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## Judicial interpreting institutionalization in criminal proceedings: European practices and Russian perspectives

Valentina V. Stepanova  

RUDN University, *Moscow, Russian Federation*

 [stepanova\\_vv@pfur.ru](mailto:stepanova_vv@pfur.ru)

**Abstract.** The research studies the institute of court interpreting in several European countries and the prospects of forming the institute of court interpreting in Russia. It bridges the previous studies concerning professionalization of this activity into the new realia and extends into legal regulation, market, and administration. The research raises awareness of the multifaceted process of forming the institute of judicial interpreting to the benefit of civil society. The issues concerning education of interpreters participating in judicial setting, level of language proficiency, qualification, authorization of legal interpreters and translators, their status, rights and obligations, code of ethics and some others inherent to the process of institutionalization are in the focus. It also highlights the grounds and voices prospects for the development of the institute of legal interpreters in Russia. The research methods are divided into theoretical and analytical, comparative, and contrastive and methods of reasoning, evaluation and summarising allowing to balance the material according to the academic aims. The practical relevance of the work rests in unifying and harmonising legal, administrative, and professional aspects of court interpreting institutionalisation within European space.

**Key words:** court/judicial interpreter; proficiency, qualification, certification; associations of judicial interpreters; legal regulation; judicial interpreting institutionalization

**Conflict of interest.** The author declares no conflict of interest.

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## Институционализация судебного перевода в уголовном судопроизводстве: европейская практика и российские перспективы

В.В. Степанова  

Российский университет дружбы народов, г. Москва, Российская Федерация  
stepanova\_vv@pfur.ru

**Аннотация.** Рассматривается институт судебного перевода в ряде европейских стран и перспективы формирования института судебного перевода в России. Автор связывает предыдущие исследования, касающиеся профессионализации этой деятельности, с новыми реалиями и распространяется на правовое регулирование, потребности рынка и систему управления. Исследование освещает многогранный процесс формирования института судебного перевода в интересах гражданского общества. В центре внимания находятся вопросы, касающиеся образования переводчиков, участвующих в судебном процессе, уровня владения языком, квалификации, полномочий юридических устных и письменных переводчиков, их статуса, прав и обязанностей, этического кодекса и некоторые другие, присущие процессу институционализации. Также выделяются основания и озвучиваются перспективы развития института юридических переводчиков в России. Методы исследования подразделяются на теоретико-аналитические, сравнительно-сопоставительные и методы рассуждения, оценки и обобщения, позволяющие сбалансировать материал в соответствии с академическими целями. Практическая значимость работы заключается в унификации и гармонизации правовых, административных и профессиональных аспектов институционализации судебного перевода на европейском пространстве.

**Ключевые слова:** судебный переводчик; профессионализм, квалификация, сертификация; ассоциации судебных переводчиков; правовое регулирование; институционализация судебного перевода

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### Introduction

In specialized literature there are various opinions concerning *fluency* and *interpreting*. Some investigators make a formally discursive error when they equate them. Language fluency describes any person who can speak and communicate in a foreign language, write on it, and accurately express their thoughts in this language. Interpretation and translation are procedures of the clear and identical transfer of ideas and thoughts that are reproduced in one language with the help of another. Since oral interpreting and language competence constitute heterogeneous groups of language functions, when defining the concept of court interpreter, it is necessary to emphasize not the fluent and unconstrained mastering of a language, but the proper quality of fluent interpreting into another language.

The WTO International Organization for Standardization (ISO) defines legal translation as “a specialization, which covers law-related or legal specialist field translation in terms of content /and context (e.g., legal settings)”. Formalized, sensitive nature of the

subject matter suggests “specific professional, confidentiality and ethical requirements, authorization, certification, and security clearance procedures” (ISO 20771:2020).

Court interpreting shares most of the above features with the difference in oral skills and competences, awareness of court proceedings and place of interpreter in it (Gonzalez, Vasquez, & Mikkelson, 1991; Hewitt, 1995).

The issues of judicial translating and interpreting attract attention of researchers in various fields. Most common works are devoted to national situation with court interpreting focusing on separate aspects such as the role of interpreter in court proceedings, linguistic rights, ethical values, quality, competence training, etc. Very few are trying to engage separate aspects of this very challenging job into the scope of professional factors that is unique in its nature. A couple decades ago, scholars were speaking about professionalization of court interpreting focusing on a logical chain of formal education, qualification, professional ethics, associations, and media.

Aspects of professionalization of judicial interpreting (Witter-Merithew & Nicodemus, 1990, 2012; Vasilenko, 2013) have been looked at by scholars in different fields: specific scope of knowledge and skills requiring formal academic education (Russell & Hale, 2008; Salimbene, 1997), public service mission, emphasized also in the light of recent migration flows (Mikkelson, 2000; Hale, 2011; Kolb & Pöchhacker, 2008), ethical norms of court interpreters (Camayd-Freixas, 2013; Tsybulevskaya & Kasaeva, 2013), professional autonomy (Witter-Merithew & Nicodemus, 2012), professional associations and sense of community (Mikkelson, 2000), professional standards (Salimbene, 1997; Liu & Hale, 2018) and status of translation profession (Pyn, Grin, Sfreddo, & Chan, 2012).

The institute of sworn interpreters in many countries is an excellent example that this is a separate and unique sphere of activities in a dedicated and highly professional job. This job is, itself, an institution with its own logic and structure satisfying specific social needs. Professional identities are increasingly framed around logics of mission and efficiency translated into practice and controlled and regulated by the state and professional agencies (Cooper & Robson, 2006). Profession is thus not only key mechanism for, but also primary target of institutional change (Scott, 2008).

