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LEGAL STATUS AND CURRENT CHALLENGES OF INTERPRETERS' PARTICIPATION IN CRIMINAL PROCEEDINGS IN UKRAINE AND POLAND: A COMPARATIVE ASPECT

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Summary. As a participant in criminal proceedings, the interpreter plays an important role in realizing the right of access to court, guaranteed by Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms. It is the interpreter who is responsible for establishing proper communication between the parties to the criminal proceedings and ensuring fair and effective adversarial proceedings in cases where one or more participants do not speak the language of the proceedings.

The article is devoted to a comparative analysis of the role, functions, legal status, and characteristics of the professional activity of translators in criminal procedural legal relations in Ukraine and the Republic of Poland. Given the steady and dynamic processes of globalization in the world, as well as the significant intensification of cooperation and growing integration between the two countries in many areas, this study is particularly relevant and practical.

The authors draw attention to the similarities and differences in the legal status of interpreters as participants in criminal proceedings, comparing the procedural legislation of Ukraine and Poland. Thus, it was found that the Ukrainian Criminal Procedure Code describes the procedural legal capacity of interpreters in much greater detail and regulates their rights and obligations more thoroughly. In contrast, Polish legislation on these issues is not limited to the provisions of criminal procedural law, but applies a special law that focuses on the professional activities of translators.

The article also compares and analyzes the pros and cons of both government approaches to setting standards, qualifications, and ethical requirements for professional translators who can be involved in criminal proceedings as fully-fledged participants.

Based on the comparative analysis, the authors outline a list of urgent problems and current challenges in the field of translation in criminal proceedings. Theoretical and practical recommendations are provided on potential ways to resolve these issues.

Keywords: interpreter, criminal proceedings, language of legal proceedings, professional translation, challenge, trial, forensic expert.

1. Introduction

In the modern world, where intense globalization and cultural diversity are becoming the norm, the participation of translators in legal relations in all spheres is becoming increasingly important. Their work is aimed at ensuring the adequate protection of the rights, freedoms, and legitimate interests of individuals who do not speak the language of legal proceedings, as well as facilitating effective interaction between representatives of different nations and cultures in the legal sphere. The participation of a translator in the process balances the opportunities for protecting the rights and interests of individuals who speak the language of legal proceedings and those who do not (Stepurko, 2011).

Criminal procedural legal relations, being a narrow and specific part of social relations, are characterized by considerable heterogeneity in their subject composition. Some types of legal relations arising in the course of criminal proceedings may affect the interests of individuals, society, the state, or all of the above subjects at once. Undoubtedly, the protection of the rights, freedoms, and legitimate interests of various participants in criminal proceedings requires measures that are different in nature.

A reliable criminal process must ensure the achievement of two conditions: substantive justice, i.e. compliance with the norms of criminal law, and procedural justice, i.e. the subjective feeling of the participants in the process that they have been treated fairly (Rosiak, 2017).

The participation of an interpreter as a prerequisite for a fair criminal trial undoubtedly contributes to the achievement of substantive and procedural justice: thanks to high-quality translation, it is possible to fully investigate all circumstances related to the alleged prohibited act and familiarize oneself with the evidence (material and personal), which ultimately contributes to the proper consideration of the case by the court (Katarzyna Liber-Kwiecinska, 2011).

Currently, Ukraine is making tremendous efforts on its path to European integration, striving to harmonize its legislation, including criminal procedure law, with the relevant EU *acquis* and legal framework of European Union countries. In this context, we find it interesting to explore doctrinal and practical approaches to understanding the legal status, functions, issues, and role of interpreters as participants in criminal proceedings in Ukraine and the Republic of Poland.

It should be noted that leading researchers from both countries emphasize the significance and importance of interpreters as participants in criminal proceedings. Thus, Nowak M. and Stanislawska M. note that “at each stage of the proceedings, each participant, primarily the suspect, the accused, and the victim, has certain rights, one of which is the right to an interpreter.” (Nowak & Stanislawska, 2017).

