

A study on the impact of interpreter intervention in the Maltese Criminal Courts

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Abstract

The human right to an interpreter for minority-language speakers in criminal proceedings is protected and provided for under European and Maltese law. This study considers whether the provision of interpreting has an impact on criminal trials in Malta. To answer this question, two lines of inquiry were followed in the three cases studied: firstly, on the particular communicative context, to understand contextual expectations vis-à-vis court interpreting and secondly, on the roles interpreters adopt in court. Ethnographic research was undertaken and data collected through observation during court hearings, recorded field notes and the transcribed audio recordings of three case studies. An interdisciplinary approach was adopted, through the use of elements from: 1) the law; 2) forensic linguistics; 3) interactional sociolinguistics; and 4) critical discourse analysis, which were applied in the analysis of collected data. The data show that interpreter action in court does not always meet specific contextual expectations i.e. the interpreter as a “conduit”, or as a “faithful renderer of utterances”, with a resulting impact on the context in both form and content. Other roles based on interpreter action may sometimes be observed, but difficulty was found in matching observed action with roles established in the literature.

Keywords

Court interpreting, Maltese law, communicative context, adversarial trial, interpreter's role, ethnography, case studies.

Introduction

This paper aims at understanding the impact of the court interpreter on the specific communicative context of trials in the Maltese Criminal Court. In considering interpreter impact, the paper focusses on two key elements: context and role. The context is that within which the interpreter acts as an interpreter, which appears purely legal when viewed from the standpoint of the law, but which also involves a communicative context. The role of the court interpreter will be considered from both perspectives: the law and court interpreting.

The main question the researchers are attempting to answer in this paper is: What, if any, is the impact of the court interpreter on the particular context? This is approached by asking the following sub-questions: What is the context? What is the interpreter's role according to the context and as observed in reality? In this paper, impact is therefore observed on the basis of actual accuracy of the interpreter within context, as compared with prescribed role.

This paper starts with an outline of the criminal trial as communicative context, together with a consideration of possible interpreter roles within that context. This is followed by the Maltese criminal trial as legal context. A description of the methodology and the analytical methods used to investigate the research question is then given. Finally, the court interpreter's prescribed role under Maltese law forms the basis of a discussion on possible roles which she¹ may adopt, and on the impact of interpreter inaccuracies, followed by a succinct conclusion. As the subject has not been previously studied in Malta (except partially in Torpiano 2011), recourse is made to internationally published research.

1. Communicative context and interpreter roles in a criminal trial

1.1. Communicative context in a criminal trial

Context is understood here in both a legal and a communicative sense. In the communicative sense, it is considered "a resource deployed in concrete socially-situated meaning-making action [...]" (Blommaert *et al.* 2018: 2) which is very much at the "intersection of language/discourse and social structure" (Blommaert 2001: 14). The criminal trial may be viewed as a social, legal and communicative event, as it is the hearing where the guilt or innocence of an accused is decided upon, according to any particular country's constitutional, procedural and criminal laws, based on a particular communicative event.

The trial is also a communicative event constituted by components (Hymes 1964: 13). The entire trial depends on the use of both oral and written

1 "She" is used for all references to the interpreter in this paper.

language. All evidence collected in preceding phases is produced, heard and examined during the trial itself in oral proceedings before the court, and is used in deciding on the guilt or otherwise of the accused, according to definitions of crimes in written laws. The adversarial trial depends on the oral language used by the prosecution and defence to persuade the court which version of events correspond to the truth. Different language registers are regularly used in court, according to who is speaking and the occasion: legal language, standard or formal language, colloquial language and other varieties. All may be heard during the examination and cross-examination of witnesses. Language use itself is essential in preserving the seriousness of the event and the authority of the court and is strictly regulated by law as to who and when court actors may speak. These rules correspond to language genres used in different parts of the trial and are particularly important in the examination and cross-examination of witnesses (Gibbons 2003).

It may be argued that anything interpreted concerning the content and form of what is said during the trial has an impact on the communicative context, which then affects the legal context and proceedings to varying extent. Context is subject to a constant process of recontextualisation in the different parts and forms of such criminal procedures, in which the interpreter also participates. The importance of context is particularly recognised in ethnographies, in that data collected are situated, which is also the case in this study (Blommaert 2001: 26).

