

Expertise sharing in the field of court translating and interpreting

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This article focuses on the challenges of multilingual court work in Finland. The goal of the article is to describe on the basis of one interpreting event the kind of problems that can be found in the court work regarding the collaboration of two professions: the court interpreters and the legal professionals. The point of departure is to answer the question: how do legal professionals and court interpreters collaborate in the court? First, the article argues for the need of shared expertise and multiprofessional collaboration in the field of legal translating and court interpreting. This claim is justified by a short description of a legal translation, some recent interviews, a survey, and the theory of situated learning and legitimate peripheral participation. Second, the article describes a problematic multilingual session in a Finnish district court on the basis of a transcribed hearing. Finally, the article offers some suggestions for the development of the current situation of court interpreting and legal translating in Finland. The conclusion is that the current situation in courtroom reflects the lack of understanding of the process of interpreting.

Keywords: court interpreting, court interpreter, shared expertise, professional collaboration

Multilingual court work

Work in the Finnish legal profession these days is increasingly characterized by multilingual tasks. This occurs, for example, in the district courts, when a party in a judicial process is a foreigner who appeals to the law of his or her country of origin. These cases can deal with international divorce matters, where the husband is German and the wife is Finnish, for example. These cases often deal with the alimony and child support and the division of property. In these cases, the Finnish court has to clarify what the content of a foreign law is in order to decide correctly on the matter. Further, there are an ever-increasing number of court processes where a party in the process is an immigrant, for example a Thai or a Somali, or where several parties have an immigrant background and do not speak the official language of the court, which is either Finnish or Swedish (or to

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some extent some of the Saami languages that are spoken by minority groups in northern Finland). The increased number of multilingual proceedings means that members of the legal profession face increasing linguistic and cultural requirements in their work (see for example Manner 2001: 601–602, and the home page of the *Finnish Prosecution Service*, and the 2008 Annual Report of the *Finnish Bar Association*).

In addition, situations arise where a Finnish court has to give an opinion on a matter processed in another country, such as Estonia, or when the Finnish court is requested to take evidence for another court in the area of the European Union (*Council Regulation (EC) No 1206/2001 of 28 May 2001*). Legal teams often need to analyse evidence written in a foreign language or in translations when preparing an international or otherwise multilingual case. Altogether, there can be various international or multilingual and cultural factors that may have an influence on the matter. In short, justice in a multilingual world presupposes an understanding of many legal cultures and the ways of legal thinking in other countries.

Legal reasoning premised on translated legal texts or on interpreted oral evidence may often be a complex assignment for a judge. In order to ensure the best possible starting point for their work, court members and court officials should know how to collaborate and co-operate with translators and interpreters and they should also know how this collaboration and co-operation should be organised. The need in the legal professions for more linguistic and cultural competence can be seen in the reviews and reports in various media published in the legal field (see OHOI 2007, the administrative justice bulletin of the Finnish Ministry of Justice, or the annual report of the Finnish Bar Association 2008). This need is also evident in the present research data, especially in two interviews that were conducted in the district court of Turku and in the district court of Espoo in 2008 (March 28 and April 16). In addition, the same need for understanding was considered extremely important by Ms. Pauline Tallroth, who is Governmental Counsellor in issues concerning language rights in Finland. Unfortunately, there are no statistics showing the real number of multilingual court sessions in Finland (interview 3 April, 2008). However, there are on-going processes and plans to develop the situation of court interpreting in Finland. For example, in 2008 Palmenia Centre for Continuing Education (University of Helsinki) started a survey on the state of the court interpretation in Finland (founded by the Finnish Ministry of Education). The Finnish Association for Translators and Interpreters (SKTL) co-operates with EULITA, European Legal Interpreters and Translators Association, a cooperating partner and subgroup in the EU project “Criminal Justice” 2007–2013. It is also worth noting that in June 2010 the European Parliament adopted the Directive on the Rights to Interpretation and Translation in Criminal Proceedings.

Translating and interpreting in the legal field – a need for shared expertise

A fair multilingual trial requires the expertise of legal translators and court interpreters. First, all parties in a process have their right to argue and participate in the process in full. This right to be understood in one's own language is first of all the right of a person who is not able to participate in the proceedings in the language of the court. But it is an important right for all other people in the courtroom, too. To assure legal protection, the judge clearly needs a thorough understanding of the whole argumentation. Argumentation in the courtroom is not easy for a layperson in one's own language, not to mention having to do it in a foreign language.

