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## **THE RIGHT TO FREE ASSISTANCE OF AN INTERPRETER AND /OR TRANSLATOR BASED ON THE EXAMPLE OF FINLAND**

### **Abstract:**

This article examines the legal, theoretical and practical issues for participation of an authorised interpreter in criminal proceedings. Based on the analysis of international and national normative sources an investigation is conducted into legal personality of an interpreter, requirements level of his professional competence and its role in the observance and implementation of the rights of the suspect and the accused to a fair trial. An interpreter plays an important role in the enforcement and protection of the rights and freedoms of people who do not speak the language of the proceedings in the criminal case.

The article is devoted to the problematic issues that arise under the influence of international law and the European Court of Human Rights on the transformation of the legal mechanism to protect the rights of suspects and defendants who did not know the language of proceedings and the role of a court interpreter.

### **Keywords:**

International law, a fair trial. Authorised interpreter, the language of the proceedings, right to a free interpreter.

**JEL Classification:** K33, K14, K10

Relevance of the chosen research topic is primarily due to the fact that science and practice require a clearly defined procedural position and status of an interpreter, in identifying proficiency in specialised linguistic knowledge by an interpreter and his qualifications in accordance with international law, the recommendation of UNESCO and the Directive of the European Parliament and of the European Council 2010/64 / EU of 20.10.2010.

The significance of study is further supported by the fact that the use of an interpreter provides an additional guarantee of protection of rights and freedoms for the duration of legal proceedings, a guarantee of full and complete examination of the circumstances through all the stages of an investigation and court proceedings. Court interpreter acts as a link, normalising relations of criminal procedure and ensures equal conditions for all litigants.

An object of study under the topic is identified as *legal relations*, arising in the process of a direct engagement of an interpreter in criminal procedural law enforcement and the courts, as well as the practice of using professionally qualified interpreter by the investigative and judicial authorities.

The subject of the study is *applicable norms* of an international and national law, governing the rights of suspects and accused during the indictment process which are required to provide a full and clear comprehension, in order to ensure a fair trial on one hand and on the other hand - legal status of an interpreter in criminal proceedings, theoretical concepts and views on various aspects of the developed problem; legal and specialised literature on the issues of the case study; jurisprudence.

The question on *participation of an interpreter in legal proceedings* is a subject of numerous studies by the likes of Irmeli Helin, Leena Laiho, and Marja Jänis. Pirkko Lilius and Risto Hiltunen delve into a subject of *legal translation*. Directive of the European Parliament and of the European Council 2010/64 / EU 20.10.2010 "On the right to interpretation and translation in criminal proceedings" has had a significant impact on the research into a level of proficiency and professional qualifications for the interpreters involved in legal proceedings. Numerous doctoral dissertations are dedicated to this issue: Nestori Siponkoski (2014), Nina Isolatti (2014), Elina Ranta (2013), Saara Ratilainen (2013), Mervi Miettinen (2012), Kristiina Abdallah (2012).

## **Purpose and objective.**

The purpose of this paper is, through international law, the legal achievements of science and jurisprudence of the European Court of Human Rights, to disclose the nature and content of the institution of interpreters involvement in criminal proceedings, to formulate the modern idea of interpreters as participants of litigation and to propose an improvement to national legislation as well as set the required standards and practices for the involvement and participation of an interpreter in criminal proceedings.

To achieve these objectives, based on the normative understanding, theoretical concepts and ideas, to develop recommendations, aimed at improving the standards and optimising the practical application of the rules of litigation on the participation of

an interpreter in criminal proceedings. Based on the analysis of international and national legal sources to define legal personality of an interpreter, requirements to the level of his professional competence and its role in the observance and implementation of the rights of the suspect and the accused to a fair trial.

In a process of conducting the study a definition of an interpreter has been formulated. Interpreter in criminal proceedings - a person in possession of an authorised interpreter's qualification, is fluent in the languages of proceedings, as well as possessing professional competence and is indifferent to the outcome of the case, in respect of the Court delivered judgment or decision of his appointment as an interpreter. This definition should be implemented into the national legislation of Finland.