1.2. Interpreter's role(s) in a criminal trial

Equally tied to the criminal trial as a communicative context, the court interpreter's role is defined by ethical duties to be respected when interpreting in court. These duties are prescribed either by established codes of ethics or by the law itself, through the oath the interpreter takes in court (Mikkelsen 1998: 21; Hale 2007: 103). Established codes of ethics agree on the court interpreter's duties of accuracy, impartiality and confidentiality (Hale 2007: 108), the first of which is mainly discussed in this paper. Accuracy and impartiality also arise from the oath to interpret "faithfully", or "well and truly", or "to the best of their ability". The interpreter's duty is to place the minority language speaker (MLS), witness or accused, in the same position as one who understands the language of the court. This has been understood to mean interpreting "*verbatim*", where the interpreter acts as a "conduit" (Hale 2004: 8) i.e. "without any changes, additions or omissions in content, meaning, manner or tone" between source and target text, and without explanations (Hewitt 1995: 200; Mikkelsen 1998: 21). While acting as a "conduit" has been considered the ideal, the *verbatim* rule has been considered contentious, in that a word-for-word or literal translation would not be understood in the target language; a complete interpretation with no additions or omissions is often impossible when interpreting in court; and clarifications and explanations are sometimes necessary for the text to make sense (Mikkelsen 2008: 83).

Interpreters are also expected to remain neutral and unbiased towards all parties in court. Any conflict of interest, such as previously being a victim of a similar crime, having close relationships with court actors, or even stating that the accused did not understand the question posed, could fall foul of this rule (Mikkelsen 1998: 23).

Hale (2008: 102) found that the following five main roles were either prescribed or could be deduced in court interpreting:

- the “advocate for the powerless participant”;
- the “advocate for the powerful participant”;
- the “gatekeeper”;
- the “filter, embellisher, clarifier, speech assistant”;
- the “faithful renderer of the original utterances” (*Ibid.*: 102).

Hale classified these roles according to levels of accuracy and impartiality (*Ibid.*): “Advocates” both scored medium on accuracy with no impartiality. “Gatekeepers” scored low on accuracy with no impartiality. The “filter/embellisher/clarifier” scored medium to high on accuracy in content alone and impartiality. The “faithful renderer of original utterances” scored highest on accuracy in content and manner, and on impartiality, and placed the MLS in the same position as others speaking the language.

Only the last two proposed roles are considered to be acceptable vis-a-vis the prescribed role of the court interpreter (Nartowska 2015). The last two roles have also been considered to match the controversial ‘conduit’, when taken as an ideal.

Roles may also vary in definition (see Wadensjö’s (2017) “co-constructor of meaning”) and may be adopted on a “continuum” (Niska 2002: 138; Pöchhacker 2008: 13). Rather than role, other researchers look at interpreter visibility (Roy 2000; Angelelli 2004), or whether the interpreter is an actor in court proceedings. Yet others classify such interpreter action in context as im/partial and un/ethical (Ozolins 2016: 280).

In reality, all the classifications could be seen to overlap: a role can be more or less visible, imply being an actor (or not), while being considered im/partial at the same time. Hale’s roles focus on the interpreter and his/her acts. Being a visible actor or interpreter partiality/impartiality also looks at the proceedings and the effect on such proceedings. Such a viewpoint is perhaps more valuable in considering the interpreter’s acts in court.

Surveys confirm the above-mentioned roles and find that interpreters also carry out acts which sometimes pertain to other professions, such as the legal sector or social services (Martin/Ortega Herraes 2014: 141). These include clarifications, explanations of cultural differences and terms, or legal procedure (Kadric 2001), additions and omissions, summaries and changes in register (Martin/Ortega Herraes 2014: 141), since accuracy is also connected to coherence (Hale 2007). Interpreters varied in levels of impartiality according to the different parties in court (Falck, as in Niska 1995: 293).

2. The Maltese criminal trial as legal context

2.1. The Maltese legal context

The legal context is that of the trial in Maltese criminal courts as regulated by criminal and procedural laws. The system is traditionally viewed as ‘mixed’, since procedural laws constituting the trial by jury were adopted from British common (adversarial) law, while concepts in the Criminal Code² emanate from the civil law (inquisitorial) system (Mamo 1954: 9; Attard 2013: 42). References to human rights, including the right to an interpreter in court, with added provisions and safeguards for the criminal courts, are provided under the Constitution of Malta³ and procedural laws, transposed from relevant European laws (the European Court of Human Rights, hereafter ECtHR, and the EU Directive 2010/64). It has been argued that such references imply that the Maltese legal system is European (Aquilina 2011), and not only ‘mixed’ or ‘hybrid’. As a consequence, references to matters concerning trials in the criminal courts are made to British law, legal literature and case-law, while in matters of human rights, Maltese courts refer to European law and the case-law of the ECtHR.