At the same time, Leonenko M. asserts that “the translator plays the most significant role in implementing the requirements of the principle of the national language of criminal proceedings, entering the process to overcome language barriers, ensure the rights of participants in the proceedings, and solve the main tasks of the proceedings” (Leonenko, 2003). It is in this context that the relevance of researching the role and place of the translator in the system of criminal procedural legal relations is revealed.

2. Legal framework: comparative analysis

In Ukraine, the legal basis for regulating the procedural status of interpreters in criminal proceedings is the Criminal Procedure Code. However, even at the highest legislative level, in the Constitution of Ukraine, there are provisions that guarantee non-discrimination in the exercise of the right of individuals to access justice in a language they understand. Thus, according to Article 24 of the Main Law, “citizens have equal constitutional rights and freedoms and are equal before the law. There can be no privileges or restrictions based on language” (Constitution of Ukraine, 1996).

Article 2 of the Criminal Procedure Code of Ukraine (hereinafter referred to as the UA CPC) requires that every participant in criminal proceedings be afforded due process (UA CPC, 2012). It is the participation of an interpreter in procedural actions involving persons who do not speak or do not sufficiently speak the language in which the criminal proceedings are conducted that allows the UA CPC to be properly implemented and ensures equal observance of the rights of each subject of criminal procedural relations.

Currently, the UA CPC does not contain a direct interpretation of the term “translator.” According to part one of Article 68 of the CPC: “If necessary in criminal proceedings, the parties to the criminal proceedings or the investigating judge or court shall engage an appropriate translator (sign language interpreter) to translate explanations, testimony, or documents” (UA CPC, 2012).

The Explanatory Dictionary of Legal Terms provides the following definition to translators: “any person who is not interested in the outcome of the case, who is fluent in the language in which the proceedings are conducted, as well as in the languages of individual participants in the proceedings, who is involved in criminal proceedings to facilitate justice by providing the necessary translation” (Lybid, 2003).

Polish legislation contains a similar gap. The Polish Code of Criminal Procedure (hereinafter referred to as PL CPC) also does not provide a legal definition of a translator as a participant in the proceedings. However, Articles 72 and 204 of the PL CPC refer in general to a “translator” whom the procedural authority is obliged to provide to a suspect or accused person if they do not have a sufficient command of the Polish language (PL CPC, 1997).

However, Polish legal regulation of relevant issues is not limited to the procedural code, as in Ukraine, but also includes a special law “On the profession of sworn translator.” This act regulates the issues of qualification requirements, rights and obligations, and the limits of competence of a sworn translator,

but not only for criminal proceedings. The scope of application of this law is broader and goes beyond criminal procedural legal relations. The PL CPC does not require the involvement of a sworn translator – any competent specialist will suffice. In such a situation, the assessment of whether a person admitted to translation activities has “sufficient knowledge” to perform these activities, taking into account their complexity, is entrusted to the judicial authority in each individual case. In fact, any person may be engaged as a translator, in particular if no sworn translator for the relevant language has been appointed or if the translation requires special knowledge that no sworn translator possesses (Kubacki, 2014).

Before comparing the specific characteristics of the procedural status of interpreters in the legislation of the two countries, it should be noted that the functions, role, and purpose of this participant in the proceedings are essentially the same in both cases and consist of:

- ensuring the right to equal access to the court;
- guaranteeing the equality of the parties;
- performing the function of a language mediator between the parties to the proceedings/court;
- complying with legal procedure and ensuring the admissibility of evidence;
- preventing the parties/court from misinterpreting the law and the circumstances of the case.

Part three of Article 204 of the PL CPC stipulates that the legal status of a translator in proceedings is identical to that of an expert (PL CPC, 1997). Ukrainian legislation provides greater detail regarding the scope of a translator's rights and obligations, which allows for the formation of their special and independent procedural status. Thus, the UA CPC clearly defines a translator as a procedurally disinterested person. A number of restrictions on incompatibility apply to them. The law also imposes on translators, along with other participants in the proceedings, the obligation to recuse themselves if the above grounds apply. It should be noted that the grounds for recusal of a translator set forth in the CPC are not unique to them, but coincide with the corresponding grounds for specialists, experts, judges, prosecutors, etc. This indicates that Ukrainian law is generally more specific and precise in defining the legal status of translators.