## **Introduction**

The author's research has shown that the proportion of crimes committed in Finland by foreign nationals and people without citizenship is constantly increasing. The proportion of crimes committed by foreigners in Finland from 2002 to 2012 has grown by 56%. Additionally, the Migration Board, the Administrative Court and the Supreme Court regularly consider cases of foreigners in Finland concerning residence permits, deportation, extradition or transfer to serve their sentences in the country of residence. The number of representatives from different language groups is increasing yearly due to the rise in migration processes that has an impact on the structure and growth of crime. According to the Statistical Institute of Finland, currently the share of foreigners among the population of Finland is 11.4% in contrast to 2011, when it constituted 4.8%. Furthermore, there has been a constant increase in a number of students in Finnish education system, where a native language is not a state language. For example, in 2014 alone schools of Helsinki reported that the percentage of students whose native language was other than Finnish has increased from 29.6% to 63.2%. A number of crimes in schools, committed by high school students from a migrant community has also increased.

In 2012, Finland's share of administrative court cases involving foreign nationals has accounted for 24%. At the end of 2013 Finland has had 289,068 registered foreign nationals or 5.3% of the total population. Residents of foreign origin speak around 55 different languages, amongst which the most common are Russian, Estonian, Somali, English and Arabic.

Statistics show an annual fluctuation in the number of foreigners due to a fact that settled individuals obtain a second citizenship, for example in 2013, 8930 foreign nationals were granted Finnish citizenship. Meanwhile, the number of representatives of different language groups is steadily increasing every year due to an escalating migration.

During the time period from January to June 2014, Finland has registered 200,900 crimes and further 189,100 traffic accidents. In 2013, the county courts of Finland have registered 73,000 defendants in criminal cases and reviewed 491,700 civil cases.

However, many of the foreigners do not have an adequate knowledge of Finnish or Swedish and require an assistance of an interpreter.

Interpreters play an important role in the enforcement and protection of the rights and freedoms of a person who does not speak the language of the proceedings in criminal case. Without an interpreter, it is impossible to carry out investigative and judicial actions, as well as protection of the rights and freedoms of man and citizen in cases where any of the participants of the process do not speak or understand the language.

The legislation provides a complex mechanism for involvement of an interpreter in criminal proceedings, due to the gaps and discrepancies of the law there are no set requirement for authorized interpreters to participate. In practice, this causes problems with finding an interpreter, checking the competence, establishing the degree of proficiency, the knowledge of the legal and judicial terminology, as existing legislation does not adequately regulate these issues. Also, in the proceedings and the specific features of professional areas, such as construction or medicine, you must have a firm grasp of the professional terminology, addressed in a particular trial. Relevance of the topic chosen is due primarily to the fact that science and practice are in need of a clear definition of the procedural provisions and the status of a court interpreter, to identify features of the use of special linguistic knowledge of an interpreter in criminal proceedings, determining the placement of an interpreter in a group of persons having specialised knowledge.

Studies show that the investigating officers, prosecutors and courts face difficulties in attracting an interpreter to participate in the criminal proceedings. In some cases, they do not apply adequate measures to bring authorized interpreters to participate in an investigative and judicial action conducted against persons who do not have an adequate knowledge or command of the language of the proceedings in the criminal case.

In practice, this causes problems with finding an interpreter, checking their competence and command of legal and judicial language of the proceedings in the criminal case, as the national law does not regulate these issues adequately.

The responsibilities of legal and court interpreters include translating judgments of the European Court of Human Rights, which results in a number of problems and inconsistencies compared to the original English or French text. Judgments of the Court, as a special type of legal text, are vital to the parties in respect of which they were handed down, whose rights must be respected and a full understanding of the court's decision achieved in order to ensure a fair trial. Translation of the European Court of Human Rights to the official state language is an extremely complex task that requires a highly skilled and knowledgeable translator who is not only a professional in the field of linguistics, but also the law. The translation of the decision of the European Court on the human rights in the countries language proves to be a hard and complex task, which demands an exact clarification from the translator, not only in the linguistics but also the rights. The problem is the level of legal translation is evident in Latvia, in particular mistranslation of the European Convention of human rights and fundamental freedoms, the second article of the 7th Protocol to the Convention, in which the Latvian language version has seen an imprecise use of terminology in definition of the "highest authority" and "highest court authority", where as the French and English languages clearly state it being the Supreme Court. In this case, the translation error is essential, since the term "highest authority" or "highest court authority" can mean several courts. This is especially true during the reform of the judicial system of Latvia.