The criminal courts in Malta are regulated by the Criminal Code (CC) and the Code of Organisation and Civil Procedure (COCP)⁴. Trials are adversarial in nature and may be heard by inferior or superior courts, depending on the gravity of the offence judged and on the length of the sentence to be handed out. Cases before the (inferior) Magistrates’ Courts as Courts of Criminal Judicature are heard by one magistrate alone, while the (superior) Criminal Court may be constituted by a judge alone (on the accused’s request) or by both judge and jury. When sitting alone in the criminal court, the judge decides on both law and fact, whereas when sitting with a jury, the judge decides on legal questions while the jury decides on fact.

The Magistrates’ Courts also act as Courts of Criminal Inquiry, compiling evidence in procedural phases leading up to the trial. Such evidence would be later heard during the trial by the Criminal Court, or by the Magistrates’ Court sitting as Court of Criminal Judicature. In its capacity as Court of Criminal Inquiry, the Magistrates’ Courts enjoy wide powers “more akin to an inquisitorial, rather than the accusatorial system” (Grech 2006: 54).

2.2. National and official languages

Maltese is Malta’s national language, and while both Maltese and English are recognised as official languages for administrative purposes, Maltese is the official language of the courts (S5(2) & (3) Constitution of Malta). However, cases may be heard in English when all the parties to a case are English-speaking and do not understand Maltese, or with the other party’s consent when one of the

2 Laws of Malta.

3 *Ibid.*

4 *Ibid.*

parties is English-speaking (S52(1) COCP; S561(1) CC). Any party may apply to the court to hold all proceedings in English. If, however, one party does not agree, or only speaks a third language, an interpreter must be appointed by the court. For historical and geographical reasons, both English and Italian are widely understood amongst the Maltese population. Italian was the language used in Maltese courts up to the nineteen thirties, although Malta was a British colony until 1964.

2.3. Provision of a court interpreter

The provision of an interpreter for foreign language participants during the criminal trial was formally recognised as an essential element to a “fair trial” by the Council of Europe in article 6(3)⁵ of the European Convention of Human Rights (hereafter ECHR), later adopted as the Charter of Rights of the European Union. In 2010, the EU Directive 2010/64 of the European Parliament and of the Council on the right to translation and interpreting during criminal proceedings further defined this right. As a signatory of the ECHR and an EU member state, Malta has transposed all of these laws into Maltese law. The provision of court interpreting primarily represents the protection of the accused’s human rights: that is why the law requires that an interpreter be provided whenever an MLS appears in criminal proceedings, and also requires that a record of such appearance be kept (SS451, S452, S391 CC; S516 COCP).

2.4. Interpreting in the Maltese criminal courts

There are no defined qualification or accreditation requirements for interpreters in Maltese courts. The only training available in Malta is a university Master’s course in conference interpreting, very recently offering an optional credit in court interpreting, or a postgraduate diploma in sign language interpreting or a short course run by the Commissioner for refugees in interpreting for refugees. Court interpreters are a mix of language graduates, trained conference or sign language interpreters, trained refugees, persons recommended by embassies, and lawyers or law students, sometimes appointed on the spot in court. All court interpreters are freelance. An official list of court interpreters is held and referred to by the courts and the police. A number of them, who interpret in commonly recurring languages, have been regularly engaged by the criminal courts for years.

When interpreting for an MLS witness before the court, the interpreter stands next to the witness facing the court and uses short consecutive mode, while for an MLS accused, the interpreter uses whispered simultaneous (chu-

5 European Court of Human Rights (2020) *Guide on Article 6 of the European Convention on Human Rights Right to a Fair Trial (criminal limb)*, Updated on 31 December 2020 <https://echr.coe.int/guide_art_6_criminal_eng.pdf>.

chotage) mode while sitting next to the accused. Where an interpreter cannot be found between any desired language and Maltese, a relay, normally through English, may be used (if the case cannot be heard in English).

