The role of the court interpreter: a powerless or powerful participant in criminal proceedings?

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Abstract

The interpreter's activity in a courtroom bilingual context is of fundamental importance for understanding to be achieved between the participants of legal proceedings. Although the key position of the interpreter in any legal process results from legal provisions, his/her role as court interpreter is defined differently: interpreters are perceived as invisible persons in the courtroom, intermediaries in communication, experts of language and culture or visible and active partners in communication. This paper analyses what actual role is played by an interpreter in judicial interaction. For this reason two transcriptions of audio recorded criminal hearings involving interpreters in Austrian and Polish courts were subjected to Critical Discourse Analysis. The analysis showed that the appointed interpreters are independent and active participants of the interaction who also play roles unrelated to their professional role and change the course of the proceedings through their own interventions.

Introduction

In the globalised world and especially in the united Europe of the 21st century, court proceedings involving an interpreter are not rare but have rather become a permanent element of everyday judicial life. Thus, the interests of a person speaking a foreign language who has to stand before a court are given much attention today on both the international and community level. Directive

2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings as well as the European Convention for Human Rights (art. 6, par. 3 of the ECHR) in force for over 60 years, guarantee the right to interpretation and translation for each person charged or accused who does not speak or understand the language of the criminal proceeding.

Interpreters are joining the footlights: the right to oral interpretation is an indispensable element of a fair trial. Interpreters should guarantee a person speaking a foreign language the right to ask questions, the right to an effective defence and also allow their presentation of the case as well as active participation in the trial. At the same time, interpreters enable communication in the courtroom and support the court in the process of establishing the truth and case law. Therefore, interpreters occupy a key position in bilingual court proceedings.

Despite the key position of court interpreters resulting from legal provisions, demands attempting to limit the central role of interpreters and reduce their activities in the courtroom to a minimum are still present. Therefore, this article will examine what is the actual role of a court interpreter as a key person in bilingual criminal proceedings. The strategies undertaken by appointed interpreters in order to enable communication in the courtroom and the extent of their active participation in the proceedings of a given court interaction will be analysed based on authentic data from interpreter-mediated hearings at an Austrian and a Polish criminal court.

1. The role of court interpreter

1.1 From a transmitting medium to an expert in intercultural communication

In theoretical literature on court interpretation[1] there is a consensus that the interpreter should remove the language barriers between the participants of proceedings and enable communication between the parties. The discussion, however, is about how this assignment is to be completed.

In the legal tradition of Anglo-American countries there is the widespread view that court interpreters must limit their activity to faithful and verbatim rendition of what is said in the courtroom (including Edwards 1995; González *et al*. 1991; Mikkelson 1998; Schweda Nicholson 1989). The interpreter's role is to transfer the person speaking a foreign language into the same position of a person who understands the language of proceedings, and not into a more or less favourable position. It is in this way that the role of a powerless and invisible interpreter in the courtroom is postulated. S/he must only function as a transmitting medium or "a linguistic conduit" (González *et al*. 1991: 156) and therefore

1 Whereas, as Hale (2008: 101) points out, most of the postulated opinions "are based solely on personal preferences and ideologies, some on descriptive studies of the current state of affairs, but very few on research that looks at the consequences of each of the roles proposed".

not add anything, leave anything out nor explain cultural differences during interpretation.[2]

However, some Anglo-American authors (Colin/Morris 1996; de Jongh 1992; Hale 2004; Laster/Taylor 1994; Morris 1995) hold the opinion that interpretation of only the language for a given statement is not sufficient to convey its overall meaning. Therefore, in their opinion interpreters should serve as communication facilitators who not only will translate the full content of a statement but the intention of the person speaking as well; none the less, court interpreters are not "cultural experts" in their opinion (Laster/Taylor 1994: 126).

In the countries of continental law, court interpreters are granted a lot of leeway: interpreters are independent experts in intercultural communication which entitles them to independently act in the courtroom on their own responsibility (*inter al.* Driesen 2006; Kadrić 2009; Niska 1995). The interpreter's objective is to provide "*effective* communication" in the courtroom [italics as in the original] (Kadrić 2009: 25) whereby the interests of all parties in the proceeding must be taken into account: on the one hand the court as an institution must receive all relevant information necessary to achieve its objective and on the other hand a person speaking a foreign language must be able to fully understand the proceedings as well as be understood in his or her own case.[3] For the interpreter it means that his/her actions in the courtroom may not be limited only to rendering in the target language what was said in the original language but s/he must also include broad linguistic mediation (primarily translation of texts, identification of documents in foreign languages at the proceedings) and cultural mediation (taking a stand regarding these texts, their contexts and also in relation to certain culturally conditioned situations and behaviours) (cf. Kadrić 2009: 28).

1.2 A visible and active participant of the proceeding

Empirical surveys on the role of court interpreter (Berk-Seligson 1990; Hale 2004; Jansen 1995; Kadrić 2009; Nartowska 2014a, 2014b; Niska 1995) show that the interpreter in the courtroom is visible, is an "active verbal participant in the interaction" (Berk-Seligson 1990: 64) and has an impact on the proceedings. The interpreter's visibility is presented by, among others, numerous "clarification

2 This way of perceiving the role of court interpreter is also supported by the lawyers in common law countries (Hale 2007; Ibrahim/Bell 2003; Laster/Taylor 1994; Lee 2009; Morris 1993, 1995, 1999) and Poland (Mendel 2011; Stawecka 2010) who only see interpreters as "interpreting machines" or "invisible persons". This view is closely related with the lawyers' demand that: "when rendering meaning from one language to another, court interpreters are not to *interpret* – […] but to *translate* – a term which is defined […] as rendering the speaker's words verbatim" [italics as in the original] (Morris 1995: 26).

