

# Court interpreting in Italy. The daily violation of a fundamental human right

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## Abstract

*The paper analyses the situation of court interpreting in Italy and examines three cases of blatant violation of the defendants' right to a fair trial.*

## 1. Introduction

The aim of this paper is to uncover and publicise a situation that has not previously been described in literature. While much has been written about aspects such as the legal role of court interpreters in Italy, the training they should receive and how they should work, little has been written about what actually happens in court based on empirical data. This study makes use of an on-going survey carried out over the last 5-6 years involving students from SSLMIT (the University of Bologna's School for Interpreters and Translators in Forlì) to discover exactly what is happening on the ground and see what the consequences of the mismanagement of the provision of court interpreting services in Italy might be.<sup>1</sup>

<sup>1</sup> Students from SSLMIT in a study coordinated by Isabella Preziosi and the author visit Italy's courts as the subject of their final-year dissertations. The students in question have all attended a third-year undergraduate course on dialogue interpreting in which the court setting is used to teach interpreting techniques. The students, therefore, have a knowledge of both the practical and theoretical aspects of court interpreting. Using

## 2. The right to a court interpreter in Italy

### 2.1 International treaties

The right of all people to liberty and of those people who have been deprived of their liberty to a fair trial are two of the most fundamental rights enshrined in the Universal Declaration of Human Rights. Moreover, Article 7 states that “all are equal before the law and are entitled without any discrimination to equal protection of the law”, while Article 10 states that “everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him”.

It was in order to achieve the “effective recognition and observance” of the rights contained in the Universal Declaration that the members of the Council of Europe, with their “common heritage of political traditions, ideals, freedom and the rule of law”, signed the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) in Rome on 4 November 1950. The ECHR, which was made applicable in Italy by Law No. 848 on 4 August 1955, states in paragraph 2 of Article 5 that “everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him” and in paragraph 3 of Article 6 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;
- (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

The right to the free assistance of an interpreter as part of the more general right to a fair trial was further re-enforced by the International Covenant on Civil and Political Rights passed by the United Nations Assembly on 16 December 1966<sup>2</sup> and implemented in Italy with Law No. 881 on 25 October 1977. Although everyone is familiar with these rights, it is important to remember them as they constitute a fundamental part of the legal and moral foundations on which the life of the Member States of the European Union, including Italy, is based.

### 2.2 Italian legislation

Having ratified these international treaties, Italy legally and morally recognises the right of people who do not speak or understand Italian to be assisted by an interpreter in court. At the time of ratification of these international treaties, no

a semi-structured questionnaire, the students interview both interpreters and court officials to discover what they know and think about court interpreting. They also observe the interpreters and legal professionals at work in court. The courts visited so far are Bologna, Brescia, Florence, Forlì, Milan, Naples, Perugia, Rimini, Rome and Syracuse. See Bottura (2009), Marchese (2009), Morganti (2009), Piscaglia (2006) and Salce (2008).

- 2 Article 14, paragraph 3, subparagraphs a) and f).

specific legislation was introduced presumably as the right to an interpreter in court proceedings was already recognised in Italy in the 1930 Rocco Code (Art. 326-331). Neither was any specific body created to oversee the provision of a right that was probably not often exercised<sup>3</sup> in what until the mid-1970s was a country of emigration rather than immigration.<sup>4</sup> Moreover, in what was then an inquisitorial system, in which most of the evidence was collected by the investigating judge outside of court, court interpreters did not have such a fundamental role.

The demographic situation changed considerably during the 1980s, however, with the immigrant population increasing so rapidly<sup>5</sup> that the country's first immigration law was introduced in 1986 (Law 943/1986) to try and regulate the flow of immigrants, resulting in the position of 105,000 irregular immigrants being regularised in that year.<sup>6</sup> Immigration was, therefore, already an important issue in Italy when the Italian criminal justice system was reformed in 1988 and the old inquisitorial model replaced by an Anglo-Saxon based adversarial system. The new code, which, "with its accusatorial nature, was introduced in order to make the criminal trial more consistent with the democratic principles of 'orality', immediacy and publicity" (van Kalmthout *et al.* 2009: 531), was intended to place the defence on the same footing as the prosecution, and greatly increased the importance of the role of court interpreters as it meant that all evidence now had to be presented orally in court and could be challenged during cross-examination.