## Legal bases of the interpreter in criminal proceedings in Finland

The right to free assistance of an interpreter provided by Article 14 of the ICCPR <sup>1</sup>

Paragraph 3 of Article 14 of the ICCPR. *"Everyone has a right to the determination of any criminal charge against him to the following minimum guarantees, in full equality: (f) To have free assistance of an interpreter if he can not understand the language used in court, or does not speak the language"*

and Article 6 of the ECHR in relation to criminal proceedings <sup>2</sup>.

Article 6 (e) *«Everyone, charged with a criminal offense has the following minimum rights: free assistance of an interpreter if he cannot understand the language used in court, or does not speak the language.»*

However, the UN Committee on Human Rights considers that in exceptional circumstances it may be required to provide free assistance of an interpreter in non-criminal proceedings by virtue of the principle of equality of the parties, including if indigent party would not otherwise be able to participate in the process on an equal footing or could not be heard by the invited witnesses <sup>3</sup>.

Only by ensuring efficient and effective representation of their rights can equal conditions be created for the involved parties. The right to a free assistance of an interpreter embodies another aspect of the principles of fairness and equality in criminal proceedings, implemented by the Human Rights Committee <sup>4</sup>. It regards to the citizens of the state as well as foreign nationals. However, persons charged with a criminal offense whose mother tongue is different from that used in the official language of the court, in principle, have no right to the free assistance of an interpreter if they know the official language sufficiently to defend themselves effectively. The accused must be in a position where he either independently or with the help of an interpreter, is able to understand the procedurals and participate in the trial, which would constitute a fair trial. Assistance of an interpreter should be such that would allow the defendant to understand the charges against him and to defend himself, in particular, being able to provide the court with his version of events.

Upon presentation of the prosecution in a criminal case, everyone has the right *"to take advantage of the free services of an interpreter if he can not understand or speak the language used in the course of judicial proceedings"* <sup>5</sup>. Although the right to a translation of documents and materials for the preliminary investigation of the trial is not covered by the provisions of this article, human rights theorists are increasingly of an opinion that the right to engage the services of an interpreter shall also include a translation of the relevant court documents. Also, the right to an interpreter applies both to the suspect and the accused if these persons are involved in an investigation at a pre-trial stage. Interpretation Services are provided on a grant basis by the State

<sup>1</sup> The International Covenant on Civil and Political Rights, article 14, paragraph 3

<sup>2</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4 November 1950

<sup>3</sup> ICCPR, General Comment number 32, CCPR/C/GC/32, 23.08. 2007, p.13

<sup>4</sup> ICCPR, General Comment number 32 CCPR/C/GC/32, 23.08.2007., p.40

<sup>5</sup> Case of Luedicke, Belkacem and Koç, (1978), 28 November 1978, p.48

and are not refundable. The right of the accused to a free use of an interpreter is not limited to the stage of the oral proceedings in the court. It also applies to "free assistance of an interpreter for the translation of all documents and statements during the indictment process as are necessary for an understanding of the purpose of ensuring a fair trial " <sup>6</sup>.

According to article 5, paragraph 2 any person arrested shall be informed promptly, in language he understands, the grounds for his arrest and of any charge brought against him. Under paragraph 3 A, every person accused of a crime has the right to be informed promptly and in detail, in a language which he understands, of the nature and cause of the accusation against him. Article paragraph 3e states that everyone charged with a crime has the right to a free assistance of an interpreter if he cannot understand the language used in court, or does not speak the language.