According to scholars studying the issues of institutionalisation the greatest concern relates to the relationship between professions and institutions such as markets, organizational forms, and practices, and specifically with the role of professional groups and professional organisations in the processes of institutional change (Muzio, Brock & Suddaby, 2013).

We understand institutionalisation as the process of forming an institute with legal consolidation of the established patterns of professional behaviour that demonstrate various features of organisation, including discipline, code of ethics, professional standards, etc.

The research bridges the contents of professionalization with legal regulation, market demands, administering and recent practices in this sphere, thus combining theory and field investigation. The data obtained gives clear understanding of social importance of the profession and the state of civil society development. Comparative and qualitative analysis of legal, administrative, public, and individual roles of stakeholders in EU and Russia provide awareness of the process of judicial interpreting institutionalization whereas highlighted pitfalls allow directing it in the right way. Why is it important? Because we are speaking about such basic things as human rights, laws, ethics, social status, professionalism, relationship of state and civil society, justice, and order.

## Objectives and methodology

The legislation of the Russian Federation provides for the possibility of attracting an interpreter who can supply qualified and professional assistance in the trials where some participants do not speak the language of the proceedings. Such provision is included in the laws of most European and English-speaking countries (Stepanova, 2021) because it constitutes one of the core rights envisaged in a number of international conventions. *The above determines the relevance of the topic.* The focus on establishing institutes of translators and interpreters that heavily contribute in terms of expertise, efficiency, and management manifests the *novelty of the study.*

*The research framework* suggests integrated studies of both European and Russian practices in the field of judicial interpreting regarding legal regulation, education, qualification, certification, experience, organization, and control.

*The purpose of the research* is of two-fold: first to study the foreign experience, then to identify the current deficiencies in Russian legislation and weaknesses of other nature concerning this aspect of judicial practice in the process of institutionalization of court interpreting in Russia.

*The research methodology* involves theoretical and analytical approaches equally balanced. Comparative analysis is implemented to identify general approaches to the issues of court interpreting in foreign countries while contrastive method contributes to profiling differences and/or similarities in tackling relevant challenges. Other cognitive methods applied in this work are methods of reasoning, evaluation, and summarising. Each of them in combination with others allows to achieve the set goals of the research.

*The theoretical basis* of the research is formed by the works of Russian and foreign scholars who are investigating the above issues. Current information concerning activities of sworn/authorized interpreters and translators in foreign countries was traced in academic literature, government, and official sites of relevant organizations.

The research looks at the experience of only a number of states for obvious reasons of limited capacity. The chosen countries are characterised by relatively high foreign-born population who do not understand or speak the national language. The growing crime rates and civil proceedings with participation of such individuals demand engaging a court interpreter and/or translator. Three countries under study belong to the EU (France, Germany, and Austria) whereas the UK is independent after Brexit; this raises interest in terms of comparison. Russia is a developing democracy and is looked at as a serious player within the European continent.

The research may contribute to unifying legal and organisational aspects of court interpreting institutionalization within the European space. It may also be included into a relevant academic course; research findings, results and conclusion of this paper will enhance coherent analysis of the role of the institute of legal interpreters/translators in quality interpretation of court proceedings involving participants who seek language assistance.

## Relevant Aspects of European Institute of Judicial Interpreters

Participation of interpreters in European courts has quite a long history. According to Martina Bajčić and Katja Dobrić Basaneže (Bajčić & Dobrić Basaneže (eds.), 2016), these days, “more than ever, there is an upswing in demand for legal translators and interpreters

owing largely to the principle of free movement in the EU and recent developments in the global migrant crisis”. There is currently a growing number of court proceedings involving non-nationals of Member States, that warrants court interpreters’ recruiting. For example, Austria has seen a large rise of foreign nationals in prison and probation, especially in pre-trial detention. The number of foreign nationals has risen from 7% in 1980 to over 50% in 2018. Representation is highest in pre-trial detention for juveniles (77%) followed by adults in pre-trial detention, sentenced juveniles in prison and sentenced adults in prison (Wasler, 2018).

It was in response to this demand and recognition of a greatly varying degree in the quality of legal translation and interpreting across the EU countries, that the EU adopted the Directive 2010/64/EU<sup>1</sup>. As instruments of secondary law, directives must be incorporated into national legislation, whereas the Member States always have the choice of the forms and methods to achieve the desired results of the norm. In other words, the Member States have more leverage when transposing directives. They can make some efforts to enhance the quality of interpreting and translation in their courts, to propose best practices and endorse additional regulations of the work of interpreters in courts (Ortega-Herráez, 2020).

In many European countries (Germany, Belgium, the Netherlands, Spain, and some others) an institute of practicing interpreters and translators has been developing for several decades. Even though the sworn interpreter works in the self-financing mode and independently organizes the work, their activities are accountable and controlled by the state bodies (usually the Ministry of Justice). The basic conditions for the work of a sworn interpreter are determined by law. Obtaining the status of a sworn interpreter is usually associated with a number of formalities: taking an exam, being the citizen of the state, obtaining higher professional education, undergoing periodic certification, taking an oath at a district court or higher regional court, etc.

Documents certified by a sworn interpreter have evidentiary power in court, and such interpreter acts on behalf of the state. Due to this, the sworn interpreter does not have the right to evade certification and is obliged to render service to any person who has addressed them (Pyn et al., 2012).