3 It is clear from the mentioned legal provisions: the court interpreter as the guardian of human rights through "adequate linguistic assistance" is to ensure that a person speaking a foreign language is able to "fully to exercise [his/her] right of defence and safeguarding the fairness of the proceedings" (point 17 of Directive 2010/64/EU).

procedures" (Berk-Seligson 1990: 86) which are undertaken by interpreters due to the nature of the mediated communication. For example, if the judge's question or the statement of the person speaking a foreign language requires clarification, the interpreters actively intervene in the interaction and attempt to dispel doubts by asking additional questions. The same applies to the explanations, comments or additional information provided by interpreters.

The interpreter's participation in court proceedings above all leads to changes in the typical setting of participants defined by the provisions of law and the related system of power (Berk-Seligson 1990; Fenton 1997; Hale 2004; Kadrić 2009; Morris 1993; Nartowska 2014b). In monolingual court proceedings the authority and control over the spoken word and the course of the proceedings are in the hands of the institution representatives, mainly the presiding judges. In proceedings with a person speaking a foreign language the lawyers' control is suspended due to the language barrier and since communication is only possible through an interpreter, the lawyers are forced to cede part of their power to the interpreter. The fact that the interpreter rather than the judge is asking questions to the person speaking a foreign language causes the interpreter to be a participant in the proceedings with the powers and authority of a lawyer in the eyes of a foreigner (cf. Fenton 1997: 31).

Moreover, the power of the interpreter is manifested in the coordination procedures undertaken: since the only person who understands the language of the foreigner is the interpreter, the course of the foreigner's testimonies is controlled by the interpreter in the role of judge (e.g. by calling him or her to answer, to repeat the statement or to be silent) (cf. Berk-Seligson 1990; Kadrić 2009).[4] In this way the interpreter contributes to a smooth and efficient court hearing but at the same time performs "a measure of linguistic coercion" (Berk-Seligson 1990: 96) and has authority over the person speaking a foreign language.

Court interpreters have the authority to actively intervene in the original statements of the proceedings' participants (Berk-Seligson 1990; Hale 2004; Kadrić 2009; Nartowska 2014b): on the one hand they may intervene with the lawyers' questions, changing their purpose which is beyond the lawyers' control, and on the other hand they may intervene with the answers provided by the person speaking a foreign language. Through modification of the language style or register of the original utterance of an accused person speaking a foreign language, interpreters may affect its assessment by lawyers in a negative way. Interpreters become therefore "power figure[s]" in the courtroom "in control of the language, in control of two languages in fact, monopolizing the means of communication" (Fenton 1997: 30).

4 Kadrić's (2009) analysis showed that if court interpreters do not demonstrate their own initiative in the courtroom and do not take the necessary actions of coordination or fail to express necessary explanations, communication problems and misunderstandings result which influence the interaction. This leads to the conclusion that court interpreters may have an influence over the course of proceedings not only by being active but by being passive as well.

2. Data

The data for this analysis come from two court proceedings which took place in the National Court for Criminal Cases in Vienna, Austria, and in the District Court in Głubczyce, Poland, with the participation of an interpreter of Polish and German languages respectively. The corpus consisting only of two case studies is due to the difficulty of gaining access to live courtroom proceedings and getting permission to record them. The analysis based on the work of two court interpreters does not allow drawing general conclusions, but can hopefully provide a basis for further research taking into account a greater number of interpreters.

Both hearings were audio recorded and an observation protocol was drawn up of the course of proceedings in each case. The recorded hearings were transcribed on a computer using EXMARaLDA software according to the HIAT transcription system (Ehlich/Rehbein 1976).[5] HIAT transcription conventions[6] were applied with the purpose of obtaining a detailed and natural reconstruction of the entire court interaction. Therefore, the elements of oral communication such as hesitation, thinking out loud, self-corrections and wording in dialect were reflected in the transcriptions as precisely as possible.[7] The translation of all Polish sequences into German and the English version provided directly below are philological translations of the original expressions that try to convey the meaning of the statements as closely as possible, taking into account all linguistic errors. Passages in German dialect are rendered in Standard English. All names and data subject to data protection were anonymised by replacing them with other names or symbols.

5 HIAT is the acronym for "Halbinterpretative Arbeitstranskriptionen", in English "Semi-interpretative working-transcriptions". The characteristic feature of this transcription method is the record of natural communication in the form of a score, by which it is possible to represent the multi-dimensionality of the interaction. On the one hand the score notation allows accurate reproduction of individual statements of participants of the interactions and on the other hand the actions of several participants simultaneously, such as overlapping speech events, interrupting, etc.

6 The following transcription conventions were applied:
- • a micropause
- •• a break up to 0.5 second
- ••• a break up to 1 second
- ... a break in utterance
- / false starts
- institution emphasis
- () hardly audible
- (()) inaudible
- ((whispers)) non-verbal features or explanatory comments
- CAPITALS anonymous information

7 Each participant in the interaction is assigned a line, a so-called verbal track [v], containing the original statement. Its translation is marked as follows: German language [de] and English language [en]. The track [k] contains comments and aspects of non-verbal communication.

In the cited examples of court proceedings the following persons are involved: J = judge, Pr = prosecutor, D = defender, Def = defendant, I (1, 2) = interpreter. The appointed interpreters are sworn translators or certified court interpreters and both have received specific university education for interpreters of the given country.[8] The difference between them is, however, in professional experience: the Polish language interpreter has very little experience in (court) interpreting, whereas the interpreter in the Austrian proceedings has over 35 years of documented experience in interpretation and considers the National Court for Criminal Cases as his second home.

The transcriptions of the hearings were subjected to Critical Discourse Analysis (CDA) according to Fairclough (1995, 1998, 2001), where a discourse is considered as "a form of social practice" (Fairclough 1995: 131). The CDA focuses therefore on the examination of the dialectical relationship between the use of language and social structures: "Describing discourse as social practice implies a dialectical relationship between a particular discursive event and the situation(s), institution(s) and social structure(s) which frame it" (Fairclough/Wodak 1997: 258). Since CDA is primarily concerned with revealing existing relationships of authority and control, it seems to be a particularly suitable tool for the analysis of translation action in the institutional and strongly formalised context of criminal court proceedings.