The right to a free assistance of a competent interpreter and such translations as are necessary to ensure that at the stage of investigation and trial meet the requirements of fairness guaranteed by the Rome Statute of the International Criminal Court <sup>7</sup>.

Among the sources of the language institutional proceedings should be mentioned the European Charter for Regional or Minority Languages (European Charter for Regional or Minority Languages), adopted by the Council of Europe on 5 November 1992, and Recommendation NR (81) 7 of the Committee of Ministers on ways to facilitate access to Justice of 14 May 1981. Their individual rules provide, inter alia, measures to ensure the rights of persons who do not speak the language of the proceedings of the country, to administer justice, which together form the content of one of the principles of this legal institution. European Charter for Regional or Minority Languages has extended above the regulatory requirements for the organization of the administration of justice states - participants of the EU on all kinds of legal proceedings (previously they were used exclusively in relation to criminal proceedings).

European Court of Human Rights (hereinafter ECHR) considered an infringement of the right to an interpreter (case of *Isop v. Austria* ", 1962, Application N 808/60, case of *Luedicke, Belkacem and Koc v. Germany* (1978), *.Oztürk v. The Federal Republic of Germany* (1984), *Lutz v. Germany* ", 1987, *Kamasinski v. Austria* (1989), *Brozicek v. Italy* (1989), *Fox, Campbell and Hartley v. Great Britain* (1990), the *Quaranta* decision (1991), case of *Jecius v. Lithuania* ", 2000, *Cuscani v. United Kingdom* (2002) and *Conka v. Belgium* (2002), case of *Lagerblom v. Sweden*", 2003, case of *Skalka v. Poland* ", 2003) .

These decisions were aimed at overcoming the consequences of a violation of fundamental human rights in the sphere of application of the language of proceedings that were made due to the imperfections of the national legislation of a number of European countries, in respect of which the Council of Europe human rights institutions have been adjudicated.

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<sup>6</sup> ICCPR, General Comment number 32 CCPR/C/GC/32, 23.08.2007, Art. 14 p. 3(f)

<sup>7</sup> Rome Statute of the International Criminal Court, Art. 55) and 67 f)

ECHR decision on Luedicke, Belkacem and Koc v. Germany pointed out that everyone charged under designated circumstances should receive a free assistance of an interpreter and not have to pay for any resulting legal costs. In fact, in this interpretation of the definition, the solution is given "for free" - this term does not refer to any exemptions under certain conditions, no time for payment of benefits, or suspension of payment but a general and complete exemption from having to pay.

The implementation of the principle of justice and national language requirement at short notice in a language that the person understands, the reason for the arrest, the nature and cause of the charge were considered in the decision *Oztürk v. Germany*, the complaint N 8544/79, 21 February 1984.

An issue of providing an oral translation in criminal proceedings is viewed at a different angle, ECHR judgment on *Kamasinski against Austria*, which indicated that the assistance of an interpreter shall be ensured so as to provide the defendant an opportunity to defend themselves and know the content of the case brought against him, in order to first of all to be able to present to the court his version of events:

*...an interpretation assistance provided should be such as to enable the defendant to have knowledge of the case against him and to defend himself, notably by been able to put before the court his version of events".*

Talking about the degree of comprehension of the defence, by means of translation, with the procedural documents, the practice of the ECHR requires that the translation must provide the person with a capability of defending their rights without consideration given to qualified legal assistance from a lawyer.

In December 19, 1989 case of "*Brozicek against Italy*" (*Brozicek v. Italy*) an applicant, German by birth, was indicted in Italy. The ECHR ruled that the document containing the charges must be submitted in German, if the authorities cannot establish that the applicant actually knows the Italian language to a degree sufficient to understand the meaning of the letter notifying him of the charges against him. Court interpreter shall without delay bring to the attention of "recipient", in an easily accessible form, linguistically accurate and adequate information of verbal nature. UNESCO Recommendation on the Legal Protection of Interpreters and Translations and the Practical Means to improve the Status of Translators (adopted in Nairobi on 22.11.1976 19 session of the General Assembly of UNESCO) refers to a person as an addressee of the translation.