The new code of criminal procedure, which came into force in 1989, contains five articles that refer specifically to interpreters in criminal proceedings (Art. 143-147), under the heading *Traduzione degli Atti* (Translation of Proceedings).<sup>7</sup> These articles are, however, surprisingly very similar to those in the 1930 code, with the wording at times identical, and there is the same confusion over the terms "interpreter" and "translator", which are used interchangeably.<sup>8</sup> Article 143 contains the only truly significant new element as it states that the interpreter's task is to enable defendants "to understand the charges made against them and follow the proceedings in which they are involved" (my translation).<sup>9</sup> This important concept has been reiterated by Italy's highest courts on various

3 No official statistics have ever been provided on the use of interpreters in Italy's courts.

4 See, for example, Bonifazi *et al.* (2009).

5 From 298,749 in 1980 to 572,103 in 1988 (cf. CEI 2005: 1).

6 This law was quickly followed by the tougher Martelli law on immigration (Law 39/1990), which, however, resulted in the position of a further 220,000 irregular immigrants being regularised in 1990 (Carfagna 2002: 56).

7 For a concise summary of all the parts of the 1988 code of criminal procedure that refer to interpreting or translation, see Ballardini (2005: 168).

8 For a more detailed analysis of this point, see Sau (2010: 18-19).

9 As for the other articles, Art. 144 specifies who cannot be an interpreter (children, the mentally ill and people with a criminal record or involved in criminal proceedings); Art. 145 talks about the removal of an interpreter from a case; Art. 146 – the conferring of an assignment – states that the *autorità procedente* (proceeding authority) checks the identity of the interpreters, asks them whether they are in any of the situations listed in Art. 144 that prevent them from interpreting the proceedings and then warns them that they must carry out their assignment "well and faithfully, with no other goal than to make the truth be known" (my translation – the closest thing there is to a

occasions, such as ruling No. 4929 of 23 November 2006 of the *Corte di Cassazione (sezione sesta penale)*,<sup>10</sup> which stated that Art. 143 conceives the interpreter as:

a means for the real participation of a defendant in a trial by enabling the defendant to actually understand the various proceedings and what is happening at any moment during those proceedings. [my translation]

### 3. The practice of court interpreting in Italy

#### 3.1 The lack of a court interpreting service and any guidelines

Although the right to an interpreter is fully recognised in Italian law, the same observation that Niska made with regard to Article 6.3 of the ECHR can also be made in relation to Italian law on the matter, namely: “[it] says nothing about the qualifications of the interpreter, or even what the interpreter is supposed to do in various situations, or what the legal status of the interpreter is” (Niska 1995: 294). The 1988 code does not mention any criteria on which the selection of the interpreters should be based (such as minimum qualifications or necessary skills), nor does it provide any kind of guidelines with regard to when an interpreter is required. Moreover, no guidelines have ever been provided by the Ministry of Justice to assist the courts in how to select and work with interpreters,<sup>11</sup> nor has a specific body been set up to manage court interpreting services.<sup>12</sup>

The need for management and policy in the provision of interpreting services has been described clearly and in great detail by Corsellis (2008), where she also points out that:

the reason for inaction is likely to be due to simple inertia where systems, designed for a monolingual constituency, have not been adapted in any fundamental way to deal with an increasing movement of people between countries. (2008:151)

professional code of conduct); Art. 147 talks about how the *autorità procedente* fixes a deadline for written translations and how an interpreter who has been removed from a case may, “after being summoned to apologise”, be made to pay a fine of €51-516.

10 For the ruling, see <<http://www.venetoimmigrazione.it/Portals/0/pdf/normativa/CASSAZIONE%20SENTENZA%20N.%204929%20DEL%207%20FEBBRAIO%202008.pdf>>

11 This is the only question on which there was total agreement among all the legal professionals (50/50 judges, public prosecutors and lawyers) in the SSLMIT survey.

12 Compare this to the US Court Interpreters Act, introduced 10 years earlier in 1978. The very first part of this act established who is responsible for ensuring the quality of court interpreting and how:

(a) The Director of the Administrative Office of the United States Courts shall establish a program to facilitate the use of certified and otherwise qualified interpreters in judicial proceedings instituted by the United States.

(b) (1) The Director shall prescribe, determine, and certify the qualifications of persons who may serve as certified interpreters. [...] The Director shall maintain a current list of all persons who have been certified by the Director and shall report annually on the frequency of requests for, and the use and effectiveness of, interpreters. The Director shall prescribe a schedule of fees for services rendered by interpreters.