Sworn/authorized interpreters are part of the legal system of the state. The direct organizational management of the system of sworn interpreters is carried out by the Ministry of Justice. Additional indirect control through the assessment of legitimacy of their professional activities is carried out by courts. In certifying credentials, sworn interpreters also become part of a system of civil jurisdiction (Larin, 2011).

## **Judicial interpreting in Germany**

### ***Legal regulation***

The term *sworn interpreter* (allgemein beeidigter Dolmetscher) comes from Germany. Here, despite the rich history of judicial transfer, that is over 60 years, there is still no single law on it at the federal level. Disparate regulations exist only in some federal states of the country. They establish the obligation to maintain confidentiality and meet

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<sup>1</sup> Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 On the Right to Directory of Sworn Translators of France. 2021. Available at: <https://www.directory-sworn-translator.com/>. [Accessed 18th August 2022].

qualification requirements (Vinnikov, 2013). Interpreting for police interrogations is understood as an integral part of institutionalized communication.

### ***Certification***

To become a sworn interpreter a candidate needs to pass the state exam or the exam at the Chamber of Commerce. It is necessary to prove that they do not only demonstrate sufficient linguistic knowledge and skills, but also certain legal and translation competences. Apart of that, all kinds of language certificates, recommendation letters, confirming work experience, resume, and other documents (lack of criminal record, debts, etc.) are also relevant. Because the requirements vary a lot throughout the country, an interpreter certified in one state/land, may not be accepted to work as a sworn interpreter in another. Most often they have to take the exam established in their new place of residence. Certain federal states/lands require candidates to be aware of legal and judicial terminology, general knowledge of the peculiarities of the structure of the judicial system and the departmental apparatus of those countries whose languages the interpreter speaks. Some also require a health certificate (Schmidt, 2017).

However, it should be noted that the profession of an interpreter in Germany is not licensed. Therefore, amateurs who speak foreign languages can also be brought by courts and police to work as interpreters.

### ***Document translation and their authorization***

A sworn court interpreter in Germany does not only speak in court, but also performs the function of translating legal documents in accordance with the international private law. In this role, they replace the notary, while certifying the authenticity of the original document and accuracy of its written translation.

### ***Professional associations***

The largest professional association of translators in Germany is the Federal Association of Interpreters and Translators (*Bundesverband der Dolmetscher und Übersetzer e. V.*). The number of its members exceeds 7,500. Only translators with appropriate professional education are admitted to its ranks. The fact that translator has taken an oath or has special powers to certify documents is not a mandatory criterion in this case<sup>2</sup>.

### ***National standardized rates***

German translators and interpreters engaged in the judicial system were facing new standardized rates beginning January 1, 2021. The rates are normally reviewed every 7 to 10 years. The amendment to the Judicial Remuneration and Compensation Act, adopted by the German Bundestag, regulates the fees of legal professionals, including linguists involved in administering justice. The updated structure of rates is very important for a

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<sup>2</sup> Schmidt N. How to become a sworn interpreter in Germany. EXRUS.EU. 10th February 2017. Available at: <https://ru.exrus.eu/Kak-stat-prisyazhnyim-perevodchikom-v-Germanii-id589df64cf002046c255e945c> [Accessed 18th August 2022].

huge segment of judicial staff, including interpreters and translators. According to UEPO.de, a total of 24,997 linguists are currently listed in Germany's national database of court translators and interpreters. UEPO estimates the total number of professional linguists in Germany to be between 40,000 and 45,000<sup>3</sup>. The rise in hourly rates was not very dramatical and only comprised 15 percent on the previous fees to great disappointment of the German Federal Association of Interpreters and Translators (BDÜ).

## **Judicial Interpreting in France**

### ***Legal regulation***

In France, translation of documents, performed and certified by a French sworn translator expert (*traducteur Expert judiciaire*), who took an oath in one of the French Courts of Appeal, and is included in the official list of this Court of Appeal, is valid throughout France. The procedural status of forensic experts is also conferred to court interpreters by French legislation: a judicial expert is a qualified professional, providing occasional support to judges in the discharging of the duties assigned to them by various French jurisdictions<sup>4</sup>. The activities of sworn translators are regulated by Law No. 71-498 of 29 June 1971.

### ***Registration and certification***

All of such experts are officially registered in the National or Circuit Directory of Sworn Translators of France, legal experts of the Appeals Court. The needed specialist can be traced by a number of criteria including desired target language, specialist field, department or region, Court of Appeal membership.

Circuit Directory of Courts of Appeal is updated annually by the decision of the Assembly of Judges and Court Officers of the Appellate District. There are five requirements that the candidate must meet to be included in this registry: relevant qualification and ten years of continuous professional experience, gaps in professional activity not longer than two years from the date of nomination (September 15 of each year), lack of criminal record or disciplinary liability for offenses incompatible with the work of an expert, undergoing special training of forensic expert and place of work or residence within the appellate district (Renz 2018). The process of certification can take several years depending on the pair of languages and experience of the candidate.

### ***Translation agencies and associations***

The Ministry of Justice is cooperating with the TTI translation company, which renders a number of services, such as translation, interpreting, transcription and assistance in swearing-in. It employs more than 4800 specialists working in various settings with more than 140 pairs of languages across France (Société TTI).

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<sup>3</sup> Florian Faes. Pay rise for Germany's judicial translators and interpreters criticized as inadequate. Slator. 2nd December 2020. Available at: <https://slator.com/industry-news/pay-raise-for-germanys-judicial-translators-and-interpreters-criticized-as-inadequate/> [Accessed 18th August 2022].

