Competent interpreters and enabling working conditions in court

– crucial prerequisites for a fair trial

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***Abstract**: The right to a fair trial is a well-known right in a state governed by the rule of law. This article delves into the subject of problematic interpretations and addresses the right to a competent interpreter as part of the right to a fair trial. It derives from a socio-legal research project in Sweden named "Negotiations in court and equality before the law: an ethnographic approach to negotiations of culture, gender and age during trials related to street crime." Our conclusion is that entering a Swedish district court today, as a non-Swedish speaker, there is an obvious risk that you will not be able to narrate your version of whatever brought you to court in the first place, nor can you be sure that court representative narratives are mediated to you in a satisfactory version.*

Keywords: Interpretor, equality before the law, right to a fair trial, socio-legal, ethnography, court-room interaction, criminal court

Introduction

"*But she* (pointing at the interpreter) *is interpreting this completely wrong! She* (pointing at the plaintiff) *says something, but she* (again pointing at the interpreter) *is not interpreting the whole sentence. It is a real mess! I got a headache from listening to all this!*"

The quote originates from a frustrated (bilingual) defendant during the interrogation of the plaintiff in a criminal court case and the text within brackets is the author´s clarifications.[1]

As the quote suggests, courtrooms are not exempt from erroneous interpretation processes and frustration directly related to such occasions. When these errors occur, it is not just the story of the trial that is under threat but also such fundamental democratic prerequisites such as the right to a fair trial. The right to a fair trial is a recognised right in a state governed by the rule of law. Particularly in criminal court cases, the right to a fair trial is more or less taken for granted in Sweden. The Convention for the Protection of Human Rights and the Fundamental Freedoms (SFS 1994:1219),[2] ECHR, Article 6.1, defines the right to a fair trial as a fair and

1. The quote in Swedish: "*Men hon översätter detta helt fel! Hon säger något, men hon översätter inte hela meningen. Detta är en enda röra! Jag får huvudvärk av att höra på det!*"
2. For more information on the ECHR see http://www.echr.coe.int/Documents/Convention_ENG.pdf and also note its correspondence

public hearing taking place within a reasonable time by an independent and impartial tribunal established by law.[3] Article 6.3 ECHR also stresses that everyone charged with a criminal offence has the following minimum rights*:*

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him /…/ and (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.[4]

In order to execute a fair trial, it is obviously essential that the participants understand what is said during the hearing and are able to communicate their different testimonies in a trustworthy way. Yet, the initial quote of this article was expressed during a criminal court case of unlawful threat, assault and damage of goods in a Swedish district court. It was observed as a part of a socio-legal and ethnographic research project addressing "street related crimes" and equality before the law. The project´s focus has been on the ways notions of culture, ethnicity, gender and age are treated during criminal court proceedings. We soon understood the urgency of looking closer at the interpreted hearings. The observation that initiates this article was far from the first occasion in the course of the project that suspicion was aroused regarding flawed interpretation processes putting the "manifest" right to a fair trial at risk.

Following our findings, this article delves into the subject of problematic interpretations and addresses the right to a competent interpreter as an essential right in connection with the right to a fair trial and the rule of law in criminal court proceedings. In relation to this, we argue that the social and cultural order of things influences what voices that are regarded as worth listening to, with the risk of immigrants in court being left with the short end of the stick. This phenomenon, in turn, has complications on a broader perspective where both court legitimacy and the rule of law can be questioned (Elsrud, Lalander & Staaf 2015).[5]

Since we have found significant variation when it comes to courtroom contexts making it more or less easy to carry out interpretation work, we will also address the working conditions of the interpreter as an area of considerable interest for further examination and research. We have found the topic of voice interpreting as particularly urgent, following the increased presence of immigrants in Swedish society in general. Given that immigrants sometimes also will end up in criminal trials, either as plaintiffs, defendants or witnesses, just as other Swedish residents do, the issue of the right to an interpreter, thus a right to a fair trial, will become all the more important. In 2017, eighteen and a half percent of the Swedish population was born in another country.[6] Approximately 10.000 court hearings (nine per cent of 130.000 civil- and criminal court cases) required the help of an interpreter because one or more involved parties of the trial did not have sufficient command of Swedish (Torstensson 2010:69). The re-

with Article 48.2 and Article 52.2 of the EU charter.

3. It is declared that article 6 should be extensively interpreted by the ECHR (the Court). See *Delcourt v. Belgium*, 17 January 1970, para. 25.
4. For the right to information concerning the charge in a language that the accused understands, see *Brozicek v. Italy*, 19 December 1989 and, more important, the right to free assistance of an interpreter see *Öztürk v. the Federal Republic of Germany*, 21 February 1984.

