LEGAL INTERPRETING IN SPAIN AT A TURNING POINT

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Abstract

The publication in the European Union of Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings has been a turning point in a great number of aspects related to court and police interpretation. The main objective of the Directive is to ensure quality legal interpretation throughout the process, as part of the right to defence and to a fair trial.

Spain, as a Member State of the EU, has the obligation to transpose this European Directive into its domestic law. Therefore, this is a historic moment in which two main factors converge: the need to change the legislation to bring it in line with the new Directive and the need to implement measures to ensure compliance with new mandates.

This paper reviews the present state of legal interpretation in Spain from the point of view of legislation and that of service provision and analyses the measures that Spain should take to ensure that court and police interpretations are carried out with due guarantees. These measures include the training of interpreters and legal operators, the creation of accreditation systems and records, as well as the consolidation of the professional profile of interpreters.

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Resumen

La publicación en la Unión Europea de la Directiva 2010/64/UE del Parlamento Europeo y del Consejo, de 20 de octubre, relativa al derecho a interpretación y traducción en los procesos penales ha marcado un antes y un después en una gran cantidad de aspectos relacionados con la interpretación en sede judicial y policial. Esta norma tiene como principal objetivo garantizar la interpretación judicial de calidad durante todo el proceso, como parte del derecho a la defensa y a un juicio justo.

España, como Estado Miembro de la UE, tiene la obligación de transponer la norma europea a su derecho interno. Se trata, pues, de un momento histórico en el que confluyen dos factores principales: la necesidad de cambiar la legislación para adaptarla a la nueva norma y la necesidad de implementar medidas para garantizar el cumplimiento de los nuevos mandatos.

En el presente artículo se realiza una revisión del estado de la cuestión sobre la interpretación judicial en España desde el punto de vista de la legislación y de la provisión de servicios, y se analizan las medidas que debe tomar nuestro país para garantizar que la interpretación en los tribunales de justicia se lleva a cabo con las debidas garantías. Estas medidas incluyen la formación de intérpretes y de operadores judiciales, la creación de sistemas de acreditación y registros, así como la consolidación del perfil profesional de los intérpretes.

Keywords: Legal interpreting. Professionalization. Training. Accreditation. Register.

Palabras clave: Interpretación judicial. Profesionalización. Formación. Acreditación. Registro

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1. Introduction

One of the pillars on which the European and the international framework of human rights is based on, is the prohibition of both direct and indirect discrimination. In this regard, the provision of interpreters to persons involved in judicial proceedings and who do not speak the official language(s) is a key measure to ensure non-discrimination from access to justice.

As part of its commitment to the creation of a plan of freedom, security and justice, the EU has developed a roadmap and has taken a series of steps which are described in recital 9 of Directive 2013/48:

On 30 November 2009, the Council adopted a Resolution on a Roadmap for strengthening the procedural rights of suspected or accused persons in criminal proceedings (hereinafter 'the Roadmap'). Taking a step-by-step approach, the Roadmap calls for the adoption of measures regarding the right to translation and interpretation (measure A), the right to information on rights and information about the charges (measure B), the right to legal advice and legal aid (measure C), the right to communicate with relatives, employers and consular authorities (measure D), and special safeguards for suspects or accused persons who are vulnerable (measure E). The Roadmap emphasises that the order of the rights is only indicative and thus implies that it may be changed in accordance with priorities. The Roadmap is designed to operate as a whole; only when all its components are implemented will its benefits be felt in full.

Measure A has been materialised with the publication of *Directive 2010/64/EU* of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (hereinafter referred to as "the Directive") which sets out common minimum standards for EU Member States on the right to interpretation and translation in criminal proceedings and obliges Member States to transpose the Directive before October 2013. The Directive firstly provides the right to interpretation and translation to persons who do not speak or understand the language of the procedure. This right must be provided from the moment these persons are informed that they are suspected or accused of a criminal offence, up to the end of the criminal proceedings, including sentencing and ruling on appeal. The new European standard also establishes that an interpreter should be made available

for the persons concerned to communicate with their legal counsel on matters related directly to any questioning or hearing during the proceedings. Another requirement of the Directive is to ensure that Member States, within a reasonable time period, provide the suspected or accused persons with a written translation of essential documents, namely of any decision depriving them of liberty, charge or indictment and judgment.¹

The objective of the Directive is that Member States establish mechanisms to ensure quality translation and interpretation in criminal proceedings in order to safeguard the right to defence and the right to a fair trial, and to strengthen mutual confidence between Member States.

As a mechanism for ensuring quality, the Directive urges Member States to set up "a register or registers of independent translators and interpreters who are appropriately qualified". In order to comply with the recommendation of the Directive, Member States must set up registers such that their members comply with a set of requirements that guarantee their professional solvency. To that end, they must have adequate training and must furthermore pass some objective accreditation tests. The notion "independent" cited in the Directive is not entirely clear since in a Spanish context, it may refer to interpreters that are not linked to any particular body, businesses or institutions, or that there is no conflict of interest with the person or persons they are interpreting for.

Spain, as a Member State of the EU, must also transpose the Directive into its national legislation since its current legislation is completely outdated, which has led to the presence of several systems for the provision of translation and interpretation services that in no way guarantee effective legal protection and the right to defence, which are obligations of the Rule of Law (see section 2 herein).

As part of the work plan and measures established by the EU and described hereinabove, the guarantees provided in Directive 2010/64/EU have been furthermore reinforced by another three Directives:

- Directive 2012/13/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 22 May 2012 on the right to information in criminal proceedings.
- Directive 2012/29/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council framework Decision 2001/220/JHA.

^{1.} For a detailed study of Directive 2010/64/EU, see the article by Hertog in this same volume.

Directive 2013/48/EC of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.

All of them consider the right to translation and interpretation as a *de facto* guarantee so that victims and defendants can enforce their rights.