<sup>4</sup> Directory of Sworn Translators of France. Available at: <https://www.directory-sworn-translator.com/>. [Accessed 18th August 2022].

It is important to note, however, that the procedural law of France does not require compulsory recourse to an expert interpreter from the National Directory, allowing the involvement of any competent person as a trial interpreter. The attraction of police or court officers who speak foreign languages is also encouraged.

A dozen of professional association of translators and interpreters aim to work toward recognition of the profession. Among them is the CETIECAP, the company of expert translators and interpreters affiliated with the Paris Court of Appeal; it includes specialists in 55 languages able to ensure communication in various legal settings.

## **Judicial Interpreting in the UK**

### ***Professional associations***

In the United Kingdom there are several registries of voluntary associations of interpreters who can be professionally involved in judicial interpreting. For police and courts investigations, interpreters are very often employed through the National Register of Public Service Interpreters (NRPSI)<sup>5</sup>, which was set up in 1994. NRPSI includes around 1,800 interpreters who speak 100 languages (NRPSI official website) with varying levels of training, from standard vocational to mediocre basic for rare languages. Selection of interpreters from the NRPSI is strongly encouraged since they demonstrate a minimum and measurable standard of training and quality (Hertog 2001:14).

Another profile organization in the UK is the APCI<sup>6</sup>; it is a qualified union of professional and freelance interpreters working within the criminal justice system of the United Kingdom. Established in 1974, this association of highly professional linguists plays an important role in representing its members' interests and provides services to state organizations and businesses. It focuses on improving quality and standards of translation and interpreting. At the same time, many of the APCI members are current NRPSI members; they are also verified by special authorities such as the Ministry of Justice, HM Courts Service, the Metropolitan Police, the Crown Prosecution Service, the Probation Service, etc. The Association is in close relation with the Institute of Linguists, and the Institute of Translation and Interpreting.

### ***Registration and certification***

The Institute of Translation and Interpreting (ITI)<sup>7</sup>, in the United Kingdom, is represented by business and conference interpreters, as well as judicial interpreters; it provides proficiency exams in various fields of translation and interpreting specialization. Despite the lack of legislation requiring employment of the tested interpreters, the organization makes efforts to certify courts throughout the United Kingdom that implement such regulations.

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<sup>5</sup> National Register of Public Service Interpreters (NRPSI). Available at: <https://www.nrpsi.org.uk>. [Accessed 17th July 2022].

<sup>6</sup> Association of Police and Court Interpreters (APCI). Available at: <http://apciinterpreters.org.uk/> [Accessed 18th August 2022].

<sup>7</sup> Institute of Translation and Interpreting (ITI). Available at: <https://www.iti.org.uk/> [Accessed 18th August 2022].

### ***Faults in domestic policymaking***

Huge expenses on interpreting/translation services forces the government to seek ways of cutting costs. Unfortunately, not all of the decisions are quite successful. Thus, in 2011 The Ministry of Justice concluded a five-year agreement with the Applied Language Solutions (ALS). That decision caused quite serious problems of various nature. Under the new law, all courts in England and Wales from February 2012 had to commission interpreters from ALS. The British Ministry of Justice expected that the law would save annually more than 20 million pounds on interpreters without compromising the quality of justice. However, numerous problems have been revealed. Among them are huge number of unregistered interpreters (51—71%), violation of human rights, lack of interpreters with rarer languages (ex., Lithuanian), low level of professional training of specialists, delays to cases and excess costs included for travel<sup>8</sup> (Vinnikov, 2012). In some cases, suspects had to be released or kept in custody because of poor or unavailable interpreting services (Green, 2016).

Besides, the services of translation agencies through outsourcing dramatically affected independent freelance interpreters considerably reducing their number.

### ***Current market situation***

COVID-19 though impacted the working regime of the judicial system, has not paralyzed it as the state invested an additional £110m on the emergency measures. Since August 2020, magistrates' courts have been completing more cases than have been received and recruiting more staff. They are increasingly using telephone, video, and other technology to hold many hearings remotely. Those hearings that cannot be conducted remotely take place in COVID secure buildings<sup>9</sup>.

## **Judicial Interpreting in Austria**

### ***Legal regulation***

Austria is considered to be an exemplary country in terms of the proper enforcement of the principle of the national language in courts and police. This sphere of activities is regulated by federal laws, including the fees interpreters can charge for their services.

The law allows attracting not only the sworn-in interpreters to the criminal process but also freelance specialists. The national procedural law does not prescribe the role of interpreter in detail and does not delimit their rights. It does not define the permissive principle of their activities; only an oath of an interpreter is established, and the process of engaging interpreter is described.

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<sup>8</sup> Bowcott, Owen. Suspects 'denied fair trial' by shortage of court interpreters. In *The Guardian*. 23th October 2012. Available at: <https://www.theguardian.com/law/2012/oct/23/suspects-remanded-shortage-court-interpreters> [Accessed 18th August 2022]; Bowcott, Owen. Private court interpretation company 'should face contempt proceedings'. In *The Guardian*. 19th March 2012. Available at: <https://www.theguardian.com/law/2012/mar/19/private-court-interpretation-contractor-contempt> [Accessed 18th August 2022].