3. The power and powerlessness of the interpreter in the courtroom

3.1 "He did not get ehh...?"

The following example from Polish court proceedings illustrates strategies used by an appointed interpreter during interpretation of monological stages of the hearing:

Excerpt 1:
[47]

J [v]	• • • Yhm. ((1,6s)) Dobrze, w takim razie proszę o odczytanie aktu	
J [de]	• • • Mhm.	Gut, dann ersuche ich um die Verlesung der Anklageschrift.
J [en]	• • • Um.	Well, in that case, please read the indictment.

8 The Austrian interpreter graduated in Translation Studies; the Polish interpreter first graduated from a five-year study of German Philology and then from a two-year postgraduate course for translators and interpreters.

[48]

J [v]	oskarżenia.
I1 [v]	Also jetzt wird • Anklageschrift... My możem/ możemy
I1 [de]	Wir könne/ können wir uns
I1 [en]	So now is being (read) • the indictment... We can/ can we sit
Pr [v]	Oskarżam Karla Fischer • o to, żee: • • w dniu DZIEŃ
Pr [de]	Ich klage Karl Fischer • deswegen an, daass er: • • am TAG
Pr [en]	I accuse Karl Fischer • because of this, thaat he : • • on the date DAY

[49]

I1 [v]	usiąść? Wir können jetzt sitzen. ((2s)) Und jetzt ist diese... ((1,6s))
I1 [de]	hinsetzen?
I1 [en]	down? We can now sit. And now is the...
I1 [k]	((whispers)) ((whispers))
Pr [v]	MIESIĄC ROK w miejscowości NAZWA, gmina Głubczyce,
Pr [de]	MONAT JAHR in der Ortschaft ORTSNAME, Gemeinde Głubczyce,
Pr [en]	MONTH YEAR in the city NAME, the municipality of Głubczyce,

[50]

I1 [v]	diese/ • • das hier (()) vorgelesen • • (()) und das. Nie
I1 [de]	Hat
I1 [en]	the/ • • this here (()) reading out loud • • (()) and this. He
Pr [v]	naruszył zasady bezpieczeństwa w ruchu drogowym w ten sposób, że
Pr [de]	Sicherheitsvorschriften im Straßenverkehr so verletzte, dass indem
Pr [en]	violated road safety rules in this way, that

[51]

I1 [v]	dostal yyy...?
I1 [de]	er nicht bekommen ääh...?
I1 [en]	did not get ehh...?
D [v]	Skróconą
D [de]	Eine
D [en]	The
Pr [v]	kierując samochodem osobowym marki MODEL POJAZDU NUMER
Pr [de]	er den Personenkraftwagen der Marke FAHRZEUGMODELL KENNZEICHEN
Pr [en]	driving passenger car MODEL VEHICLE REGISTRATION

[52]

D [v]	wersję.
D [de]	verkürzte Fassung.
D [en]	shortened version.
Pr [v]	REJESTRACJI • • • na prostym odcinku drogi nie zachował należytej
Pr [de]	lenkte und • • • auf einem geraden Straßenabschnitt die erforderliche Vorsicht nicht
Pr [en]	NUMBER • • • on a straight stretch of road did not maintain due precaution

[53]

I1 [v]	Das ist das hier.
I1 [de]	This is this here.
Pr [v]	ostrożności podczas wykonywania manewru wyprzedzania najechał na
Pr [de]	beachtete bei der Ausführung des Überholungsmanövers fuhr er die mit dem Fahrrad
Pr [en]	during passing maneuver drove over

After completion of the hearing of the German-speaking defendant, the judge asks the prosecutor to read the indictment (lines 47-48). The interpreter, who is sitting in the dock right next to the defendant, does not literally interpret the judge's request in Polish but informs the defendant of what will happen next ("So now is being (read) • the indictment…") trying to integrate him into the action. After a moment however, when the prosecutor stands up and starts to read the indictment (line 48) the interpreter suddenly interrupts her comments. In addition, confused by the fact that all other participants (except the prosecutor) are sitting while she and the defendant remain standing, the interpreter asks the defender in the front bench if both of them may sit down (lines 48-49). This request indicates the interpreter's lack of knowledge of court procedure. Only when the defender nods affirmatively does the interpreter inform the defendant by whispering and both of them take their places again (line 49).

In the meantime the prosecutor reads facts about the time and place of the incident and then moves to the defendant's misconduct which is violation of road safety rules (lines 49-50). The defendant does not participate in this official stage because the interpreter does not inform him of what is being read in any way, although she seems to follow the reading of the indictment. After a two-seconds break the interpreter only informs the defendant: "And now is the…" but does not finish her sentence. Then she refrains from commenting as she tries to search among the defendant's documents for the fragment which is being read out in order to bring his attention to it eventually ("the/ • • this here ((|)) reading out loud • • ((|)) and this"). The false start and numerous demonstrative pronouns indicate the interpreter's difficulties with the interpretation of legal terminology.

Since the defendant does not respond to the interpreter's actions, the interpreter, disregarding the circumstances, addresses the defender again asking him if the defendant received a copy of the indictment (lines 50-51). Sudden discontinuation of the question confirms that the interpreter is not proficient in legal terminology or does not remember the term "indictment". Her decision to

ask the defender again proves that she is afraid of the consequences of not interpreting the indictment. If the defendant were to later report that he had not understood everything or did not understand it properly, the interpreter would be discredited.