Nevertheless, it is noteworthy that the PL CPC provides for disciplinary punishment in the form of a monetary fine of up to PLN 3,000, which may be imposed on a translator if they fail to appear when summoned by the authority conducting the proceedings. The UA CPC does not contain provisions with a specific numerical expression of material liability not only for the translator, but also for any of the “other” participants in criminal proceedings, of which the translator is a part within the meaning of Ukrainian law.

In accordance with Part 5 of Article 68 of the UA CPC, a translator shall be liable under the law for knowingly incorrect translation or refusal to perform his or her duties without valid reasons (UA CPC, 2012). As we can see, the approach to determining the scope of a translator's liability for violating their procedural obligations differs significantly in the national legislation of the two countries.

However, in the context of what we just said, it seems a bit controversial that Polish law doesn't have unique grounds for recusal for translators, but uses the same ones as for experts. The difference between the procedural function of an expert and that of a translator lies in the fact that an expert is a person who uses special knowledge to evaluate evidence, while a translator does not create any evidence, but only acts as a language mediator. This, in turn, determines the difference in the specific weight of the results of the procedural activities of the two participants in the proceedings for the proceedings themselves. Ukrainian legislation also does not contain separate grounds for recusal of a translator, combining the effect of the relevant provision for all “other” participants in the proceedings. However, the UA CPC contains an important caveat that expands the grounds for recusal of specialists and experts, additionally prohibiting them from participating in criminal proceedings if they have conducted an audit, inspection, etc., the materials of which are used in these proceedings.

Another advantage of the Ukrainian legislative approach over the Polish one is the direct provision in the law requiring the translator to recuse themselves. The PL CPC does not contain a similar provision not only for translators, but also for experts, which could potentially pose risks in the event of unlawful abuse of their procedural role by such participants in the proceedings.

3. Comparison of current challenges in the practical implementation of the role of criminal translators in Ukraine and the Republic of Poland

As determined above, the legal status of interpreters as participants in criminal proceedings in the countries studied generally has much in common. Under such conditions, it seems logical that there would be similar problems in the practical implementation of interpreters' procedural functions in specific criminal proceedings.

There are several major problems in Ukraine in this area, including a shortage of qualified translators, a lack of clear standards and procedures for translators' work, and problems with control and accountability of translators.

Currently, there are two sectoral standards of the Association of Translators of Ukraine (issued in 2000) that are sufficiently detailed and practical in nature. At the same time, given the trends toward European integration and the ongoing harmonization of national legislation with the EU Acquis, relevant international and European standardization documents must also be taken into account in practical activities and when developing amendments to domestic standards. At the same time, there is no single, unified, and publicly available code of ethics in the domestic translation industry, which to some extent weakens the quality of services provided by specialists, as well as reduces the effectiveness of control over the activities of translators and the possibility of holding them accountable in case of certain violations.

In Poland, the practical implementation of interpreters' functions in criminal proceedings also has a number of characteristic problems, many of which are similar to those in Ukraine. First of all, despite the general legal obligation to involve an interpreter and the establishment of this right for suspects or defendants, there remains uncertainty as to the range of persons from whom it is optimal to select a qualified specialist.

The only document in the Polish regulatory environment that includes practical guidelines on the rules for performing interpreting services for judicial authorities is the Professional Code of Conduct for Sworn Interpreters, developed by the Editorial Committee of the Polish Association of Sworn and Specialized Interpreters (TEPIS) with the participation of representatives of the Ministry of Justice. This document is purely advisory in nature and is not binding on law enforcement agencies or courts, but nevertheless outlines important directions for the development of the industry. The latest edition of the code has been supplemented with additional recommendations regarding the interpreter's workplace, preparation for work, and methods of interpreting (Professional Code of Conduct for Sworn Interpreters, 2019).