This paper briefly reviews the current situation of legal interpretation in Spain, from a legislative and service provision point of view (RITAP 2011, Ortega Herráez 2011, Del Pozo Triviño 2013, Blasco Mayor 2013, Del Pozo Triviño & Borja Albi 2014) and analyses the diverse mechanisms for setting up registers of legal translators and interpreters with a view to providing information on the steps Spain should take to correctly transpose the European Directives mentioned above (Corsellis, Cambridge, Glegg & Robson 2007; Blasco Mayor 2013; Del Pozo Triviño 2013; Del Pozo Triviño & Borja Albi 2014). It likewise discusses the several training and accreditation models in judicial interpretation (Blasco Mayor, Del Pozo Triviño, Giambruno, Martin, Ortega Arjonilla, Rodriguez Ortega & Valero Garcés 2013; Giambruno 2014; Blasco Mayor 2013; Mikkelson 2014) and the training of legal operators to work with interpreters (Blasco Mayor 2014; Corsellis, Clement & Vanden Bosch 2011). Special attention has been paid both to the particularities of the so-called "less widely used languages" (which are currently the most used in Spanish courts) as well as to the regulation and consolidation of professional interpreters (Del Pozo Triviño 2013, Blasco Mayor 2013, Mikkelson 1996).

2. Current Situation of translation and interpretation in criminal proceedings in Spain

2.1. Spanish law on translation and interpretation in criminal proceedings

This section briefly reviews the Spanish legislation on the right to translation and interpretation, especially in criminal proceedings. The *Ley de Enjuiciamiento Criminal* (LECr)[Code of Criminal Procedure], when referring to the stage of preliminary investigation called "*sumario*" within the regular procedure, followed for crimes punishable by more than nine years in prison, in its Article 440, literally reads as follows:

If the witness does not understand or speak Spanish, an interpreter shall be appointed, who shall swear to perform his duty well and faithfully. This method shall be used to question the witness and to receive his/her answers, which shall be channelled through the interpreter. In this case, the procedural declaration shall be recorded in the language of the witness and then translated into Spanish [Translated by authors].

This LECr, in its Article 441, makes reference to the qualification and accreditation of the interpreters, as follows:

The interpreter shall be elected from among persons with a title, if any available in the town. In default thereof, a teacher of the corresponding language shall be appointed, failing which any person that knows the language shall be appointed [Translated by authors].

As can be seen, the LECr, which was enacted in 1882, in theory establishes an order of priority, since it states that the judge shall first choose "those who have the title", followed by "the teacher of the corresponding language" and, finally, "any person who knows the language". However, the summary procedure applicable when the deprivation of liberty is less than nine years, does not even mention the order of preference established for the regular procedure, but literally states that the interpreter does not need to have an official title:

When the accused or witnesses do not speak or understand Spanish, the provisions of articles 398, 440 and 441 shall apply, there being no need for the interpreter appointed to have an official title [Translated by authors].

As pointed out by the *White Paper on Institutional Translation and Interpretation* (RITAP 2011: 19), "The articles of the LECr have become obsolete, are characteristic of the 19th century and do not reflect the transformation undergone in the Spanish society". On the other hand, the *Organic Law of the Judiciary*, in its Article 231, provides that judges and magistrates have the power to appoint any person as an interpreter during oral proceedings.

As has already been mentioned, Spain must adapt this legislation to the new European rules. However, on the date of publication of this Article, the Directives mentioned in the introduction paragraph have not yet been transposed into Spanish legislation such that the self-evident right contained in the European rules is still not guaranteed in the Spanish context.²

^{2.} At the time of writing this paper, the process of transposition of the Directives is being implemented, primarily through two draft bills: statute of the victim, which for the first time in Spain incorporates the right of victims to an interpreter, and the modification of the LECr, which recognises the right of the victims and defendants to qualified and professional interpreters.

2.2. Provision of interpretation and translation services in criminal proceedings

Under the current outdated and permissive legal framework which offers judges and magistrates the possibility of appointing "any person who knows the language" as a court interpreter, without the need for any type of accredited training and professional capacity, it is not surprising then that this leads to service provision models that do not guarantee the quality of interpretations. The following paragraphs set out the main models currently used to recruit legal interpreters in Spain (RITAP 2011: 47-71, Ortega Herráez 2011). According to Ortega Herráez (2011: 95), Spain has three systems for recruitment of court interpreters.³ Generally speaking, and without taking into account the peculiarities of the Autonomous Communities to which competences in the field of justice have been transferred (which are the majority), the three models currently used for the provision of translation and interpretation services in Spain are:

- The traditional model: in this model there is coexistence of the in-house interpreters (who access the position through a competitive exam) and the freelance interpreters (who are hired when workload is very high and whenever interpretation is required into languages for which in-house interpreters are not available).
- Outsourcing of services: administrations publish a tender to which private companies present bids. The fact that the company acts as an intermediary means that the rates received by interpreters are reduced significantly, which in turn means that many professionals do not accept the terms and conditions imposed by the companies awarded the bid and the companies in turn seek to recruit people with little or no training or experience.⁴
- Integral public management of legal interpretation and translation services: this model, unique to the province of Las Palmas, is based on the presence of a single in-house interpreter to coordinate and supervise the interpreters' team. This model, despite not being perfect, has certain advantages such as the absence of intermediaries, and thus translators and interpreters are paid full rates by the State, and also the presence of an interpreter who applies quality control to some extent.

Unfortunately, the model that has succeeded over the past years in most parts of Spain is the so-called "outsourcing model", by which the Administration, through a public tender, hires private companies to provide interpretation and

^{3.} And police interpreters, except for the third model, that only applies to interpreting in the courts.

^{4.} There are numerous complaints and allegations about the damage caused through recruitment of non-professional translators and interpreters in the several fields of justice (Handi 2012; De Luna Jiménez de Parga 2009).

translation services in court and police settings (Ortega Herráez & Foulquié Rubio 2008: 125). These companies are responsible for choosing interpreters, establishing the requirements for their employment (minimum in most cases) and determining their work conditions: hours, remuneration, etc. This model of hiring not only negatively affects translations and interpretations but also affects the manner in which the profession is perceived socially. For all these reasons, there are many groups both from the professional and the academic world who are struggling to stop this practice while simultaneously offering alternative formulae to ensure quality interpretation and rationalisation of expenditure (De Luna Jiménez de Parga 2009).

After analysing the current situation of interpretation in the Spanish courts and police⁵ with regard to legislation and service provision, we can conclude that Spain has a long way to go in order to comply with the provisions of Directive 2010/64/EU.