<sup>9</sup> UK Ministry of Justice. Guidance. HMCTS weekly operational summary on courts and tribunals during coronavirus (COVID-19) outbreak. Available at: <https://www.gov.uk/guidance/hmcts-weekly-operational-summary-on-courts-and-tribunals-during-coronavirus-covid-19-outbreak> [Accessed 18th August 2022].

### ***Registration and certification***

Interpreters in this country are the members of the Austrian Association of Sworn and Certified Court Interpreters (Österreichischer Verband der Gerichtsdolmetscher). To be included in the professional register, the interpreter must apply to a competent court (16 of them administer the list of sworn-in and certified court interpreters/translators), prove their professional knowledge, full legal capacity, honesty, knowledge of the rules of conduct in court, two-year work experience for graduates in translation/interpreting studies and/or five-year experience for those without diploma. Absence of criminal record and legal capacity also constitute requirements.

The certification examination is conducted by a commission of three people: a presiding judge and two expert linguists. Certification test consists of oral and written assessment of legal competencies, interpreting, and translating skills. The exam fee is €400. The first-time attestation is granted for five years, the further ones are valid for ten years. Then the attested specialists take an oath and are allowed to use personal official seal and electronic card, which allows to control quality and compliance to the code of ethics. Certification can be lost as a result of complaints concerning availability, and/or quality of work on the part of courts, police, and public authorities.

### ***Current market situation***

In total, there are more than 1,400 sworn and legally certified interpreters in 49 languages in Austria. However, in some languages, accredited court interpreters are not enough or there is none. For example, in December 2020 in Vorarlberg, there were only 25 sworn interpreters for 14 languages. The average age of interpreters is 62. According to Angelika Prechtel-Martel, head of the District Court, the main reason for deficit is low fees, professional hardships, and ever-growing demands. This also refers to the most common in court languages like Serbian, Croatian, Bosnian, and Turkish. As for interpreters from Arabic, they are non-existent, and court has to invite them from other states (Dolmetscher-Mangel bei Gericht — Vorarlberg).

### **Findings**

In European Union, the interpreting service is regulated by the EU Directive 2010/64/EU<sup>10</sup> establishing the right of the defendant not speaking the language of the trial to participate in the proceedings on equal terms with other actors. This Directive is further developed by national laws that vary in minor details.

According to these rules, a person who interprets in court does not need to have a special education or be a professional interpreter. Even in the countries with strict rules concerning qualification examinations, relative experience, and requirements to become an official court interpreter (Germany, Austria, Denmark), in practice, any person who speaks both the native language of a suspect/defendant and the language of the jurisdiction of the state in question can act as a judicial interpreter. The fact that amateurs are often engaged in courts, undermines the prestige of the profession.

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<sup>10</sup> Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the Right to Directory of Sworn Translators of France. 2021. Available at: <https://www.directory-sworn-translator.com/>. [Accessed 18th August 2022].

International community realize the importance and specificity of the profession of trial interpreter. The issues of language quality in criminal proceedings have been raised in a significant number of court cases and highlighted a certain number of so called “grey areas” that need to be addressed<sup>11</sup>. In response to the challenges the EU has worked out standardized descriptions of the scope of knowledge and skills as well as codes of behaviour.

This helps in further institutionalizing the given profession in terms of authorization, certification, remuneration and management. All those are performed by the state bodies (Ministries of Justice) of European countries, which determine all the conditions for the work of a legal linguist expert. Additional indirect control is realized by courts who commission interpreters for their work. Though interpreters are most often self-employed their relationship with the state is accountable, controlled, and public by nature. They are part of the legal system with certain duties and liability tied up with an oath. Sworn translators and interpreters are entitled to certify credentials they translate into the official language, thus joining the system of civil jurisdiction.

The state also regulates rates of those engaged in judicial interpreting, which are periodically reviewed. The costs of services of judicial and police interpreters reach enormous proportions. Their significance compels the authorities to seek ways to minimize expenses. Striving to cut costs courts prefer dealing with translation agencies, which act as a managing body taking on the responsibility to provide the right professional in due place and time. However, there were cases when those obligations were not performed, ending in trial delays, low interpreting standards and failure to provide a specialist with a rare language. The national policy aimed at cutting judicial costs at the expense of certified language specialists forces real professionals out of system.

At present, the multiplicity of languages involved in judiciary interpreting across European Union poses an especially difficult challenge to a profession. The well-known fact that interpreters of different languages have absolutely different linguistic and cultural problems is only one part of the big issue. More important is the fact that because of their language combination and the market where they operate, most judiciary interpreters can work only part-time in courts, seeking other ways to provide for living. Strict rules, hard working conditions and low fees contribute to reducing the number of those who would like to devote themselves to this profession.

National associations of translators and interpreters play an important role in administering registries of sworn interpreters, certifying, and controlling the professional standards and norms of ethics connected with court practice. Most often they are cooperating with higher school to develop certification programs and arrange profile conferences, seminars, training, and other events in order to raise qualification of their members.

To improve things and solve the problems associated with court interpreting, an international association was set up in the European Union (EULITA, the European Legal Interpreters and Translators Association). This is a non-profit organization established under the Criminal Justice Program of the EU Commission's Directorate-General of Freedom, Security and Justice. One of the main EULITA objectives is to represent its full and associate member associations, as well as its associated individual members in

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<sup>11</sup> Brannan J. ECHR case-law on the right to language assistance in criminal proceedings and the EU response. Available at: [ECHR case-law \(eulita.eu\)](http://eulita.eu). [Accessed 18th August 2022].