The challenges of multilingualism in mediating legal knowledge are manifold also in the field of legal translation. More and more members of the translator and interpreter profession have currently the opportunity to specialize in the field of law. However, shortcomings in translations and the lack of confidence towards translators and their products can be read in the critical reviews of cases published in some judicial textbooks. On the one hand, this criticism is aimed at the lawyers' interpretations of the foreign statutes (Koulu 2003: 8; Klami & Kuisma 2000: 59), and on the other hand, at the mistranslations of legal texts and the utility value of such texts (Klami & Kuisma 2000: 34). In a previous study, I explored the influence of the translation process on legal sources (Kinnunen 2006). I analysed what happens to the meaning of a legal source text when it is translated into a second language and then reinterpreted in a new context of meaning. In the analysis, I studied an unofficial German translation of a Finnish statute (Code of Real Estate) translated by two lawyers whose native language was not German but Finnish. On the basis of this analysis I was able to argue that the translation was not a very functional one. That also became evident in an interview with an expert. A German lawyer who was expert in the field of real estate liens studied the above-mentioned German translation of the Finnish statute and, while reading the translation aloud, he pointed out many parts of the text that were open to different interpretation. He asked a considerable number of questions and made many comments while reading the text. He was not able to construe the original meaning of many concepts. The expertise of the translators in question (i.e. two lawyers) did not lie in the field of translational communication although they had much legal cultural knowledge. They did not possess the knowledge of expressing things in an effective way in another legal cultural context.

On the basis of the analysis I suggested that we should see the translator at least as a guardian of translated texts – or even as a defender of the rights of a translated text and the other legal culture. This is probably true for the court interpreters, too, but in a limited sense that should be investigated and discussed thoroughly. The role of the court interpreters in the process should be understood more clearly as there is a strong controversy over the role (i.e. Isolahti 2008; Kadrić 2008; Vanden Bosch 2008; and especially Lee 2009 with a detailed description over the controversy). This statement means that translators and interpreters need to have a well-defined position and role in multilingual proceedings as trouble-shooters of communication. To achieve this, the ways of collaboration should be discussed thoroughly in order to guarantee productive

interaction. Governmental Counsellor Ms. Pauline Tallroth stated in the above-mentioned interview that the interpreter is the person who makes the whole trial possible, and she saw the role of an interpreter comparable to the role of a lawyer in the process. In a rather similar way, Vanden Bosch (2008) compares the roles of legal translators and court interpreters to the roles of legal expert witnesses. In Austria, the court interpreters already have a status similar to an expert witness (*Gerichtssachverständige*).

As a result of these previous observations, I suggest that efficient ways of collaboration with translators and interpreters need to be developed. This means that members of two separate professions – the lawyers and linguistic facilitators – should find new ways of handling the complex translating and interpreting processes. These include, for example, initial discussions about interpreting procedures before the interpreting starts in the courtroom, and the naming of a contact person who can assist the linguistic facilitators and transfer the necessary documentation to the interpreter or the translator so that they have the background material and can prepare for a case. Unofficial meetings to discuss the problems of collaboration and learning to know each others' work would also be important for the general development in the field. Solving complicated problems involving two or more languages probably requires multiprofessional teamwork (see also Kinnunen 2005). In addition, there is a need for a completely new kind of expertise sharing. This kind of expertise does not necessarily exist before collaboration but subsequently begins during an activity that has a common objective. Translators and interpreters work at the interface of the legal profession.

Judicial discourse as professional social practice

I assume that many of the problems of translating specialized texts or managing a court interpreting situation involve learning to understand translating or interpreting as a necessary action in a larger activity system (see Engeström 2000). Translating and interpreting processes have certain goals in the activity of courts. A multilingual court process can be seen as an activity system, and the actions that are taken by translators and interpreters form parts of it. When you become a competent legal translator or court interpreter, you learn to use the language in an adequate way in that context of activity. In order to learn the discourse of the legal community, a newcomer has to be able to participate legitimately in the processes of the expert community (see Lave & Wenger 1991). Newcomers should “have broad access to arenas of mature practice” (Lave & Wenger 1991: 110). The possibility to participate opens the way to expertise in a certain special field. The current ways of collaboration must be analysed and discussed thoroughly in order to guarantee and develop new ways of participation. According to Vijay K. Bhatia (2004: 144–145), judicial discourse can be seen as a form of professional social practice, and a professional needs “social and pragmatic knowledge in order to operate effectively”.

The development work in this field calls for collective expertise and the sharing of expertise among the participating professionals. According to work research, expertise resides in collaborative activity (i. e. Engeström 2000). The concept of collective expertise states that the knowledge required for handling a

piece of work is no longer owned by one person or profession only. Instead, the research on collective expertise argues that a person acting in a group has better chances of putting his or her problem-solving skills into practice than a person working alone. However, according to Parviainen (2006: 173), there are many obstacles that hinder the formation of collective expertise. These can be (1) hierarchies and power positions, (2) organisation cultures, (3) cognitive asymmetry, (4) language and professional terminology, (5) gender, age and ethnic background, (6) emotions, (7) lack of trust or excessive trust, (8) individual interests, (9) time, (10) competition and (11) organisational spaces.