3. Registers of legal interpreters

As has already been mentioned, one of the mechanisms that the Directive proposes to Member States to ensure quality court translation and interpretation is the creation of "one or more registers for appropriately qualified independent translators and interpreters" (Art.5.2). Therefore, Member States must set up registers such that members comply with a set of requirements that guarantee their professional solvency. The following sub-sections address some important issues related to registers of translators and interpreters and propose a register for Spain.

3.1. Definition of the concept

According to Corsellis, Cambridge, Clegg & Robson (2007: 140) "A profession is a group of people who share expert know-how, who profess a code of ethics (to protect their customers, their knowledge and peers) and who go beyond the personal interest of the group's members." To meet the requirements set forth in the code, these professionals establish national systems that are transparent, systematic and accountable. These systems cater to selection, training, accreditation, membership of register, promotion of good practices, quality control and establishment of disciplinary procedures. As indicated by the authors, this definition appeared in the first European project on the

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^{5.} When in need, the Spanish police may hire interpreters as freelancers without any agency intermediation.

procedural right to interpretation in European justice, *Grotius 98/GR/131* (Hertog 2001), concerning the equivalence of translation and interpretation standards in all EU Member States, and accepted by the European Commission (Corsellis et al. 2007: 140). The authors go a step further regarding the register:

[...] such a register is therefore, not a list or a directory but the public manifestation of a professional structure and of its integrity (op.cit.:141).

More recently, the team of experts of the European project *Qualitas*⁶ (Giambruno 2014: 250) defines the concept of professional register as follows:

An independent voluntary or statutory body that registers and makes available the details of individuals who meet its criteria in terms of qualifications, experience and security clearance, and have agreed to observe its code of ethics/conduct along with its disciplinary procedures when any breach of the code is alleged. A professional register goes further than just a database or list.

This concept of register that inspires Directive 2010/64/EU is not supposed to be just a simple list or database but an "official body" of qualified independent professionals governed by official rules, which furthermore guarantees the independence of these registered professionals, checks their qualifications, experience, criminal record, and compliance with the code of ethics. At the European level, the creation of national registers is meant to establish a system that would permit the authorities in the different Member States to identify and locate qualified independent translators and interpreters in all EU countries without having to question the quality or legitimacy of the services they offer. In order to achieve this goal, there must be some uniformity or harmonisation on the subject of the minimum criteria to be met by professional interpreters in each of the Member States. A register of operators that does not guarantee the required quality does not contribute to mutual trust or to the desired legal certainty (Blasco Mayor et al. 2013, Blasco Mayor 2013).

We will now analyse the current situation in Spain and present a proposal for the creation and management of a register of legal translators and interpreters.

3.2. Current situation in Spain

The Ministry of Foreign Affairs and Cooperation currently exhibits a list of translators and interpreters under its jurisdiction. In order to appear on this

^{6.} http://www.qualitas-project.eu/

list, candidates need to pass an exam conducted by the Ministry's Languages Interpretation Office (hereinafter OIL), or must obtain accreditation from this office for having achieved certain credits in legal translation and interpretation in the now extinct Translation and Interpretation *Licenciatura*⁷ (*Order-AEX/*1971/2002, of 12 July 2002 laying down the requirements and the procedure for obtaining the title of sworn interpreter for Translation and Interpretation graduates). In regard to the tests carried out by the OIL to grant the title of sworn translator-interpreter (Vigier Moreno 2010: 26), they consist of a translation from and into Spanish of a legal text, and an interview with the candidates to ensure they speak the source and target languages fluently. None of these tests are related to knowledge of the legal field or the ability to interpret, and therefore it seems clear that the word "interpreter" should not be part of the title because the candidate's ability to interpret is not checked, which only leads to more confusion with regard to the professional profile of interpreters in Spain.⁸

The OIL publishes a list of sworn translators cum interpreters on its website and the list can be consulted by any citizen who requires the services of these professionals. It is organised by languages and contains the name and contact details of the sworn translator cum interpreter. Very few of these professionals work as interpreters in the field of criminal justice; the majority work in civil cases and do sworn translations of several types of documents, as these are well-paid jobs with social prestige.

The OIL does not perform any follow-up on the professional performance of the sworn translators nor does it organise ongoing training and career development programs for them. The nature of the tests or the professional scope of the activity of the sworn translators cum interpreters, which is entirely outside the different profiles drawn in the legal field, cannot *a priori* ensure that these sworn translators can successfully perform as court or police interpreters.

At present, there is neither a register nor any list of court and police interpreters in Spain. As indicated in section 2.2. above, this is because the provision of the service has been outsourced to private companies, and it is these

^{7.} *Licenciatura* was the name of the degree prior to the EHEA changes. It is now called *Grado*.

^{8.} The title was initially called "interpreter" and did not contain the word translator, which was recently added. The name "interpreter" was retained as a vestige of the original title that was given to the first interpreters of the Colonial America, and dates back to the XVI century (Peñarroja 2004). That title seems anachronistic and does not conform to the European professional profiles (Blasco Mayor 2013).

companies who decide on which interpreters to hire. In most cases, the persons working as interpreters are not professionals and neither are they sworn translators cum interpreters. They likewise have no studies in translation and interpretation or in languages. This outsourcing model has destroyed the professional fabric, which can only be improved if a new model is established in accordance with the provisions of Directive 2010/64/EU, in which the first step would be the design and creation of a professional register of legal interpreters and translators in Spain, in line with the mechanisms already approved by the European Commission in 2001.

3.3. Proposal for a Register in Spain

The proposal for a professional register in Spain put forward by the authors relies on the model already proposed in the report prepared by the Conference of University Departments and Centres of Translation and Interpretation of Spain (hereinafter CCDUTI) for the Spanish Ministry of Justice on the transposition of Directive 2010/64/EU (Blasco Mayor et al. 2013). The authors participated actively in writing the said report which bases its proposals in the rules laid down in the UK's National Register of Public Service Interpreters (NRPSI), since it is the reference register in Europe, and is possibly the model register that inspired Directive 2010/64/EU. Our model adapts the NRPSI rules to the Spanish reality as follows:

- a) The register must have clear and transparent rules.
- b) Members must be qualified and independent interpreters and/or translators.
- c) They must abide by a code of ethics.
- d) They must have no criminal record.
- e) They must pay a professional association membership fee.
- f) They must periodically renew membership of the same. Guidelines for renewal should be established, which may include demonstrable experience in the field of justice and ongoing training courses. Candidates who fail to comply with these requisites should be re-examined.
- g) The register should be free for end-users.
- h) Different categories of membership can be contemplated according to the languages and the type of accreditation of the candidate.
- i) The register should be established at national level but given that the autonomous communities⁹ with own languages have justice powers transferred to them, alternate registers that include professionals who work with these languages may also be considered.

