

CURRENT DEVELOPMENTS IN LEGAL TRANSLATION AND COURT INTERPRETING IN ESTONIA

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Some Facts about the Estonian Language

The Estonian language is not an Indo-European language. It belongs to the Finno-Ugric group of languages and is closely related to Finnish. Estonian is the only official language of the Republic of Estonia and it is used in all areas of life. According to the Estonian Language Institute, “along with Icelandic, Estonian is at present one of the smallest languages in the world that fulfils all the functions necessary for an independent state to *perform* linguistically” (Sutrop 2004: 3). Of a total population of 1,391 million (Ministry of the Interior, 01.06.2005, Population Register), approximately one third belongs to various ethnic groups, the vast majority of whom do not speak Estonian. The city of Narva, at the Russian border, is a good example: Russian-only speakers constitute the overwhelming majority of inhabitants. The Government of the Republic of Estonia can decide that the language of a national minority (in this case, Russian) may be used alongside Estonian as the internal language of the local public administration “where the majority of permanent residents are non-Estonian speakers” with the stipulation that all correspondence shall take place in Estonian (Language Act, 2003).

According to the last official census in 2000, the largest ethnic groups in Estonia are Estonians (68%), Russians (26%) followed by Ukrainians (2%), Belarussians (1%) and Finns (1%) (Ministry of Foreign Affairs, April 2005). For this reason, most translations and interpretations done in Estonia are from and into Russian or Estonian. However, as the Ministry of Justice acknowledges in a report published in 2001 “the fact that Estonia is becoming very international provides interpreters more and more work. Some years ago mainly Russian interpreters were used at trials, nowadays English is no longer uncommon and sometimes very rare languages occur. For instance, Tallinn administrative Court has proceeded cases in which Yaruba or Urdu interpreter has participated. Other interesting examples are the Pakistan language and an Afganistani dialect” (Ministry of Justice, 2001: 10).

It is interesting to note that in contrast to many Indo-European languages, the Estonian language makes only a tiny lexical distinction between a “translator” (tõlkija) and an “interpreter” (tõlk). Generally, the Estonian word “tõlk” is used for both professions, adding sometimes the adjectives “oral” (suuline) or “written” (kirjalik) when necessary to specify. In the daily praxis, a translator can always work as an interpreter and vice versa. For this reason, it might be impossible to draw a clear line between both activities and to examine them separately. Moreover, the Estonian language does not have a generic term for designating “public service interpreters” or “community interpreters” but has specific words for expressing the different categories of legal translators or court interpreters.

Legal Translation and Court Interpreting

Among the different settings community interpreting involves, court interpreting is certainly the most developed and the best organized field in Estonia, apart from sign language interpreting. It is important to note that differently from many countries, court interpreting is not considered less prestigious than conference interpreting.

The Estonian legal system is special in the sense that it hires two kinds of interpreters: permanent interpreters and free-lance interpreters. The categories of translators and interpreters in the judicial field are the following:

1) Usaldustõlgid or “Confidence Translators”

This category of translators has not taken any specific exam. The “usaldustõlgid” work with a notary who authenticates their translations.

2) Vandetõlgid (Sworn Translators/Interpreters) or Free-lance Translators and Interpreters

In the second category, we find translators “empowered by the state to certify, on equal basis with a notary, the correctness of translations of documents translated by the translator himself or herself or by another person and the authenticity of related copies. [...] Translators may also perform other translation/interpretation work” (Ministry of Justice, 2004). This category of translators goes through a centralized set of tests organized by the Ministry of Justice in Tallinn. The tests take place once a year in autumn. This test was introduced in 2002 mainly because the notaries were overloaded with work: clients had to wait sometimes for weeks before having their documents translated and authenticated. With the new system, services are more efficient and the sworn translator “certifies the correctness of the translation in substance, unlike a notary who only authenticates the signature of a translator and does not verify the content of the translation” (Ministry of Justice, 2004).

