

The Translation before the International Criminal Justice between right and obligation

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ABSTRACT

This article investigates multilingualism before the International Criminal Justice. The internationalization of criminal courts made translation an imperative tool, and this is ushered in a great linguistic diversity among the parties concerned with the international criminal proceeding. In this context, International human rights law also protects the right of the accused to translation and interpretation. Therefore, international criminal courts should guarantee this right in respect of fair trial principles.

Keywords

Multilingualism; Translation; Interpretation; International Criminal Justice

Introduction

The relationship between languages and international law appears by the conventional character of the international rules. The phenomenon of States integration encourages multilingualism and; we can look at EU to know how many national languages are used in the international legal work.

International law is made by States, and for this reason, it must be a common language between States to negotiate and write the rules. International criminal justice is composed of bodies which its headquarter is far from the accused and victim. This has made the international criminal justice a multilingual hub.

In this framework, communication is a key for the accused to defend himself, to speak with a lawyer, and to discuss the witnesses and evidences. For these reasons, the gateway to the accused rights before a court is the understanding of the working languages of the court. International criminal justice ensures the right of the accused to translation of documents and the simultaneous interpreting of the discussion in the trial. However, the practice showed that many problems can arise about this right.

This article addresses the following question: How can international criminal justice ensure the right to translation and interpretation for the accused? Is the international criminal justice a multilingualism place?

Methods

This article uses the legal texts of the international criminal justice as material support for the discussion, using a comparative lecture to see how rules are developed at the international level.

Results and discussion

1. International Criminal Justice between Bilingualism and Multilingualism

The right of the accused to the translation is linked to the languages adopted by the international criminal justice; we should note that in this line anyone from all corners of the world can be accused before the International Criminal Court. This fact can cause communication problems between the accused and the staff of the court, especially when we know that the personnel working in the court came from all parts of the world, which results in communication issues between the judges, the public prosecutor, the registry, the accused and the victim as well.

At the level of the national tribunals, the translation is not a general rule; but rather an exception, because such limped communication between the accused and the court arises less at the national level. It is the case when there is a difference between the working languages of the national courts and the language of the accused. For example, if the accused speaks in different language other than the language of the court,

either because he come from a national minority whose language is not recognized as an official language by law or because he is a foreigner. For this purpose, an interpreter is used to avoid any potential language barriers. Translations and interpretations, in this regard, are needed to people with special needs (Miller, 2001). This fact makes the courtroom a bilingual event.

We should add that the right to translation, whether at the level of the international courts or the national tribunals, came to respond to the case that the accused did not understand the work language of the court, and thus it falls within the protection of the accused from arbitrariness. It guarantees him the conditions for a fair trial. Furthermore, our days showed the great diversity of languages or local dialects that the world knows.

We must look at the history to see how international judicial translation was developed; it is crucial to note that the beginning of all that started following the Second World War. The military court was established in Tokyo after this war stressed that the trials must be in English, and we know that the language of the accused was Japanese. Additionally, the Nuremberg military Tribunal took the same path; the article 25 of its statute states that the French, English, Russian are the trial languages, but it was German for the accused.

Before the International Criminal Tribunals, the working languages were English and French, which is the case of the International Criminal Tribunals for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, although the accused spoke Bosnian, Croatian, Serbian, Albanian, Kenyan and Rwandan.

Those courts affirmed the right of the accused to speak in his own language during the stages of the trial. Indeed, this right is not only related to the accused. Every person who appears before the court may use his language if he does not know sufficiently the working languages of the courts, except for lawyers. A counsel for an accused may apply to the Presiding Judge of a Chamber for leave to use a language other than the two working ones or the language of the accused. If such leave is granted, the expenses of interpretation and translation shall be borne by the Tribunal to the extent, if any, determined by the President, taking into account the rights of the

defence and the interests of justice. The Registrar shall make any necessary arrangements for interpretation and translation into and from the working languages.

The Special Court for Sierra Leone decided to adopt English as a working language without the other the languages. Furthermore, the Special Tribunal for Lebanon adopted Arabic, French and English languages to hold the trial.

It is important to clarify that international courts differentiate between their official languages and their working languages. For example, the ICC statute states that the official languages of the court are Spanish, English, Russian, Chinese, Arabic and French, while the working languages of the ICC are limited to English and French. The other working languages can be added through the procedural rules and evidence by the Assembly of States Parties. At the request of any party to a proceeding or a State allowed to intervene in a proceeding, the Court shall authorize a language other than English or French to be used by such a party or State, provided that the Court considers such authorization to be adequately justified. The trial chamber is responsible to determine the language or languages to be used at trial.

The rule number 41 (rules of procedure and evidence) states that the Presidency shall authorize the use of an official language of the Court as a working language when:

(a) That language is understood and spoken by the majority of those involved in a case before the Court and any of the participants in the proceedings so requests; or (b) The Prosecutor and the defence so request. The Presidency may authorize the use of an official language of the Court as a working language if it considers that it would facilitate the efficiency of the proceedings.