The Finnish Constitution guarantees the right of everyone to conduct their case in court and other authorities by use of their language, Finnish or Swedish, as well as receive documents regarding the case drawn in that language as guaranteed by law.<sup>8</sup> Stated in § 6 of the Constitution guarantees the principle of equality before the law. No one should be without a good reason be put in an unequal position on the grounds of sex, age, origin, language, religion, belief, opinion, health, disability or other reasons related to the person.

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<sup>8</sup> The Constitution of Finland. Suomen perustuslaki (11.6.1999/731, 17 §)

The Language Act (06.06.2003 / 423) defines the status of the national language and the right to its use by officials. The law provides for the protection of constitutionally guaranteed rights of individuals to use their own language in court proceedings and with other authorities. According to the Law on the language everyone has the right to use their own language and the authorities must provide free translation <sup>9</sup>.

In criminal proceedings of bilingual Finland - Finnish or Swedish - if defendants are multilingual, or if the language of the defendant is not Finnish or Swedish, the court decides on the language with regard to the rights and interests of the parties in the proceedings. If the language selection cannot be made on this basis, the court uses the official language of the majority. This also applies to the representatives of the prosecution. In the preliminary investigation, the use of the language defined by the Law on the preliminary investigation <sup>10</sup>. In proceedings of the Court of Appeal and the Supreme Court the language of cases is applied with regard to the rights and interests of the parties involved.

Language Act, in addition to special legislation, also provides for the use of language in the preliminary investigation and trial. Judgment, decision and other documents of the criminal proceedings are drawn up in the language used during the process. Messages, invitations and letters that are sent to the parties of the process are made in the language of the defendant, regardless of the language of the proceedings. If the statement of claim, judgment, decision, protocol or other documents are not made by public officials in the language of the parties of the process, at the request of the party, these documents are to be ready available, free of charge, in an officially certified translation with regard to the rights, interests or obligations. The law provides for an official translation to be made by the official or an officially certified translator from Finnish or Swedish languages.

Qualification requirements for interpreters or translators of documents used in court for a criminal process have been established by Finnish Legislation and determine specific qualification requirements for interpreters or translators employed in criminal court proceedings 2007.

The right to act as a licensed interpreter is granted to interpreters in possession of a confirmed qualification set by Law of official interpreters (1231/2007) <sup>11</sup>. National Board of Education of Finland is responsible for maintaining the official examination system, the development and qualification of licensed interpreters. Licensed interpreters are individuals who receive a formal degree of a licensed interpreter, giving them the right to act as an authorized interpreter for duration of a five-year period. Authorisation may be revoked if an interpreter does not fulfil the conditions stipulated by law, or if its actions were clearly unsuitable for an authorized interpreter.

Finnish Ministry of Education in 2008 issued an expert report on the preparation of legal interpreters (Ministry of Education 06/12/2008).

Directive of the European Parliament and of the Council 2010/64 / EU of 20.10.2010 on the right to interpretation during the court session has obligated the states - members of the European Union before 10/27/2013 to take concrete measures to

<sup>9</sup> Law on language. Kielilaki 6.6.2003/423. § 18

<sup>10</sup> Ibid, § 14

<sup>11</sup> Law on the official translators (1231/2007). Laki auktorisoiduista kääntäjistä 1231/2007.



ensure interpretation and translation in criminal proceedings maintained the required quality standard <sup>12</sup>. In order to promote the adequacy of interpretation and translation as well as efficient availability, Member States should endeavour to establish a register or registers of independent qualified translators. After the creation of such a register, if necessary, they should be available to lawyers and relevant authorities.

The directive is aimed at improving the safety of suspects and defendants in criminal proceedings who do not understand or speak the language of the proceedings. The Directive identified the right to interpretation and translation and minimum standards that should apply in criminal proceedings throughout the European Union.