Europe. It heavily contributes to promoting justice, fundamental principles of human rights and enhancing high standards of the profession.

Based on the above we can assert that European court interpreters are still striving to enhance their status and autonomy, however, the institute of judicial interpreters has been generally formed. It has united all the stakeholders, representing both the state bodies, social institutes, and individuals, and regulates this sphere on legal rules and ethic norms to satisfy the judiciary needs in administering justice.

### **Russian Legislation and the Need for Changes**

The principle of language assistance in criminal proceedings is one of the most important and together with the principle of independence of judges, equal access to justice and the adversary principle, forms a single institution. Russian legislation has been created in full conformance with the international laws, including the International Covenant on Civil and Political Rights 1966 and the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, which proclaim the inalienable right of any person subject to criminal prosecution to receive timely and quality assistance of a professional translator/interpreter.

V. Stepanova (2020) gave a detailed analysis of Russian rules concerning the language of criminal proceedings and participation of judicial interpreter. This work focuses on those of them that will help to study the challenges in further institutionalizing of judicial interpreting.

The law establishes checking the language competence of a person detained on suspicion of an offense before the investigative actions (Criminal Procedure Code of the Russian Federation, para. 2, Art. 176.). However, the procedure and term for testing skills and knowledge in the field of language proficiency and competence are not indicated.

Similar problems are relevant to EU, too. In 2016 the European Union Agency for Fundamental Rights held the survey concerning the right of the suspect and/or the accused to interpreting and informing in criminal jurisdiction in the EU Member States. The survey showed that there is no clear procedure or mechanism in place to ascertain whether the suspect or accused persons concerned speak and understand the language of the criminal proceedings and whether they need interpreter's assistance (Rights of Suspected and Accused Persons Across the EU: Translation, Interpretation and Information)<sup>12</sup>.

Investigative actions also suffer from other gaps in the current Russian legislation. For example, how can the investigator verify the language competence of interpreter if they do not speak or understand the language themselves? The procedure for verifying documents of interpreter, confirming their knowledge and competence in the declared language, is not clarified.

Recent court cases have revealed another pitfall connected with poor organization of translating documents necessary for court resolution. The time limit and pressure from key actors of the process can lead to violation of Part 2 of Article 307 of the Russian Criminal Court that treats liability for intentional incorrect translation. Lack of accurate definition of *intentional/unintentional incorrect translation* realized itself in translator's conviction

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<sup>12</sup> Rights of suspected and accused persons across the EU: translation, interpretation and information. European Union Agency for Fundamental Rights. 2016. Luxembourg: Publications Office of the European Union. Available at: [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2016-right-to-information-translation\\_en.pdf#page=33](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-right-to-information-translation_en.pdf#page=33) [Accessed 18th August 2022].

(Larin, Obidina, & Sdobnikov, 2018). That was virtually the first experience in practical application of the above article.

Legislative inconsistencies have led to the emergence of corresponding linguistic competence verification institutions that work successfully and bring positive results in countries such as Canada, USA, Australia (Stepanova 2021), Austria, France, and many others. Such experience can also be very useful and favorable for the Russian Federation. It is evident that due to globalization and growth in migration flows, the need for the formed institute of judicial interpreters is urgent. It should be noted that in 2020, 34400 foreign residents and stateless persons were convicted in Russia. At the same time, the number of offences against foreign citizens and stateless persons comprised 15981 (Ministry of Internal Affairs of the Russian Federation)<sup>13</sup>. In 2022, the crime rates regarding labor migrants were more shocking. According to the Deputy Minister of Internal affairs, 40200 crimes were committed by labor migrants, most of them against Russian citizens. In comparison with 2021 the number of such criminal offences have raised by 10%. Such figures cannot but set alarm. It is logical to assume that such people may have a very limited command of the Russian language, respectively, the need for certified interpreters is constantly increasing.

Certification and/or authorization procedures for judicial interpreters established and operating in most developed countries liberates the court officials from additional verification of the interpreter's language competence and greatly simplifies the process of engaging interpreters into judicial proceedings.

Based on international experience, we can submit that the core principles for institutionalizing judicial interpreters in the Russian Federation may involve:

- Financing certification and/or authorization of court interpreters. Financing should be provided from the state budget as the state should favorably implement the principle of parties' equality and the principle of interpreter's independence.
- Forming and monitoring organizations that will carry out the work on certification and/or authorization of judicial interpreters.
- Determining evaluation criteria and competence of judicial interpreters, as well as conducting examinations for those applying for a certificate of judicial interpreter.
- Systematic updating and correcting the list of foreign languages deemed necessary for criminal proceedings. This task seems to be one of the most difficult, as the need for interpreters in particular language is changing rapidly since the flow of foreign citizens arriving in the country is very diverse.
- Forming the National Register of Judicial Interpreters of the Russian Federation.
- Working out the national rates for linguists engaged in judicial interpreting and translation.
- Perfecting the centralized organization of proceedings with language assistance based on revised legal rules and court practices.

Obviously, formation of the institute of legal interpreters in the Russian Federation will be a significant factor in modernizing and enhancing democratization of the Russian penal system.

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<sup>13</sup> The State of Crime in Russia in January-December 2020. Main Information Analytical Centre of the Ministry of Internal Affairs of the Russian Federation. Available at: <https://мвд.рф/reports/item/22678184/> [Accessed 18th August 2022].