The test for sworn translators is organized in three phases and contains both content and linguistic questions: the first step includes 23 questions on Estonian civil and public law, among them 10 questions on EU law. Answers must be selected (multiple-choice format) or require very short sentences.

If the candidate is successful in this first part, he receives a notification for the second phase: the written translation and the correction of a text. The candidate may choose the language direction covered by the exam (from the foreign language to Estonian or the opposite or both of them). This step includes a translation of a legal text (civil or public law) in the chosen direction(s), mostly a court decision, a contract or statutes and a text in the foreign language which will contain mistakes for the test taker to correct.

If the candidate completes the second part successfully, he will be invited to the third phase: an interview, where general questions will be asked about his preparation to the exam, his work experience, and his future professional plans – for example, where he will open his office, etc.

The only requirements to a sworn translator are the following two: having the Estonian nationality or the nationality of another EU member State and having completed an academic higher education. Most candidates taking the tests have previous experience in the field of translation and/or interpreting since there is no specific preparation provided for this test.

This test also applies to interpreters although in their case no oral test has to be taken. The translator/interpreter may be asked to work in court. The sworn translator’s examination committee is composed of members of academic staff, active translators, state officials and other experts and vary according to the language examined.

When sworn interpreters work in court, they need not swear a separate oath, since after their exam, they have to take the oath in front of the Minister of Justice and thus do not need to be sworn in again for every case. For the time being, there are 18 sworn translators for all Estonia: 4 sworn translators for English, 4 for Finnish, 1 for French, 8 for Russian and one for German.

Ethical Guidelines

Sworn translators/interpreters, also called “freelance interpreters”, have to respect the “Sworn Translators Act” (Vandetõlgi seadus) which entered into force on 1st October 2002 and was consolidated in 2004 (01.01.2004). The rules they have to respect are established on the model of the rules applying to notaries. When working in civil and criminal matters in court, interpreters also

have to respect the Code of Civil and Criminal Procedure containing the guidelines about oath administration, their rights and their duties.

Professional Requirements to the Sworn Translator set by the Ministry of Justice

The professional requirements for the sworn translators are set by the Certified Translators Act that entered into force in March 2004. Some dispositions may be subject to revisions in the near future because they have turned out to be unrealistic or inappropriate in practice.

- Initially the Act provided that the Ministry of Justice had the right to set a minimum annual number of acts that a sworn translator had to translate. Actually, this provision has not been applied but is still mentioned in the text. In any case, the translator has to keep a record of every professional activity by entering it in a book that belongs to the State.
- A sworn translator may have another salaried job besides his/her translation activity if “his or her main activity or main employment or service duty is translation, language teaching or linguistics, or if his or her main activity or main employment or service duty involves frequent use of the foreign language indicated in his or her professional certificate.”
- The Act requires also from the translator that from 1st January 2006 he or she “enters into a professional liability insurance contract”. The sworn translator is personally liable for damage caused by wrongful violation of his or her official duties. This provision will be repealed soon because no insurance company offers this specific kind of service in Estonia. The translator is of course free to have liability insurance if he can locate an insurer but it will not be compulsory as initially set out.

Assessment

In the future, language tests will be organized. According to the Sworn Translators Act (2004), the sworn translator should be submitted to a verification of his professional skills every five years. If he or she fails, he or she could be removed from office and will have to take the exam again. As the exam was only introduced in 2002, no verification has taken place so far.

3) *Kohtutõlgid or Permanent Court Interpreters*

The third category of translators/interpreters includes the classification “permanent” interpreters.

In Estonia, there are 56 permanent positions of which only 52 are currently filled. These positions only concern interpreters of Russian-Estonian language pair and their distribution is as follows: 38 interpreters work at a court of first instance, 13 at a court of second instance and 1 at the Supreme Court. The distribution depends partly on the number of judges, cases and of the size on the area. As there are 245 judges in total, on average, the ratio is 1 interpreter to 4.7 judges. The distribution of interpreters depends mostly on the area being served. Therefore, in Tallinn City Court, the ratio is 3 interpreters to 1 judge. Tallinn, the capital city, has to hire the highest number of court interpreters (16 in the City Court, 1st instance). For example, the Viljandi Court, in south Estonia, does not hire any permanent interpreter. Interpreters work in civil, criminal and administrative matters.