Fulfilling the requirements of the Directive, the Ministry of Education of Finland 02.02.2011 added to the occupational structure the qualification diploma of professional qualification of a licensed interpreter and in 2013 Finland started training a special group of court interpreters. Prior to that in Finland there was no training or licensing of interpreters in legal proceedings, so almost everyone - both professional and amateur, may inform the court and act as an interpreter and translator of written documents.

In March 2012 the Finnish Ministry of Justice has set up a working group to amend the Directive on the right to interpretation during the court session, the purpose of which was to propose changes to legislation in the field of procedural law as required by the Directive.

Protecting the quality of interpretation or translation suggests that the interpreter works honestly and is suitable for the job and possesses skills required to perform this task. The bodies of pre-trial investigation or the court must appoint a new written or oral interpreter if required by the legal protection aspects of the process <sup>13</sup>.

Resolution of the Government to the Parliament of HE 63/2013 has also established the right of the suspect and the accused to interpretation and translation, which is based on Article 6 fair trial guarantees of the European Convention on Human Rights and Fundamental Freedoms <sup>14</sup>.

Interpretation of the Directive provides suspects and accused the right of interpretation and translation in criminal proceedings in order to ensure their right to a fair trial.

Victims of crime rights, support and protection are provided in accordance with the Directive of the European Parliament and of the Council 2012/29 / EU of 10.25.2012. Article 7 contains provisions on the right of the victim to interpretation and translation in criminal proceedings <sup>15</sup>.

The new Law on the preliminary investigation of Finland in Chapter 4, § 13 gives parties the right to translation of materials of the preliminary investigation. Article provides for the translation of documents of the preliminary investigation or parts

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<sup>12</sup> Directive of the European Parliament and of the Council of Europe 2010/64 / EU of 20.10.2010

<sup>13</sup> Resolution of the Ministry of Justice. OM 5/41/2012

<sup>14</sup> Representation of Parliament HE 63/2013. Hallituksen esitys eduskunnalle oikeudenkäynnistä rikosasioissa annetun lain ja eräiden muiden lakien muuttamisesta.

<sup>15</sup> Ibid .2.2 The quality of interpretation and translation

thereof, the volume of the oral interpretation of Legislation must comply with the requirements of the Directive.

An essential document can be translated verbally, if one of the parties does not require the translation of legal documents in writing.

Preliminary investigation bodies must ensure that the side of the process gets enough information about the translation of documents. It is also assumed that the translation is available in reasonable time <sup>16</sup>. Full and effective participation of an interpreter in the fate of the accused or the victim is possible if they recognize the importance of the role of the interpreter in a criminal case. Sometimes the accused or any other participant of the process, whom an interpreter was invited to assist, can clearly exaggerate their language skills. In this case, the question of the participation of an interpreter should be decided by the peremptory decision of the investigator, inquiry officer or the court.

Senior Inspector of Crimes Pertti Sovelius said that the Helsinki Police Department notes a growing need for interpreters. More than half of the upcoming preliminary investigations of criminal offenses against property are involving suspects of foreign origin. Police requires assistance of interpreters on daily basis <sup>17</sup>.

At this stage, the situation with the right to an interpreter in Finland falls short of the requirements set by the European Convention on Human Rights and Fundamental Freedoms and other international.

For example, only in the District Court of Helsinki up to seven interpreters of the Russian language are constantly working, none of whom are authorised translators and do not have certificates from the Finnish National Board of Education.

Due to a severe lack in the number of professional translators in Finland, foreign detainees may be offered an option to be questioned in English, so as not to be in the police custody awaiting a freelance translator with knowledge of their native language. Also, this constitutes considerable savings for the investigating authorities.

For example, a suspect with dual citizenship of the Russian Federation and the United States (US citizenship received in 1998 and returned to Russia in 2007) accused of smuggling of illicit drugs to Finland, was offered to be questioned in English, which was not the native language for either the Russian citizen and especially not for the customs inspector. Transcript of an interrogation was read out without an interpreter in the investigator's own interpretation of English and written in Finnish, where the latter was not known by the suspect <sup>18</sup>. The suspect was not even offered a translation through an official interpreter by phone, as it is practiced by the Finnish Police, if the interpreter is not present during questioning. At the trial the case was heard in Finnish and in Russian languages through use of an interpreter, who also did not have a certified authorisation of a qualified translator <sup>19</sup>.