   Also *Lagerblom v. Sweden*, 14 January 2003 (being denied the right to a Finnish interpreter after having lived in Sweden for some years) in comparison with *Cuscani v. the United Kingdom*, 24 September 2002 where this right was given.
5. See Lederach 2005; Mayer 2004 and Spivak 1988.
6. https://www.scb.se/hitta-statistik/sverige-i-siffror/manniskorna-i-sverige/in-och-utvandring/

cent increase of immigrants with limited skills in the Swedish language will enlarge these figures for many years to come.

The research approach and method this project has been using is a combination of a socio-legal and an ethnographic approach. It provides a legal background to the issue in focus of this article by presenting the different judicial sources that frame the practice of court interpretation. Subsequently, we present our empirical findings following observations and interviews in a section thematized in accordance with the most relevant articles of the interpreter´s code of conduct in Sweden (Kammarkollegiet, [The Legal, Financial and Administrative Services Agency] KAMFS 2016:4).

Research background, approach, and material in short

This article derives from a research project named "*Negotiations in court and equality before the law: an ethnographic approach to negotiations of culture, gender and age during trials related to street crime*." The project has a socio-legal base, and by combining this base with an ethnographic approach in a legal context, we have been able to reach results that are different from those in traditional legal research, yet are of great legal interest. Our ethnographic approach has been inspired by symbolic interactionism and social constructionism (Emerson 1969/2008, Lazarus-Black, 2007, Maveety 2003, Scheffer 2007, Stiles 2009, Travers 1999), but also by theories of power exertion and structural power. The strength of symbolic interactionism perspectives is that they identify and problematize the social interaction in both talk and action that forms the basis for our social construction of reality and truth claims. The project has studied conversation practices, interaction and court documents in so-called street crime trials (such as assault, theft, vandalism, arson, muggings, robberies, drug offenses) in Swedish district courts. In addition, we have concentrated on cases where the defendant(s) and/or the plaintiff(s) have a foreign background (excluding Northern Europe). Early in the project, we noted the emotional distress that characterized many of the interpreted hearings, which thus made us look more closely at this issue.

In the following discussion, we focus on how these described rights to a competent interpreter are maintained "in real life".[7] We have approached this "real life" through various empirical sources. In our case, we have been doing courtroom observations, as well as interviews and analyses of court documents (in addition to legal documents and guidelines just mentioned). We have observed 40 criminal court cases regarding "street related crimes." The courts have been located in both middle-sized Swedish towns and larger cities. Many of the studied trials have lasted for a day or two, with some trials lasting up to five or six days. Most cases originate from trials at the district courts, with a few that have continued to the Court of Appeal. In those cases, the observations continued during the trials in the Court of Appeal. Sometimes two to three researchers from our team attended the trials as members of the audience listening, observing, and taking notes, and sometimes only one. We have studied what is said in the courtroom hearings and sometimes also outside in the waiting-room while waiting for the trial to continue (see also Elsrud, Lalander & Staaf 2015). The collected material has undergone analysis by the members of the research group. The observed court cases being subjected to research have been anonymized, as has the location of the courts, due to ethical considerations.

In addition to the observations, we have ordered and received all public material related to the cases, such as the criminal investigations made by the police, the taped courtroom interrogations, pictures and other evidence pre-

7. See R. Pound (1910) for the socio-legal concept of researching the law in the books and law in action.

sented in court, together with the verdict, and existing appeals. All of the taped interrogations have been transcribed by assistants or by the researchers.

The interpreted hearings have later been subjected to a second review where we used bilingual assistants having earlier interpretation experiences. It was essential that they were fluent in both Swedish and the interpreted language. However, these assistants had quite a different work task from that of a court interpreter. While reviewing the interpreters' translations, our assistants could take all the time they needed, and they were also able to double-check uncertainties using a dictionary or could rewind the taped hearings to listen to them once more. All their work was carried out at their own pace and hopefully in an attentive way. Suck working conditions are rarely found by the courtroom interpreters who often must perform simultaneous interpretation, listen to one language while speaking an other while being pressured by the court to keep up with the pace of the hearing. Later in the article, this will be further elaborated.

Apart from detailed courtroom observations and a second review by bilingual assistants of interrogations, seven interviews with interpreters have been conducted to increase knowledge about the ways the interpreters themselves experience their working conditions and other relevant circumstances during court proceedings. The interviews have consisted of semi-structured questions with open-ended answers. Half of them have been conducted in personal meetings and the other half over the telephone, all of them lasting between one and two hours. Upon their request, four of the informants received the questions beforehand to prepare themselves. The interviews were recorded and transcribed. The informants were interpreting in one or two of the following languages: French, English, Spanish, and Arabic languages to Swedish, with five to twenty-five years of interpreters´ experience. Three of them were authorized court interpreters, three authorized interpreters, but not specialized in court interpretation and one was an unauthorized interpreter.