3. Methodology and analytical methods followed

3.1. Ethnography of communication

An ethnography of communication was considered appropriate in researching this subject because it means “investigat(ing) directly the use of language in contexts of situation” (Hymes 1964: 3). In this case, the ethnography focussed on interpreting in the criminal courts, gaining access to audio recordings, observing interpreted and other interactions during court proceedings, taking field notes, collecting and analysing data. The aim was to obtain situated meanings of interactions and hence produce a “thick description” (Geertz 1973: 9) of the interpreter and her work within the context of the Maltese criminal courts. Besides being a legal expert, the researcher has spent a considerable amount of time in court observing and taking field notes⁶. This also involved participatory methods, not in the cases discussed here but of use in the ethnography. This enabled immersion in and access to the site, enhancing the lived experience of court interpreting and provided added insight.

Ethnography has been successfully used, also as part of mixed method studies in researching interpreter impact in court interpreting, by leading researchers in the subject such as Hale (2004), *inter alia*. It has also been used in Translation and Interpreting Studies (Flynn 2005; Koskinen 2008; Duflo 2016). Influential authors in ethnography (Hymes 1964; Geertz 1973) have been relied upon as a guide in this research.

Ethnographic data used in the analysis were gleaned from case studies as often occurs in qualitative research (Silverman 2011: 58). This permitted a detailed study of situated discourse, which is impossible to capture solely through note-taking. Three audio recorded case studies, to which access was granted by the court, were transcribed. They contain the examination and cross-examination of witnesses. As the number of cases is limited, the study cannot claim to be representative of the whole phenomenon of interpreting in the Maltese Criminal Court, or of the population of interpreters in Maltese courts. It cannot, however, be considered of less value. Each case is unique, and “intrinsic” in being “ordinary and particular” and thereby, “of interest” (Stake 1994: 236). Case studies also permit an in-depth understanding of the use of interpreting within particular contexts.

6 Intermittently from October 2016 to June 2021.

3.2. Analytical methods

The use of analytical concepts from various disciplines (forensic linguistics, interactional sociolinguistics, critical discourse analysis) enabled us to gain an understanding of what the speech under scrutiny represented in relation to the context. The law and contextual regulations applicable to interpreting in court were also combined with these different approaches to language use to gain a fuller insight into interpreter practices in the Criminal Court.

In this respect, several areas of study have previously been drawn upon by scholars researching court interpreting to analyse the data collected. For example, forensic linguistics (O’Barr 1982; Gibbons 2003; Coulthard/Johnson 2007) permits an analysis of the way spoken language is used by the law, in a court of law, and during criminal cases built on written language. This features heavily in studies by Berk-Seligson (2002), Hale (2004) and Heffer (2020) in witness styles, understanding different genres, and language interpreted in court, in order to measure the interpreter’s impact on court discourse (in witness credibility, the examination and cross-examination of witnesses, and court narratives, respectively).

Goffmanian sociology (Goffman 1981) as used by Wadensjö (1998), is drawn upon, alongside socio-linguistics, particularly regarding “framing”, “footing”, and other elements of Goffman’s participation framework such as “bystander” and “overhearer” (see excerpt 2 below). Interactional sociolinguistics has been used to highlight discrepancies between source and target text. Indexicality⁷, and hence contextualisation, is traced in identifying elements of information units that constitute examination and cross-examination genres (see excerpts 2-5 below). Critical Discourse Analysis (Fairclough 2014) has also been applied (see excerpts 2-5 below) to gain an understanding of power and authority in court arising from the law, to which the interpreter is also subject (see also Hale 2004). These different disciplines are drawn upon to discuss the excerpts from the data in section 4. The concepts and related disciplines used are more explicitly rendered in the analysis.

4. Prescriptive role, analysis and discussion

4.1. Prescribed role under Maltese law

Before presenting and analysing the main data, it is essential to consider the constraining factor of the role prescribed to the interpreter under Maltese law. This emerges from data mainly found in Maltese legal documents and will also be illustrated by an extract from the ethnographic data.

7 An indexical is, roughly speaking, a linguistic expression whose reference can shift from context to context. <<https://plato.stanford.edu/entries/indexicals/>>.

4.1.1. No definition for/of the court interpreter

Maltese law does not specifically define the court interpreter's role. No formal or established code of ethics specifically applicable to interpreters in the Maltese courts exists. The only existing code of ethics for interpreters in Malta concerns sign language interpreters and is not context-specific. However, when considering legal provisions concerning the interpreter, the only possible role under the law is that of Hale's (2008: 102) "faithful renderer of other's utterances" or the "conduit" as an ideal. This is because:

- (i) court interpreting represents the accused's human right to understand the proceedings and prepare his defence (see 2.3 above);
- (ii) the interpreter swears to "interpret faithfully";
- (iii) the law appears to treat the interpreter as a witness.

