the Directive.

Weak points include the training system of interpreters in Poland, although the development of the last decade must definitely be considered as positive. The educational path, in the meantime stabilized, consisting of philological or linguistic studies, which the profound language skills are required in, and of a postgraduate course in translation, is a good basis for training of appropriately qualified interpreters in the future. However, the current, strong single-track approach of postgraduate courses must be evaluated negatively. The focus of these studies only on the specialized translation and the neglect of interpreting lead to an incomplete education: There are currently trained qualified translators of specialized texts, but not (court) interpreters, so that practicing interpreters do not want to take interpreting assignments. It is therefore necessary, to replenish translation studies with appropriate interpreting modules. Moreover, in the very practice-oriented courses theories of translation studies or rather court interpreting should be introduced which would help to develop the correct awareness of the own role as a court interpreter.

In addition, university interpreter training is offered only for a limited number of languages, so that court interpreters for most languages now do not have any opportunity to qualify or to take further education courses. However, the market investigation has shown that there is need for interpreting services for non-European or rather less popular European languages and that there are insufficient sworn interpreters for these languages available. By appointing of non-qualified persons proficient in a language, however, the high quality of interpretation cannot be guaranteed. Thus, it would be necessary to set up cross-language courses for interpreters of rare languages, ad hoc appointed persons and for already sworn interpreters, which would allow the interpreters to make up for the

lack of preparation for practising the profession. Beside university institutions the professional association TEPIS could take over the leading role in the training of court interpreters.

Changes in interpreter training, however, would only affect future court interpreters and not those who have been admitted to practice the profession under the old Regulation. Therefore, Poland currently does not meet the requirements of the Community law connected to the obligation of all Member States to ensure high quality of interpreting services exclusively by highly qualified court interpreters. To fulfil these demands, the skills of already sworn translators and interpreters should be verified, as it was the case e.g. in Austria (cf. Soukup-Unterweger 2003), but also an obligation for court interpreters should be introduced to review their own skills, e.g. every 5 years (similar to Austria, Greece, the Netherlands). It would allow the elimination of the problem of low-quality interpretations in the courtroom and of the numerous refusals of assignments for authorities. Such a solution would also justify the fight for the raising of the ministerial rates that would reflect the actual competences and responsibilities of court interpreters.

Since the cooperation between lawyers and court interpreters, which is not satisfactory at the moment for the latter, can also affect the quality of interpretation, this field is considered to be in need of optimization. It would then be worth considering to conduct joint workshops or rather trainings for lawyers and interpreters, so that in this way the awareness of the individual roles of the parties in proceedings could be raised. The development of a sound basis for the mutual collaboration and optimization of the quality of interpreting services has already been possible.

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Acts of law:

- Directive of the European Parliament and of the Council on the right to interpretation and translation in criminal proceedings (2010/64/EU).
- European Convention on Human Rights.
- Rozporządzenie Ministra Sprawiedliwości z dnia 8 czerwca 1987 r. w sprawie biegłych sądowych i tłumaczy przysięgłych (Dz. U. nr 18 poz. 112).

- Rozporządzenie Ministra Sprawiedliwości z dnia 24 stycznia 2005 r. w sprawie szczegółowego sposobu przeprowadzenia egzaminu na tłumacza przysięgłego (Dz. U. nr 15 poz. 129).
- Rozporządzenie Ministra Sprawiedliwości z dnia 24 stycznia 2005 r. w sprawie wynagrodzenia za czynności tłumacza przysięgłego (Dz. U. nr 15 poz. 131).
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- Rozporządzenie Ministra Sprawiedliwości z dnia 24 stycznia 2005 r. w sprawie Komisji Odpowiedzialności Zawodowej (Dz. U. Nr 15, Poz. 132).
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- Rozporządzenie Ministra Sprawiedliwości z dnia 24 stycznia 2005 r. w sprawie wzoru świadectwa potwierdzającego uprawnienia do wykonywania zawodu tłumacza przysięgłego oraz sposobu prowadzenia listy tłumaczy przysięgłych (Dz. U. Nr. 15 Poz. 130).