Jurisprudential starting points and governing documents

In Sweden, the legal framework promises a right to an interpreter during criminal court proceedings in order to obtain a fair trial, as earlier mentioned. The ECHR, enforced in Sweden on 1 January 1995, dictates that, together with its additions and amendments, it should apply as Swedish law. The treaty has constitutional status in Sweden through Chapter 2, Section 23 of the Constitution (SFS 1974:152), and should, therefore, be directly applied by Swedish courts and authorities.[8]

The demand for stricter competence requirements regarding interpreters and translators in court and among crime investigative authorities was strengthened in Sweden on 1 October 2013 due to the implementation of an EU Directive, 2010/64/EU. The directive states an absolute right to an interpreter for defendants and suspects of crimes not able to speak or understand Swedish. If possible, an authorized interpreter should be used in criminal court proceedings to benefit the defendant. If this is not feasible, another suitable person should be appointed. If there is a community interpreter with knowledge of the language in question available, he or she should be appointed by the court.[9] On 1 November 2015 another EU Directive, 2012/29/EU, took effect in Sweden, giving the same explicit rights of authorized interpreters to the plaintiffs, as earlier was given only

8. Mole & Harby (2006). *The right to a fair trial. A guide to the implementation of Article 6 of the European Convention on Human Rights*. Directorate General of Human Rights, Council of Europe. Strasbourg.
9. For the different definitions of interpreters, see below.

to the defendants.[10] The national legislation expresses this right clearly in Chapter 5 Section 6, Code (1942:740) of Judicial Procedure.[11] The section uses the expression "*not able to master the Swedish language*" to describe parties in a criminal trial who have the right to an interpreter. The phrase means that the person is not able to speak and understand Swedish in such a way that he or she can exercise their rights at the court hearing. The need for an interpreter is to be determined by the circumstances of the individual case.[12] The court language in Sweden is decided to be Swedish, accordingly to Section 10 of the Swedish Language Act (SFS 2009:600).

There are two kinds of authorized interpreters in Sweden; authorized interpreters and authorized interpreters with special competence in a particular field of activity, such as court interpreters. Both types of authorized interpreters have passed national tests given by a state agency, Kammarkollegiet, responsible for the supervision of the activity of interpreters, according to Section 1, 6 and 10 in Regulation (1985:613) of authorization for interpreters and translators.

There are also two kinds of interpreters without state authorization. One is the community interpreter; a person who passed education on a lower level, organized through the Swedish "folk high school" which the Higher Vocational Education (Yrkeshögskolan) supervises. The other category is 'other interpreters' which includes everyone assisting with interpretation. This last category of interpreters can lack all formal education.

In total, there are more than 150 different languages spoken in Sweden, but there are only authorized interpreters to cover approximately 35-40 of these. About 210-220 of all interpreters in Sweden are authorized with a specialization in court proceedings, covering 25 different languages.[13] In the national directory of interpreters, the qualified interpreters are listed, and they consist of around 1.500 interpreters (KAMFS 2015:5). The total amount of practicing interpreters is much higher, but there is no official record. This means that interpreters rather often lack authorization and even more frequently, lack specialization in court proceedings.

Sections 4 and 9 in the regulation of authorization for interpreters and translators state the personal requirements of the interpreter. To become an interpreter, you have to be known for your integrity, honesty, and suitability for the task. In the interpretative work, interpreters should conscientiously perform their assignments and follow the Interpreters' Codes of Conduct. The Code of Conduct, by Kammarkollegiet, is a guide for authorized interpreters (KAMFS 2016:4)[14] in which it is said that "*[a]n authorized interpreter shall, before he undertakes to or pursues an interpretation, carefully consider if he is suitable to perform the interpretation. The interpreter should resign if he is not competent to perform in a satisfying manner or if he in any other way is unsuitable*" (Article 17).

10. For more information see Governmental bill 2014/15:77 *Implementation of the victim´s directive* and 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.
11. For more information see Governmental bill 2012/13:132 *Interpretation and translation in criminal court cases* and EU directive 2010/64/EU of the European parliament and of the Council on the right to interpretation and translation in criminal proceedings.
12. For more information, see legal bill 2012/13:132 p. 21 *Interpretation and translation in criminal court proceedings*.
13. For more information http://www.kammarkollegiet.se/interpreter/sv/search?competence=RT&user_lang=sv
14. Kammarkollegiets författningssamling (2016:4) is a binding regulation for authorized interpreters and is also used as a guideline for unauthorized interpreting.