^{9.} Or regions.

Access to the register should in all cases be through a reliable and validated accreditation test as explained in section 5. Given that the Ministry of Justice is the institution responsible for the transposition of the Directive and hence of its compliance, it would only be logical to think that the Ministry should not only be responsible for the provision of this service but also for the accreditation process. The Ministry should avail of the collaboration of academic experts and professionals for designing the register and the evaluation process. Alternatively, the accreditation could be managed by an inter-university consortium created for that purpose through an agreement with the Ministry of Justice.

Another possibility, considering the territorial, political and administrative organisation of the Spanish state into autonomous communities, most of which¹⁰ have justice powers, is the creation of professional associations called "*colegios*" of translators and interpreters in each autonomous community, which shall be responsible for the service provision and management of the register. This modality is already in use for management and provision of duty counsel services in the Spanish administration of justice. The role of the professional *colegios* in Spain has a longstanding tradition in the development and evolution of the liberal professions. Article 1.1 of the valid Spanish legislation on *colegios*, which dates back to the year 1974 (*Law 2/1974*, *of 13 February 1974*), defines *colegios* as follows: "[...] corporations under public law, protected by law and recognised by the State, with their own legal status and full capacity to engage in their business purpose", and Article 1.3 describes their purpose as follows:

essential business purposes in these corporations consist of regulation of professional activities, exclusive institutional representation of the same when they are subject to compulsory membership, defence of the professional interests of its members, and protection of the interests of consumers and users of the services provided by its members, without prejudice to the powers of the Public Administration by virtue of their official relationship. [Translated by authors]

The structure and legal nature of the *colegios* would make them best suited to assume the competences derived from the Directive. On the one hand, they

^{10.} Andalusia, Aragon, Asturias, the Canary Islands, Cantabria, Catalonia, Valencia, Galicia, Madrid, Navarra, the Basque Country, La Rioja. Communities where justice powers are not transferred: Castile-Leon, Castile-La Mancha, Extremadura, Murcia, Ceuta and Melilla. Source: https://www.administraciondejusticia.gob.es/paj/PA_WebApp_SGNTJ_NPAJ/descarga/08c_Doc_Estad%C3%ADstico_Traspasos_Competencias_Admón_de_Justicia.pdf?idFile=f96d9863-3b11-49a8-a64f-330eeac35158 (consulted on 5/11/2014).

could be the ones running the register and just as in the case of the lawyer colegios, also be responsible for appointing the duty interpreters and for managing the service for provision of registered interpreters to courts and police in the area. On the other hand, and in collaboration with experts from universities, and through a General Council, they could also be made responsible for the processes of criminal background verification of candidates, and furthermore could be entrusted with administration and assessment of the specific tests related to the accreditation required for membership on the register of court interpreters and translators. In addition, the colegios would be responsible for ensuring quality of services provided by their members because one of their main missions is to cooperate with the judicial authorities to establish quality control mechanisms, both a priori (access through examination, continuing professional development of its members) and a posteriori [evaluation of recordings and other quality control mechanisms (Vidal Fernández 2007, Aranguena Fanego 2007), application of disciplinary procedures, and so on], in accordance with Article 2 (8), Article 3 (9), and Article 5 of the Directive. Finally, and in cooperation with the bar associations, law schools and police academies, training courses to these court operators could be provided, in accordance with Article 6 of the Directive (see section 6 of this article).

Given that the creation of *colegios* in the autonomous communities and the preparation of tests require the passing of legal regulations that would take some time, the justice administration could consider to first create a "transitional" register with an expiry date, such that individuals interested in continuing membership on the register after the expiry date shall have to fulfil a set of requirements. During this transitional stage, membership to the register could initially be considered in the following cases:

- Graduates in Translation and Interpretation who can demonstrate real professional experience in the legal field.
- Sworn translators cum interpreters (appointed by the OIL) who can demonstrate real experience in the legal field.
- In the case of the less widely spoken languages, persons with proven experience or specific training gained in other countries could also be included.

During this transitional stage and as an exception, other graduates with proven experience in the field can be accepted for membership to the register, in order not to block the access of persons already working in the field and doing a good job.

For those languages in which there are no degree programs offered in Translation and Interpretation or in Languages, candidates shall be required to take a specialisation course, which could be offered by universities in collaboration with professional associations.¹¹ In such cases, the Government should encourage and financially support the persons who speak these greatly demanded languages to take the said courses.

If validation of legal translators and interpreters from other EU Member States becomes an issue, then there should be a reciprocal guarantee in place, i.e. that the Spanish accredited legal translators and interpreters must also be recognised in these other EU Member States.

One way to ensure incorporation of qualified interpreters into the judicial system, either by way of *colegios* or by way of registers, is through the establishment of a professional tariff Act present in countries like Germany, Austria and other EU Member States, where the fee to be paid to the interpreters per hour or per day is set in the law or the legal instrument which regulates the implementation of the Directive. This measure would help to avoid the abuses currently committed by companies awarded public tenders and would furthermore ensure that professionals receive fair compensation for work that requires high specialisation, thereby promoting consolidation of the profession, attraction of talent and quality, which will provide benefits to the entire judicial process. This is the only way to guarantee procedural rights, and comply with the mandates established by Directive 2010/64/EU.

There are a number of precedents in Spain, such as the tariffs of solicitors, which are applied throughout the justice system and which are referred to in *Royal Decree* 1373/2003 of 7 November 2003, approving the fees of solicitors, wherein detailed fees are established according to the scope and volume of services provided by these professionals.