## First Steps for Institutionalization of Judicial Interpreting in Russia

### *Legal initiative*

Many useful innovations in this direction have been introduced in Russia lately. As a result of the legislative assembly, a meeting of the Science Advisory Board was held in Nizhny Novgorod on December 23, 2015. The initiative group of the Union of Translators of Russia (UTR)<sup>14</sup> prepared a draft of integral legislative regulation in the field of official translation and interpreting based on problems detected during investigative proceedings and court practice. This document is highly functional, informative, and complete in its essence; it consists of sixteen articles and four chapters (Larin, Obidina, & Sdobnikov, 2016).

The *Project for the Provision on Judicial Translator/Interpreter 2015*<sup>15</sup> proposes to fill in the existing legislative gaps regarding the method of assessing professional competence of the interpreter and calls to determine the process of selecting an interpreter by court and law enforcement agencies.

This project may be useful in many ways, since interpreter's assistance is needed in various areas of justice and law, namely civil, constitutional, criminal, and administrative. Article 118 (Part 2) of the Constitution of the Russian Federation directly provides for this.

The legislative project indicates the necessity to set up a Unified Registry of State Judicial Interpreters with the purpose to inform all the stakeholders about qualified professionals ready to render services. Those will be specially trained specialists capable of engaging in a particular type of court proceedings, including investigative actions and those who have proved their professional competences and qualifications after passing the relevant examination in a particular body of the Ministry of Justice in the territory of the Russian Federation.

To determine the examination board qualifying and certifying interpreters, it is recommended to introduce an equivalent number of representatives of the territorial state body of justice, as well as linguistic specialists in the field of interpreting and translation, and judicial interpreters who have previously been included into the Unified State Register in any constituency of the Russian Federation.

It is important to note that Part 2, Art. 13 of the draft act establishes the possibility of involving persons who are not included in the Unified State Register of Judicial Interpreters, but demonstrating specialized knowledge and skills, with relative qualifications in the required language, in judicial and pre-trial interpreting and translation.

The Examination Commission conducts the test in three stages: a test on the Russian legal system, a test on linguistics, and a test on interpreting and translation in certain legal settings. In this order. It means that those who have not taken the exam on the legal system of Russia will not be allowed to take the exam on professional knowledge and skills. It is understood that the exam on legislative foundations of the legal system of Russia is taken once in contrast to linguistic testing and testing professional skills, which are to be renewed on a regular basis to confirm qualification. Any person who managed to pass the exam takes an oath and is then granted a certificate of judicial interpreter.

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<sup>14</sup> Union of translators of Russia (UTR). Available at: <http://www.translators-union.ru/> [Accessed 18th August 2022].

<sup>15</sup> Project of the Provision on Judicial Translator. Interpreter. 2015. Available at: <http://www.translation-school.ru/index.php/ru/archive/2015/sworntranslator>. [Accessed 18th August 2022]. (in Russian).

Qualification exam of national character shall provide an opportunity to collect complete information on all the persons who were granted a certificate; it will allow to form a Unified Register of Judicial Interpreters of Russia. It is logical to assume that such registry should be a single electronic database that will be accessible to lawyers, investigators, prosecutors, as well as judges and other legal professionals. This electronic database must be constantly updated automatically in order to quickly find a judicial interpreter of relevant qualification in a particular area of law.

The project also details the grounds for termination and suspension of work activities in the field of judicial interpreting/translation. In order to simplify certification to gain the status of judicial interpreters contrary to periodical reexamination, the authors propose to revoke the certificate in the event of a gross violation of procedural law, as well as in the case of refraining from work as a judicial translator within three years.

On the other hand, for the timely execution of work, the project provides for a detailed description of working conditions considering the volume and complexity of services rendered.

This provision also regulates and determines the pricing policy in interpreting and translation services. For this end, it is necessary to establish a single tariff rate for providing interpreting/translation services throughout the country. Such measure is necessary to control and prevent an unjustified rise in prices by individual representatives of the translation community. Guaranteed remuneration and stable work are the main motivational factors aimed at improving the professional competence and qualifications of interpreters in the labor market.

From the above, it follows that the draft provision on judicial interpreting/translation will beneficially remove a number of problems that the translation community and law enforcement officials are jointly facing. Employers in the face of the judicial system and law enforcement agencies will be able to attract qualified specialists through the Unified State Register, which will significantly shorten their time and efforts. Court officers will receive additional tools to improve efficiency and quality of criminal proceedings.

### ***Professional training***

Since the legislative initiative, the process of institutionalization of legal interpreters and translators in Russia has been going forth. Higher school has worked out educational packs for training legal interpreters and translators to be, both at undergraduate and graduate levels. Great contribution has been made by the Law Institute of Peoples' Friendship University of Russia (RUDN university); the team of professors of the department of foreign languages have developed 50 master courses on various aspects of public service interpreting (PSI) as well as legal translation and interpreting.

Leading classical and profile legal universities as well as other profile universities offer master courses of legal translation and interpreting; among them are St. Petersburg university, Kutafin Moscow state law university, Moscow State Linguistics University, and some others. The courses are mostly focused on the popular European languages, however, the bachelor's supplementary translation program at the Law Institute of RUDN University also involves Arabic, Chinese, Korean, and Japanese. However, it is virtually impossible to train interpreters in infrequently encountered languages that are not traditionally taught at university level (Babanina & Zhivaeva, 2015).