In order to align to the same approach and to maintain the linguistic consistency of the court, the ICC statute provides the conditions required by judges, the prosecutor and his deputies, as well as the registrar and his deputies, where it requires them to have an excellent knowledge and fluency in the language of at least one of the working languages of the Court, i.e. English and French.

It is noted that the Rome Statute, when defining the working languages of the Court, was influenced by the place of two languages in the diplomatic world, especially, the most widely

spoken language at the diplomatic level which is the English followed by the French language that escaped from the diplomatic field on the one hand, the influence of both language, as they represent the largest legal schools in the world on the other hand, as well as the role of France and UK during the drafting of the ICC Statute and its adoption during the 1998 Rome Conference.

2. The Right of the Accused to Translation and Interpretation before International Criminal Justice

The International Military Tribunal in Tokyo Statute mentioned in Article 9 that the court provides translation of documents and papers related to the trial whenever the need is for that and whenever required. On the level of international criminal courts, it is important to note out that these courts guaranteed the right of the accused to be informed in a language that he understands and in detail of the nature and cause of the accusation directed against him, which we find in Paragraph 4, Part A of Article 21 of the Statute of the international criminal tribunal for Former Yugoslavia, paragraph 4, Part A of Article 20 of the International criminal Tribunal for Rwanda, as well as Paragraph 4 Part A of Article 16 of the Statute of the Special Tribunal for Lebanon, Paragraph 4 Part A of Article 17 of the Special Court for Sierra Leone. Those courts also guaranteed the right of the accused to be assisted free of charge by an interpreter if he did not understand or speak the language of the court, as stipulated in, paragraph 4, Article 21 of the International criminal Tribunal for former Yugoslavia, and paragraph 4 and Part F of Article 20 of the International criminal Tribunal for Rwanda. The translation and interpretation must be in good quality so as to prevent any unintended effect on the accused and victim. The ICC statute states this right clearly in article 67.

In the international law on human rights we see that the right of the accused to an interpreter during criminal prosecution is ensured by the article 14, Paragraph 3 (a) of the International Covenant on Civil and Political Rights, the court is obliged to inform the accused in a language that he understands the nature of the accusation directed against him and the reasons for it, the same article added : “to be provided with a

translator free of charge if he does not understand or speak the language used in the court” (SHERMAN, 2016). At the European level we should note that the right of the accused in a translator appears through the European Convention on Human Rights and Fundamental Freedoms. Article 6, paragraph 3, part (a) of the convention includes the right of the accused to be informed in a language that understands the nature and cause of the accusation against him, and the same article expresses the right of the accused to assist him with an interpreter if he does not understand or speak the language used in the court.

At the regional level, translation is taking over the attention of national legislation and regional agreements aimed at unifying and harmonizing national legislation in the field of minimum rights related to criminal justice, such as the Directive No. (EU2010-64, adopted by the European Parliament of the European Council, regarding the right to translation in criminal proceedings, adopted on October 20, 2010.

This directive is considered as the first legislative mechanism in the criminal field adopted within the framework of the Lisbon Agreement. It represents the first stage of the program aimed at increasing mutual confidence among member States regarding criminal systems and protecting procedural rights contained in the European Charter. It aims, in particular, to guarantee the right to translation for those arrested persons in the European context.

In the practice there are some difficulties for interpreters, related to two legal systems (civil law and common law), where each legal system has its own unique court procedures, legal concepts, and terms that sometimes have no equivalent in other languages. Furthermore, interpreting requirements include courtroom design that enables its factory acoustics and visibility, the provision of a dedicated preparation and workplace, as well as conditions that include fatigue prevention and other aspects necessary for good performance.

It is important to point out that the principal guarantor of the translators and interpreters work before the international criminal courts, particularly concerning the accused, is the undertaking that they make before performing any duties. The translator or the interpreter solemnly declares that he will perform his duties faithfully,

impartially and with full respect to the duty of confidentiality. It should be noted that the identification of translators' duties before the international criminal justice differs from one court to another. In this regard, we shall learn how to deal with these duties before the temporary criminal justice through the International Criminal Tribunal for the Former Yugoslavia (ICTY) at first, then the special international courts like the Special Court for Sierra Leone, and finally before the International Criminal Court.

The translators and interpreters at International Criminal Tribunal for the Former Yugoslavia are subject to the rules of the code of ethics, approved by the registrar of the court on March 8th, 1999. The first article of that Code defines these persons as temporary workers that interpret in simultaneous mode or translate documents, whether in the courtroom or outside the court, and those who perform their duties at home under a fixed term contract with court.