The defender's reply that the defendant received the shortened version of the indictment (lines 51-52) seems to calm and satisfy the interpreter because she no longer bothers to interpret the content of the indictment to the defendant. Once more she shows the defendant the fragment of the text she found (line 53), ignoring the prosecutor's speech. Her conversation with the defender remains incomprehensible to the defendant as well.

The interpreter refrains completely from providing a simultaneous interpretation of the course of events despite her most favourable position in the courtroom. The interpretation is first replaced by her own uninformative comments and then with the fragments of text she found, therefore, delegating the responsibility of understanding to the defendant. Since the reading of the indictment was not communicated to the defendant in any form, he is unable to take part in the judicial interaction.

3.2 "You took a swing, you wanted to hit the policeman"

The Polish-speaking defendant is also excluded from court discourse and interaction for an even longer period at the Austrian court hearing, primarily during the 28 minutes of the hearing of witnesses. Five witnesses were questioned in all, including three policemen who spoke in dialect and partially in professional jargon as well. The interpreter who took a seat next to the judge was not able to interpret simultaneously due to the long distance from the defendant who was sitting in the dock. However, the interpreter took no initiative after the hearing was closed and neither did he interpret statements consecutively, nor sum them up. In spite of this, the judge directly communicates with the defendant, clearly expecting him to take a stand:

Excerpt 2:

[241]

J [v]	Sooo. ((1,3s)) Na ja, Herr Krawczyk,
J [en]	Sooo. Well, Mister Krawczyk,

[242]

J [v]	jetzt haben Sie einige Zeugen gehört, ja? Was/ was sagenS dazu? Kann das		
J [en]	now you have heard several witnesses, yes?	What/ what do you say to that?	Can it
D [v]			Na,
D [en]			No,

[243]

J [v]	stimmen, was sie gesagt haben?	Haben Sie das verstanden, was die
J [en]	be true, what they said?	Did you understand, what all the
D [v]	haben Sie des verstaunden überhaupt?	
D [en]	did you understand anything at all?	

[244]

J [v]	Zeugen alle gesagt haben?		Ja? Kann das stimmen, was die gsagt
J [en]	witnesses have said?		Yes? Can it be true, what they
Def [v]		Ja.	
Def [en]		Yes.	
Def [k]		((very quietly))	

[245]

J [v]	haben?		Zuerst die Drohungen, auf der
J [en]	said?		First these threats, on the
I2 [v]	((2,3s))	Czy to się może zgadzać, co świadkowie zezna/ jak	
I2 [de]		Kann das stimmen, was die Zeugen ausge/ wie die	
I2 [en]		Can it be true, what the witnesses testi/ how the	

[246]

J [v]	anderen Seite den einen Schlag da gegen den Polizisten versucht haben zu	
J [en]	other hand this one punch there (you) attempted to give that policeman.	
I2 [v]	świadkowie zeznawał/ co świadkowie zeznali?	Pan się
I2 [de]	Zeugen ausgesagt hat/ was die Zeugen ausgesagt haben?	Sie haben
I2 [en]	witnesses was testifying/ what the witnesses testified?	You took a swing,

[247]

J [v]	setzen.	
I2 [v]	zamachnął, chciał	zadać cios policjantowi.
I2 [de]	ausgeholt, wollten dem Polizisten einen Schlag versetzen.	
I2 [en]	you wanted to hit the policeman.	

The questions by the judge to the defendant concerning the testimonies which were heard (lines 242-244) show that the judge is presiding over the proceedings as though they were a monolingual hearing. The judge also assumes that the defendant was able to follow and most of all to understand the course of the proceedings regardless of the fact that the interpreter has completely withdrawn from the interaction. It is therefore not surprising that the defender reacts energetically and is aware of an existing language barrier for the defendant by raising an objection ("No") and then asking the defendant if he understood the hearing of the witnesses at all (line 244) before the judge ends his statement. The interpreter is passive and does not attempt to interpret questions for the defendant.

The judge immediately picks up the defender's question whether the defendant understood what all the witnesses said or not (lines 244-245). The interpreter, however, still does not react.

Without the interpreter's help the defendant appears to understand that the questions are directed at him because he finally answers "yes" (line 244) but he says it quietly and unconvincingly, so that it may be assumed that his answer is forced and does not correspond to the facts. The judge not hearing the defendant's answer repeats the question as to whether what the witnesses said is true (lines 245-246). This time the defendant does not respond. It is possible that he feels frightened by the situation or intimidated by the difficulties related to understanding the German language which he fears to admit openly. It is also possible that he does not even understand the questions which are now being asked.

Although the interpreter's intervention is clearly expected, he remains passive. What causes the interpreter's restraint is not clear. The interpreter decides to step in after a long pause (2.3 sec) when there is no reaction from the defendant. However, the interpreter omits to translate the repeated question as to whether the defendant understands and only translates the last question by the judge: "Can it be true, what the witnesses testi/ how the witnesses was testifying/ what the witnesses testified?". Perhaps the omission is caused by the interpreter's assumption that the defendant – despite apparent difficulties – is able to understand the courtroom's course of events. It is more likely, however, that the interpreter fears losing his face, thus, the omission is deliberate. If the defendant had officially admitted that he did not understand the testimonies of the witnesses, the responsibility for this fact would have fallen on the interpreter. A consecutive interpretation of the entire hearing of the witnesses would have been quite a challenge for the interpreter, especially as he took no notes. This may also be indicated by the very apparent nervousness (numerous corrections of his own expressions) on behalf of the interpreter who at other times behaved very confidently in the courtroom.

The interpreter's question, however, remains unanswered because the judge speaks again and clarifies what the last question referred to, namely: the defendant's threatening behaviour and attempt to hit the policeman (lines 245-246). The judge is apparently aware of the defendant's language difficulty which is why he summarises the entire hearing of witnesses in one explanatory statement. Thus, on the one hand the judge provides the defendant with a specific reference point, and on the other hand he allows the interpreter to correct his mistake by supplementation of the defendant's deficit of knowledge.