Whatever the reasons behind the failure to introduce a court interpreting service, the absence of any system for the training, certification and accreditation of court interpreters<sup>13</sup> and the total lack of any guidelines, the result has been that the legal professionals in Italy's courts and the courts' administrative services have been left totally to themselves to decide on linguistic matters – how to select and work with interpreters and decide when they are needed – about which they have no knowledge or training. The result is, unsurprisingly, an almost totally arbitrary approach, which varies from court to court and even from judge to judge within the same court.<sup>14</sup>

### 3.2 The official register of court interpreters

In every court, the *Cancelleria* (the Clerk of Court's Office, which deals with all the administrative duties of the court, including contacting interpreters) has a register of expert witnesses, which also includes court interpreters (and translators),<sup>15</sup> from which interpreters are supposed to be selected whenever they are needed. There is no legislation stating what the criteria are for admitting interpreters to this register, however, so here, too, the situation varies considerably from court to court. Most courts would prefer interpreters to at least have a degree in languages, but, of the courts studied, only the court of Rome specifically states in the application form for interpreters that Italian applicants must have a diploma in interpreting. Most courts also require interpreters to be first enrolled in the local Chamber of Commerce's list of experts (*Ruolo dei Periti e degli Esperti*). To be admitted to this list, candidates present their CV together with any documentation they deem relevant to demonstrate their professional activity. This documentation is then examined by a special board. Neither the *Cancellerie* nor the Chambers of Commerce ever test the interpreting or language skills of the candidates, however.<sup>16</sup>

### 3.3 The unofficial lists of court interpreters

As some type of qualification, such as a degree in languages, is usually requested (if not required) in order to be admitted to the official register, the interpreters on this register tend to have the mainstream languages taught in Italian universities, namely English, French, German and Spanish, as their working languages. These, unfortunately, are not the languages of Italy's immigrant population, the vast majority of whom are from eastern Europe, North Africa and

13 The goal of the Grotius and Agis projects, and now EULITA, is to promote the training, certification and accreditation of court interpreters in the Member States of the European Union. See <http://www.eulita.eu/home>.

14 See, for example, Salce (2008: 87-130) and Bottura (2009: 45-72).

15 For an explanation of why court interpreters are equated to expert witnesses, see Curtotti Nappi (2002: 279-291), Sau (2010: 24-27) and Longhi (2004).

16 See Piscaglia (2006: 36-40) and Salce (2008: 27-29) for more detailed information.

Asia; nor are they the languages required by Italy's courts.<sup>17</sup> Most *Cancellerie*, therefore, also have an unofficial list of interpreters for lesser known languages, where the only criteria are to be able to speak the foreign language and to be readily available.<sup>18</sup>

As Corsellis emphasised, in order to be able to provide an efficient court interpreting service:

it is self-evident that the first step to planning and organising a service to a multilingual, multicultural constituency is to know what that constituency consists of in terms of specific features (...) And to store that information in a customised database for updates and retrieval according to purpose. (2008:153)

Although official statistics exist on the nationality of the defendants in Italy's courts, there are unfortunately no such statistics on the use of interpreters in Italy's courts, either as regards the number of days of interpreting or the languages used. It is known, however, that the regular immigrant population grew from 572,103 in 1988, when the present code of criminal procedure was introduced, to almost 4,300,000 (just over 7% of the resident population) in 2010,<sup>19</sup> in addition to which there are an estimated 500,000-1,000,000 irregular immigrants.<sup>20</sup> Moreover, figures are often being mentioned by top judges about the high number of court cases involving non-Italian defendants in relation to the problems facing the Italian justice system. Giuseppe Grechi, President of the Milan Court of Appeal, stated in 2006 that:

The number of petty crimes committed by foreigners, above all from North Africa and Eastern Europe, is rising constantly and in these cases Italian justice proves to be swift indeed – 75% of the defendants in summary trials are non-Italians.<sup>21</sup>[my translation]

An idea of the number of cases in which interpreters are involved is provided by Giancarlo Caselli, Chief Prosecutor of Turin:<sup>22</sup>

in order to understand how essential interpreters are in the Italian justice system nowadays, all you have to do is go into any courtroom where there is a summary trial. You will find that 85% of the people arrested on the streets are non-Italians.<sup>23</sup> [my translation]

17 See Bottura (2009: 51-52).

18 As was confirmed by one clerk of court: "We use mother-tongue people and we do not ask for any certification" (*ibid.*: 52). See also Salce (2008: 29).

19 There were 4,235,059 non-Italian citizens resident in Italy on 1 January 2010, an increase of 8.8% over the previous year. 2,086,000 (49.3%) of these citizens were from Eastern Europe. The countries from which the largest increases were recorded compared to 1 January 2009 were Moldova (+18.1%), Pakistan (+17.1%), India (+15.3%) and Ukraine (+13.1%) (ISTAT 2010: 1).

20 <[http://www.corriere.it/cronache/09\\_agosto\\_10/focus\\_8coab4fo-8572-11de-8be5-00144fo2aabc.shtml](http://www.corriere.it/cronache/09_agosto_10/focus_8coab4fo-8572-11de-8be5-00144fo2aabc.shtml)>.