4.1.2. The oath

S596(2) of the COCP of the Laws of Malta, dealing with the oath applicable to the court interpreter, states that "the [...] interpreter shall [...] swear before the court that he shall faithfully report the words of the witness". Maltese law contains no explanation as to what "faithfully" means. In other codes, fidelity is generally understood as pragmatic accuracy and impartiality, and not literal or word-for-word translation (Hale 2007: 110).

4.1.3. The interpreter as a witness

"Report faithfully" in the oath is reminiscent of witnesses reporting faithfully. Also, like witnesses, the interpreter is summoned to court by *subpoena* (S452(3) CC); should she not turn up, or should she refuse to act as an interpreter, or leave court without being dismissed, she is placed by the court in the same position as a witness who acts in the same way (S452(4) CC). The accused's spouse may not act as an interpreter, as in the case of the witness's spouse (S452(5) CC). Similarly, the law provides that interpreters committing perjury are to be treated as witnesses giving false witness (S107(2) CC). Subornation of interpreters to make a false interpretation is included in the same section as subornation of witnesses and referees (S102 CC). Witnesses or interpreters are permitted by the court to make any addition or correction (S602 COCP). Some sections of the law dealing with interpreters are also included under the title "Of Witnesses" in both the CC and the COCP. In being treated as a witness, the interpreter is unique, in that she is not a witness like any other presented in the case. All other witnesses speak about the facts of the case, or "what happened", while the interpreter only relates what is said in court, although that content refers to the facts of the case.

Classifying the interpreter as a witness is consonant with the hearsay rule, applicable to witnesses and their testimony. According to the hearsay rule

(S598 COCP), the original witness must be produced in court to testify. However, the testimony of a witness reporting in court what is/was said by another is acceptable as evidence that it was said, but not as proof of the content of what was said⁸. The interpreter is no exception to the hearsay rule – she simply does not fall under it.

4.1.4. Relevant caselaw

Furthermore, the interpreter engaged to interpret in court has been referred to as a witness in the Maltese Court of Criminal Appeal⁹. Reference should be made to British and European caselaw, which is used as a constant reference and persuasive force in the Maltese Criminal Courts. The UK courts have ruled that the interpreter is a witness with reference to a suspect's interpreted confession during police interrogations¹⁰. A police officer's testimony regarding the interpreted confession is accepted by the court, despite the fact that he did not understand what the suspect had said when interrogated. American and Australian caselaw, on the contrary, ruled that the interpreter merely acts as a 'conduit' in such cases.

In *Ucak vs U.K.*¹¹, in considering whether the interpreter was an actor in court, the ECtHR decided that "there are no formal requirements of independence or impartiality as such" in relation to court interpreters, as there were for the court itself (which must be independent of the executive, with independently appointed judges). The ECtHR decided that "the services of an interpreter must provide the accused with effective assistance in conducting his defence". The only effective assistance the interpreter can provide is by interpreting as correctly, faithfully and as fully as possible. The court went on: "...the interpreter's conduct must not be of such a nature as to impinge on the fairness of the proceedings", which clearly also implies impartiality.

4.1.5. Interpreter treated as a witness

At times, the court itself clearly treats the interpreter as a witness:

Excerpt 1: Interpreter as witness

J: "Mr/Ms (Interpreter), have a bit of patience with me. He said...?"

(Case Study 1. Recording 2. 17:08. Our translation from Maltese to English. Similar excerpt at 35.10.)

8 *Ir-Repubblika ta' Malta vs Meinrad Calleja*. Court of Criminal Appeal 3/5/2000 Indictment number 21/97.

9 *Republic of Malta vs Jurgen Sixt* 31/10/2021 Crim. App. 7/99.

10 *R vs Attard* Central Criminal Court (1958) 43 Cr. App. R.90.

11 *Ucak versus United Kingdom* Application number 44234/98. Decisions (Final) by Court (Third Section) 24/01/2002. <<http://hudoc.echr.coe.int/eng?i=001-22168>>.

The interpreter is requested to repeat what the witness had just stated in court in order to compare this with the witness's previous statements given to police and through letters rogatory.

4.2. Role recognition and impact of interpreter inaccuracies

The law clearly prescribes that the interpreter translates accurately. Consequently, the only acceptable roles that may be adopted by the court interpreter are the "conduit" as an ideal (and not in its negative sense), or the "faithful renderer of the other's utterances", or perhaps "the clarifier" (Hale 2008: 102).