The interpreter, however, not only loses the opportunity granted but he also frustrates the intended purpose of the judge. His interpretation: "You took a swing, you wanted to hit the policeman" contains only the second quite modified part of the judge's speech, while the first point mentioned, which is threatening behaviour, was omitted in the rendition – probably due to the overlap of both statements. It appears that the interpreter is aware that the original sentence consisted of two parts, therefore, he tries to compensate by adding his own words ("You took a swing"). It is also possible that the interpreter's own comment is meant to emphasise the criminal offense committed by the defendant, as also confirmed by the use of words: "wanted to hit" while the judge

only mentioned an "attempt" to hit. In this way, in the translation into Polish the defendant becomes the only agent accused by the interpreter on the latter's initiative.

Increased knowledge among the participants of the proceedings is not gained by the interpreter's interference with the judge's statement summarising the testimonies of the witnesses, nor does the defendant receive a reference point to take a position but is confronted with the interpreter's accusation. The interpreter changes the purpose of the judge's words, and also affects the entire interaction, because afterwards the defendant does not answer the judge's question but defends himself against the interpreter's accusation.

3.3 "And where then • • exactly?"

In the proceedings under analysis in the following example from a Polish court, the interpreter's interventions in the judicial interaction are of a different nature. As shown the interpreter assumes the role of the judge and presides the hearing on her own initiative:

Excerpt 3:

[30]

J [v]	Yhm. ((2,1s)) Yy Czy oskarżony pracuje obecnie?				
J [de]	Mhm.	Äh arbeitet der Angeklagte derzeit?			
J [en]	Um.	Eh does the accused currently work?			
I1 [v]				Äh Sind Sie jetzt ääh/ also	
I1 [en]				Eh are you now ehh/ so	

[31]

Def [v]		Ja, ich arbeite als ääh Rohrreiniger.		Ja.	
Def [en]		Yes, I work as ehh a pipe cleaner.		Yes.	
I1 [v]	arbeiten Sie jetzt?		Sie sind jetzt beschäftigt?		Yy tak,
I1 [de]					Äh ja,
I1 [en]	do you work now?		You are now employed?		Eh yes,

[32]

Def [v]			Ja. • • • (Inst...)	
Def [en]			Yes. • • • (Plum...)	
I1 [v]	jest teraz zatrudniony jako	• • • eee pff eeh • • •	y czyszczenie yy	
I1 [de]	er ist jetzt beschäftigt als	• • • äää pff ääh • • •	äh Reinigung ää	
I1 [en]	he is now employed as	• • • eee pff eeh • • •	eh cleaning eh	

[33]

J [v]	Yhm.
J [de]	Mhm.
J [en]	Um.
I1 [v]	instalacji y czy rur kanalizacyjnych prawdopodobnie chyba, tak?
I1 [de]	von Installationen äh oder Abwasserrohren wahrscheinlich wohl, ja?
I1 [en]	of installation eh or sewer pipes likely maybe, yes?

[34]

J [v]	• • • A gdzie?		
J [de]	• • • Und wo?		
J [en]	• • • And where?		
Def [v]		Auch in STADT.	
Def [en]		Also in CITY.	
I1 [v]	Und wo denn • • genau?		W MIASTO.
I1 [de]			In STADT.
I1 [en]	And where then • • exactly?		In CITY.

[35]

J [v]	Yhm.			
J [de]	Mhm.			
J [en]	Um.			
Def [v]				Die
Def [en]				The
I1 [v]	Und ich meine/ Anstaltsname, • • glaub ich, is(t)...			• • • wo Sie
I1 [en]	And I mean/ the name of the institution, • • I think, is...			• • • where do

[36]

Def [v]	Firma?	• • Das ist die ääh Karl Fischer GmbH.		
Def [en]	company?	• • It is ehh Karl Fischer GmbH.		
I1 [v]	arbeiten.	Yhm.		• • Ee Karl Fischer e
I1 [de]		Mhm.		• • Äh Karl Fischer ä
I1 [en]	you work.	Um.		• • Eh Karl Fischer e

[37]

J [v]	Yhm.	((7s))
J [de]	Mhm.	
J [en]	Um.	
I1 [v]	GmbH, czyli spółka z o.o. Tak się nazywa firma.	
I1 [de]	GmbH, also Gesellschaft mit beschränkter Haftung. So heißt die Firma.	
I1 [en]	GmbH, meaning a limited company. That is the name of the company.	

After explaining the question on whether the defendant currently works (lines 30-33), the judge wants to know where the defendant works ("And where?"), which the interpreter translates as: "And where then • • exactly?". By independently adding the adverb "exactly" the interpreter implies that the defendant is expected to give a precise answer. The defendant briefly answers by giving the name of the same city he was born in and where he currently lives which is eventually translated for the court (line 34). Although the judge has already accepted the given answer ("Um") the interpreter independently asks the defendant: "And I mean/ the name of the institution, • • I think, is… • • • where do you work?". The interpreter requests detailed information from the defendant although from the questions asked by the judge it is not clear whether she meant the city or the defendant's place of work. This ambiguity is perceived also by the interpreter ("I think"). On the one hand the interpreter shows her own initiative and on the other hand she is not certain of her actions which comes to light through her numerous pauses, corrections and interrupted sentences, as well as her unawareness that she speaks in her own name ("I mean", "I think"). The phrase "the name of the institution" which is incomprehensible to the defendant and used by the interpreter seems to be so vague for her that she adds a clarifying explanation ("where do you work?"). At the same moment the defendant reports difficulty in understanding the interpreter by asking if she means a company (lines 35-36). The interpreter confirms this and then obtains the desired answer from the defendant (line 36).