In Translation Studies, Pérez González (2006: 393) uses the concept of interactional status, which defines the position of each participant of courtroom interaction. This status depends on the familiarity with the institution. The research in dialogue interpreting is particularly interested in the set of factors that influence the interpersonal meaning negotiation in different institutional settings (Pérez González 2006: 393).

According to the interviews with court members, some courts are very well aware of their lack of linguistic and cultural expertise. One of the interviewed judges said that judges generally need more cultural understanding and education in these questions. The expertise of a well-educated court interpreter could be a partial solution of this problem. Choosing the services of a professional interpreter who is able to participate in the process in full is of the utmost importance to all participators. It is of major importance for the interpreter to be a fully acknowledged participator in the process. This is a necessary starting point for a fair trial for all parties. For the person who gets professionally interpreted, this ability to speak means the ability for action. If a party in the process does not have proper access to interaction in the courtroom, it can be said that basic human rights have been violated.

When a court needs the services of an interpreter or a translator in a criminal case, the translators and interpreters are often contacted by the secretary of the case or other clerk member. Sometimes they are contacted by the judge. A small-scale survey (Isolahti & Kinnunen 2008) in 54 Finnish district courts revealed that in commission issues, the courts had developed several kinds of local practices. These diverse practices reveal, for example, that many smaller courts are not very experienced in commissioning translators and interpreters. In 15 district courts, the services of an interpreter or a translator were not needed every month. In contrast, for example, in the Espoo district court near the Finnish capital of Helsinki, interpreters are commissioned every day, mainly in family-related issues.

On the basis of the above-mentioned survey and on the basis of the interviews and discussions carried out by the Palmenia expert group (the group consisted of representatives of education sector, the courts, the lawyers and Ministry of Justice) it became clear that the biggest problems of court interpreting lie in the services of small immigrant groups whose languages are only spoken by very small minority groups in Finland. There are often problems of legal incompetence, too. Many speakers of these minority languages act as interpreters without proper education or training. Therefore, there are huge obstacles to the formation of collective expertise in certain areas of court interpreting. Factors like lack of trust, ethnic background and different power positions play a major role here. When entering a courthouse, a newcomer is aware of having entered the premises of hierarchy and power and the premises

of supreme rules and actions. The use of power can be sensed at the very first moment after opening the door, as everybody has to go through security control. Court interpreters enter the courtroom at the same time as the parties in the process. The interpreters act in a role outside the authority. (See also Kinnunen 2010)

Collaboration problems - some preliminary observations

I observed an interpreter-mediated criminal trial in a Finnish district court in March 2008. The communication in court was mediated by a Thai interpreter as one of the participants of the hearing was a young Thai woman. The description of the following pilot case is based on the field notes in my notebook and on the recorded hearing of the victim and its transcription. The observed criminal case was about discrimination at work. The persons in the courtroom were the judge as the chairwoman, the injured party and her attorney, the interpreter, the district attorney, the defendant and the defendant's attorney, witnesses (when they were called in), the secretary of the court and three lay members of the court. There were no observers other than myself.

The district attorney accused a 50-year-old Finnish woman, the owner of a cleaning firm, of discrimination against an approximately 25-year-old woman who had worked as a cleaner in the cleaning firm. The owner of the cleaning firm was accused of not explaining to the cleaner properly where and how she should do her work and she was also accused of pinching her. The young woman's interpreter (commissioned by the court) was of the same sex and approximately of the same age as the injured party.

I was not able to assess the interpreting into Thai language, but on the basis of the Finnish interpreting, I could notice the many uncertainties in handling the situation and in participating in the hearing as well as in managing the role of a court interpreter. The interpreter was actively taking notes when the prosecutor and the judge talked. However, after the case was introduced in Finnish, the interpreter was not able to take her turn as an interpreter of the communication that was taking place in the room nor was she capable of interpreting or whispering simultaneously. At the beginning of the prosecutor's turn, there was also some doubt whether the charge should be interpreted consecutively or not. When the interpreter asked the judge whether she could start interpreting, the judge told she could take her turn when the hearing of her client started. Thus the first part of the session was not interpreted completely. The victim's counsel did not intervene in order to require the charge to be interpreted for his client nor did anyone explain the situation directly to the victim. The judge based her decision on the fact that the contents of the charges were already known to everybody. Hopefully this was also true. However, in my opinion these issues should be negotiated with the victim who has the right to the interpretation. When the prosecutor was presenting the evidence by reading it out loud, the interpreter showed the actual passage in the document to the victim with her finger. Every now and then the interpreter said something to the victim. Thus it was the interpreter who decided what was a necessary piece of information for the victim.