Another important issue for legal regulation in both countries is the lack of specific guarantees for interpreters in criminal proceedings, along with their procedural rights and obligations, at the level of law or subordinate legislation. Defining the concept of a guarantee, V.M. Kornukov wrote: "Everything that, to one degree or another, contributes to the achievement of certain results or ensures a certain state of affairs can be regarded as a guarantee of the relevant activity or state of affairs, because it contributes to the activity, protects the state of affairs, i.e., guarantees them. The general concept of a guarantee is often quite conditional and, if I may say so, fluid, since what is a guarantee in one case is not a guarantee in another." (Kornukov, 1988). In the absence of legally binding and widely known requirements for translators' guarantees, a number of problems arise, in particular regarding 1) the safety and comfortable working conditions of translators; 2) adequate, timely, and proportionate compensation for work performed; and 3) the procedure for communicating with (involving) translators by law enforcement agencies.

Given that the daily activities of modern humans are becoming increasingly integrated into various types of virtual environments, it seems logical that the influence of IT technologies is also being observed in the sphere of criminal procedural social relations. This has led to increasing discussion among experts about the prospects of using artificial intelligence in the context of translation for criminal proceedings without the involvement of translators. Indeed, linguistic operations involving complex legal terminology are becoming possible for artificial intelligence, since the creation of speech synthesis and recognition programs involves the use of content from related disciplines such as applied phonetics, applied programming, theoretical grammar, lexicology, lexicography, psycholinguistics, etc (Holmes, 2002). When searching for optimal options for implementing the latest IT technologies into the imperative environment of criminal procedure legislation, a number of serious and fundamental questions arise.

For example, it is difficult to determine the subject of criminal proceedings who could directly perform the functions of an AI program operator. It is obvious that assigning such functions to one of the parties to the criminal process would grossly violate the general principles of criminal proceedings and create a conflict of interest. However, it should already be noted that the most successful cases from the world of IT technologies will inevitably be implemented in the future in the practice of criminal procedural social relations both in Ukraine and in the countries of the European Union.

In our opinion, the following measures could help resolve the pressing issues and challenges described above:

- legislative clarification of the terminology and qualification requirements for interpreters involved in criminal proceedings;
- introduction of mandatory procedural standards and a single code of ethics for interpreters, which would be binding in nature;
- developing methodological guidelines to prevent translation errors at every stage of the criminal process;
- ensuring safe and comfortable working conditions for translators (taking into account the specifics of criminal procedural legal relations);
- improvement of technical solutions and development of artificial intelligence systems for performing certain translation functions, in particular during certain online procedural actions;
- transparent and adequate regulation of compensation mechanisms for translators involved in criminal proceedings.

4. Conclusions

Summing up the results of our work, we note that the role and influence of interpreters in the system of criminal procedural legal relations in both Ukraine and the Republic of Poland is very important, since communication between the subjects of criminal procedural legal relations is at the heart of every procedural stage, both at the pre-trial investigation stage and during court proceedings. In proceedings involving a person who does not speak or does not speak sufficiently the language of the proceedings, it is the translator who is responsible for the consistency and appropriateness of communication processes in all their manifestations and forms.

Comparing two approaches to the legal regulation of the status of interpreters in different countries allows us to take a realistic and objective look at the advantages and disadvantages and take into account the best regulatory practices. Thus, based on the results of the study, we can conclude that Ukrainian criminal procedural legislation describes the legal status (rights, obligations, guarantees of activity) of interpreters in greater detail and more comprehensively, while Polish law focuses on more practical aspects, in particular specifying the financial liability of interpreters. However, an important advantage of the Polish legislative approach is the existence of a separate law on the profession of sworn translators. It seems appropriate for Ukrainian legislators to take this practice into account and explore the possibility of adopting a similar law with binding provisions.

The study also compared approaches to regulating professional standards and ethical criteria for translators. As a result, we conclude that the relevant norms of “soft law” in both Ukraine and Poland meet the necessary requirements, although they could be updated in certain areas. Such an update could take place through the mutual implementation of the best provisions of the legal regulation of both parties into each other's acts.

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