The interpreter first gives the court the name of the company in its original form ("• • Eh Karl Fischer e GmbH") and then explains the German abbreviation for the kind of company by translating it literally into Polish ("meaning a limited company"). Since the interpreter is still uncertain if she is being correctly understood, she adds her own explanatory comment that it is the name of the company ("That is the name of the company"). This comment has also a justifying character, because it was not the judge but the interpreter who asked the defendant this question, thus the interpreter feels obliged to justify this short dialogue with the defendant.

The interpreter usurps the judge's position and authority by her intervention in the interaction between the judge and the defendant. At the same time she changes the common structure of a hearing and alters its course.

3.4 "There was my girl also there"

The following example illustrates the interpreter's involvement in the Polish defendant's statements during Austrian court proceeding:

Excerpt 4:

[107]

J [v]	• • So, Herr Krawczyk! Bekennen Sie
J [en]	• • So, Mister Krawczyk! Do you plead

[108]

J [v]	sich schuldig, nicht schuldig oder teilweise schuldig?
J [en]	guilty, you don't plead or do you partially plead guilty?
I2 [v]	((1,6s)) Przyznaje się
I2 [de]	Bekennen Sie sich
I2 [en]	Do you fully

[109]

I2 [v]	Pan do winy całkowicie, częściowo czy w ogóle nie?
I2 [de]	völlig schuldig, teilweise oder überhaupt nicht?
I2 [en]	plead guilty, partially or not at all?
Def [v]	• • • Yym • • • przyznaję
Def [de]	• • • Ähm • • • ich bekenne mich
Def [en]	• • • Um • • • I plead

[110]

J [v]		• • Mhm̆.	
J [en]		• • Hm.	
I2 [v]	Ich bekenne mich schuldig.		
I2 [en]	I plead guilty.		
Def [v]	sięę...	Ymm • • za dużo wypiłem,	
Def [de]	schuuldig...	Ähmm • • ich habe zu viel getrunken,	
Def [en]	guiltyy...	Umm • • I drank too much,	

[111]

I2 [v]	Ich habe zu viel getrunken.		Ich weiß nicht,	
I2 [en]	I drank too much.		I don't know,	
Def [v]	ponieważ...	((1,2s)) Nie wiem,		dlaczegoo • • •
Def [de]	weil...	Ich weiß nicht,		waruum • • •
Def [en]	because...	I don't know,		whyy • • •
Def [k]		((nervous))		

[112]

I2 [v]	warum das so passiert ist.		Ich
I2 [en]	why it so happened.		I didn't
Def [v]	tak się stało, że...		Nie um/ nie chciałem yy zrobić
Def [de]	das so passiert ist, dass...		Ich ka/ ich wollte nicht äh diesem
Def [en]	it happened so, that...		I ca/ I didn't eh want to do anything

[113]

I2 [v]	wollte nicht...			Da
I2 [en]	want...			There
Def [v]	temu człowiekowi...	Mówiłem wam od ni/ (())...	Była moja dziewczyna tam...	
Def [de]	Menschen (Leid) antun...	Ich habe euch gesagt von ih/ (())...	Es war meine Freundin dort...	
Def [en]	to that man...	I told you from th/ (())...	My girlfriend was there...	

[114]

I2 [v]	war mein Mädchen auch dabei.	
I2 [en]	was my girl also there.	
Def [v]		((1,5s)) Nie pamiętam, żebym się na tych
Def [de]		Ich kann mich nicht erinnern, dass ich mich auf
Def [en]		I don't remember, that I threw myself at

[115]

I2 [v]		Ich kann mich nicht erinnern, dass ich auf die
I2 [en]		I don't remember, that I attacked the
Def [v]	policjantów rzucał,	((2,6s))
Def [de]	die Polizisten geworfen habe,	
Def [en]	those police officers,	

[116]

J [v]			Langsam, langsam, langsam!
J [en]			Slowly, slowly, slowly!
I2 [v]	Polizisten losgegangen bin.		
I2 [en]	police officers.		
Def [v]		ale możliwe, że tak było.	
Def [de]		aber möglich, dass es so war.	
Def [en]		but possible, that it was like this.	

The judge starts the defendant's hearing with a question on whether the defendant pleads guilty (lines 107-108). Since the judge summarised the indictment in a comprehensible manner for the defendant at the beginning of the hearing, thereby forgoing the reading of the indictment by the prosecutor, he now expects a clear position from the defendant. Neither the judge, nor the other lawyers in the

courtroom are aware of the fact that none of the points of the indictment were interpreted for the defendant. The interpreter continues not to provide interpretation (1.6 sec) as though he expects a reaction by the defendant's to the judge's question. Since the defendant does not respond, the interpreter interprets the question asked (lines 108-109), but in his rendition he leaves out the direct form in which the judge addresses the defendant without replacing it with some other form of courtesy which is more suitable in Polish culture.

The defendant begins to answer insecurely but immediately admits his guilt (lines 109-110). The interpreter this time does not delay the interpretation. On the contrary he does not wait for the defendant to complete his sentence but stops him and interprets his fragmentary utterance as a complete and forceful sounding sentence: "I plead guilty". The judge acknowledges the answer by "Hm" which motivates the defendant to speak further. The defendant states the reason for his misconduct as being alcoholic intoxication and tries to justify himself ("Um, I drank too much, because…") but he does not finish his utterance because the interpreter firmly interrupts him again and provides a ready-made full translation of the interrupted sentence (line 111).

The interpreter's importunity seems to intimidate and confuse the defendant who, clearly frustrated, decides to continue after a pause (1.2 sec). The defendant does not return, however, to the statement he started earlier but admits that he does not know "why it happened so, that…" The attempt to clarify what the defendant is referring to is again interrupted by the interpreter's insertion (lines 111-112). The defendant's utterance is incoherent and chaotic which is caused by the lack of a relevant point of reference because the indictment was not interpreted for him. The defendant is forced therefore to move in the dark. The continuous, aggressive interruptions of the interpreter continue to hinder his answer and completely confuse him.