Background and Exams

Court translators and interpreters come from various backgrounds: some of them are philologists (especially at the Tartu County Court, for instance) or come from bilingual/bicultural families. Educational training is not a requirement. In order to work in court, they have to take tests organized by the senior interpreter. Interpreters have to translate in writing both general and legal articles and orally some testimonies from files. These tests are organized by each court differently. After the tests, interpreters go through a probation period of 6 months during which they attend

hearings and are seconded by colleagues. These interpreters are civil servants and not free-lance: they have a regular schedule; they work in court every day. When they do not have to appear at hearings, they work in offices where they translate judgments and other legal documents. Sometimes they are required to go to prisons to translate case materials to inmates. Therefore, their field of activities is broader than interpreting in a courtroom setting. They are paid on a monthly basis and always receive a standard fee regardless of the number of hearings they might have attended. If the court is satisfied with their work, they are promoted to the category of “senior interpreter” entering into a slightly higher wage category. At the moment, the monthly salary is 5000 EEK a month (€ 333). Senior interpreters get 5500 EEK (€ 366). The average salary in Estonia is currently 7200 EEK or € 480 gross a month (Internet source: www.investinestonia.com – Estonian investment Agency).

Every year, they are required to submit to an informal conversation with the senior interpreter where they discuss their achievements during the year. The interpreter will also receive feedback on his or her work.

Another important point is that this category of interpreters has access to court documents before the audience if the judge authorizes it. They work in both civil and criminal cases but mostly in criminal matters.

Remarks about the Use of Languages in Legal Proceedings

According to the Estonian Code of Criminal Procedure (2004: § 10, 1 and 5), the “language of criminal proceedings is Estonian”. However, if all participants in the proceeding and the parties to the court proceeding agree, the criminal proceeding may be conducted in another language, such as Russian, as is often the case at Narva city court. If the accused is not proficient in the Estonian language, he or she receives a translation into his or her native language of the statement of charges and will then be assisted by an interpreter. The court decisions will be translated into Estonian. From the moment of arrest, the person under arrest will be notified of the court’s decision on the arrest in a language which he or she can understand (Code of Criminal Procedure 2004: § 9, 2).

The same language provisions are in the Code of Civil Procedure and the regulations about asylum proceedings (Refugees Act, § 8, 1 to 5), with the difference that in the case of asylum proceedings, the interpreting and translation services are organized by the Ministry of Social Affairs and interpreters are hired on a free-lance basis according to the needs of the asylum proceedings.

Legal Provisions

According to court interpreters, the judges require literal translations (verbatim) where the Code of Criminal Procedure speaks of “precise” and “complete” translations. The interpreters do sometimes have to explain either to the judge or to another participant of the proceedings that they cannot meet this requirement. However, the Estonian court system seems to give interpreters a certain degree of liberty and it treats the role of the interpreter seriously. Under § 161, 4 of the Code of Criminal Procedure, 2004 “In order to ensure the correctness of a translation or interpretation, the translator or interpreter has the right to pose questions to the participants in the proceedings, examine the report of procedural acts and make statements concerning the report, and record shall be made of such statements”.

The clerk of the court session records the conditions and course of the hearing of a criminal matter in the minutes. The clerk relies on the translation of the interpreter. If the minutes are in a language other than Estonian, the Estonian translation is annexed to it.

Interpreting Mode and Working Conditions

The interpreting mode used in court is whispering and/or consecutive. In a every particular case, it is the interpreters who choose the most appropriate mode. Interpreters do not use any

technical devices. The acoustics are not always perfect due to environmental circumstances (ventilation, computer noise) and it can be very tiring to work under those conditions, especially if a hearing lasts for two or three hours. Interpreters have only the right to take a break when the judge so decides.