The uncertainty of the initial interpreting phase indicates that the interpreter did not have much experience of court interpreting, as she had not developed a clear strategy for managing the initial discussions that would define her working conditions with the judge. When her name was asked in the beginning of the session she did not use the possibility to inform the judge about her interpreting techniques. On the other hand, neither did the judge take the control over the structure of the interpreted communication, as she did not discuss the interpreting techniques and strategies they would use during the trial with the interpreter.

Judging from the victim's performance in Finnish, the young Thai woman had only some knowledge of spoken Finnish and she spoke Thai language in the courtroom. Yet she started to answer in Finnish, but this was rejected by the judge who said that her Finnish was not understandable and that she had better tell her story in her own language as the interpreter was available (see Excerpt 1). However, the victim's behaviour indicates that she was not aware of her right to use the interpreter or she thought for some other reason that she should use Finnish in the courtroom. Furthermore, the judge's behaviour in this excerpt also indicates that she has not been educated nor trained in communication through interpreter. She is not addressing the injured party directly although she later on advises the interpreter on how she wants the story to be told (Excerpt 3).

In Excerpt 1 and in the following excerpts from the transcription, the following notation is used: (J) = judge, (I) = interpreter, (V) = victim, (A1) = victim's attorney, (A2) = defendant's attorney, (P) prosecutor. When the Thai language is spoken, the utterances are marked with three dots. Italics are used to mark the utterances that are being discussed. The names mentioned in the excerpts have been changed. The excerpts have been translated from Finnish into English by Tiina Kinnunen.

Excerpt 1

- 01:04 (J) *Well, couldn't she now that we have an interpreter... We don't understand her Finnish.*
- 01:09 (I) ...
- 01:18 (J) *If she will explain in her own language, as we have an interpreter, then it's not wrong, because the possibility of error is so great.*
- 01:20 (V) ...
- 01:46 (I) ...
- 01:47 (V) ...
- 02:00 (I) ...
- 02:01 (V) ...
- 02:17 (I) *She said that when she got back from vacation, then the next day Jaana...*
- 02:20 (J) Before got there, there were no troubles before that?
- 02:27 (I) ...
- 02:28 (J) *We can't start from the end, because I think she - -*

The interpreter's Finnish was very fluent, and she probably had lived in Finland for a long time. However, her actions as an interpreter reflected her lack of training. For example, she refers to the person with '*when she got back from*

vacation' instead of the trained form '*when I got back from vacation*'. Thus, she apparently did not have much court experience or knowledge of the ethical codes of interpreters (see for example the SKTL recommendations for the court interpreters and the FIT code of professional ethics that are available at http://www.sktl.net/en_index.html). Excerpt 2 shows how the interpreter fell into trouble with the volume of speech that her client produced in a very short time in the beginning of the hearing (the victim's turn lasted almost exactly one minute). The judge had to intervene the victim by saying that the interpreter could already start to interpret, '*if you now could translate her*'. (This can also be noticed in the Excerpt 4, '*Maybe if you translated now for a change*'). In these situations the judge uses her power to manage the interpreter-mediated hearing. According to Pérez González (2006: 393): "Typically, interpreters' mediation involves the active management of the turn-taking mechanisms, which in many cases forces interpreters to take the floor themselves." Despite the fact of not being able "to take the floor" the interpreter may have done linguistically her very best. However, this should be analysed by a researcher who has knowledge of both Thai and Finnish.

Excerpt 2

13:38 (I) ...
 (V) ...
 (I) ...
 (V) ...
 13:58 (V) ...
 14:35 (J) *If you now could translate her*
 14:36 (I) *She started telling about these concrete incidents with Jaana and Jaana and how she has treated - - that she had to go to see a doctor, but now she started explaining in detail and she said that Jaana had pinched her but she hasn't told anything more about it yet*

Unfortunately, the interpreter's unprofessional way of handling the interpreted hearing was apparent in several occasions (for professional standards see for example Colin & Morris 1996). For example, the interpreter used on many occasions reporting structures '*she started telling*' and '*now she started explaining in detail*' and '*she hasn't told anything more about it yet*' i.e. commenting on the victim's answer without telling the judge what the victim really said. Such reporting structures are usually not allowed in the standard training of interpreters. In the following excerpt (Excerpt 3 a) the judge directs the interpreter not to use passive voice but to tell who is doing and what. The interpreter used the third person singular passive form when reporting what the victim said. Sometimes it is not clear who is giving the examples, the interpreter or the victim, when the interpreter uses the phrase '*but then for example*'. This confusion is also due to the use of reporting structures used in interpreting. The judge had to tell the interpreter that the correct way of interpreting is in the first person but the interpreter was not able to follow this instruction. Thus it is apparent that the judge had had some earlier experience in working with interpreters. Only the prosecutor manages to maintain this mode of speech during first two of her turns (see Excerpt 3 b). After the interpreter has used the third person singular voice again, the prosecutor also turns into the third person

singular voice and addresses the victim immediately thereafter only indirectly. However, the prosecutor turns back later to the direct mode of questioning. See Excerpt 3a + b.