4.2.1. The interpreter is not a translation machine

The interpreter in the Maltese criminal courts may interpret:

- for the MLS accused or witness;
- in simultaneous chuchotage, short consecutive or relay mode;
- into/from Maltese or English and/or languages understood by the court or by no one except himself and the MLS;
- in oral proceedings relying on written laws and evidence compiled by previous courts;
- in adversarial criminal courts, of a superior or inferior nature, with or without a jury;
- in a mixed system with frequent references to previous phases based on civil/inquisitorial law rather than common/adversarial law;
- based on Maltese laws and with frequent references to both British and European law and caselaw.

Despite the constraints of Maltese law, the interpreter cannot merely be seen as a "translation machine" or a "conduit" in the negative sense. This is seen in the way the interpreter adapts to the constantly changing wider context of the Maltese hybrid system where she interprets, as seen in the above extract from the ethnographic fieldnotes.

That the interpreter does not translate *verbatim* is also seen:

- in interpreter repetition for the court, when she realises the court has missed something said by the witness because it was concentrating on a legal point;
- in the court's requests to refresh the court's memory as to what was stated by the witness (excerpt 1 above);
- in clarifications of speech content with court actors or the witness regarding something not heard or understood.

That the interpreter is not merely a "translation machine" is also clearly portrayed through interpreter action shifting between different interlocutors in court and distinguishing what should be transmitted to the witness or not, which at times may not be clear at all. In excerpt 2, (i) the prosecutor asks the judge about the procedure to be followed in questioning the witness (questions or photo first?).

The interpreter is about to render this for the witness (ii) when, after the judge's response to the prosecutor, she suddenly seems to realise that it might not be in the court's interest to do so (iv).

Excerpt 2: Not a "translation machine"

- i. P: Your Honour, we could show him the photo so that we can picture where everyone was.
- ii. I: (to MLS witness in chuchotage) He is saying
- iii. J: = = *First* he testifies, and *then* we show him the photo
- iv. I: (p) A:ha
- vi. W: (pp to interpreter) Do I continue?
- vii. I: Yes

(Case Study 1. Recording 1. 9:21. Our translation into English)

In recognising that the witness was not the intended addressee of this information, the interpreter changes her own footing to that of an overhearer, and that of the witness (who does not understand the original text) to that of a bystander, instead of a participant in that particular part of the proceedings (Goffman 1981). The witness is not given the power to follow proceedings concerning him or to be aware that the court could compare what he says with a photo of the scene of the crime. While the interpreter appears to act partially as advocate for the powerful institution, or even as a court actor, she in fact acted correctly, ensuring no negative contextual impact. The photo was used to indicate the physical position of all on the scene of the crime, which was of importance as another witness's testimony contradicted this witness's testimony.

4.2.2. Seeking precision

All three case studies show the interpreter constantly seeking precision. Clarifications were used for this purpose when checking what was said by the speaker. These were accepted by the court in the case studies, but heavily objected to by defence or prosecution in other cases observed when it was thought clarifications could change content in witness testimony. Another tactic used by the interpreter was that of trying to keep up with speakers, while using consecutive mode, which often led to overlaps. Although trying to control the flow of speech, the interpreter's aim was defeated as neither the interpreter nor the speaker could be clearly heard, resulting in loss of accuracy, and the interpreter being admonished by the judge.

4.2.3. Inaccuracies, additions, omissions

It was observed that inaccuracies, differences between source and target text, additions or omissions could not always be further classified according to Hale's roles (2007). Type of inaccuracy observed did not always match described roles. Many inaccuracies appeared to indicate a need for further training in languages or interpretation skills (examples 3 and 4 below). Furthermore, while Hale's roles are broadly defined, interpreter action remains open to subjective interpretation. For example, clarifying what a speaker says favours accuracy/interpreting faithfully, but could be seen as impinging on interpreter impartiality in acting as an advocate for the speaker. Repetitions of questions posed to a witness could constitute a form of advocacy for both the questioner (the powerful participant: in pressing the witness for an answer), and the witness (the powerless participant: in giving him time to understand and consider his answer). In excerpt 2 above, the interpreter not interpreting (iv) could be viewed as "active third participant" as gatekeeper (Hale 2008: 102), or as advocate for the institution.