The defendant's uncertainty and confusion is proven by his next statement: "I ca/ I didn't eh want to do anything to that man… I told you from th/ (())… My girlfriend was there…" and numerous false starts, corrections and unfinished sentences confirm his considerable nervousness. The defendant expresses repentance and then in his despair turns to the lawyers ("I told you") whom he believes united in the fight against him. At the end he mentions his girlfriend in order to communicate to the court that he was only spending his holidays in Austria and had no bad intentions.

The interpreter begins to translate the defendant's utterance but for unclear reasons interrupts the first part in which the defendant expressed repentance ("I didn't want to"). This action is surprising in that the interpreter up to this point in the proceedings had performed the opposite way round and had communicated the defendant's fragmented sentences as complete. Now the middle part of the defendant's utterance is completely omitted in translation. The interpreter renders only the last information that the defendant's girlfriend was "also there" (lines 113-114). Due to selective translation of the defendant's utterances by the interpreter and failed communication of their total content, the defendant's statements appear to be even more confusing and less meaningful in the German translation than in the original. However, the nature of

the statement as well as the defendant's frustration and uncertainty are not rendered at all.

After a longer pause (1.5 sec) the defendant starts another thread, namely he does not remember that he threw himself at the police officers (lines 114-115). The interpreter consistently interrupts the defendant and translates the interrupted fragment as a complete sentence: "I don't remember, that I attacked the police officers". Moreover, he also changes the defendant's colloquial wording and raises the language register to probably match it with the official language of the institution. This time the defendant considers the completion of the utterance he started as important and adds right after the interpreter's rendition ends: "but possible, that it was like this". This addition is crucial because it constitutes the character of the defendant's entire utterance: despite the fact that due to alcoholic intoxication the defendant cannot recall what happened he does not deny it and clearly admits his guilt one more time. The interpreter, however, completely gives up translating this repentance which appears to be a particularly flagrant intervention in the original statement. The provided German translation of the fragment that the defendant does not remember attacking police officers means exactly the opposite, namely, the defendant does not admit guilt. In addition, the strong tone of the interpreter reinforces this impression.

The interpreter remains consistent with his strategy and repeatedly interrupts the defendant by dividing his statements. This makes the defendant's answer to the judge's question (which is already confusing due to lack of a point of reference), incomprehensible to the German-speaking lawyers. The lawyers attribute responsibility for the inconsistent statements to the defendant since they are unaware of the interpreter's actions. The interpreter's most serious intervention is omission of the defendant's utterances in which he admits guilt as well as expresses repentance, while instead giving the court the opposite impression that the defendant does not admit to guilt. In this way the interpreter questions the defendant's credibility and has a negative influence on his image in the eyes of the lawyers. Through the manipulative translation of pleading guilty, which is a mitigating factor, the interpreter probably also influences the course of further proceedings. Furthermore, the interpreter not only interferes with the content of the speech but with its nature as well, providing the court with a distorted image of the defendant, who is presented in the German interpretation as sovereign and self-confident.

3.5 "On behalf of the Republic of Poland"

The interpreter in the Polish court proceedings of the next example also intervenes and modifies original statements. In this case it is the content of the judgement read by the judge:

Excerpt 5:

[106]

J [v]	((1,3s)) Ee wyrok w imieniu
J [de]	Äh Urteil im Namen
J [en]	Eh judgement on behalf

[107]

J [v]	Rzeczpospolitej • Polskiej!‿Sąd Rejonowy w Prudniku, siódmy
J [de]	der Republik • Polen!‿Das Bezirksgericht in Prudnik, die siebte
J [en]	of the Republic of • Poland!‿The Regional Court in Prudnik, the seventh
I1 [v]	Im Namen der Republik Polen.
I1 [en]	On behalf of the Republic of Poland.

[108]

J [v]	zamiejscowy wydział karny z siedzibą w Głubczycach, ee po rozpoznaniu w
J [de]	auswärtige Abteilung für Strafsachen mit Sitz in Głubczyce, äh aufgrund der Verhandlung
J [en]	city criminal division based in Głubcz yce, eh after having examined
I1 [v]	Und jetzt werden • alle Namen und ((1s)) von
I1 [en]	And now are • all the names and ((1s)) of

[109]

J [v]	dniu dzisiejszym w ee Głubczycach sprawy Karla Fischer oskarżonego o
J [de]	am heutigen Tag in äh Głubczyce in der Sache Karl Fischer, angeklagt deswegen
J [en]	this day in eh Głubczyce the case of Karl Fischer accused of this,
I1 [v]	Richtern vorgelesen ihre Daten persönlich. Ja, das
I1 [en]	the judges read out loud their personal data. Yes, this
I1 [k]	((whispers

[110]

J [v]	to, że: • • ee w dniu DZIEŃ MIESIĄC ROK w miejscowości
J [de]	dass er: • • äh am TAG MONAT JAHR in der Ortschaft
J [en]	that he: • • eh on the day DAY MONTH YEAR in the city
I1 [v]	ist in Głubczyce. Heutiger Tag.
I1 [en]	is in Głubczyce. Today's day.
I1 [k]	quietly))

[111]

J [v]	NAZWA, gmina Głubczyce, naruszył zasady bezpieczeństwa w ruchu drogo
J [de]	ORTSNAME, Gemeinde Głubczyce, Sicherheitsvorschriften im Straßenverkehr so verletzte,
J [en]	NAME, the municipality of Głubczyce, violated traffic safety rules in this way,
I1 [v]	Und jetzt ist vorgelesen, was ist geschehen in dieser Zeit,
I1 [en]	And now is reading out loud, what happened at that time,

[112]