The Code of Conduct also requires that every active interpreter must be impartial and objective to achieve and preserve the confidence of the general public for that specific interpreter as well as for the interpreter profession as a whole. This demand also corresponds with Chapter 5, Section 7, of the Code of Judicial Procedure, where it is stated that the interpreter performs his or her task under oath.

Article 19 of the Code of Conduct declares that "*[a]n authorized interpreter must render all information as exact as possible*" (KAMFS 2016:4). The interpreter's task is not to judge what is relevant or not in a statement. This verbatim ideal is also significant in the witness oath under which the interpreter is bound: "to conceal, add or change nothing." A satisfactory interpretation requires that the affidavit with all its nuances is reproduced as accurately as possible. It also means that different terms and expressions should be repeated in the same way. Expletives, emotional expressions or body language, should not be toned down. If the interpreter has difficulties keeping the pace or risks losing information, he or she should be able to interrupt the person speaking in an appropriable way. If a word or term is unknown, the interpreter should ask the person speaking to paraphrase it.

Through both Article 17 and Article 19, the Interpreters' Code of Conduct stresses that interpreters have a responsibility to inform the court if they feel they have left out important information or failed to interpret correctly. It also emphasizes that the court must provide enough time and information for the interpreter to do a good job. If a translation is considered incorrect, it is possible to appeal, but of course, this requires that there are bilingual individuals in the courtroom who master both languages well enough to be able to understand the misinterpretation. Furthermore, according to the Code of Conduct, it is also desirable that the interpreter reproduces what is said in first person and that he or she reminds the involved parties of the trial to speak to each other and not to the interpreter.

In addition, "*[t]he interpreter is not allowed to ventilate his or her opinion or values in the case or in any other way allow that such circumstances influence the interpretation* (KAMFS 2016:4, Article 20). Kammarkollegiet continues this reasoning by explaining that it is a matter of trust and that a prerequisite for feeling confidence in the interpreter is the belief in his or her neutrality in the case (KAMFS 2016:4, Article 21).

Findings

Our findings from courtroom observations and interviews with interpreters will now be presented in connection with four different themes, consisting of the three most relevant articles in the interpreter´s code of conduct, and a fourth theme including the voices of the interpreters themselves discussing their working conditions in court.

Courtroom observations of interpreted proceedings

In the following sections, we relate our findings from the lived reality of the courtroom to the intentions stressed by the authorities through structuring the findings around three different central themes from the articles in the Interpreters´ Code of Conduct. These three themes correspond to several troublesome court interpretation events encountered during observations and interviews. The interrogations made during trials were recorded by the court administrator and are practically always public material (see Elsrud, Lalander & Staaf 2016).

The first theme that has caught our attention during the project is related to demands in the Code of Conduct that the interpreter should have the skills needed for the job:

> "*An authorized interpreter shall, before he undertakes to or pursues an interpretation, carefully consider if he is suitable to perform the interpretation. The interpreter should resign if*

> *he is not competent to perform in a satisfying manner or if he in any other way is unsuitable*." (Article 17)

The initial quote of this Article, from the frustrated bilingual defendant, originates from an interrogation where the plaintiff was an Arabic-speaking woman in her forties explaining the course of events when her car was demolished, and she was threatened by a gang of teenagers. The event was said to be initiated by the defendant who had also kicked her on her legs a couple of times. After hearing the defendant exclaiming that the interpretation was flawed, the defense lawyer tried to understand in what parts the interpretation was faulty by asking the defendant: "*You said something about interpretation problems, was it something special you reacted on?* The defendant replied again: "*She* (the plaintiff) *says something, but she* (the interpreter) *is not translating the whole sentence and translating other things wrong. It was really strange, all of it!*" There were no follow-up questions regarding this, and the presiding judge concluded that the interrogation of the defendant was at an end and that the witness should now be called in to testify. He seemed not at all interested in discussing these flaws and posed no questions regarding this himself.

The mentioned interrogation lasted for 26 minutes, and when retranslated we found that the interpretation was flawed nine times during that period. Most of the flaws were minor, but at one point the plaintiff pointed out the defendant as being the woman who had been kicking her and shouting to the teenagers to destroy the plaintiff´s car. She went on stating that she later found out that the woman committing those actions against her was the wife of the owner of the pizzeria. But instead, the interpreter incorrectly added a not (the owner of the pizzeria´s wife) to the translation in the courtroom making the entire testimony very confusing and worthless. The crime took place just outside the mentioned pizzeria, making identification of the defendant rather easy.