Oath administration

Regarding the administration of oath to interpreters and translators, the Codes of Civil and Criminal Procedure specify that a sworn interpreter or translator, or an interpreter or translator who has already taken the oath is not required to take the oath in a court session. But a non-staff interpreter will have to take the oath orally and sign the text of the oath. Before a non-staff translator or interpreter commences translation or interpretation, he or she must be warned about criminal punishment for a knowingly false translation or interpretation (Code of Criminal Procedure 2004: § 278, 3) and “[...] the presiding judge shall make known the identity of the interpreter or translator and shall explain the duties of an interpreter or translator to him or her. Explanation of duties to a sworn interpreter or translator is not required” (Code of Civil Procedure 2002: § 175, 3).

Training for Court Interpreters and Continuous Assessment

There are currently two universities offering training in conference interpreting (Tartu and Tallinn) but there is no specific training provided for public service interpreters in Estonia.

The Ministry of Justice is planning to organize training sessions in legal matters for court interpreters where interpreters would be taught by teachers from the Law University.

Conclusion

There is no doubt that Estonia has developed rapidly on the field of interpreting since gaining its independence in 1992. Due to the shortness of the period of independence, there is still some vagueness as how to organize or professionalize community interpreting across the country. But at the same time, Estonia is surprisingly well organized compared to other countries with a longer interpreting tradition, probably because it had to “start from scratch” and catch up for lost time.

Since the integration of Estonia into the EU, interest has grown for an improved quality of interpreting, especially in the field of conference, sign language and court interpreting.

Even though the Ministry of Justice acknowledges that interpreting has not been a priority over the past years, concrete steps are now being made towards more professionalization. For instance, two judges of the Narva City Court and an expert from the Ministry of Justice went to the Conference on court interpreters and translators¹ held in The Hague in November 2004, thus showing their willingness to learn about the specifics of court interpreting and to improve their collaboration with interpreters.

Moreover, last year the Ministry of Education published a document called “Development Strategy of the Estonian Language 2004-2010.” This document is an intensive study on the Estonian language and objectives that need to be achieved by the decade’s end. The Development Strategy of the Estonian Language also mentions a clear position towards more professionalization of interpreting: “[...] it is vital for the Estonian language to be internationally represented. There have to be qualified interpreters and translators with an excellent knowledge of the Estonian language” and in this scope, the development strategy foresees to “train interpreters and translators of foreign languages” (Ministry of Education and Research, 2004: 43).

This concern for quality is understandable and very timely. Very soon, as Estonia continues to grow within its new position in the EU, it will have to face newly emerging cross-cultural challenges, such as new language issues resulting from increased migration movements throughout the country.

Notes

Most of the data provided in this article were collected from informal interviews conducted with judges, the Ministry of Justice, the Ministry of Education, the ETTL (Estonian Association of Interpreters and Translators) and interpreters, in addition to various official sources. Community interpreting is still a topic ignored by researchers. The only way of collecting information at this stage is via direct interviews with actors on the field. I would like to thank them for their assistance and contribution.

1. English translations of the Estonian legislation are available at <http://www.legaltext.ee> (Estonian Legal Language Center).
2. Conference on Court Interpreters and Translators, *Instruments for lifting language barriers in intercultural proceedings*, The Hague, the Netherlands, 18-21 November 2004.

References

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SUMMARY

A great deal of studies has been dedicated to conference interpreting and to the techniques and underlying cognitive mechanisms involved. Conversely, what is generally called “community interpreting” or “public service interpreting” has only started to become a field of study in the last two decades. This lack of a research tradition is intimately linked with a lack of status, recognition and professional identity, as reflected in the absence of a universally shared definition of the profession.

The present article focuses on the current situation of court interpreting and judicial translation in Estonia and gives an overview of different aspects of the profession, such as access to the profession, assessment procedures, provisions of ethical guidelines, professional associations, perspectives in the field, etc. Being the first article published on this topic, the article is based on data collected during interviews with judges, court interpreters, translators, professional associations and contacts within the Ministry of Justice..