4.2.4. Interpreter inaccuracies and possible explanations

With particular reference to the case studies, interpreter inaccuracies were observed to run along two main lines:

- First of all, they may indicate a lack of training, constant updating and testing in languages and interpreting skills, which may interfere with content and form transmission (excerpts 3 and 4).
- Secondly, the different attributes of examination-in-chief and cross-examination genres, which require particular interpreter skills, can be equally problematic for the interpreter.

Comparing excerpts from the two genres enabled an understanding of the different interpreting skills required according to genre. Examination-in-chief tests memory and languages for precision in (sometimes lengthy) detailed descriptions. Cross-examination necessitates precision in following language structure and logic in questioning. Both genres affect content and form, which must be kept in the target text (Niska 1995: 305): content as imported into the case by witness's testimony and form as prescribed by speech in court. The following excerpts from the case studies illustrate inaccuracies within the particular frames of examination (excerpts 3 and 4) or cross-examination (excerpt 5). The resulting changes in source-to-target text have consequent effects on the process itself, thereby illustrating impact.

Excerpt 3: Omissions in examination-in-chief. Loss of content/evidence.

- i. W: e poi, ho riconosciuto il timbro della voce, ma ho riconosciuto la persona pure dal fisico, dai tratti somatici
and I also recognised the timbre of the voice, but I recognised him from his physique too, from his facial characteristics
- ii. I: u għaraft il-persuna, il-vuċi
and I recognised the person, the voice

(Case Study 1. Recording 1. 29.06)

The excerpt highlights the importance of interpreter precision in the criminal court (Section 596(2) COCP). Descriptions are an essential part of the narrative of opposing parties' own witnesses in the criminal trial and constitute evidence (Hooper *et al.* 2009: 2311 and 2355 regarding facts in issue and burden of proof). They are teased out of witnesses' memories by open questions in examination-in-chief by the party presenting the witness, without leading the witness. The witness is given the opportunity to present the facts he experienced, leading to the trial. His statement is subsequently dissected and attacked by the opposing party in cross-examination, in an effort to discover who is telling the truth, or to discredit the witness. The more detailed, the more convincing the witness's testimony becomes. Long, detailed descriptions were found to lead to omissions or changes in interpreting in the case studies.

The turn in excerpt 3 concerns the prosecutor's own witness explaining during examination-in-chief how he had recognised the accused as the aggressor during the police line-up. It illustrates how the interpreter loses content, and thereby unwittingly decreases evidence produced in court through the witness's testimony, and reduces the witness's credibility by omitting details in the description (Berk-Seligson 2002; Heffer 2020). The court itself, which understood the witness's language in this case, points out the omission, recognising its importance as evidence. (J: "[...] he said something which was not translated. With all due respect, i tratti somatici are [...]" Case Study 1. Recording 1. 29.23) Interpreter omissions amounting to loss of content during examination-in-chief, appear unintentional (but seem to indicate lack of training in language, interpreting and other skills), highlighting the importance of training and testing in language, memory and understanding of the legal side (Balogh *et al.* 2016), also addressed in Trafut¹², Qualitas¹³ and Building Mutual Trust Projects I & II^{14, 15}.

12 Trafut (Training for the future) <<https://eulita.eu/training-future/>>.

13 Qualitas: <<http://qualitas.old.ogpi.ua.es/content/assessing-legal-interpreter-quality-through-testing-and-certification-qualitas-project>>.

14 <<https://eprints.mdx.ac.uk/12234/1/BMT%20Report.pdf>>.

15 See Eulita at <<https://eulita.eu>>.

Excerpt 4: Additions in examination-in-chief: Interpreter as clarifier

- i. P: kif kien fl- (Isem l-istabbiliment), bhala ambjent, bhala nies?
what was it like inside the (name of club) - what was the atmosphere like, the crowd?
- ii. I1: how was the...the environment inside (name of club), with regards to the people, to the number of people, I imagine
- iii. I2: (interprets on relay into witness's language)
- iv. I1: (continuing) also regarding the lighting, the sound...

(Case Study 3. Recording 2. 45.44)

The interpreter translates “ambjent” as “environment”. “Ambjent” also means “atmosphere” which was the correct pragmatic meaning in this case. She also attempts to clarify the reference to “nies” (people) by adding “with regards to the number of people”, together with the discourse marker “I imagine” indicating that this was her own personal interpretation (ii). She later clarifies the “environment”, stating “also regarding the lighting, the sound...” (iv).