In any case, the register should observe the maxims of qualifications and independence of its members, and therefore cannot be dependent on or be at the particular service of any agency or legal/police entity.

4. Training for legal interpreters

It has been some years since Gile wrote:

[...] the training of professional translators and interpreters is still based essentially on professional experience, introspection, intuition and negotiations between trainers on methods and modalities rather than on research (2009:3).

^{11.} See section 4.2. on specialist and diploma programmes. The objective of these courses is to cater to the professional profiles demanded by society whenever formal teaching programs of official titles do not cover these languages.

There has been an exponential growth in research in recent years, not only in the didactics of general translation and interpretation but also in the didactics of specialised translation and interpretation and, therefore, of court interpretation. At the same time, the recent offer of university training in translation and interpretation has grown enormously, both in Spain and abroad. However, the offer for training in court translation and interpretation remains low and in most cases is limited to a few specific modules within the general undergraduate and postgraduate programs. This section discusses the current training offer in Europe, and more specifically in Spain, and a proposal is put forward for legal translation and interpretation¹² training which could provide a response to the growing current demand that will increase once the mechanisms for the transposition of the Directive and the creation of registers of qualified interpreters are articulated.

4.1. Formal training: undergraduate and postgraduate

Many European countries (UK, Germany, Austria, Netherlands, Belgium, Italy, etc.) offer university Bachelor's and Master's degree programs in translation and interpretation studies.¹³ In regard to the training of Master's programs in court translation and interpretation, the majority of the Member States offer some type of program but they are either integrated within larger ones, such as Master's degree in translation and interpretation, or are included in more specific Master's programs such as the ones dedicated to training in interpretation for the public services, which in addition to court interpretation also includes interpretation for the police, health, education and social services fields. For example, the United Kingdom has Master's programs that include training in public services translation & interpretation. In the Netherlands, the Stichting Instituut van Gerechtstolken & -Vertalers (SIGV)¹⁴ offers specialised training and specific accreditation for court translators and interpreters in 20 languages.

In Spain, about twenty public universities and some private ones offer undergraduate programs in T&I (Baxter 2014) and some of them offer Master's

^{12.} Proposal based on the report written by the Conference of the Translation and Interpretation Centres for the Ministry of Justice (Blasco et al. 2013).

^{13.} The EU funded OPTIMALE - *Optimizing Translator Training* project offers an interactive map that provides up-to-date information on training in public services translation and interpretation in the EU (http://www.translator-training.eu/).

^{14.} http://www.sigv.nl/

programs that include training in court interpretation and legal translation. The Master's programs currently on offer in Spain are the following:

- Master's Degree in Inter-cultural Communication, Interpretation and Translation in the Public Services (University of Alcalá de Henares), a member of the European Masters Network (EMT).
- Master's Degree in Legal Translation and Court Interpretation (Autonomous University of Barcelona).
- Master's Degree in Legal-Financial Translation (Universidad Pontificia Comillas ICADE (Madrid-ICAI), a member of the European Masters Network (EMT).
- Master's Degree in Institutional Translation (Universitat d'Alacant Universitat Jaume I Universitat de València).

None of these programs is specifically oriented to interpretation in courts (although the one offered at the Autonomous University of Barcelona is the one that presents a more dedicated profile). However, all of them can update their contents to increase credits for these disciplines. There are up to nine other specialised translation Master's programs offered by other Spanish universities; some of which include modules in court interpretation or legal translation, but these are very few.

In relation to the less widely spoken languages, it should be noted that the above-mentioned Master's Degree in Translation and Interpretation in the Public Services, from the University of Alcalá de Henares, offers training in up to ten language pairs, with special attention to the languages considered as less widely spoken which are, in fact, the most demanded today in legal settings. Language combinations in which training is provided along with Spanish are: German, Arabic, Bulgarian, Chinese, French, English, Portuguese, Romanian, Russian and Polish.

4.2. Non-formal training: specialist and diploma programmes offered by universities

An example of non-formal training at European level is the United Kingdom, where university preparation courses are offered for the official Chartered Institute of Linguists (*CIOL*) accreditation, the so-called Diploma in Public Service Interpreting (DPSI); as is the case of the Diploma in Legal Interpreting¹⁵ offered at the University of Middlesex, with 45 credits, and training in 14 language pairs.

^{15.} http://www.mdx.ac.uk/courses/undergraduate/legal-interpreting

In Spain, Article 34(3) of *Basic Law no.* 6/2001 of 21 December 2001 of Universities grants to universities, by virtue of their autonomy, the possibility of offering programs leading to diplomas or degrees, as well as lifelong learning courses. These programmes seem to be an adequate way to fill the gap that exists for legal interpreter education, as indicated in the regulation of 29 May 2013 which regulates these degrees at the University of La Laguna,

[...] these programmes, whose interest is to provide a quick and effective response to cultural, scientific, artistic or professional social demands, complement the set of regulated (official) curricular programmes and together comprise the offer from each University, thereby contributing to providing a unique profile to the University. The possibility of offering all these specialist programmes covers an important gap in the range of university studies on offer, in that it permits the University to respond to the challenge of the growing needs of a competitive labour market that demands highly qualified workers [Translated by authors].

There are currently two such programmes in Spain that offer training in court and police interpretation and translation but not on an exclusive basis. These are set within a general Public Services Interpretation program (hospitals, schools, social services, etc.). These courses are:

- Specialist Diploma in Translation and Interpretation for Community Services (University of La Laguna)¹⁶
- Postgraduate Diploma in Interpretation in the Public Services of Catalonia (Universitat Autònoma de Barcelona)¹⁷

Both courses pay special attention to the less widely spoken languages. The former provides training in English, French, German and Russian; while the latter is offered for Arabic, Chinese, Romanian, Russian, English and French.