The translators and interpreters perform their duties with respect to the duty of independence, must not accept any gratuities, benefits or advantages from anyone and they must commit themselves not to exercise power or influence over their listeners. Also, they are committed to respect the duty of confidentiality as they should not communicate any information to the media and should not show or release confidential court documents to third persons. The translated documents remain the property of the court, and so the translators should maintain confidentiality when doing the translation between the person being investigated or the accused and his counsel. So, it cannot be disclosed to any other person without the expressed consent of the suspect or the accused concerned and his counsel. The duty of professional secrecy remains even after the termination or the expiration of the translator's employment with the court.

In the discharge of their duties, translators and interpreters are bounded to the strictest impartiality and they are prohibited from giving any legal advice and referring suspects or accused to specific defense counsels. They should disclose to their supervisor any conflict of interest that may arise during the performance of their duties. They also should comply with the texts and to the original letters they get without any modification, change or alteration.

The duties of translators and interpreters before the Special Court for Sierra Leone are identified pursuant to the translators' code of ethics of the that court, and approved by the registrar of the court on May 25th, 2004. According to the first article of that ethics code, interpreters are defined as persons employed by the court and entrusted with interpretation during the court proceedings or in its other tasks, the translators are those who are entrusted with the translation of documents referred to the court or other documents intended for use by the court. Thus, this code of ethics includes two categories: the interpreters and the translators.

The translators and interpreters are bound to impartiality, independence and confidentiality. They should respect the principals of morality and dignity, and should maintain at all times a professional attitude towards judges, court employees, public prosecutor, defense, suspects, witnesses or anyone inside the courtroom.

To ensure their independence, translators and interpreters should not allow any personal interests that may interfere with the performance of their duties, and they should not accept any gratuities, advantage or privileges of any kind. They should advise their supervisor in case of conflict of interest that may arise during the performance of their duties.

The translators and interpreters should not communicate to the media or to any person, governmental or nongovernmental organization, or other authority external the Special Court, any confidential information they knew in the course of their duties. The translated documents remain the property of the court at all times; so they cannot be shown to a third person without the expressed permission of the supervisor or by order of the judges or one of the chambers. The translators' commitment to confidentiality remains even after the termination of the contract with the special court.

During their work, translators and interpreters should be accurate, precise and impartial when translating any word. They must convey the entire message including the offending statements, insults, errors, lies or any non-verbal indication, such as the tone of the voice and the speaker's feelings that might help to understand the listeners and reader. They are prohibited from amending, deleting any material they translate and they may

request any repetition, reformulation or explanation if useful to avoid unclear translation of the material in question. Interpreters must acknowledge the error and correct it immediately once occurred during their work. They should inform their listeners and readers in case of external element interfering with the accuracy and the perfection of translation of interpretation.

The translators and interpreters at the International Criminal Court are subject to its employee's staff regulations. They enjoy the status of international civil servants and are exclusively committed to international duties. They must ensure their independence from any party external to the court, whatever it is. Translators and interpreters, like the rest of the court employees, should commit to respect the duty of confidentiality, as they are not entitled to use, publish, disclose, provide or allow access to the information that they gained in the course of their work at the court. This commitment remains even after the termination of the contract with the court. To ensure their independence, translators and interpreters may not engage in any outside occupation or employment, whether paid or not, except after the approval of the registrar or the prosecutor. They should not accept any honor, gifts, favor, decoration or remuneration from any government or from any nongovernmental source without the approval of the registrar or the prosecutor. The translators and interpreters, like the rest of the court employees, should adhere to the highest levels of efficiency, competence and integrity in performing their duties. Their performance is evaluated periodically to ensure that the required performance levels are met.

The court verifies the accused level of understanding of the trial language. In this regard, the prosecutor requests the trial chamber to verify the accused level proficiency of language. When the court confirms that the accused is not fluent in the language of the trial, it decides to grant his right to translation. We should refer for example to the case of ALFRED YEKATOM on December 17th, where the prosecutor requested the court to assess the accused the level of French language proficiency, and then the trial chamber issued its assessment on January 11, 2019 and decided that the accused is not entitled to use an interpreter since he is fluent in French. We note that the decision of the court took 24 day, and this

duration is considered as a hindrance to the international trial procedures, which are basically characterized by their length of time.

The court operates according to three mechanisms of translation; the first is related to the translators working in the court and which are entrusted with the task of translating evidences, confidential documents and interpreting the discussions during the trials. The second mechanism is the external agencies of translation which are assigned by the court to translate public documents such as judgments, publications and other documents. The third one is the freelance translators; they are contracted for a fixed term to work without moving to the court headquarters in The Hague. They are also entrusted by the court to translate public documents.

Conclusion

As a conclusion, we can see that the international criminal justice makes great efforts to ensure the right of accused to translation in trials. This engagement is justified by the international law norms in human rights matter.

We should also note that the international criminal justice is more open than the international court of justice in the multilingualism.

The international criminal justice is called to open the way to use other languages in trials, with a view of giving the opportunity for lawyers who come from non-English and French speaker countries to participate in its mandate. We recommend States to open a debate about languages in international criminal justice in order to encourage other languages to be developed and contribute in the practice of the international justice.

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