The confusion was noticeable in the courtroom, the prosecutor and the laymen appeared irritated, closing their eyes and sighing rather distinctly. The plaintiff made herself smaller and smaller in her chair, shrinking noticeably, and her answers became quieter and more monosyllabic during the process of interrogation. As we have noted during numerous observations of interpreted hearings, silencing is sometimes the result of a flawed hearing. Silencing, in turn, often lead to antagonistic hearings, where the involved parties´ communication become increasingly angry and even hostile towards each other as the hearing continues based on faulty expressions with subsequent refusal to expand on explanations (see Elsrud 2014; Elsrud, Lalander & Staaf 2015). It is easy to assume that both silencing and anger develop from feelings of frustration and of not being able to control ones' self-presentation. In Collins' (2004:121) words, experiencing a lack of control over the conversation may lead to a "drainage" of "emotional energy" – leaving the interpreted party emotionally exhausted and unwilling to participate. In the end, the case was dismissed by the court, and there is a reason to wonder if the interpretation could have had something to do with this, affecting the plaintiff´s credibility. The competence of the interpreter was definitely not satisfying enough, and it probably gave more than the defendant a headache.

Another interrogation, in a different court case, this time concerning several burglaries and possession of drugs, was flawed eight times during the fourteen minutes it lasted. One of the more obvious flaws was that the interpreter did not use the correct word for cannabis resin (hashish) and translated it as marijuana when accounting for the different charges the prosecution had made, and by doing so, he misled the defendant. The charge was, in reality, more serious than the interpreter told the defendant

since the prosecutor was accusing him of possession of hashish, a rather more potent drug.

It has been evident during a number of observations that interpreters do not always have the skills required to work in courts. This discussion on interpreters who lack necessary skills is closely connected to the second theme where court reality and the Code of Conduct's intentions mismatch. The lack of skills often leads to linguistic inaccuracy:

> "*During the interpretation, an authorized interpreter shall render all information as exact as possible*." (Article 19)

Often during observations of interpreted hearings, it has been clear that the interaction between the legal representatives and the court participants has been strained and sometimes even hostile. As exemplified elsewhere, we have noted that interpreters are asking the court to slow down, but we have also seen objections from the court representatives as when a presiding judge interrupt to question the quality of the interpretative work. We have also observed when bi-lingual defendants and plaintiffs have interrupted to claim the interpretation was wrong. While we have not observed the presiding judge reprimanding the prosecutor for rushing the speech and ignoring interpreters' requests to speak slowly, it is not uncommon for objecting defendants and plaintiffs to be reprimanded by the judge. It is likely that reprimanding a court participant only seems "natural" since it is against court rules and regulations for plaintiffs and defendants as well as witnesses or the audience to speak out if not invited to speak. However, during faulty interpretations, not all outbursts and objections are mere disobedience but, instead, contain valuable information about shortcomings in court. Treating participants' complaints and legitimate concern over faulty interpretation as disobedience only means to rob participants of the restricted power they have to control the way their version of the story is being handed over to the court.

In almost all the translated court cases, there have been dialogues between the interpreter and the interpreted party that were not interpreted to the court and the audience. In some cases, only shorter discussions were not translated, but on several occasions, the dialogue between the two parties lasted some minutes but was translated as a short yes or no- answer to the court. As stated before, all information during the court hearings must be interpreted, and it is never up to the interpreter to decide what is relevant or not for the court to take part of and to leave out information.

One incident was witnessed during an interrogation at a trial regarding several minor crimes, possession of narcotics, two different thefts of wallets and two attempts of theft (clothes and money). In this observed episode from the hearing of the defendant, the prosecutor asked questions about one of the thefts.

> **The prosecutor**: *A couple of minutes after the theft of XX's wallet was discovered, the surveillance camera spots you at the central station throwing something in the garbage-bin that later proves to be XX's empty wallet*.
>
> **The interpreter translates the defendant's answer to the prosecutor´s claim as**: *Well, well, is there only me in X-town that have the name of (defendant's name), why should it be me?*

In the pressing situation in court, this answer was rather confusing, and gave the impression that the defendant was trying to equivocate by answering this way, creating irritation among the court representatives.

> **What the defendant actually said was**: *How is it that you claim that every crime has been committed by* (defendant's name)*? Don´t you*

have anyone else to blame but (defendant's name again) *in X-town?*

Even though this reply does not answer the question either, it still makes some kind of sense. You can expect an answer like that when the prosecutor accuses a defendant, and it probably would not cause the same irritation as a non-understandable answer.

The prosecutor continues with a frustrated voice*: I claim that you are identified on this* (a sequence from a surveillance camera at the station was shown at the trial) *surveillance film*.

The defendant: *Yes, it is me, but I did not throw that wallet, and I did not have any wallet with me*.