4.3. Training proposal for legal interpretation

The training of legal interpreters should be based on three fundamental pillars. On the one hand, it should include learning of interpreting techniques, methods and strategies for court and police settings. On the other hand, it should include training in comparative law and police proceedings in the relevant language combinations¹⁸ and, finally, it should address the professional

^{16.} http://experto.webs.ull.es/

http://www.uab.es/servlet/Satellite/postgrado/diplomatura-de-postgrado-eninterpretacion-en-los-servicios-publicos-de-cataluna-arabe-chino-rumano-rusoingles-frances-/datos-basicos-1206597472083.html/param1-2996_es/param2-2009/

^{18.} Interpreters working in countries with inquisitorial judicial systems (Spain, France, Italy) require more training in the criminal justice system and legal terminology than

code of ethics (Dueñas González, Vásquez & Mikkelson 1991: 202). In order to comply with the common requisites for all EU interpreters and translators, we believe that the EU should provide guidelines on the contents and format of this training with collaboration and advice from academics and professionals and, obviously, in consonance with the several accrediting bodies created in each Member State.¹⁹

Such specific training could be provided by universities through degree and diploma programmes, in accordance with the already existing models, and in collaboration with experienced professionals from the field.²⁰ In order to reduce costs incurred in the establishment of examination boards for many language pairs and to guarantee homogeneity of the process, a single board of evaluators could be established for the entire country.

In the case of the less widely spoken languages, training would not be so focused on the languages themselves, since it would be practically impossible to have trainers in all language combinations. Students wishing to get trained would have to demonstrate knowledge of Spanish and the language in which they wish to work as legal interpreters (not always their mother tongue), and such accreditation of linguistic knowledge should be done pursuant to uniform criteria provided for in the rules established for this purpose.

Such training, in all cases, should be always geared towards hands-on practice of the profession, and therefore, in addition to containing exercises that simulate real-life situations, it should also include internships supervised by professionals and visits to courts and police units.

5. Accreditation system for legal interpreters

In order to speak knowledgeably on the process of accreditation in Spain, we need to first define the concepts. According to the Spanish Language Royal Academy (RAE), accreditation is a "document that certifies the condition of a person and his/her faculty to undertake a particular activity or position", and certification is "a document that guarantees the truth of a fact". We believe that the term "accreditation" in Spanish would be the most appropriate in the present context. In accordance with these definitions, Spain does not have a system or an accreditation process for legal interpretation. This means that it

those in countries with adversarial systems (United Kingdom, United States) (Giambruno 2014).

^{19.} See final report of Grotius project I (2001/GRP/ 015), Aequitas - Access to Justice across Language and Culture in the EU

^{20.} See article by Hertog in this same volume.

does not have a previously established procedure, in which candidates must demonstrate sufficient skills, to guarantee quality through the performance of a set of tests designed with reliable methods and based on the reality of the profession. Such procedure or system to guarantee quality must be designed and evaluated by external experts.

For the English-speaking context, Mikkelson (2013: 66) explains that organisations are accredited while individuals are certified. She furthermore includes licensing as an alternative to certification even though it typically refers to institutional authorisations granted to individuals who have demonstrated certain skills for carrying out an activity over a specified period of time. In professions with licenses, these are a legal requirement to engage in the profession, and therefore anyone not having a license cannot use the title or provide the service. A certification is usually a voluntary process to which an individual submits himself/herself, normally performed by a professional association or an academic institution and is based on proven competency and other criteria such as professional experience (Mikkelson 2013: 67).

5.1. Accreditation and socio-professional status

In consolidated professions such as lawyers or engineers, it is the very professional associations or bodies that promote such "voluntary" certifications. Their aim is to guarantee quality to users of professional services when they hire an accredited professional. The accredited professionals are likewise guaranteed professional prestige and visibility, access to employment pools, assistance with mobility in the European Union, access to civil liability insurance, ongoing training and other professional benefits.²¹ Spain currently does not have any professional body or association of legal interpreters that performs these functions.

Legal interpretation in Spain is an activity that currently lacks clear definition, occupational prestige and social recognition, and therefore can be said to lie exactly at the opposite end when compared to consolidated professional profiles that are in constant evolution. On the one hand, there are in-house interpreters hired by the Ministry of Justice and the Ministry of Home Affairs, who are becoming increasingly scarce and strive to survive (Ortega Herráez 2011). On the other hand, in recent years both the Ministry of Justice and the

^{21.} There are professional corporations such as COGITI in Spain http://www.cogiti.es/ Paginas/Ficha.aspx?IdMenu=A2238BD0-3048-4D9D-AB8C-C91C6FDFD475

Ministry of Home Affairs are usually provided with "interpreters" through private companies that have won a public tender.²²

The proposed legal interpreter professional profile, on which the Directive is inspired when it refers to "qualified and independent interpreters", is that of a self-employed professional who has obtained a specific qualification that enables him/her to engage in a professional activity. Just like in the majority of the liberal professions, after obtaining a specific university degree that permits one to work in a profession, the self-employed interpreter seeks and obtains work from a variety of job sources, not only in the legal or court fields (court cases, civil mediation, notaries) but also within a general scope of conference interpreting (congresses, conferences, courses), and that of translation. It would be illogical to believe that one can survive solely from just the one source of income in the free market, and therefore qualified interpreters normally work for several employers, both public and private, and even diversify their offer by expanding their profile to that of a translator. The profile of legal interpreter is defined along the same lines in Status Quaestionis (Hertog 2008), a project funded by the EU's D. G. Justice that analyses the status of legal interpretation in Europe via a questionnaire survey carried out on the judicial authorities and interpreters in the Member States.

5.2. Accreditation and disruption of the Spanish market

Along with the creation and implementation of an accreditation system for legal interpreters, the main obstacle for the regulation of access to the profession is the phenomenon that Witter-Merithew & Johnson (2004: 20, *apud* Mikkelson 2013: 71) call disruption of the market or *market disorder*,²³ of which Spain is a good example:

Defined as the current state of the interpreting market that reflects significant instability related to minimum standards for entry into the field and the lack of consistent and reliable professional control over the variables impacting the effective delivery of interpreting services (e.g., introduction into the field, working conditions, job descriptions, role and responsibility, wages).

In the Spanish case, the problem is compounded by the presence of a real oligopoly for service provision, in the hands of companies interested in hiring interpreters at ridiculously low rates in order to increase their profit. This means that the persons working for them as interpreters do not bother to get

^{22.} See section 2.2 and Giambruno (2014: 174).

^{23.} Wallace, in this same volume, relates the phenomenon with the absence of professional registers.

training, which is costly in terms of time and money. In the absence of incentives for access to a decently paid and prestigious profession, there will be no interpreters willing to get trained and be accredited, to ensure a minimum quality of interpretations in the legal process.