Excerpt 3 a + b

- 04:15 (I) *She doesn't remember that day so clearly*
 04:17 (J) I guess so. It says so here... It must be here somewhere.
 04:25 (J) Yes, that's April sixth, that's May two thousand five, the month is wrong, change the month to five, yes...
 04:50 (I) ...and that's when the bullying started, *for example they were telling her off*, telling her everything was wrong and it's not clean enough *but then for example...*
 05:05 (J) *Let's not use the passive "They". I want to know who did it.*
 41:02 (P) Your honor, I would like to ask the victim when you were in the GGG-company, *how did you go to your sites?*
 41:14 (I) ...
 41:22 (V) ...
 41:25 (I) *I took the tram*
 41:32 (P) *Did you have one or more sites per day?*
 41:33 (I) ...
 41:44 (V) ...
 42:04 (I) So *she* went to GSP by herself, but they had several sites there so they took the boss' car every time together
 42:20 (P) Did this situation change somehow when *she* joined the company ABC, were there usually one or more cleaning sites per day?

The judge also had trouble in following what really had happened on the basis of what she hears (see Excerpt 4 below). However, on some occasions, the judge herself was too impatient to listen to the interpretation of the victim's utterances. In addition to this, as an observer, one had the impression that she was in some occasions negotiating only with the interpreter, not with the victim. For example, she addresses the victim only indirectly in Excerpt 4 by saying '*or what does she mean.*'

Excerpt 4

- 05:50 (I) and she remembers one case where she had cleaned downstairs and there was another cleaner who did the upstairs and then she was being told off that the upstairs wasn't clean even though it wasn't her job that day, that's an example
 06:10 (I) ...
 06:11 (V) ...
 07:10 (J) *Maybe if you translated now for a change*
 07:15 (I) And erm there was another time when she was accused of not having done her job well, but she had then she had gone to the foreman because she had been on sick leave then so she couldn't have been the person who cleaned the place that wasn't clean enough and the foreman came there with Jaana and seen it for himself and she had

- explained to them both that she had been on sick leave then
- 07:50 (J) *Now I don't quite follow, so later they said something about cleaning, or what does she mean?*
- 08:00 (I) Well, erm ...
- 08:15 (V) ...
- 08:55 (I) She had a job in Sörnäinen and she had been cleaning the bathroom and it wasn't or they said the bathroom wasn't clean

As we can notice on the basis of the evidence presented in the above excerpts, the judge was not able to handle the interpreter-mediated hearing of the injured party properly. She could have been more instructive as she was the chairwoman in position of power and would have been able to advise the victim and the interpreter after she had noticed that it was difficult for the victim to tell her story in such a way that it would advance her hearing. Instead of advising the victim directly, she talked more or less to herself in short incomplete sentences, although she indirectly addressed the interpreter and other participants of the hearing in her speech. Later on, only the prosecutor addressed the victim directly. In Excerpt 5, the judge is expressing her view on the victim's hearing. She indirectly requires that the victim would tell more relevant issues.

Excerpt 5

- 10:45 (I) And she told of a case when she was told to go somewhere to clean and she doesn't she doesn't remember what the place was where she was to go then, but she cleaned it and then Jaana said it wasn't done well enough and it's not clean enough, but she had asked the foreman who was there at the time if it was clean and if the foreman is satisfied and the foreman had said it was satisfactory
- 11:25 (J) *We can't really do this, she remember this and that, we should pin it down to something, if we go into more relevant, more relevant then when she says – if we can't pin it down, it's very hard to*

When the hearing went on and it was still difficult to follow the thread of the victim's story, the judge finally advised the victim to keep to the point of the case in question, as it would otherwise be very difficult to respond. Apparently the victim was not at all able to understand the structure of the session nor had she been adequately informed.

In the following excerpt (Excerpt 6), the judge is rather irritated and requires the victim again to be more logical in her answer. Also here, she could have addressed the victim directly, for example, by saying that she should rather proceed in chronological order. In this occasion, the victim's attorney also says something in order to clarify the issue.