21 <<http://www.altalex.com/index.php?idnot=10321>>.

22 The high frequency of trials requiring interpreters was also confirmed by the legal professionals interviewed in the SSLMIT survey and in a similar study at LUSPIO University in Rome (see Sandrelli *et al.* 2009).

23 <<http://espresso.repubblica.it/dettaglio/effetto-colpo-di-spugna/2114409>>.

### 3.4 The remuneration of court interpreters in Italy

In addition to the absence of training and accreditation, another problem affecting the quality of the interpreting provided in Italy's courts is the disgracefully low sum that court interpreters are paid. On the basis of Law No. 319 of 8 July 1980, as interpreting is not a recognised profession, interpreters are paid on the basis of the time they actually spend in court. This is calculated using *vacazioni* (a period of two hours), which are currently paid € 14.68 for the first *vacazione* (of a trial, not of the day) and € 8.15 for each subsequent *vacazione*<sup>24</sup> for a maximum of four *vacazioni* per day even if the interpreter works for more than 8 hours. A judge may increase this amount by up to 100% in cases of particular difficulty or urgency. It also usually takes more than a year to be paid.<sup>25</sup> The low pay (as little as € 4.08 gross per hour) obviously discourages most trained interpreters from applying to work as court interpreters, as is highlighted on the home page of the recently created Italian Association of Legal Translators and Interpreters, assITIG.<sup>26</sup>

## 4. Interpreters at work in Italy's courts

In order to discover who is willing to work for as little as €4.08 gross per hour, a survey was begun to find out exactly who interprets in Italy's courts and how these "interpreters" work, by visiting Italy's courthouses and interviewing them and the legal professionals. Of the interpreters interviewed (mostly non-Italians) only 6/60 had any interpreting qualifications or training and only half had a degree. Virtually all of these interpreters stated, however, that they never had any real problems when interpreting, never prepared for a case or asked for documentation ("Why? I just translate") and did not use any of the "tools of the trade" (such as dictionaries, glossaries or even a pen and notepad). Moreover, for none of these interpreters, whose experience ranged from over 20 years to their first ever assignment, was court interpreting their main source of income.<sup>27</sup>

When observed at work, their performances and behaviour, unsurprisingly given that there are no prescribed standards, rarely came anywhere near the professional standards that exist in countries in which court interpreting is a recognised (and regulated) profession. There was no whispered interpreting of what was not addressed directly to the defendants – at most, there were very short summaries, but often nothing at all was translated, not even when, for example,

24 According to Art. 10 of the 1980 law, the fees "may be adjusted" every three years using the official cost-of-living index, but the most recent adjustment was 30 May 2002.

25 As Giancarlo Caselli also stated in the interview, interpreters "are paid little and disgracefully late". See also the results of the interviews with court interpreters in Piscaglia (2006) and Salce (2008) and [http://archiviostorico.corriere.it/2006/agosto/27/Tribunale\\_nuova\\_protesta\\_Ora\\_tocca\\_co\\_10\\_060827017.shtml](http://archiviostorico.corriere.it/2006/agosto/27/Tribunale_nuova_protesta_Ora_tocca_co_10_060827017.shtml).

26 <<http://www.interpretigiudiziari.org/index.htm>>.

27 The findings in the LUSPIO study are almost identical. See Sandrelli *et al.* (2009).

police officers described the facts leading up to the defendants' arrests.<sup>28</sup> Virtually all the interpreting was done using the third person as legal professionals almost invariably addressed the interpreters rather than the defendants. Moreover, the interpreters were often seen to engage in discussions with the defendants before translating their replies and sometimes even answered for the defendants, while their attitude towards the defendants was frequently either paternalistic or hostile.

The situation observed in the on-going SSLMIT survey on the interpreting provided in Italy's courts corresponds very closely to the warning issued by Corsellis:

inadequate training and assessment leads to inadequately qualified 'interpreters' who are likely to be inappropriately used, poorly paid, vulnerable, without prospects and a risk to others. (2008: 56)

#### 4.1 Three emblematic cases

All trials are recorded in Italy and so it is also possible to study the actual performance of interpreters at work in Italy's courts. Three cases have, therefore, been chosen to highlight the dysfunctions of Italy's court interpreting system. The first two cases were high-profile cases, followed closely by the international media, involving an English witness and an American defendant, while the third case was a murder case involving various Bangladeshi people that did not even merit a mention in the national media, in which the language used was Bangla.

##### 4.1.1 The testimony of Mark Covell at the G8 trial in Genoa

The first case involves the testimony of the British freelance journalist, Mark Covell, on 25 January 2006, in the trial against members of the Italian police for their alleged excessive use of force in the raid on the Armando Diaz school during the G8 summit in Genoa in July 2001. This case, which was followed very closely by the British media (one of the BBC journalists covering the summit was also called as a witness in the same trial), highlights the total lack of awareness on the part of the Italian court system of what a professional court interpreter is, despite the likelihood of international public scrutiny during the hearing.