This situation is compounded by the disparity of names, titles and accrediting institutions for interpreters in Spain, that further add to the confusion to the poorly profiled professional scenario. Titles need to be unambiguous and provide clear descriptions on the competencies the title holder can perform. In this sense, the Spanish universities are putting great effort into the profession through constant collaboration with active interpreters, by organising seminars and courses with a clear orientation towards the professional market, and by including and specifying the professional competencies of their titles.

5.3. Proposal for European accreditation: the Qualitas project

In *Qualitas:* Assessing Legal Interpreting *Quality through Testing and Certification* (Giambruno 2014), a project funded by the EU's Criminal Justice Program for standardisation of the accreditation system for court interpreters in Europe, fourteen experts from seven European countries analysed and designed an accreditation system for legal interpreters based on experiences that have worked in Europe and in other countries (United States, Canada, Australia), as well as on the application of psychometric criteria and techniques for developing assessment tests.

The project carried out an extensive and detailed study on the accreditation system of court interpreters, along the following points:

- Minimum basic skills and legal and professional knowledge that must be checked in any accreditation system for legal interpreters
- Basic principles of test design and psychometrics, and application of these in legal interpreting tests
- Criteria for the selection of interpreters in less widely spoken languages
- Application of new technologies in police and court interpretation: video conferencing and remote interpretation
- Organisation, administration and management of an accreditation system for legal interpreters.

5.4. Proposal for accreditation of legal interpreters in Spain

The accreditation proposal presented below for Spain is largely inspired in the report prepared by the CCDUTI for the Ministry of Justice (Blasco Mayor et al. 2013), and the results of the *Qualitas* project (Giambruno 2014).

5.4.1. Prerequisites to accreditation

It is important to establish the prerequisites that candidates must fulfil for entry into the accreditation process. Among the factors that must be considered are academic training, accredited work experience and some criteria of a personal nature such as minimum age, nationality/citizenship and no criminal record, among others. These data can be checked in a phase prior to the accreditation process by means of a computer application that automatically excludes candidates who do not meet the established requirements.

5.4.2. Mastery of languages

The high training level needed for engaging in legal interpretation means that potential candidates for accreditation must, whenever possible, be graduates and demonstrate a native or near-native linguistic level. Thus, the level C2, according to the Common European Framework of Reference for Languages (CEFRL), is the recommended level; however, the candidate's real proficiency should be checked, including handling of registers, specialised vocabulary and technical terminology, among other components. A screening exam, which may be a multiple-choice test because it is less expensive than conducting an examination with an examinations board, is recommended to check language proficiency. Only candidates who pass this language proficiency test will be able to access the second phase of the process.

5.4.3. Knowledge of the legal system and code of ethics/good practice

It is universally recognised in court interpretation that the accreditation process must include an assessment of the candidate's knowledge of the system and of the professional rules of conduct. If a translator or interpreter does not know the basic elements of the system in which he/she will be working (structure, processes, rights, institutions, participants and the like), then the possibility of making a mistake when working in a real environment increases exponentially.

The same can be said with regard to ethics. Knowing and understanding the limits of ethical behaviour is essential in this area. The assessment of this knowledge can be included in a general qualifying exercise for all languages.

5.4.4. Development of an instrument for assessment of interpretation

This is a complex process which must be designed by experts from different fields and should include experts from linguistics, experienced interpreters

and specialists in psychometrics, jurists and government officials or representatives of agencies entrusted with tasks of controlling, supervising and regulating the judicial system.

Below are the main factors which need to be taken into account when developing an assessment tool:

a) Type of accreditation and basic characteristics of the tests

Candidates must separately accredit each language combination they would like to work in (Spanish-English, Spanish-Arabic, Spanish-Romanian, etc.). According to Van Deemter, Maxwell-Hislop & Townsley (2014), the first essential for designing an interpretation examination is that it must be based on the performance of authentic tasks, that is to say, it must be based on the real experience of a professional interpreter who works in the judicial field (*performance-based*) and should be assessed according to pre-set parameters, i.e. not conditioned by the number of candidates or the needs of the judicial system (*criterion-referenced*). These two concepts from psychometrics must not be changed if we want to achieve a valid and reliable examination.

In regard to assessment, reliability of evaluators must be established to ensure that each exercise will receive a similar treatment and that passing does not depend on the particular examiner assigned to assess the candidate (*inter-rater reliability*) or on the emotions or situations of an examiner who receives dozens of exercises for assessment (*intra-rater reliability*).

b) Administrative organisation of the accreditation examination for legal interpretation

This section lists some important aspects of the accreditation processes that do not specifically deal with exercises as such but which are equally important for the process developed to produce the desired results:

- Identification of experts that can form part of a team that prepares examinations, the staff that conduct the examinations, and the examiners.
 Each group should participate in orientation sessions to ensure proper administration of examinations.
- Determination of logistics requirements (spaces, computer equipment, acoustics, among others). The use of on-line digital technologies greatly reduces costs and administrative procedures for examinations, as has been demonstrated in the on-line programme for assessment of interpreters developed by Middlesex University (Braun, Sandrelli & Townsley 2014: 120).
- Development of materials for candidates with information on the requirements, registration process, exam format, rates, deadlines, and

even some exercises by way of example. The development of this information will be crucial to attracting qualified candidates and to avoid the high cost of performing an exam with candidates that have not yet achieved the levels needed to get the desired success in the exam.

We can therefore conclude that the assessment and accreditation process of court interpreters is not an easy task. However, as demonstrated in earlier paragraphs, a lot of progress has been made lately in research and implementation of systems that take into account both the objective of the process and the inherent difficulties. All that is needed now is that governments of the Member States realise that the assessment and accreditation of court interpreting candidates is an essential process.

6. Training of legal operators to work with interpreters

Last but not the least, we would like to address the issue contained in Article 6 of Directive 2010/64/EU on training of judicial staff to work with interpreters. More specifically Article 6 states that Member States:

...shall request those responsible for the training of judges, prosecutors and judicial staff involved in criminal proceedings to pay special attention to the particularities of communicating with the assistance of an interpreter so as to ensure efficient and effective communication.