After this exchange of words the interpreter and the defendant started discussing something in the Arabic language very vividly and emotionally with big gestures, screams and weeping (the defendant) during several minutes while the rest of us sat quietly observing the scenario. None of it was translated into Swedish or in other ways explained to the court or the audience, and the court did not ask why this outburst of speech, tears, and big gestures was occurring. The defendant also spoke a couple of half sentences in broken Swedish during the discussion, asking for mercy.

Finally, the prosecutor harshly interrupted and said: *What did you say this wallet…?*

The interpreter interrupts: *Not stolen, that day I did not steal, wear or throw any wallet!*

This last statement was answered by the interpreter without translating the question for the defendant or giving him time to reply or say anything at all, which is rather unprofessional and most problematic according to the Code of Conduct.

The use of reinforcing words have also been relatively common in our study. In several cases, the prosecutor asks a general question like: "*Can you tell me what happened on the XX (date)*" and the interpreter adds a reinforcing word like "*tell me **exactly** what happened on the day of*"… or "*do you remember how things happened*" becomes "*do you **clearly** remember how things happened*" in the mouth of the interpreter.

On some of the occasions where interpreters have added reinforcing words and sentences, these have been accompanied by a change of tone and force, indicating that emotions on the interpreter's behalf have entered into the conversation. These emotions are interesting in relation to another article in the Code of Conduct:

> "*When an authorized interpreter performs interpretive assignments he is not allowed to express his opinion and values or in any other way let them influence the interpretation*." (Article 20)

Evidently, it is essential that the interpreter is considered to be neutral and impartial to claim a fair trial for the defendant which corresponds with Chapter 5, Section 7, of the Code of Judicial Procedure and the interpreters Code of Conduct, Articles 20-21.

In the earlier mentioned trial concerning possession of narcotics, two different thefts of wallets and two attempts of theft (clothes and money), the defendant used offensive and vulgar language when describing the course of events and the persons involved. This caused the interpreter to apologize to the court before interpreting, apparently distancing himself from the defendant. He also physically turned away from the defendant, finally sitting almost with his back towards him. By doing so, he was making his required position of neutrality and objectivity rather problematic. We have noticed such behavior from interpreters on several occasions. During the untranslated discussion ad-

dressed earlier, and afterwards, for most of the remaining trial, the interpreter sat and rolled his eyes, sighing loudly and clearly showing his irritation over the defendant and his relatively incoherent answers and (unmanly, author´s interpretation) sobbing.

In yet another trial regarding assault, the interpreter also rolled his eyes and started sighing when the defendant was describing the course of events in detail and with many irrelevant sidetracks and started interrupting the defendant, probably telling him to get to the point, making him obviously insecure and increasingly mute.

In other proceedings, it has seemed like the interpreter almost became a prosecutor interrogating the person he or she is interpreting for, such as in this hearing from an assault case (see also Elsrud 2014:49).

> **The prosecutor**: "At page 629 in the police interrogation with you, you have stated that you have seen injuries on X, the fifth section from the top. 'Z [name of the witness] is asked again to tell us about the occasions where she has seen injuries on X. Z mentions an occasion when X came to visit in April'."
>
> **Interpreter to witness**: He [meaning the prosecutor] says once again that it doesn't match up, what you have said in the police hearing and what you say now, where they earlier asked you, and then you said "yes, when I asked, she showed me her body, and I saw burn marks".

In this exchange, the interpreter evidently questioned the witness' earlier statement and credibility in a very accusatory manner. It seemed as if he had abandoned the impartial and neutral position an interpreter is required to have. The witness is likely to feel more insecure and even questioned by the prosecutor by such additions even though the prosecutor was not questioning the witness' credibility at all, but wanted to make the testimony clearer. If a witness experiences the trial in a negative way, reacting with fear and reluctance to share information, it may have significance for how the court case as a whole is viewed by the involved participants, which, even more seriously, affects the legitimacy of the court. A translated testimony is usually full of information and meaning, including potentially legally relevant information as well as disinformation.

As we have argued elsewhere (Elsrud 2014; Elsrud, Lalander & Staaf 2015) and described above, we have found that interpreted court hearings are often disrupted and disturbed by skewed meanings. Linguistic material is added, subtracted and altered. Grammatical changes have led to open and non-provocative questions being transformed into commanding and confronting demands. When our bi-lingual assistants translated the taped interrogations, they came up with several mistakes, in some cases rather serious ones affecting the credibility of their client and in the end the legal security.

It is likely that some of the examples above are the results of individual interpreters' shortcomings in linguistic skills or proper behavior when interpreting in court. However, difficult working conditions, involving stressful situations, shortness of time, and lack of respect for the work of the interpreter may well have added to some of the examples presented.