Although there is no difficulty in finding professional, qualified interpreters for English, the person chosen to interpret Mark Covell's testimony was a Canadian citizen of Italian descent with a degree in sociology. She was not on the court's official register of expert witnesses (or even the unofficial list of interpreters), she was not a professional interpreter and she had no qualifications (or training) in interpreting, though she had worked as an interpreter in court on one previous

<sup>28</sup> For the importance of whispered simultaneous interpreting for a defendant, see Mikkelsen (1999).



occasion. She was, nevertheless, contacted by the *Cancelleria* and asked if she would come to court the following week to work as an interpreter at the G8 trial.<sup>29</sup>

This “interpreter”, who agreed to do the job because she felt it was her civic duty, was not provided with any documentation to help her prepare for the assignment (which she says, looking backwards, would have enabled her to avoid a few mistakes).<sup>30</sup> She said that, in general, she did not have many problems interpreting although occasionally she had to ask for explanations. Analysing her performance,<sup>31</sup> there are naturally many mistakes typical of untrained interpreters. She has problems translating the formal legal warning that the judge gives the witness, she interrupts the speakers in order to translate after they have uttered just a few words, she often has to ask for repetitions and there are several lexical mistakes, especially into Italian (she has problems, for example, translating the term “uniform”). There are also minor omissions (and sometimes additions) and problems with names and numbers (for example, she continues to call the organisation Mark Covell works for “Intermedia” instead of “Indymedia”). Moreover, there is no whispered interpreting of a long discussion between the defence, prosecution and the judge with regard to Mark Covell’s use of *carabinieri* in his initial statements and then “police” during the trial (she just informs him very briefly that “they’re talking about...”). Although her performance does not contain any major errors, it does considerably lengthen the proceedings and is clearly not that of a professional court interpreter.

She was not helped in her task by the legal professionals. As virtually always happens in Italy, the presiding judge gives no instructions to the court about working with an interpreter<sup>32</sup> and immediately addresses the interpreter instead of the defendant (as often occurs during the testimony). The judge also does nothing to stop the prosecution and defence counsel from speaking over one another during the cross-examination. Furthermore, the interpreter is made to work for several hours without a break, something she complained about when interviewed.<sup>33</sup>

She had no idea why she was chosen for the assignment, but believed it may have been because she was the friend of a judge. Another possible explanation is that she was selected because of her social standing in the local community given that she was the Director of the Italo-British Association.<sup>34</sup> Whatever the reason,

29 All the information concerning this interpreter was provided by the interpreter herself in an interview for an undergraduate dissertation. See Marchese (2009: 44-58).

30 In the SSLMIT survey most of the legal professionals interviewed said that they did not provide any documentation because, among other things, “they did not want to influence the interpreters” or “interpreters must only translate”, revealing a total lack of understanding of how interpreters work.

31 A recording of the interpreted testimony can be found at [http://www.processig8.org/Udienza\\_021\\_Diaz.html](http://www.processig8.org/Udienza_021_Diaz.html).

32 In the cases observed in the courts of California, the judges always gave instructions about working with interpreters. See Salce (2008).

33 See Marchese (2009: 65).

34 She says that she was treated with greater respect by the legal professionals when they discovered this (*ibid.*).

she was not selected because of her interpreting experience or training. Even in such a high-profile case, the court failed to provide a trained, qualified interpreter.

#### 4.1.2 The trial of Amanda Knox

The second case is the even more high-profile trial of the American student, Amanda Knox, and her Italian co-defendant, Raffaele Solletico, for the murder in Perugia in November 2007 of Meredith Kercher, a British student. It was known that there would be massive media coverage of the trial in both Britain and the United States, where, in particular, there had been criticism of the way the investigations had been carried out. As Amanda did not speak Italian sufficiently well, she was appointed an interpreter. The interpreter chosen was, once more, not on the official register, although this time she did at least have a diploma in interpreting and, apparently, considerable interpreting experience, including in court.