J [v]	wym w ten sposób, że kierując samochodem osobowym marki • • •		
J [de]	dass indem er den	Personenkraftwagen	der Marke • • •
J [en]	that driving the pass	enger vehicle	brand • • •
I1 [v]	• • also wieder ((1,8s))		das.
I1 [en]	• • so again		this.
I1 [k]		((rustling of paper))	

The judge begins with a solemn announcement of judgment stating the official expression "On behalf of the Republic of Poland!" which is interpreted correctly without any changes by the interpreter (line 107). Then the judge reads one long sentence at a fast pace which is characteristic for written legal language and includes court information and the criminal case data (lines 107-109). The interpreter instead of whispering interpreting the content being read and communicating its message adequately, informs the defendant that now all the names and the "personal" data of the judges are being read out (lines 108-109). She does not seem to notice an obvious contradiction, namely, that the court consists of a single judge who acting on behalf of the institution cannot have her last name or any other personal information disclosed in any way. The interpreter has clear difficulty understanding the legal language. Although she heard reference to the district court and the criminal division she is apparently unable to allocate this information accurately nor certainly render it. Thus, it cannot be ruled out that the interpreter chose to provide any 'translation' to more or less fit into the context in order to keep face. Two other comments by the interpreter ("Yes, this is in Głubczyce", "Today's day") have no relationship with the judgment being read and seem to be only the result of her own interpretation of fragments she heard and was not able to understand. The interpreter is trying to assure herself by means of the particle "Yes" that what she says is actually true.

The judge proceeds to reading the points of the indictment by giving the day and place first (lines 110-112). Again the interpreter attempts to comment on the content being read for the defendant: "And now is reading out loud, what happened at that time, • • so again ((1.8 sec))". In this expression, which is grammatically incorrect, the interpreter directly refers to the content read in Polish ("at that time") as though she assumes that the defendant has the same knowledge. This statement, however, must be unclear for the defendant since the data read out were not interpreted for him and in German there was only reference to "today's day". However, the interpreter quickly discontinues commenting and in-

stead reaches for the same strategy used during reading of the indictment, namely, pointing out to the defendant the appropriate sections of the text (line 112). In this way the interpreter again delegates her task of interpreting and thus the responsibility to understand on the defendant. The reading of the judgment was not rendered to the defendant in any way.

4. Conclusion

As the above examples show, both interpreters in Poland and in Austria are not only media of transmission or invisible persons in the courtroom (cf. 2.1), but active participants in the proceedings who act independently, autonomously and on their own initiative. The results of the analysis thus confirm the existing empirical studies (including Berk-Seligson 1990; Hale 2004; Kadrić 2009). Although both interpreters fulfil their crucial role of intermediaries between languages and facilitate communication between the participants of the proceedings this is not achieved to the full extent. Both the Polish and Austrian interpreters primarily facilitate communication between the presiding judges and defendants speaking a foreign language but they do not guarantee complete understanding of the proceedings to all the participants. The communication they provide in the courtroom is therefore not "effective" (Kadrić 2009: 25): in both cases the defendant remains partially excluded from the interaction and discourse, thus not actively participating in the proceedings (while reading the indictment in example 1, during the hearing of the witnesses in example 2 as well as the sentencing in example 5). In addition, the interpreter in Poland delegates her translation duty on others and uses a number of other means in order to replace proper rendition, such as comments on read out discourse or events in the courtroom, pointing to the text in documents, and even inventing "translations".

Similarly to the study conducted by Berk-Seligson (1990) and Hale (2004) the results of the analysis show that both interpreters work actively in courtrooms intervening in court interaction as well as with the participants' utterances, but not exclusively in situations justified by the specifics of intercultural communication, as in the case of the "clarification procedures" (cf. 2.2). The Austrian interpreter repeatedly modifies the judge's statements and causes him to miss the intended target. In example 2 the interpreter did not even interpret the question whether the defendant understood the hearing of the witnesses (which was also not translated), so the judge's question remains unanswered. The interpreter selectively interprets also the judge's next question regarding the threats and attempt to hit a policeman, rendering only the second part. The interpreter thus affects the interaction between the judge and the defendant, which has a given nature in the German language and another in the Polish language. Moreover, by changing the meaning of the judge's statement, which spoke of an "attempt" to hit, the interpreter confronts the defendant with the accusation that he "wanted" to hit. In this manner also the interpreter causes a change in interaction, because the defendant does not respond later to the judge's question but proceeds with his own defence.

The interpreter also interferes with the defendant's answers (example 4): he changes the nature of the defendant's original statements by selective interpretation, above all by omission in the rendition of the defendant's confession of guilt and expression of remorse. By doing so the interpreter questions the defendant's credibility and provides the court with a distorted view of the defendant. His actions apart from this can also affect the process, and even the judgment, because confession of guilt is an extenuating circumstance that reduces punishment.

In the Polish court the interpreter also shows initiative when her intervention is not necessary (example 3), namely when she independently asks the defendant a question in the German language, which was not presented in the Polish language, regarding where exactly does the defendant work. By acting as the presiding judge of the hearing the interpreter forces the defendant to give a specific reply, thus influencing the interaction between the judge and the defendant.

This analysis shows, therefore, that both interpreters have power in the courtroom (cf. Fenton 1997), on the level of interaction as well as the content. Their power is manifested in changing the typical setting of the judicial institution, affecting the roles of the proceeding's participants, in influencing the course of court interaction, in changing the typical form and structure of the hearing, in changing the court's discourse by the omission or addition of content, as well as in changing the speaker's intentions and intended purposes. The power of both interpreters is manifested also in such a way that both of them sovereignly and independently decide as to what is interpreted, to what extent and above all how it is interpreted. Therefore, it is essential for court interpreters to develop the proper identity of their role. Although the number of examples provided are few and only two interpreters were involved they indicate that if court interpreters do not develop proper awareness of their own role, they can simultaneously take on functions unrelated to their role and become accusers or judges of hearings.

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