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<sup>16</sup> Ibid, HE 63/2013. p.3. Aims and the main proposals

<sup>17</sup> YLE's news. Special Examination oral court interpreter.

<sup>18</sup> Minutes of interrogation of 13/02/2014 9010 / R / 9022/13

<sup>19</sup> The decision of the district court of Vantaa from 27.6.2014 R14 / 626

In 2011, the costs of translation and interpretation services in the district and appellate courts of Finland amounted to 2,448,931 euros <sup>20</sup>.

Finnish media often reports on sub par levels of translation in court. For example, a district court judge of Tampere, Kimmo Vaikiala, describes a situation where a person can speak for a minute or two, and then an interpreter translates it in 30 seconds <sup>21</sup>.

Problem of poor translation quality was a subject of doctoral dissertation by Nina Isolahti. (thesis, "The accuracy of translation in criminal proceedings: an unattainable ideal. University of Tampere. 2013".) The study indicated the factors that affect the accuracy of the translation during interrogation and court proceedings. In a minute one is capable of voicing an average of one hundred words. When interpreted a fifth of information can easily be omitted, which is although secondary by nature, still possesses a great deal of value. At the hearing, as stressed by the majority of researchers and the court, the accuracy of the translation must be at a very high level. An interpreter, during the hearing, must transmit all aspects of the source language in the courtroom translation, including meaning, accurate information, tone, even facial expressions and body language indicating hesitation, repetition, illogic, etc.

In Finland, the use of videoconference during the preliminary investigation and the trial, which often involves interpreters, is a common occurrence. Videoconferencing is capable of reducing the costs of witnesses, who are paid by the public funds. On the other hand, the principle of a fair trial is largely based on the physical presence of the parties in the courtroom during proceedings.

Finland rejected a request for the extradition of the accused Rwanda Bazaramba on the grounds that he cannot get a fair trial in Rwanda and in the autumn of 2009 in the Finnish town of Porvoo's district court a high profile hearing has begun with use of videoconferencing <sup>22</sup>. A former pastor Bazaramba was charged with genocide in Rwanda, Tutsi, 800,000 people population. In the Court of Appeal of Helsinki 22.8 - 9.12.2011 the Prosecution was represented by a public prosecutor and two district attorneys, court sessions were held in Finland, Rwanda and Tanzania. 64 witnesses were heard from Rwanda and Tanzania; video recordings presented testimonies of 8 more witnesses. The defendant had the right to use their native language in the proceedings, attended by several interpreters. Questions were asked, first in French, then in the language of Kinyarwanda and translated into Finnish. During the court hearings numerous errors in the translations were made. Although the total cost incurred by the Ministry of Justice for a preliminary investigation and trial amounted to 5.3 million euros, according to the Union of Finnish Translators, the quality level was of a very low standard.

For example, accused has explained the content of a written document presented in court. Bazaramba told the court that he saw a gun and inquired about acquisition permission from the mayor. The letter was written in May 1994.

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<sup>20</sup> Portal of newspaper Iltalehti. <http://portti.iltalehti.fi/keskustelu/showthread.php?t=914553>

<sup>21</sup> The decision of the district court of Porvoo R 09/404. 11.06.2010. Itä-Uudenmaan käräjäoikeuden tuomio R09 / 404

<sup>22</sup> Law on the preliminary investigation. Esitutkintalaki, 22.7.2011 / 805, 13 § (8.11.2013 / 770)

*Jag skriver till Er för att informera Er om att under dessa dagar har jag sett ett vapen som tillhör kategori Kalshnikov.*

An interpreter from Rwanda translated the written document from the language of Kinyarwanda into French and then his colleague from Guinea translated it from Swedish into Finnish and content of the letter was interpreted so that Bazaramba acquired a machine gun. An issue of the protection of evaluation doubtfulness of a translated document from Swedish and distorting the content of evidence of the accused, the presiding judge has promised to evaluate later.