Working conditions in court for interpreters

As mentioned earlier, we have also conducted interviews with seven interpreters, some of them court interpreters and some interpreters with a regular authorization with no specialty in court interpretation. Another one was an unauthorized interpreter active in court. We have considered it highly relevant that the interpreters themselves are given space to reflect on our findings and discuss their working conditions when interpreting, especially those in court.

All of the interpreters were very critical when some of our observations were described to them. They stated that an interpreter must always interpret everything that is said and never leave out or alter the given information even if it seems useless. If there is a need for clarifications because the interpreter does not understand what is said, an exchange of words in the interpreted language must be allowed, but that exchange must later be explained to the court. Even though they criticized the described events taking place in courtrooms, they also said that they had encountered several occasions when other interpreters had made rather serious mistakes when translating or had abandoned the objective and neutral stance they are required to have. The most common place for such encounters is in the court of appeal where some of the district court cases are reassessed. Interrogations made during the district court sessions are taped and then recorded again before the court of appeal. The interpreter present at the appeal court proceedings is seldom the same person as the one who interpreted for the district court. One court interpreter says:

> "*I sometimes ask the court how they want me to do if I hear that something is misinterpreted. Should I say something or not? In this case, the court accepted the earlier misinterpretations because one of the prosecutors came from another part of Sweden and it would be hard to summon the parties in reasonable time again.*
>
> *On another occasion, the court clerk stated that she did not know what to document; what the interpreter said the defendant was saying or what the defendant actually was saying! The interpretation was in English and easy to understand for the members of the court.*"

In some cases, the interpreter experienced an apparent wish that hearings move forward faster than what is desirable. This stress was particularly evident during cross-examinations where the defendant started to contradict him- or herself and where the prosecutor wanted this insecurity to be shown to the court.

> "*Sometimes especially the prosecutors get eager and want fast answers, not giving the client time to think his or her story through properly. It is rather common when interpreting in English where the prosecutor understands what is said*".

This view of a stressed courtroom session has been supported by our observations in court, where, for instance, one interpreter was told she must carry out simultaneous interpretation despite having been promised consecutive interpretation because the court did not want a lengthy trial. In an informal interview in the hallway during a break, she was quite upset while telling us this happens typically on Fridays because no one wants to work late with the weekend coming up.

It must again be stressed that the legal responsibility to create order in court and enable the interpreters to do their work at their best lies with the presiding judge. Similar neglect to act by different court representatives and even judges sometimes has been noted on some occasions during our observations. It can be argued that apart from the rather evident risks of not assuring legal security and a fair trial this can also be seen as a demonstration of power where a prosecutor refuses to accommodate to the need of the parties on trial, which would have provided participants with a better understanding of the court procedure.

Stress is not only induced by the courts' request to "speed up" or change the mode of the interpretation. It can also evolve from tiring work. In relation to the question about working conditions, one male interpreter says: "*Sometimes it is hard to interpret, especially when the court hearing goes on for the whole day, or even several days, to stay focused*." An absolute majority of district courts find it unnecessary to engage more than one interpreter even though the court case is estimated to take more than

half a day. When that happens, recurrent breaks become even more important. One court interpreter states: "*It is of course much better to be two interpreters in long hearings where you can take turns. You stay more focused when the other interpreter is sitting beside you and taking notes. Maybe you exert yourself a bit more when someone else also knows the language*."

Even though the rules concerning authorized interpreters in court at criminal trials were reinforced in 2013 in connection with defendants and suspects of crime and again in 2015 regarding plaintiffs, not much has happened according to the interviewed interpreters. They claim that it is still challenging to find competent and authorized interpreters, especially court interpreters. Some languages that exist in Sweden do not have a single court interpreter, and sometimes the Kammarkollegiet does not find anyone competent to assess the competence in a particular language and is, therefore, unable to appoint new court interpreters, like in the Somali language.

All of the interviewed authorized interpreters have also been critical of the courts' inability to make long-term plans. It is not uncommon that the court notifies the interpretation agency of their need of an interpreter in court that same day, just before the hearing, making it almost impossible to find authorized court interpreters. Some court interpreters are very critical regarding the agencies giving qualified interpreting assignments in court to unauthorized interpreters when there are more educated persons available. According to our interviewees, there has also been some discussion about who is responsible for the competence of the engaged interpreter. Some courts seem to think it is the interpreting agency that has such responsibility, whereas the agency considers it to be the obligation of the court. Once again, according to the law, the responsibility to appoint qualified interpreters lies with the court.

