

# ЮРИДИЧЕСКИЙ ПЕРЕВОД В МЕЖДИСЦИПЛИНАРНОМ КОНТЕКСТЕ

## TRANSLATION IN THE EUROPEAN COURT OF HUMAN RIGHTS: CHALLENGES AND SOLUTIONS

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The article deals with some problems of court translation, the right to which is provided by the European Convention of Human Rights and other legislations. The translation challenges appear at all stages of the court proceeding, ranging from submitting documents to judgment delivering. Translators and interpreters' competences are outlined. Translation performs important functions in communication of the judgments of the European Court of Human Rights to the European Council member States and in conducting comparative studies of national and European legislations. Translation has been proved an important means in enhancing the role of the Court in protecting human rights.

**Key words:** particularities of court translation and interpreting, requirements to translators and interpreters, translation problems in the court's comparative studies, ECtHR's translation projects.

### *Translation in the Court: specific features and challenges*

The European Court of Human Rights (ECtHR) was established in 1959 on the basis of the European Convention on Human Rights (ECHR), which deals mostly with civil and political rights. It is a powerful mechanism to implement international treaties on human rights in the member states of the Council of Europe. The official languages of the Court are English and French, though the application to the court could be submitted in any official language of the Contracting State.

The language of international human rights legislation with its long history has developed into a more unified language of global justice. Conventions unlike treaties are often characterized as being less formal, containing general principles of law recognized by states. The European Convention's principles are drafted in broad terms, they are not determinative and require extensive interpretation by courts to infer meaning in particular factual circumstances. This situation calls for linguistic awareness, and even greater awareness is needed when translation comes into play. Article 6 of the Convention provides the right to a fair trial, stating among the others the following rights: «a) to be informed promptly, in a language which he understands» and

«e) to have the free assistance of an interpreter if he cannot understand or speak the language used in the court» [3].

The right to a fair trial is intended to provide understanding of the accusation and the whole process in the court by a charged person. There are some important general points concerning the language and translation in the court which should be taken into consideration. At the initial stages, when the accusation is brought, it has been emphasized that its understanding does not imply that a translation has to be necessarily in the mother tongue or a written translation, in some cases oral interpretation would be sufficient for an accused to be fully informed of the charge.

The assistance of an interpreter is provided if an accused does not understand and does not speak the language used in the court, another problem could arise from a physical disability to understand or speak the language of people with impaired hearing or dumbness. In all cases free assistance of an appropriate interpreter has to be provided notwithstanding the outcome of the proceeding. The amount of documents to be translated should be also specified. It is not always possible to have written translation of all evidences and documents, but an accused is entitled to receive information making understanding and defense possible.

English is becoming an international language in the courts; this practice has become common in international and European courts. Considering that the court translation and using English in international courts are relatively new fields of practice and research, studying and analyzing various practices of translation is a crucial way to improve translation programs and disseminate best practices globally.

One of such endeavors has been undertaken by the Consortium for Language Access in the Courts to prepare *The Guide to Translation of Legal Materials* designed to advance the language access programs in the court [2].

The information concerning using English in the courts specifies requirements and skills of translators and interpreters. It was stated that the practice of using translation in the court shows that even bilingual people, using English as a second language and living in English speaking countries experience serious problems in understanding and speaking this language. Being bilingual does not guarantee written fluency and adequate information processing as very often people over-estimate their communication skills. That's why requirements to translator are very strict, they include good knowledge of source language and the subject in question. Considering difference between translation and interpretation, it is necessary to outline the required skills and abilities of translators and interpreters.

Translator's important skills and abilities include:

- knowledge of source language equivalent to at least 4 years of intensive and 10 years of irregular study;
- writing ability in the target language equivalent to that of educative native speaker;
- knowledge of the subject which equals to one or two years of training or working experience in the particular field.

In their work translators may use various software, translation memory system or other term management tools, hence skills how to use new technologies are getting more important and require special training.

Interpretation involves various language skills and such abilities as alternating attention, divided attention, focused attention, auditory processing speed, conceptual reasoning and other cognitive abilities.

Documents to be translated in the court are generally of two types: 1) official court forms and documents and 2) evidentiary materials, as they could be numerous, only the most important needed to be translated.

*ECtHR's projects and translation*

In the past years several projects were launched by the European Court of Human Right which revealed the importance of translation of ECtHR's judgments into national languages and researches. The European Court of Human Right has jurisdiction over the Council of Europe member States, all its decisions are binding. That is why the awareness of the ECtHR activity, litigation system, judgments and their dissemination in member countries should contribute to better understanding of the European human rights legal system and its influence.