Excerpt 6

- 15:05 (J) *She's jumping from one subject to another, could she be more logical, it's difficult to follow this, because now I think - - and we're in November now, and as I see it - - and when she says vacation, does she mean sick leave or summer vacation?*
- 15:35 (I) Mmm...
- 15:35 (J) - -
- 15:37 (A1) It must have been an unpaid leave that she had in the fall, a week before this case - when she was back home in
- 15:48 (V) ...
- 15:48 (J) Yes
- 15:49 (A1) - -
- (V) ...
- 16:17 (I) Okay so she explained this that in the beginning there were these two incidents that she has already told about , they were things that she felt was bullying but that the worst was quite and the worst were after this holiday thing after the autumn
- 16:42(J) In the beginning of October 2005
- 16:43 (I) Yes

To me it looked as if this remark was not at all understood or mediated by the interpreter (see the transcribed period between 15:05 and 15:37), and thus there was, also here, no real interaction between the judge and the victim. However, the courtroom interaction is jointly managed and collaboratively construed, and everyone is responsible for the quality of the interaction. According to Pérez González (2006: 391), this view is growing stronger in Translation Studies, despite the view that jointly managed interaction is not possible if the inherent power differentials are too big. Also in this case, we can notice the following problems of the hearing: 1) inadequate knowledge of one's communicative rights and the role of the interpreting in the process on the victim's side, 2) inadequate professional self-confidence and training on the interpreter's side, 3) inadequate communicative training on the judge's side, 4) inadequate creativity in the problem solving skills of communicational problems on all sides, and 5) inadequate knowledge of managing a multilingual process on the judge's side as the chairperson of the court. These problems are due to the general lack of training in the issues of court interpreting, but these problems are also created together. Alas, they are not solved together. The interpreter lacks professionalism, the judge does not master the process of interpreter-mediated hearing and the victim as a lay individual is not able to understand her position correctly so that she could prove her case and answer the judge's questions. Finally, the victim's attorney does not intervene the discussion. The interactional encounter here is unfortunately not a very creative one.

Due to the interpreter using the third person singular passive form (in Finnish) there was also a moment, when both the judge and the defendant's attorney (A2) had to announce that they were not able to follow 'who said what to whom.' The excerpt speaks of the general vagueness of the information that is made available to the judge and the defendant's attorney.

Excerpt 7

- 30:07 (V) ...
 30:10 (I) but she said that Jaana asked erm asked V if she knows
 30:17 (V) ...
 30: 20 (J) *Now I don't know what*
 30:22 (I) ...
 30:27 (V) ...
 30:40 (I) she had just asked if she knows that I want that you are here only for three weeks more and she said that I know you had said so
 30:57 (A2) *Your honour, I didn't quite get who said what to whom*
 31:02 (J) *Well, I understood that she said that Mäkinen had told V that that she had first told Seppänen that do you know that I want you working only for three weeks more... this... this is how I understood it*

Further, there was a part later in the hearing where the judge had to say that the victim had told about the same event a while ago and she would not accept that it is told in different words. It is impossible to know without the analysis of the utterances in Thai language who had told the story in different words: was it the victim herself or was it the interpreter. In any case, the victim apparently said that she did not change her story (see Excerpt 8).

Excerpt 8

- 47:04 (I) Henrikinkatu?
 47:04 (V) ...
 47:15 (I) So she said that in the Henrikinkatu case it was again that she was told or Jaana told her about it orally and that Mäkinen had said it quite fast and she hadn't asked about it more clearly because she had thought that they will go there together and then usually it was like that and she knew
 47:35 (J) *She told the same case a while ago, so I don't quite understand when she said then that she didn't go there because she didn't know if Mäkinen will take her there or should she go alone and she went after Mäkinen for a long time and asked many times and Mäkinen didn't answer so I won't accept now that it is told in different words*
 48:00 (I) ...
 48:08 (V) ...
 48:23 (I) ...
 48:23 (V) ...
 49:10 (I) *She didn't change her story about how it happened and it was the reason why she didn't go there but she said that usually even if she didn't know exactly where a place was, she knew she could ask her husband and he would explain where it was and so it was in this case too and she didn't get the exact address on paper or anything, but*

In spite of her attempts at seeking some clarification, the judge might have tried to find a new way of handling this situation. She might have stopped the hearing for a moment by explaining calmly and in a friendly manner the structure of the hearing for everyone. There were some signs of collaboration, but we cannot talk about expertise sharing. It was apparent to an observer that the victim was not really able to share her own experience with the court. She did not have a real chance to be an actor in her own case. The preliminary investigation was not handled in a proper way either, for the victim's husband acted there as the interpreter. The signed protocol was a Finnish "translation" of her hearing. She probably had not been able to understand the protocol, since she could not fully understand Finnish. There may also have been communication problems between her and her husband. So in the end, there was not sufficient foundation for a good trial. In Excerpt 9, we can notice several problems in a fair trial. The defendant's attorney is accusing the victim of not having told everything in the preliminary hearing. Finally, the victim did not win her case – apparently because of not being able to prove it. Besides, the management of the whole procedure starting by the police and in the preliminary hearing was not very successful from the perspective of interpreting.