Conclusions

In this article, we have firstly provided a background to the "scene of our investigation," the interpreter assisted courtroom, by presenting the legal framework that is meant to set the conditions for satisfactory interpretations and, subsequently, guaranteeing legal security in both its formal and material sense for the plaintiffs and defendants in court. We have also described the ethnographic, close-up-study approach with both interviews and observations that has enabled us to delve into linguistic details. This methodological "triangulation" of methods and empirical sources has provided us with material to understand how well, or not so well, the legal framework is being executed on the lived and performed courtroom environment. The article then moved over to address the findings made during our study of interpreted hearings, by presenting numerous examples of problematic interpretation acts thematized in relation to three of the central requirements stated in the guidelines, the Swedish Code of Conduct for interpreters (Articles 17, 19 and 20-21 in KAMFS 2016:4). These requirements involve the right to a competent interpreter (or else the interpreter should resign), the right to a rendering of the information that is as exact as possible and the right to an interpreter who is objective and not expressing his or her personal opinions.

As we have seen, neither of these demands have been met in many of interpreted hearings we have studied. Even if there have been a few hearings during the project that has not been problematic to the extent presented in this article, the fact remains that when entering a Swedish district court today, as a non-Swedish speaker, there is a definite risk that you will not be able to narrate your version of whatever brought you to court in the first place, nor can you be sure that court representative narratives are handed over to you in a satisfactory condition. This risk is a worrying conclusion given

the fact that a proper interpretation is vital for legal security.

It is equally worrisome that during the last ten to fifteen years almost the same deficiencies and concerns regarding language interpreting have been detected in several studies performed by different agencies and academics at the same time as the legal demands of competent interpretations have been increased.[15] The attempts to deal with this situation seems to have been limited, and the question to what extent the legal institutions try to safeguard the right to a fair trial when it comes to the competence of the interpreters and their working environment in court needs to be highlighted. The last couple of years this situation has been even more urgent due to the increase of people not having Swedish as their first language when in contact with public authorities, such as the courts. This situation dramatically increases the need for language interpreters in all public authority sectors.

In this article, we have shown that crucial details are being omitted, and sometimes the credibility becomes more or less erased for all heard parties in court, including the court members themselves, in cases where the interpreter lacks competence or is not given enough time to properly mediate the information to and from the client. Of course, the consequences of misinterpretation can vary, which becomes evident in the observed criminal court proceedings. When the clients´ freedom (and law-abiding reputation) is at stake, the consequences of misinterpretation must be considered severe and the faulty interpretation act as a miscarriage of justice. The procedural safeguards of the rule of law in such conditions have to be exceptionally clear and predictable (Staaf 2005, Norström, Gustafsson & Fioretos 2011).

A way of dealing with the apparent flaws during interpretations, and their consequences for legal security, that are caused by interpreter incompetence is to demand a minimum level of formal education from all interpreters. Such demands are especially urgent in connection with interpreting in situations where the exercising of public authority is involved. This is a question that Kammarkollegiet, the supervising agency in Sweden, must actively prioritize.

Another question related to the supervision of court interpretation standards is the responsibilities held by interpreting agencies who often send unauthorized interpreters even if there are court interpreters available, according to the interviewed interpreters. As stated before, it is the court who is responsible for appointing competent interpreters, not the agencies, but to be able to take that responsibility seriously, the courts must become better at planning ahead for their need of this competence. Otherwise, the acute ad hoc solutions the agencies come up with will not end.

A status upgrade for authorized court interpreters appears to be urgently needed. Also engaging two interpreters during all court proceedings lasting more than half a day must be considered a strong reinforcement of reliability for all parties involved in the trial. A status upgrade would also include increasing awareness among legal representatives about the needs of interpreters to make high quality interpretations. The court interaction needs to be adjusted to provide better working conditions than we have encountered in this project – allowing for more pauses, accommodating to interpreters' requests to slow down or for consecutive rather than simultaneous interpretation when this is required by the situation. Another option, which is most likely costly yet highly relevant from a legal perspective, is to subject all interpreted hearings to a second review by an authorized interpreter after the trial and before sentencing to avoid the sentence being based on false information (see also Elsrud 2014).

It appears as if rather comprehensive and fast changes are needed in order to fulfill the

15. See the section earlier documents concerning court interpreters

right to a fair trial in practice. Unfortunately, we see little action taken by the courts or their co-ordinating authority Swedish National Courts Administration to accomplish this. Importantly, low quality interpretation is not only a legal issue but also a social one. Finding that their voices and versions of the story that led them to court are distorted, people are likely to lose faith and trust in the Swedish court system. The same may happen to an increasing number of interpreters who experience that they are not provided with the means to do a good job. As it stands, both groups – the non-Swedish speaking participants and their interpreters – risk being subjected to unfair treatment.

Less competent or sometimes clearly incompetent interpreters, under rather poor and stressful working conditions, undermines the thought and foundation of equality before the law, legal authority and the legitimacy of court rulings.

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