The trial began on 16 January 2009, which means that the interpreter had already spent five months in the company of Amanda at the trial when she testified for the first time on 12 June 2009.<sup>35</sup> When anyone testifies in court in Italy, they are first asked to provide their name, and date and place of birth. The interpreter not only remarkably does not know this information, but also fails to write it down or memorise it when it is provided by Amanda. She, therefore, has to ask Amanda to repeat this simple information. She then covers Amanda's testimony by starting to translate when Amanda has uttered just two or three words, making it impossible for Amanda to answer the prosecution's questions and for the court to follow Amanda's testimony. After a few minutes the interpreter is interrupted by the judge, who asks her to let Amanda complete her sentences. The interpreter's reply is that she is translating simultaneously!<sup>36</sup> This "experienced" interpreter reveals a total lack of knowledge of basic interpreting techniques, especially of the interpreting techniques used in court interpreting. The result was that Amanda continued her testimony the next day (and during the rest of the trial) using her limited Italian.

This case highlights how a generic diploma in interpreting and previous experience on one's CV is not sufficient and that interpreting skills need to be tested (and by people who know what to test).

#### 4.1.3 The trial of Yesmin Akter

The third case is a murder case in which all the protagonists were from Bangladesh and at the time spoke virtually no Italian. Yesmin Akter was accused

<sup>35</sup> Eyewitnesses present at the trial also commented on the way she would laugh and joke with Amanda before the proceedings started and would then fail to provide her with whispered interpreting when all the evidence was being presented. She also failed to take any notes and at best occasionally whispered a few words into Amanda's ear.

<sup>36</sup> The interpreter's performance can be seen at <<http://www.youtube.com/watch?v=1gW67Fj9RWY>>.

of having conspired with Sikder Selim (a compatriot who had raped her on four occasions shortly before the murder) to murder her husband, Haque Hamdadul, on 3 June 2004. She was suspected by the police because she had not reported her husband missing and because of the way she cried when she was informed by the police of her husband's death, revealing a total lack of cultural awareness as regards Bangladeshi women.<sup>37</sup>

After her arrest, Yesmin Akter was questioned on 7 June and then again on the following day before the GIP (the judge for the preliminary investigations, who had to decide whether the evidence presented was sufficient to confirm the arrest and if so, whether she should be held in custody). The interpreter at this hearing was a Bangladeshi woman who sometimes works as a cultural mediator for the Municipality of Venice. Not only was she not an interpreter, but when subsequently summoned to testify at the trial of Yesmin Akter, she required the assistance of an interpreter to answer the court's questions. After first translating the judge's warning that "you have a right to remain silent, but anything you do say may be used against you" with "anything you say will be used in your favour", the interpreter then made Yesmin Akter seemingly admit her guilt in the opening exchange:

- GIP: Tell her that Yesmin is accused of taking part in the murder of her husband and of conspiring to do so. In practice, it is alleged by the Public Prosecutor that they – she and Sikder Salim – conspired together to entice her husband to the Nuove Gemme Park in Spinea and that Sikder Salim then killed Haque Amdadu, who was found dead in a ditch in the park at 12.30 on June 3. Tell her that for now.
- Interpreter's translation: They are saying what is written, what you said before, that you and Selim together took your husband to the park, where you spoke and Selim killed your husband. Is that right?
- Yesmin: Uhm, uhm, is that what I said?
- Interpreter's translation: Yes, she did. [my translation]

This was taken by the prosecution and the judge to be an admission of guilt and she was remanded in custody, eventually spending two years in jail. Yesmin Akter's young, recently qualified court-appointed lawyer apparently raised no objections.

Fortunately for Yesmin Akter, she was visited in jail by Bhaumik Lopamudra, a translator and cultural mediator from Bangladesh with fluent Italian, having come to Italy in 1984 and being married to an Italian. Mrs Lopamudra had gone to see Yesmin Akter to inform her that her parental responsibility had been taken away from her. When Yesmin Akter told Mrs Lopamudra about her situation, Mrs Lopamudra suggested that she should speak to a good lawyer and the woman sharing the cell with her recommended Luciano Faraon, who took over the defence of Yesmin Akter. When Mr Faraon, who had asked Mrs Lopamudra to assist him as an interpreter, consulted with his client, he realised that something had gone badly wrong during the questioning and requested for her to be re-heard by the GIP. On this occasion (28 September 2004), thanks to the presence

<sup>37</sup> The testimony of the police was shown on *Un giorno in pretura*, an Italian TV programme which shows and comments cases of interest in Italian courts. For the facts of the case, see also Faraon (2008). Further information was also provided in a number of interviews with separately Luciano Faraon and Bhaumik Lopamudra.

of Mrs Lopamudra – a different court-appointed interpreter was once more unable to translate the cross-examination properly – a different version of the facts emerged.

Examining the official transcripts of the original questioning of Yesmin Akter on 7 and 8 June, Mr Faraon realised that they made absolutely no sense and asked for the recordings of the 8 June hearing (there was no recording of the questioning at the police station). The public prosecutor refused to allow the defence to have these recordings and it was only towards the end of the preliminary investigations that the GIP instructed the public prosecutor to hand them over. The recordings were then re-translated by Mrs Lopamudra, with the help of another lawyer for the legal terminology, which is when all the mistakes made by the first interpreter came to light.