The court judged Bazaramba to be guilty of arson in a settlement of Tutsi, propaganda and inciting murder through fomenting anger and contempt. Convicted, he received a life imprisonment sentence. Supreme Court of Finland has not issued decisions on review of the case.

## Conclusion

Currently in Finland the interpreters employed by courts are not qualified to officially conduct this services at the required level of expertise. Translations of written documents for trial courts require a translation to be completed by an authorised interpreter and confirmed with an official rubber stamp. Authorised interpreters are defined by law and governed by the Act on authorised translators 7.12.2007 / 1231. Oral legal interpreters who are invited to work in courts and at preliminary investigations are of a mediocre level, commonly from university graduates or those who have passed a "translator of business communication" exam.

Finnish legislation clearly states when it is necessary to have an interpreter present and who is responsible for the costs of interpretation, but the laws relating to the interpretation in the Finnish legal sphere, contain very few provisions on the requirements for interpreters and their responsibilities. Law on administrative enforcement established that a person involved in legal proceedings as an interpreter or translator cannot have any involvement to parties in the case, or to the case itself, as such a relationship is a cause in which the credibility of the interpreter can be called into question. (Hallintolainkäyttölaki, 26.7.1996 / 586, 77§ - «Law on administrative enforcement").

In addition the Aliens Act (Ulkomaalaislaki 30.4.2004 / 301, 10§) states that interpreters and translators cannot be used if a person has an involvement to the case or to a party in the case, that the credibility of the interpreter can be put in doubt and safety of the participants of the case may be jeopardized.

Interpreter thus should be neutral and indifferent person, of such an opinion or position that it does not affect his or her operation. In addition, the interpreter is obliged to keep the confidentiality, i.e. not to disclose information that became known to him by means of working with officials even after this work is concluded. Sensitive data must not be used to their advantage or for the benefit of another person, or to harm another person. (Laki viranomaisen toiminnan julkisuudesta 21.5.1999 / 621, 23§ - «Act on the Openness of government agencies"). Finnish law does not establish the requirement for a proficiency level as well as a term "court interpreter".

In Finnish legislation the role or the working methods for a legal interpreter are not specified. The only instructions for legal interpreters are "Professional code of interpreter" (Tulkin ammattisäännöstö) and "Instructions for oral legal interpretation» (Oikeustulkkausohjeet).

The situation with the legal translation in Finland has changed in October 2013, when Directive of the European Union "on the right to interpretation and translation in criminal proceedings" (N Directive 2010/64 / EC of the European Parliament and of the Council of the European Union) entered into force.

In 2011, the Law on preliminary investigation has been implemented, with the addition of the translation and interpretation of documents for preliminary investigation based on the legal protection of the suspect. For the first time an amended legislation gives the right for a suspect to appoint a new interpreter if it involves legal protection of the suspect or any other compelling reasons. Also, messages, invitations and documents relating to the preliminary investigation will be sent in the language that the suspect may presumably understand sufficiently [23]. These amendments entered into force on 1 January 2014.

January 2014, saw amendments to § 37 of the Language Act, according to which each reporting period the cabinet provides a report to Parliament on the application of language legislation and the implementation of the right to language.

Problem of omissions in oral legal interpretation in Finland is being tackled not only in legal but also on the educational level. Foundations of a new training standard for interpreters were set in spring of 2013, introducing a special professional examination for an oral legal interpreter qualification, which will organize the training of legal interpreters and translators at a broader level.

The situation with oral legal translation in Finland is far from the requirements set by the European Union, as even fundamental issues with setting an authorised interpreters practice in Finland have not been solved, and the directive "on the right to interpretation and translation in criminal proceedings" is not properly executed.

In comparison, Germany has in excess of 22,000 translators, and only highly qualified authorised professionals are invited to perform oral and written translations in courts, as they are well aware that the legal interpretation and translation - is a responsibility, where its implementation is vital for provision of legal protection and human rights.

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