Excerpt 9

- 01:40 (A2) When *she* explained in the preliminary hearing about an incident on the Veljenkatu site and told about it here as well today when she stopped working at 3.50 pm then they complained to her about stopping work too early *and she told her that she had pinched her in that situation. Why didn't she tell anything about this in the preliminary hearing?*
- 01:10 (I) *So didn't tell about it*
- 01:13(A2) *About the pinching in the preliminary hearing*
- 01:15 (I) ...
- 01:40 (V) ...
- 01:49 (I) ...
- 01:50 (V) ...
- 02:10 (I) erm
- 02:11 (V) ...
- 02:16 (I) ...
- 02:20 (V) ...
- 02:32 (I) *First she said that she thinks she told but then she started thinking back and she said that yes she told about it to many people then but but if then if she didn't tell about it in the preliminary hearing then she didn't realize it would have been important*
- 02:50 (V) ...
- 02:57 (A2) *So why didn't she tell in the preliminary hearing about Mäkinen telling her that she will only work there for three weeks?*
- 03:04 (I) ...
- 03:25 (V) ...
- 03:30 (I) ...
- 03:42 (V) ...
- 03:53 (I) ...
- 03:56 (V) ...
- 04:02 (I) ...

- 04:10 (V) ...
 04:29 (I) ...
 04:35 (V) ...
 05:13 (I) *She said that she thinks she has told all these things then but but then she said that she doesn't know what had been written down and but she was going to tell all the details but*
- 05:31 (I) ...
 05:32 (J) --
 05:37 (A2) *But she has signed the interrogation report*
 05:44 (J) *It has been translated so she can't have if she has read it and signed it she can't have understood it*
- 05:54 (A2) *Well that's true but the question is whether she knows at all what is written in here since her husband has been the interpreter in this case*
- 06:02 (J) *well, I'd say I don't really - I think we shouldn't really because - you can't say that she has approved it because her Finnish is not really --*

Conclusion

A short analysis of the reported case reveals severe obstacles to the collaborative process in this very session. Collaboration was not on a satisfactory level as there were problems of linguistic and cognitive asymmetry. Due to the lack of a common language and possibly also due to the different ethnic background, it was difficult to overcome this asymmetry. Partly due to the quality of interpreting, the general structure of the procedure was apparently not clear to the victim. On the basis of the performance of the interpreter, it was clear that the interpreter did not know judicial discourse very well, and she did not portray a great deal of experience. However, it must be pointed out that there are plenty of professional court interpreters whose involvement makes a fair trial possible. It is also worth noticing that the quality of court interpreting and the level of collaboration and knowledge sharing can be viewed from the perspectives of the client who is a layperson, of the interpreter who wants to act professionally and of the court members who must be able to make a proper decision.

However, any informal collaborative activity that involves lay members seems to be a problem in the working processes of the courts. The courts must act according to the law and they must protect their authoritative expert status in the society. In spite of the growth in the number of multilingual sessions, translating and interpreting are still some kind of anomaly in the court process. In the everyday practices of the courts, they are increasingly common elements, but they do not yet have well-defined roles in the overall process.

Translators and interpreters are not yet trusted members of the judicial community, and the preparatory part of their work takes place outside the walls of the court. Translators and interpreters working alone do not become socialised into the legal communities of practice. As a result, they are not able to achieve what is most valuable in their work, i.e. the understanding of the various discourses in the activities of the courts and the judicial community. Since judicial discourse can be seen as a form of professional social practice, its members should bridge the gap rather than create tensions, and they should not

act as keepers of the wisdom in the eyes of other professionals. My assumption is that translators and interpreters are neither invited nor openly encouraged to have effective collaboration with the courts even though most professional translators and interpreters are used to cooperating with other activity systems. In addition to this, the current work of many experts can be characterised by short-term contracts. This kind of work does not necessarily produce collective expertise, and should such a network exist, they may not have enough shared knowledge. At the moment, the greatest challenge lies in developing the education of court interpreters and court officials (including a system of apprenticeship), in developing the working practices in multiprofessional teams and in acquiring valid research information on this issue.