The original question (i) is typical of questions asked to witnesses during examination-in-chief: *wh-*, open questions (S579 COCP). The intonation is innocent, with no hint of what the prosecutor is leading to. By specifying the meaning (ii) (iv), the question form has been altered, making it more specific, and thereby tampering with the rules, or indexicality (Blommaert 2005), of examination-in-chief and with this particular genre. The changes in meaning are also important: the atmosphere and the crowd were relevant when considering the accusation of grievous bodily harm followed by death, which allegedly started from a fight in a nightclub. Was it calm or rowdy? Was there heavy drinking? The meaning has been altered along with this part of the prosecutor's narrative.

In acting independently of the court, she may have acted as a gatekeeper (Hale 2008: 102). However, in not asking the question as it was put, or requesting a clarification from the speaker, she partially usurps the power to speak from the court actor who had that power at the time, and who was himself bound by rules of evidence and genre.

Excerpt 5: Omission: cross-examination: loss of form, narrative

- i. D: ara nghidlux sew illi harstu, dak il-hin, l-inkwiet tieghu, kien dik il-pistola ippuntata lejh? U dik il-haġa li ra dak il-hin?
Am I not correct in telling him that, at that time, what was worrying him was the pistol pointing at him? And that was what he saw at the time?
- ii. I: guardi se ti dico bene (sic) che tu guardavi a quella pistola, perche' avevi paura di quella pistola?
Am I correct in telling you that you were looking at the pistol, because you were afraid of that pistol?
- iii. W: eh, certo che avevo paura di quella pistola.
Ah, of course I was afraid of that gun.
- iv. I: iva, dażgur li kelli biza' ta' dik il-pistola.
Yes, of course I was afraid of that gun.

(Case Study 1. Recording 2. 39.06)

Defence's question is typical of cross-examination, framed by the laws of evidence within the larger frame of the adversarial trial. She presents a version of events challenging the witness's statement previously made in examination-in-chief: an argument is built up, culminating in a question based on the information previously given, and contrasting with that information (i). Defence counsel puts pressure on the witness to admit that, being so frightened, his eyes were fixed on the pistol pointed at him, not on the aggressor, and consequently, he could not identify him. In doing so, she uses indexes, such as the form, formality and standard formula, recognisable as appertaining to the particular genre used in cross-examination.

The original question is coercive in form and in intonation (i), starting "Am I not correct in telling him..." which the interpreter has attempted to retain throughout this narrative (ii). However, the interpreter has used the Italian familiar form of "tu" in addressing the witness in the target text (ii), with a consequent loss of formality. Furthermore, the target text is erroneously constructed (ii), seemingly translated literally, indicating the interpreter was not a native speaker. The result is a loss in formality and coercion.

In omitting the supplementary question in (i) "And that was what he saw at the time?" the focus of the question has been deflected away from the information the questioner was trying to force the witness to admit. As this was part of a series of questions challenging the witness's recognition of the accused as perpetrator of the crime, counsel's logical sequence of questions building up an argument is disrupted and the narrative is also lost. The witness simply admits he was afraid of the gun. The total sum of loss of form and of content has robbed the cross-examiner of the exercise of power/authority granted under the law of challenging the witness. Interpreter inaccuracy has resulted in a recontextualisation of the source text through the loss of the indexicality particular to cross-examination.

5. Conclusion

This paper set out to investigate the impact of the court interpreter, if any, on trials in the Maltese criminal courts. Sub-questions asked what the context was and what the interpreter's role was in such context. The communicative context was that of the Maltese criminal courts, which are adversarial within a mixed and/or European system. Although no specific definition of role exists under Maltese law, the court interpreter's role is prescribed as that of a witness according to its legal context, "reporting faithfully" what the witness says, and thereby demanding accuracy. This role only matches the "conduit" as an ideal, or Hale's (2007) "faithful renderer of other's speech". Although the court interpreter makes an effort to be accurate and remain faithful to the source text, it was observed that in reality a loss of accuracy does occur. Different reasons explain such loss: possibly a lack of training in languages or interpreting skills, or the way language is used in the different genres of examination and cross-examination during a criminal trial. The resulting impact observed on the communicative and legal contexts in three case studies, shows that content and form may both be affected by interpreting. However, difficulty was found in matching inaccuracies to roles in Hale's spectrum: due to ambiguity encountered in role recognition. The use of ethnography and an examination of the resulting data by using concepts from the ItS literature stemming from different disciplines, permit an enriched understanding of the communicative event and consequent effects of court interpreting on the legal context.

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