After the preliminary investigations had been completed and Yesmin Akter appeared before the GUP (the judge for the preliminary hearing whose task it is to decide whether there is sufficient evidence to stand trial), Mr Faraon requested that the evidence presented by the prosecution be ruled inadmissible as it was based on incorrect translations by the court-appointed interpreters, as demonstrated by Mrs Lopamudra's translations. The public prosecutor rejected this claim, stating that the defendant had always had an interpreter present whenever she was questioned and so there was nothing wrong with the evidence. The GUP, completely ignoring the testimony of Yesmin Akter on 28 September and rejecting the defence's request for the two different versions of the translations to be compared, ordered that Yesmin Akter stand trial.

At the opening of the trial at the Court of Assizes on 26 October 2005, Mr Faraon once more asked for the prosecution's evidence to be ruled inadmissible as it was based on completely erroneous translations and told the court that Yesmin Akter's right to an interpreter had been violated by the incompetence of the court-appointed interpreters. The public prosecutor replied that the defendant's rights had been respected as "all the interpreters had been mother-tongue Bangla speakers who had been living in Italy for several years" (my translation). She stated, moreover, that information had been sought from the police and university institutes to ascertain their suitability, adding that only the defence's interpreter said the translations were wrong. The judge ruled that the evidence was admissible and then shouted at the new court interpreter to get his attention, before asking him to translate the charges. When, after a long delay, the interpreter finally provided a translation, Mr Faraon (informed by Mrs Lopamudra of the error) told the judge that the translation given had been "What is your husband's name?" The judge asked the interpreter, who clearly had a very limited knowledge of Italian,<sup>38</sup> whether he was able to translate the charges. The interpreter replied that he did not really understand Italian, at which point the judge exclaimed, "Allora buona notte!" (literally, "Goodnight then") and adjourned the trial while yet another interpreter could be found.

The interpreter for the rest of the trial was a Catholic missionary priest who had spent 24 years in Bangladesh as a missionary. He was not an interpreter and had

38 He was apparently a chef. Anyone requiring a copy of the recording of the opening part of the trial, which will later be posted on the Internet, can contact me by e-mail (christopher.garwood@unibo.it).

never interpreted in court before, and he had a few problems (as he himself admitted), especially as the defendants (and witnesses) spoke a dialect with which he was not familiar.<sup>39</sup> This meant that he was forced to clarify the meaning of several terms with the people concerned (sometimes with the help of Mrs Lopamudra), thereby lengthening proceedings. When a new version of the facts emerged during cross-examination, thanks to the presence of the two competent interpreters, the public prosecutor dropped the charges of conspiracy to murder (but continued with the lesser charge of aiding and abetting, of which Yesmin Akter was later also acquitted).<sup>40</sup>

This case was referred to the Italian Constitutional Court as the defence requested at the end of the preliminary investigations that their interpreter be paid by the State since the various court-appointed interpreters had been incapable of enabling Yesmin Akter “to understand the charges made against [her] and to follow the proceedings in which [she was] involved” (my translation) in accordance with Art. 143 of the Code of Criminal Procedure. The GIP rejected this request and the matter was referred to the Constitutional Court, which ruled in favour of the defence, stating that the mere provision of an interpreter does not guarantee a person’s right to a fair trial if the interpreter is not able to perform the task s/he was summoned to carry out. The Constitutional Court also added that Parliament must introduce the necessary legislation to guarantee the competence of court interpreters.<sup>41</sup>

## 5. Conclusions

All three of these cases were normal trials, which are programmed weeks or even months in advance and, therefore, should give the *Cancellerie* ample time to find competent interpreters. One would have thought that this would have been a priority in the first two cases because of the likely international coverage (and with English as the language involved, this was hardly a difficult task), and in the third case because the defence had already challenged the evidence presented by the prosecution on the grounds that the interpreting had been totally inadequate. It is clear from these three cases, however, that the courts are totally lacking in any criteria with regard to the selection of interpreters.

Unfortunately, interpreters are most frequently used in court in Italy in the *giudizio direttissimo* (summary trials), where defendants must be brought before the court within a maximum of 48 hours.<sup>42</sup> The *Cancellerie*, therefore, have a very

39 All this information was provided by the priest in question in an e-mail interview. He had no idea who had given the court his name, but apparently they wanted someone who could speak Italian.

40 She has not, however, been paid compensation for the two years she unjustly spent in jail and Luciano Faraon intends to take this case before the European Court of Human Rights.