### ***Translation/interpreting agencies and associations***

Several associations (the National League of Translators and Interpreters (NLT), the Union of Translators of Russia (UTR)<sup>16</sup>, the International Federation of Translators (FIT) and the Association of Translator and Interpreter Trainers (ATT)<sup>17</sup> as well as numerous translation agencies (ALBA, Prima Vista, One, Russian Translator Pro, AKM-West, LMGP and others) are investing a lot of effort into determining countrywide standards for court interpreting services. They commit to secure professional quality and ethics in legal translation and interpreting.

Of those mentioned only the UTR and the ATT attach prime importance to education and training the freelance interpreters and translators. They aim at strengthening links between universities and language industry companies. ATT publishes open access articles on the issues of contemporary translation studies, practice, and didactics of translation, offers refresher courses for translation teachers, holds seminars and trainings, and arranges traineeship and practice opportunities for students of profile educational institutions (ATT website).

The UTR, which associates theorists and practitioners in the legal sphere in various languages and represents academic, corporate and translation communities, has formed an extensive information base of interpreters across Russia. This information may play an important role in setting up the Unified State Register of Judicial Interpreters within the Russian Ministry of Justice.

### **Conclusion**

Current legislation of the Russian Federation grants participants to criminal proceedings who cannot communicate in the language of court trial, the right to use an interpreter. However, legislative shortcomings and imperfect court practice revealed poor centralized control over translation services in the field of criminal proceedings, which, in turn, adversely affects the process of selecting a qualified interpreter in the required language and reasonable pricing policy in translation and interpreting services.

Domestic legislative regulation of interpreter's participation in the criminal process, as well as the principle of the language of legal proceedings, needs to be modernized to be in accordance with current realities and positive international trends. Along with this, the law-enforcement practice, which regulates the principle of interpreter's participation in the criminal process, also requires improvement. Unfortunately, the state seems reluctant to tackle these issues as the initiative of the translation and interpreting community has not been supported by state authorities so far.

Costs in the criminal process for translation and interpretation services reach significant proportions. This forces judicial authorities to seek ways to cut them by inviting less qualified specialists. Such cases are also relevant with rare languages, including but not limited to the languages of national minorities of the Russian Federation. European countries seek to reduce costs through outsourcing, *i.e.*, referring to judicial and translation

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<sup>16</sup> Union of translators of Russia (UTR). Available at: <http://www.translators-union.ru/> [Accessed 18th August 2022].

<sup>17</sup> Association of Translator and Interpreter Trainers (ATT). Available at: <http://translation-teachers.ru/> [Accessed 18th August 2022].

organizations. This practice has proved its effectiveness, is predominant in the modern societies and worth examining.

A study of the UTR proposals and a review of the current state of affairs in the field of judicial interpreting/translation suggests that there are both opportunities and weighty prerequisites for institutionalizing judicial interpreting, however, this demands plenty of efforts to remove existing legislative and organizational deficiencies.

The lack of extensive formal educational opportunities, accreditation procedure and clear legal status of trial interpreters form another important scope of weak points. These issues are widely discussed in academic and legal societies and are waiting for their solution in Russia.

Professional society of court interpreters needs a code of ethics and professional behaviour to create a proper moral and working environment and refine procedures and technologies of language assistance. The basic principles stem from the mission of court interpreters to bridge people and cultures and contribute to administering justice regarding human rights. In short, they can be formulated as follows: faithful, accurate, qualified, impartial interpreting, confidentiality, and no conflict of interest. Principles outlining the atmosphere within the interpreting community are to honestly represent qualifications and responsibilities, to enhance capabilities through continuing education in the professional sphere, to resolve disputes by mutual agreement and abide by it, and to be compensated commensurate with the experience and accomplishments. Failure to abide by these principles can harm both an individual interpreter, fellow members, professional association, and court as a state body of justice.

This field of professional activities has developed into a separate institute with its clearly distinguished features in the legal systems of many countries. Among them are autonomy of expertise governed by standards and professional behaviour, a body of knowledge and skills requiring academic background, public service mission and integration into the judicial structure, ethical codes that must be strictly complied, professional associations designed to register interpreters, set criteria for the profession, certify, share practices, safeguard the interests of the professional community, etc., state regulation, authorization, and remuneration, mechanisms for testing, certification, qualifying and monitoring conformance to standards, media for disseminating relative knowledge, skills and practices with the aim of advancing standards and some others.

The research shows that the process of institutionalization of court interpreting in Russia can go further on with regard to the identified concerns. It will bring plenty of benefits in terms of ensuring the quality of legal interpreting thus providing equal access to justice, unifying the process and techniques of legal interpreting and translation, and pool all the stakeholders of various nature to meet social needs in judicial setting. Obviously, the main burden will rest on courts, which will have to administer qualification exams and certification and establish the Unified State Register of authorized legal interpreters, but this burden is fully justified as it will enhance trust to the judicial system *as per* and contribute to formation of civil society.

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**About the author:**

*Valentina V. Stepanova* — PhD in Linguistics, Associate Professor of the Department of Foreign Languages, RUDN University; 6 Miklukho-Maklaya str., Moscow, 117198, Russia Federation

**ORCID ID: 0000-0003-0495-0962, Researcher ID: H-9968-2016**

*e-mail: stepanova\_vv@pfur.ru*

**Сведения об авторе:**

*Степанова Валентина Витальевна* — кандидат филологических наук, доцент кафедры иностранных языков, юридический институт, Российский университет дружбы народов; Российская Федерация, 117198, г. Москва, ул. Миклухо-Маклая, д. 6

**ORCID ID: 0000-0003-0495-0962, Researcher ID: H-9968-2016**

*e-mail: stepanova\_vv@pfur.ru*