We believe that the training of judicial staff is of prime importance if we want to achieve the quality of interpretation mentioned throughout the Directive.

Justice systems are complex systems with multiple actors. The last decade has seen a multiplication of criminal proceedings involving foreigners, "either on the personal front (victims, defendants, witnesses, experts) or on the material front (international financial transactions, evidence located in another country, etc.)", says Carmona Ruano (2013: IX). In this new judicial scenario, the author's comment on the judges:

...we cannot remain passive and let the emergence of the international dimension in proceedings become an obstacle but rather, we should ensure that the judges and courts in our countries are able to handle these circumstances normally and that we are able to benefit from all the enormous possibilities offered by the new forms of cooperation that are being created (op. cit.:X). [Translated by authors]

The normality and possibilities of cooperation to which Carmona Ruano refers is the exchange between jurisdictions of information and documents from one language to another. The judges, lawyers and other court operators currently working in the Spanish justice system rarely work with professional interpreters, hence their absolute ignorance of the performance and behaviour of a professional interpreter, and how to perform best with the assistance of an interpreter.

The collaboration between lawyers and professional interpreters is a longstanding demand from the Spanish professional legal interpreters group, who "stress the urgent need for adequate training of judges, prosecutors, police, and in general anyone who has to work through an interpreter" (Vidal Fernández 2007: 224). Training through courses is therefore needed and this can be organised within their corporations and associations, and it is the judicial authorities who should be responsible for this training role. The following are some of the most relevant judicial organisations in Spain: Consejo General del Poder Judicial [General Council of the Spanish Judiciary], Red Judicial Española de Cooperación Judicial Internacional (REJUE) [Spanish Judicial Network of International Judicial Cooperation], Red de Expertos en Derechos *de la Unión Europea (REDUE)* [Network of Experts in European Union Law], Red Judicial Europea (RJE) [European Judicial Network (EJN)], Eurojust. The most outstanding among the associations of judges, justices, prosecutors and lawyers are Jueces para la Democracia [Judges for Democracy], Jueces Francisco de Vitoria [Judges Francisco de Vitoria], Asociación de la Magistratura [Association of Judges], Unión Progresista de Fiscales [Progressive Union of Public Prosecutors], Asociación de Fiscales [Association of Public Prosecutors], Consejo General de la Abogacía [General Council of Spanish Lawyers], among others.

Equally important is the training of the State Security Forces, since they are part of the criminal process in pre-trial proceedings, and they usually require the assistance of an interpreter to perform their duties. The most prominent learning centres are the National Police Academy, the Centre for Higher Police Studies and the Civil Guard Academy.

We cannot forget either the future legal operators that can be trained during their university education through the Schools for Legal Practice of the Bar Associations and the Universities, and also via a Master's programme in Law, since their professional career will on more than one occasion require them to work through an interpreter to interview a client or a witness, or intervene in a trial conducted with the assistance of an interpreter.

Finally, the forensic teams, who are frequently assisted by interpreters in their daily work, should also be included in this training group.

Recent publications at both European (Corsellis, Clement & Vanden Bosch 2011; Townsley 2013) and national levels (Blasco Mayor 2014), specifically target the training of legal operators, and outline the requisites that a professional legal interpreter should have, in order to help legal staff detect whether an interpreter has acted professionally. Guidelines for working effectively with the assistance of an interpreter during the criminal process have also been established. Brief and intense training²⁴ can help judicial operators to maximise their performance when working with interpreters, and this not only benefits all persons involved but also contributes to the smooth operation of the Spanish justice system and safeguards fundamental rights.

7. Conclusions

The construction of the European Union has given rise to an actor of great importance on the international arena by creating a space of freedom, security and justice. This space should primarily ensure a set of rights including the rights to defence and the right to a fair trial, which encompass the right to information of the defendants and the victims and, therefore, the right to interpretation and translation in the case of persons who do not speak or understand the language of the procedure. The EU has already taken strong measures to ensure these rights, not only *de jure* but also *de facto*, and it is therefore important for Member States to be governed by that same spirit when transposing the European standards into national legislation.

We are now at a historic moment in time when Spain, just like the other EU Member States, has the opportunity to create a legislative framework that will not only guarantee the right to translation and interpretation in criminal proceedings (*de jure* guarantee), but also to make this right effective through a quality service provided by trained professionals accredited for that purpose (*de facto* guarantee).

To that end, Member States must establish mechanisms to ensure quality legal interpretation by creating a professional register and access to the same should be through objective, measurable and reliable criteria. The best way to ensure compliance of these criteria is by developing an accreditation system with an independent register that functions in the interests of the justice system. The register should also strive towards the well-being of the translation and interpretation professionals and of society in general. Furthermore, there should be a clear understanding and consensus on its functions and the important role it plays.

It is logical to think that, in order to have skilled professional interpreters, we need to have a training offer that would be able to respond to the real demands from society. Therefore, the institutions responsible for training

^{24.} See Hale on the training of judges to work with interpreters in this same volume.

must show a clear commitment to this mission and provide training offers that meet these needs, in terms of both content and format.

The creation of an accreditation process for interpreters who provide services in the justice system is not only of utmost importance to the parties directly involved in criminal proceedings but also beneficial to society in general. The initial investment in terms of labour and economic funds will be largely offset by the benefits gained by all, thanks to a well configured system that will expedite the judicial process and confer quality and professionalism to the same.

It is therefore essential to train agents that participate in criminal prosecution processes on how to best work with interpreters. Interpreters participate in the judicial system procedures right from pre-trial proceedings carried out by the State security forces to the later processes that involve judges, lawyers, court clerks, forensic teams, and the entire set of operators involved in the criminal process. All of these professionals ought to know who an interpreter is and how to best work with his/her assistance.

The European authorities have shown a willingness to promote quality court interpretation in Europe by creating Directives on the fundamental rights of defendants, witnesses and victims, and also by financing expensive projects through the EU's D.G. Justice. Member States Governments and the Justice Administrations should demonstrate their willingness to change the present situation by implementing the legal mechanisms they have at their disposal because the defence of fundamental rights is the responsibility of the States themselves.

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BIONOTE / NOTA BIOGRÁFICA

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