The JURISTRAS project was initiated by the European Commission to explore the processes of human rights litigation in the ECtHR and the effects of its judgments on national laws and at the same time to assess their impact on the legal norms, institutional structures and policies of the states that are parties to the Convention. Eight European countries were selected as case studies. The empirical research carried out in Germany showed a limited influence of the ECtHR judgments against Germany on its domestic legal system and political debate. Recommendations provided on the basis of this research emphasized the importance of the interrelated nature of the national legal order and the supranational legal order of the Council of Europe. Among these recommendations the following issues were specified: the necessity of translating and disseminating ECtHR's judgments within Germany and translating and disseminating ECtHR's judgments at the level of the Council of Europe.

Translation of ECtHR's judgements has been considered as one of the important measures to enhance the role of the European Court of Human Rights [4].

Another important sphere where translation plays an important part is comparative law studies in the European Court of Human Rights. The ECtHR often uses comparative law in its reasoning and regularly refers to international treaties and judgments from other jurisdictions. The main purpose of the comparative analysis in the court is primarily informative, it provides data and informs the judges about possible solutions. The impact of comparative analysis can be identified at the different levels of the court's reasoning, while the assessment of data comes at final stages and can affect the judgments.

The challenges of comparative law have been explored in the academic comparative analysis but they are not the same in the comparative research conducted by the European Court of Human Rights. The most common identified problems are cultural bias of comparative research and translation of legal terms. These problems are closely interrelated, as the same terms could represent different legal concepts in different legislations. Even in English speaking countries there could be differences in terms and meanings, not to mention countries with different languages, social and political systems. Comparative research is intended to provide the European Court of

Human Rights with objective information regarding particular legal matters and often proves to be a precondition for its ruling.

Comparative analysis carried out by the European Court of Human Rights showed that it could be more exact when the norms were considered in the broader context rather than as pure legal provisions, thus describing the degree of their similarity. Another important point is that the comparative analysis might retain persuasive authority in some cases. This and other findings of comparative analysis are important for translation [1].

In the European Court of Human Rights initial documents are submitted by the lawyers who speak the language of the member State in question and are fluent in English or French, the official languages of the ECtHR. The problems of legal translation are common for international court practices. Judges approach these problems from their national and cultural backgrounds and experience as lawyers within legal systems of member States from which they proceed. The same approach is applied in the Court of Human Rights. Judges have to take into account important differences in legal systems and terminology.

The approach that translation of court's judgments could serve a greater awareness of national judges and a closer interaction between the national protection of human rights and the European Court was important considering the situation with the new member States [6. P. 55].

In 2012 the European Court of Human Rights launched the project «Bringing Convention Standards Closer to Home: translation and dissemination of key ECHR case-law in target languages». It was stated that «the project's aim is to translate the Court's key judgments and decisions in order to further disseminate its case law via HUDOC (the Court's database) and partners at national level» [5].

Under this project the translation of judgments and decisions of relevant cases into official languages of some member States has been commissioned, besides non-official translations in non-official languages could be submitted through some internet sites. Recently the Court has commissioned the translations of key case-law, legal summaries, factsheets, research reports and case-law guides into Russian. The status of these translations should be specified, they are annotated as not binding for the Court. Translation of ECtHR's judgments is a new approach to reinforce the role of the court in the protection of human rights.

#### *Conclusion*

Translation in the European Court of Human Rights can be subdivided into two spheres: translating documents and interpreting at court proceeding and translation for research and for communication with European and world communities. Serious consideration should be given to challenges of translation in these spheres by law professionals, researchers and educators as it is often claimed that only collaboration could provide for their solution. The right to free translation is regarded as one of the important human rights in the globalizing world and an indispensable tool for enhancing the role of the European Court of Human Rights in protecting people's rights and advancing legislation.

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**ПЕРЕВОД В ЕВРОПЕЙСКОМ СУДЕ  
ПО ПРАВАМ ЧЕЛОВЕКА:  
ПРОБЛЕМЫ И СПОСОБЫ ИХ РЕШЕНИЯ**

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В статье рассматриваются проблемы перевода в суде, право на который закреплено в Европейской Конвенции по правам человека. Проблемы перевода возникают на разных этапах судопроизводства: от подачи иска до вынесения приговора. Одной из важных функций перевода в Европейском суде по правам человека является перевод постановлений суда на языки государств — членов ЕС и роль перевода в проведении компаративных исследований европейского и национальных законодательств. Перевод является важным средством усиления роли Европейского суда в защите прав человека.

**Ключевые слова:** особенности устного и письменного перевода в суде, требования к судебным переводчикам, проекты Европейского суда по правам человека и перевод, проблемы перевода в компаративных исследованиях в суде.