41 Ruling 254/2007. See: <<http://www.cortecostituzionale.it/giurisprudenza/pronunce/schedaDec.asp?Comando=RIC&bVar=true&TrmD=&TrmDF=&TrmDD=&TrmM=&iPag=1>>.

42 Summary trials are possible when someone confesses to a crime or is caught in the act.

short time (sometimes only a few hours) in which to find the interpreters, usually for languages not commonly known in Italy, moreover paying as little as € 4 per hour. When interpreters can be found, they are presumably the unqualified interpreters observed in the SSLMIT survey or in the Yesmin Akter case. It is not uncommon for no interpreter to be found or for the interpreters contacted to fail to turn up or for the court to fail to request an interpreter.<sup>43</sup> Indeed, this happened on several occasions when students from the SSLMIT survey were present in court and the judges sometimes asked the students to interpret.<sup>44</sup> On many occasions, vehicular languages, such as English and French, are used even if the defendant is not competent in the language (but who decides and on what basis?). Sometimes the defendants are forced to use a very limited Italian.<sup>45</sup> None of these situations enables defendants to be “linguistically present” in court and participate in their own defence (Berg-Seligson, 2002: 34).

The unacceptable quality of the interpreting is clearly not the fault of the interpreters who appear in court (often, like the Canadian interpreter, out of a sense of civic duty), nor of the court officials who have to find and work with the interpreters. It is extremely worrying, however, how in the case of Yesmin Akter three judges and a public prosecutor refused to acknowledge what was patently clear – the incompetence of the court-appointed interpreters – and worse still claimed (the public prosecutor) that the interpreters had been carefully selected.<sup>46</sup> Exactly how many cases like that of Yesmin Akter occur, nobody knows, but it is clear that without the creation of a programme for the training, selection and accreditation of the interpreters (devised by academic institutions and interpreting professionals) not everyone is “equal before the law” in Italy and that most non-Italian-speaking defendants do not enjoy “full equality” in criminal proceedings. Indeed, their right to a fair trial is violated every time they are provided with untrained, unqualified interpreters, with no professional code of conduct to guide them, as occurs in the vast majority of cases.<sup>47</sup>

The Italian Parliament has done absolutely nothing to ensure the competence of the interpreters in Italy’s courts despite the Constitutional Court’s 2007 ruling or the 2010 EU directive on the Rights to Interpretation and Translation in Criminal Proceedings,<sup>48</sup> which requires Member States to take concrete steps to ensure that the interpretation provided is of “a quality sufficient to safeguard the

43 See, for example <[http://roma.corriere.it/roma/notizie/cronaca/10\\_\\_settembre\\_\\_30/traduttori-tribunali-crisi-roma-digianvito-1703859614642.shtml](http://roma.corriere.it/roma/notizie/cronaca/10__settembre__30/traduttori-tribunali-crisi-roma-digianvito-1703859614642.shtml)>.

44 Usually they refused, but not always. See Morganti (2009: 61).

45 See Ballardini (2002: 209-210), Salce (2008: 88, 89-95), above all with regard to the situation in Naples, and Corsellis (2008: 2) with regard to the level of language required to be linguistically present in court.

46 The public prosecutor was contacted by e-mail in order to find out which university institutes had been involved in the selection of the Bangladeshi interpreters, but at the time of writing no reply had been received.

47 It is known, however, that 37.4% of the Italian prison population are non-Italians. See <[http://www.ristretti.org/index.php?option=com\\_content&view=article&id=905:giustizia-antigone-straniero-il-374-dei-detenuiti-percentuale-mai-raggiunta&catid=16:notizie-2010&Itemid=1](http://www.ristretti.org/index.php?option=com_content&view=article&id=905:giustizia-antigone-straniero-il-374-dei-detenuiti-percentuale-mai-raggiunta&catid=16:notizie-2010&Itemid=1)>.

48 Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010.

fairness of the proceedings, in particular by ensuring that suspected or accused persons have knowledge of the case against them and are able to exercise their right of defence” and to establish a register of “appropriately qualified” interpreters. Hopefully, the Italian Parliament will act swiftly not just to end this legally and morally unacceptable violation of a fundamental right – the right to a fair trial – but also to end this financial absurdity of hiring – for € 4 an hour – totally untrained and unqualified interpreters, who, in addition to sending innocent people to jail, considerably lengthen court proceedings, frequently cause cases to be adjourned and sometimes give rise to totally unnecessary trials, at enormous cost. As Edwards rightly points out, “finding and using qualified people cost money” (1995: 8), but not only does this guarantee the rights of defendants to a fair trial, it also makes financial sense as, in the long run, it actually saves the State money. In the meantime, it is essential to “name and shame”, by bringing to everyone’s attention all violations of such a fundamental right.

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