References

- Bhatia, V. K. 2004. *Worlds of Written Discourse. A Genre-Based View*. London: Continuum.
- Colin, J. & R. Morris. 1996. *Interpreters and the Legal Process*. Winchester: Waterside Press.
- Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters. Official Journal of the European Communities. [Retrieved June 20, 2010] Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:174:0001:0024:EN:PDF>
- Engeström, Y. 2000. Activity theory as a framework for analyzing and redesigning work. *Ergonomics*, 43, 960–974.
- Finnish Bar Association. 2008. Annual report. [Retrieved June 20, 2010] Available at http://www.asianajaliitto.fi/files/693/Suomen_Aasianajaliiton_vuosikatsaus_2008.pdf.
- Finnish Prosecution Service. 2010. Conference with the topic “Cultural encounters in the use of law” [“Kulttuurit kohtaavat lainkäytössä”] (Oikeuslaitospäivä 19.3.2010) [Retrieved June 20, 2010] Available at <http://www.vksv.oikeus.fi/Etusivu/Ajankohtaista/Tiedotteet/1266333723111>
- Isolahti, N. 2008. Tulkki oikeussaliviestinnän monitaiturina. *MikaEL. Kääntämisen ja tulkkauksen tutkimuksen symposiumin verkkojulkaisu*. [Interpreter as an expert of courtroom communication. An e-publication of the symposium on translation and interpretation.] [Retrieved February 28, 2008]. Available at <http://www.sktl.net/MikaEL/vol2/Isolahti.pdf>
- Isolahti, N. & T. Kinnunen. 2008. Tuomioistuinten kokemuksia oikeustulkkaustilanteista. [Experiences of interpretations in courtroom situations.] *Oikeustulkkauksen selvityshanke*. Opetusministeriön asettaman asiantuntijaryhmän raportti opetusministeriölle. Appendix 2. Helsinki: University of Helsinki, Center for Continuing Education.
- Kadrić, M. 2008. *Interpreters under Fire: Professional identity and public perception*. Presentation at the 9th FIT-Forum Interpreting and Translating at Court and for Public Authorities. Tampere 30.5.2008. [Retrieved February 28, 2008]. Available at <http://www.uta.fi/laitokset/kielet/trans/fitforum/>
- Kinnunen, T. 2005. Are there professional limits for a legal translator? In K. Koskinen & L. Salmi (eds.), *Proceedings of the XVII World Congress International Federation of Translators*. International Federation of Translators, 74–75.
- Kinnunen, T. 2006. *Käännös oikeudenkäyntiaineistona. Lakitekstien tulkinta oikeuskäsitteiden kääntämisen näkökulmasta*. [Translation as courtroom data. Interpreting legal texts in the viewpoint of translating legal concepts.] *Acta Universitatis Tamperensis* 1173, University of Tampere. Available at <http://acta.uta.fi>.
- Kinnunen, T. 2010. Agency, Activity and Court Interpreting. In T. Kinnunen & K. Koskinen (eds.), *Translators' Agency*. Tampere Studies in Language, Translation and Culture. Series B 4, 126–164. [Retrieved June 20, 2010]. Available at <http://tampub.uta.fi/tup/978-951-44-8082-9.pdf>
- Klami, H. T. & E. Kuisma. 2000. *Suomen kansainvälinen yksityisoikeus*. [Finnish international civil law.] 3. ed. Helsinki: Lakimiesliiton Kustannus.
- Koulu, R. 2003. *Kansainvälinen prosessioikeus pääpiirteittäin*. [International process law in general.] Helsinki: WSOY.
- Lave, J. & E. Wenger. 1991. *Situated learning - legitimate peripheral participation*. Cambridge: Cambridge University Press.
- Lee, J. 2009. Conflicting views on court interpreting examined through surveys of legal professionals and court interpreters. *Interpreting: International Journal of Research & Practice in Interpreting*, 11 (1), 35–56.
- Manner, M. 2001. Kansainvälisyys asianajajan arkipäivää. [Internationalization as a part of an attorney's everyday life.] *Pääkirjoitus. Defensor Legis*. (4), 601–602.

- OHOI. 2007. The administrative justice bulletin of the Finnish Ministry of Justice. Oikeustulkkaukseen kaivataan pelisääntöjä. [Rules of the Game lacking in Court Interpreting] (4).
- Parviainen, J. 2006. Kollektiivinen tiedonrakentaminen asiantuntijatyössä. [Collective knowledge building in expertise positions.] In J. Parviainen (ed.), *Kollektiivinen asiantuntijuus*. Tampere: Tampere University Press, 155–187.
- Pérez González, L. 2006. Interpreting strategic recontextualization cues in the courtroom: Corpus-based insights into the pragmatic force of non-restrictive relative clauses. *Journal of Pragmatics* 38 (3), 390–417.
- Vanden Bosch, Y. 2008. *Legal experts vs. Court Interpreters/Legal Translators. A Comparison*. Presentation at the 9th FIT-Forum Interpreting and Translating at Court and for Public Authorities. Tampere 31.5.2008. [Retrieved February 28, 2008]. Available at <http://www.uta.fi/laitokset/kielet/trans/fitforum/>

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